



Screen NSW Terms of Trade

Effective Date: 21 March 2024

Overview

Screen NSW is the primary NSW Government funding body supporting the Australian screen sector based or operating in NSW.

Screen NSW provides funding and incentives, and audience and industry support, across a range of programs for projects, practitioners and screen businesses.

There are four teams:

- Screen Investment Development, Production
- Audience Development & Industry Development
- Post, Digital & Visual Effects (PDV) and Digital Games
- Destination Attraction & Incentives

Screen NSW is part of Create NSW, the New South Wales Government arts and cultural driver. Create NSW is part of the Arts and Tourism group of the Department of Enterprise, Investment and Trade (DEIT). All funding is provided by the NSW Government.

Terms of Trade and Program Guidelines

These *Terms of Trade* contain the core terms on which Screen NSW will transact its business.

The *Terms of Trade* apply to all Screen NSW funding and incentives, and audience and industry support, except for the following incentives and programs:

- NSW PDV Rebate (see [PDV Rebate Guidelines](#))
- NSW Digital Games Rebate (see [Digital Games Rebate Guidelines](#))
- Digital Games Seed Development Program (see [Digital Games Seed Development Program Guidelines](#))
- Location Scouts and Inbounds Program (see [Location Scouts and Inbounds Program Guidelines](#))
- Made in NSW – International Footloose Production (see [Made in NSW Program Guidelines](#))

Current funding programs can be viewed here: [Funding & Support](#).

If a project is an Official Treaty Coproduction, the *Terms of Trade* apply only to the Australian producer, and only to the Australian components of budget and revenue.

Screen NSW's *Terms of Trade* generally align with Screen Australia's *Terms of Trade*. Screen Australia is the federal government agency which supports screen development, production and promotion.

Funding applications to Screen NSW (except for any of the 5 incentives and programs listed above) must comply with these *Terms of Trade* and the relevant *Program Guidelines*, which may contain additional eligibility requirements and assessment criteria.



Successful applicants will sign funding contracts with the NSW Government. These contracts will reflect the *Terms of Trade* and relevant *Program Guidelines* at the time an applicant submits their application. Screen NSW will only agree to exceptions to these *Terms of Trade* and *Program Guidelines* if circumstances are exceptional.

If the *Terms of Trade* and relevant *Program Guidelines* conflict, the *Terms of Trade* prevail.

Screen NSW reserves the right to change or terminate a funding program, and to change the *Terms of Trade* and *Program Guidelines* that apply to future applications, at any time.



Contents

A. Key requirements	5
1. Ethical Conduct.....	5
2. First Nations' content or participation	6
3. Diversity and inclusion	7
B. Eligibility.....	9
1. Applicants: general eligibility requirements.....	9
C. Applications, Assessments and Decisions.....	15
1. Applications	15
2. Assessments.....	16
3. Decisions.....	17
D. Funding types, limits and terms.....	18
1. Funding types	18
2. Funding limits	18
3. Funding terms.....	18
4. Feedback.....	27
Change Log	28

A. Key requirements

1. Ethical Conduct

Screen NSW acts in the public interest and strives to exhibit the highest levels of propriety.

Screen NSW expects funding applicants and recipients to always conduct their business ethically, professionally and with integrity, including in their dealings with Screen NSW.

Applicants and recipients must:

- be honest and open in all dealings with Screen NSW;
- not mislead or deceive Screen NSW by act or omission;
- be courteous and respectful in their communications with Screen NSW staff; and
- comply with requests to provide information in relation to their applications.

After first telling an applicant or recipient of its concerns, Screen NSW reserves the right to decline funding applications from, and not correspond with, anyone who Screen NSW considers treats its staff in a discourteous, disrespectful, hurtful, harassing, vexatious or intimidating manner.

Screen NSW also expects all recipients to act fairly and reasonably to third parties involved in funded activities by:

- complying with all relevant laws, including laws relating to workers' compensation, superannuation, work health and safety, and working with children. For example, by paying Key Creatives, cast and crew at least relevant award minimum rates or any relevant industrial minimums agreed between guilds;
- requiring any work performed by third parties to comply with all relevant laws;
- paying suppliers in a timely manner, and within 30 days of service delivery or as otherwise contracted;
- maintaining appropriate insurance cover; and
- respecting other people's rights, whether the rights are intellectual property rights such as copyright or moral rights, Indigenous Cultural and Intellectual Property (ICIP) rights, or the rights of people encompassing diverse cultural backgrounds, disability status, or sexual orientation and identity.

Screen NSW may withhold or revoke funding or terminate a funding contract if a recipient fails to act in any of the ways outlined above.

Discrimination, harassment, sexual harassment, and bullying

All employers (and every person conducting a business or undertaking), including producers, production companies, and their contractors, must comply with all applicable safe workplace legislation and applicable industry codes of conduct, including the *National Guidelines for Screen Safety*.

All employees have the legal right not to be discriminated against, harassed, sexually harassed or bullied in the workplace. Workplaces should be non-threatening, respectful, safe and free from all forms of harassment. There are federal, state and territory laws that prohibit discrimination, harassment, sexual harassment and bullying in the workplace.

Screen NSW has zero tolerance for unsafe workplace behaviours, including discrimination, harassment and bullying. This includes at all events and activities we manage and support as well as on all projects and other initiatives we fund.

We are committed to actively working to eliminate sexual harassment and other unsafe workplace practices and behaviours in our industry. Screen NSW includes obligations to comply with relevant legislation, and to use reasonable efforts to follow recommendations in the *Australian Screen Industry Code of Practice* to the extent it applies, in its funding contracts. Screen NSW may ask applicants to give evidence of their safe workplace practices at assessment stage.

Working with children

Adults who work or volunteer in child-related work in NSW must have a Working with Children Check (WWCC) <https://ocg.nsw.gov.au/working-children-check>. Screen NSW includes obligations to comply with this requirement in its funding contracts.

2. First Nations' content or participation

Screen NSW supports the telling of First Nations' stories by First Nations storytellers and meaningful collaboration with the communities to which these stories belong.

Evidence of consultation and consent appropriate to the relevant stage of production must be submitted as part of your application materials. Specifically, Screen NSW requires applicants to review applicable Checklists in Screen Australia's [Pathways & Protocols: a filmmaker's guide to working with Indigenous people, culture and concepts](#) and may require applications to include:

- a statement on how they are approaching First Nations' content (even if they believe the content is not specific to a community or individual);
- evidence of their collaboration to date; and
- if relevant, signed letters of consent confirming the community and/or individual's willingness to collaborate.



Screen NSW requires producers to engage a First Nations consultant on any project with First Nations' content or participation and encourages the employment of First Nations creatives. If Screen NSW considers your project contains *significant* First Nations' content, Screen NSW will require appropriate First Nations Key Creatives.

Screen NSW also requires producers to comply with *Pathways & Protocols*, including in relation to Indigenous Cultural and Intellectual Property (ICIP) rights.

Screen NSW encourages producers to acknowledge in their project credits the traditional owners of the land on which their project was produced. The following text is suggested:

The Producers would like to acknowledge the Traditional Owners of the land on which [Name of Project] was produced.

OR

If a producer would like to provide details of the traditional owners of the land on which the project is produced:

The Producers would like to acknowledge the [Traditional Owners name] people as the Traditional Owners of the land on which [Name of project] was produced.]

3. Diversity and inclusion

Screen NSW actively supports a diverse and inclusive Australian screen sector. Our funding programs and funding eligibility criteria reflect this.

Project accessibility

Producers of projects with any disability considerations must demonstrate they will follow appropriate consultation and collaboration to ensure authenticity of casting and content. Screen NSW expects all applicants to consider disability access arrangements relevant to the production of their projects and conduct of their activities, including any obligations under relevant legislation such as the *Disability Discrimination Act 1992*.

To give access to audience members with impaired vision or hearing, Screen NSW requires producers to:

- caption and audio describe funded feature films for theatrical screenings, streaming channels and DVDs, allowing for this requirement in the budget; and
- use reasonable efforts to ensure Australian distribution agreements require captioning and audio-description for theatrical screenings and DVDs.



Screen NSW encourages producers of all other funded content to give people with a visual or hearing impairment access to their project (for example, for website material, by accessible web design) and to budget for this.

Diversity data

Screen NSW supports the importance of diversity benchmarking and tracking. *The Everyone Project* (TEP) is an initiative of the Screen Diversity and Inclusion Network (SDIN) to do so.

As a funding condition, Screen NSW will require some funded projects to register their project, and producers are encouraged to upload relevant data. Information on how to register can be found [here](#). To register, producers will need to use Screen NSW's TEP registration Code, which will be given in the letter sent to successful funding applicants.

TEP has devised a simple survey tool for data collection, and an overview of the way it works is available [here](#). Get started by following the 4 simple steps [here](#), which Screen NSW encourages producers to do as soon as possible at the start of their project. Producers are also asked to inform their cast and crew about TEP and encourage their participation using [these key communication points](#).

Further information and support is available via the Help Centre at www.theeveryoneproject.org and/or via [FAQ](#).

B. Eligibility

Eligibility requirements apply to all applications, applicants, and the projects and other activities for which funding is sought. Individual funding programs may have specific eligibility requirements. If they do, they are set out in the *Program Guidelines*.

Screen NSW receives many funding applications. Funding is competitive; meeting the eligibility requirements does not automatically mean you will receive funding.

Only certain individuals and organisations are eligible to apply for Screen NSW funding. Some entities are ineligible for some funding programs, for example, trustees of a trust are ineligible for production finance.

Priority is given to individuals who are, and teams that include, people from underrepresented groups, including First Nations' peoples, people from CaLD backgrounds, people with disability, LGBTQIA+ people, people from Western Sydney and people from regional NSW.

Screen NSW is also committed to supporting gender balance for both above and below the line project talent. If stated in the relevant *Program Guidelines*, applicants and funding recipients must use their best efforts to give priority in line with Screen NSW's gender equity targets.

If the contracting entity differs from the applicant, the same eligibility rules apply to the contracting entity or entities, including any special purpose vehicles (SPVs).

Screen NSW alone determines whether eligibility requirements are met.

1. Applicants: general eligibility requirements

All applicants must:

- ✓ have an active ABN;
- ✓ be registered for GST if required by law;
- ✓ meet the eligibility requirements of the relevant program set out in the relevant *Program Guidelines*;
- ✓ not be currently engaged in a dispute or legal proceedings relating to the subject of the application;
- ✓ have meaningful financial and creative control of the project or other activity the subject of the application;
- ✓ have the capacity and resources (with any applied for Screen NSW funding) to execute the project or other activity; and
- ✓ have the right to carry out the project or other activity, for example, own or have licences of any relevant copyright. If the application is based on a third party underlying work, at a

minimum, an appropriate option agreement, with an initial option period of 18 months and at least two extensions of a minimum of 12 months each.

Individuals

If individuals are eligible to apply for funding under relevant *Program Guidelines*, the **individual applicant must be**:

- ✓ 18 years or over;
- ✓ applying in their own capacity and have legal capacity;
- ✓ an Australian citizen or an Australian resident. If an Australian resident, a person who is lawfully domiciled in Australia, and who has actually been in Australia, continuously or intermittently, for more than six months immediately before the application; and
- ✓ NSW-Based or have at least one NSW-Based Key Creative on the project. Screen NSW may require additional documents if an applicant is not NSW-Based. In any case, Screen NSW only funds the NSW Spend.

An **individual applicant cannot be**:

- ✗ an employee (full-time or part-time) of a Broadcaster or Commissioning Platform, a distributor or a telecommunications company;
- ✗ an employee (full-time or part-time) of a company owned or controlled by a Broadcaster or a Commissioning Platform, distributor or telecommunications company;
- ✗ enrolled as a full-time secondary or tertiary student;
- ✗ a full-time employee of a tertiary educational or training institution;
- ✗ a full-time or part-time current employee of Create NSW, Screen NSW or another federal, state or territory screen funding agency;
- ✗ unless Screen NSW agrees otherwise before an application is submitted, an individual applicant who has an outstanding obligation to Screen NSW, Create NSW or a predecessor agency. This requirement also applies if any Key Creatives, executive producers or project directors to be included in the application have an outstanding obligation to Screen NSW, Create NSW or a predecessor agency.

Part-time students and part-time employees of tertiary education or training institutions

Part-time students (including post-graduate students) and part-time employees of tertiary education or training institutions are assessed on eligibility on a case-by-case basis.

In addition to meeting the other eligibility requirements for individuals, part-time student projects must not be part of any assessable material for their course or contribute to credits for a course of study. The student applicant must submit a signed letter from their course coordinator confirming the project is not assessable material for their course and that the institution does not hold any copyright interest in it.

Organisations

Organisations **must**:

- ✓ if a Corporations Act company, be taken to be registered in New South Wales;
- ✓ have their central management and control in Australia;
- ✓ carry out business in Australia; and
- ✓ be NSW-Based and have their principal place of business in NSW for at least six months immediately before the date of application, unless an exception applies that is set out in these *Terms of Trade* or in the relevant *Program Guidelines*. Screen NSW may require additional documents if an applicant is not NSW-Based. In any case, Screen NSW only funds the NSW Spend.

Organisations **cannot**:

- ✗ be a Broadcaster, Commissioning Platform, distributor or telecommunications company;
- ✗ be a holding company or subsidiary of a Broadcaster, Commissioning Platform, distributor or telecommunications company; or a company owned or controlled by one or more of them, unless Screen NSW agrees otherwise in exceptional circumstances;
- ✗ be an educational or training institution; or
- ✗ unless Screen NSW agrees otherwise before application, have an outstanding obligation to Screen NSW, Create NSW or a predecessor agency. This requirement also applies if a related party to a company applicant or any of its directors, or any Key Creatives, executive producers or project directors to be included in the application, have an outstanding obligation to Screen NSW, Create NSW or a predecessor agency.

Development funding

Screen NSW will only fund development projects that include:

For early and advanced development:

- ✓ a Key Creative with Eligible Credits.

For slate development, at least:

- ✓ one Key Creative for each project from an under-represented group such as First Nations' peoples, people from CaLD backgrounds, people with disability, LGBTQIA+ people, people from Western Sydney and people from regional NSW; and
- ✓ one female-identifying Key Creative for each project.

Production funding

Screen NSW will only fund screen projects that:

- demonstrate Significant Australian Content or are a Treaty Co-Production; and
- meet the applicable *Program Guidelines*; and
- have a clear pathway to an Australian audience.

Screen NSW only funds the following **formats**:

- ✓ feature films
- ✓ adult and children's television drama and narrative comedy, including series, miniseries, web series and telemovies
- ✓ documentary television or web programs and series that meet the definition of a 'documentary program' under the Australian Communications and Media Authority (ACMA) *Documentary guidelines*
- ✓ animation series
- ✓ creative interactive screen content

Screen NSW **does not fund**:

- ✗ infotainment, infomercials, lifestyle, light entertainment, travel, 'how-to'; magazine, sports, education, game shows, serials/soaps, music videos, and other programs primarily intended for corporate, educational, training or promotional purposes, or other magazine style projects or advertisements; reality television; non-narrative experimental, performance programs
- ✗ current affairs and news projects
- ✗ community television shows
- ✗ shorts, short features (under 60 minutes duration) (unless part of a specific initiative), or interstitials
- ✗ projects that are part of assessable materials for a course of study or that will contribute to credits for a course of study

- ✘ projects that could attract an X18+ or RC as described on the Australian classification website
- ✘ projects that in Screen NSW's opinion contain material that will bring or is likely to bring the NSW Government, Create NSW or Screen NSW into public disrepute, contempt, scandal or ridicule or that may tend to reflect unfavourably on Create NSW or Screen NSW
- ✘ projects that, in Screen NSW's opinion, includes content that is exploitative or that may harm an individual or group
- ✘ digital games (for production funding there is a separate rebate incentive)
- ✘ purchase of capital works or equipment or publication costs of journals, books or magazines or the purchase of hardware, software or platform developer's kits
- ✘ any combination of the above.

Coproductions

Coproductions may only be one of two types, either:

- an Official Treaty Coproduction; or
- a Genuine Coproduction.

If a project is an **Official Treaty Coproduction**, the *Terms of Trade* apply only to the Australian producer, and only to the Australian components of budget and revenue.

If a project is a **Genuine Coproduction**, the Non NSW-Based applicant must:

- ✓ provide evidence of a genuine co-production with a NSW-Based producer; or
- ✓ have at least one NSW-Based Key Creative attached; or
- ✓ satisfy Screen NSW that the project offers outstanding benefits to NSW.

Screen NSW considers that in a Genuine Coproduction the co-producers share in the following rights and revenue streams: the producer's share of copyright, producer fees, overheads, Producer Offset margin, producer equity, and producer recoupment position including profit share.

Industry Development funding

Industry development funding is available for:



- ✓ one-off or annual professional development events including workshops, masterclasses, forums

Industry development funding is not available for:

- ✗ publications or magazines
- ✗ development or production of screen content
- ✗ travel
- ✗ awards or competition components of a film festival or initiative
- ✗ secondary school or tertiary education provider focused programs

Festival and Market Travel funding

Screen NSW will only fund festival and market travel if the travel is associated with the kind of screen project described in the eligible listed formats or for eligible practitioners. Screen NSW only funds travel to festivals and markets for actors if they are also a Key Creative or attached as an executive or other producer.

If an applicant for festival or market travel funding is not NSW-Based, the applicant must satisfy Screen NSW that:

- ✓ the applicant is part of a Genuine Coproduction; **and**
- ✓ there is at least one NSW-Based Key Creative attached; **and**
- ✓ the proposed travel offers outstanding benefits to the NSW screen industry.

C. Applications, Assessments and Decisions

Screen NSW receives many funding applications. Funding is competitive; meeting the eligibility requirements does not automatically mean you will receive funding. In any case, Screen NSW only funds the NSW Spend.

Fees

Screen NSW does not generally charge applicants or funding recipients application, administration or legal fees. However, Screen NSW may choose to charge an appropriate fee on a case-by-case basis. Screen NSW will give an applicant reasonable notice of its intention to charge a fee, with details of the amount and the basis for charging.

1. Applications

Applicants are encouraged to contact a Screen NSW Investment Manager to discuss their project before submitting an application for funding support.

Applicants **must disclose** in their funding application:

- applications for funding from sources other than Screen NSW; **and**
- funding already secured at the time of Screen NSW application; **and**
- any conditions that attach to other funding.

The following applications are ineligible:

- × late applications if there is an application deadline published on the Screen NSW website
- × incomplete applications
- × applications for retrospective funding
- × applications for funding for capital expenditure
- × applications for development funding that have previously been declined through Screen NSW's assessment process, unless Screen NSW considers the new application shows significant change
- × applications for production funding if two previous applications have been declined through Screen NSW's assessment process
- × unless Screen NSW agrees otherwise before application, applications from applicants who have an outstanding obligation to Screen NSW, Create NSW or a predecessor agency. This requirement also applies if a related party to a company applicant or any of

its directors, or any Key Creatives, executive producers or project directors to be included in the application have an outstanding obligation to Screen NSW, Create NSW or a predecessor agency.

2. Assessments

The assessment process for each program is outlined in the relevant *Program Guidelines*, which may include specific assessment criteria and turnaround times, including decision timing.

Assessments are generally conducted by Screen NSW staff and, for particular programs, considered by the Film and Television Industry Advisory Committee (FTIAC). Sometimes, applications may be reviewed by independent assessment panels or individual non-staff assessors and consultants.

When assessing, Screen NSW will generally consider:

- the terms and availability of funding;
- the number and quality of competing applications;
- giving preference to applications fully developed or whose applicants are NSW-Based;
- the cultural and economic benefits to NSW, including NSW Spend and employment of NSW-Based Key Creatives and other personnel;
- the diversity of the project and how issues of equality manifest in a project’s content, cast and crew;
- the level of previous or current support of the applicant or the project by Screen NSW and other screen funding agencies;
- audience and market;
- industry and skills; and
- any supporting documents and additional information Screen NSW requests.

Screen NSW may also consider the diversity of applicants and the slate of projects being assessed, including in the context of previous funding decisions.

Screen NSW may not give these assessment considerations equal weight.

Screen NSW may contact and discuss an application with all parties associated with a project’s financing, such as other government funding bodies, broadcasters and other commissioning platforms, sales agents, distributors, and lenders.

All applications involving First Nations’ content or participation will be assessed by a First Nations’ assessor or consultant.



3. Decisions

All applicants will be notified of the outcome of an assessment by email.

If an applicant is offered funding, the applicant must not publicise any aspect of the offer without first obtaining Screen NSW's consent.

Successful applicants are required to enter into a funding contract with Screen NSW. Screen NSW will not negotiate the core terms of a development investment agreement or the core terms of a production grant agreement.

Screen NSW may withdraw an offer of funding if contracting is not completed within six months unless Screen NSW extends this period. Screen NSW will generally only agree to extend in exceptional circumstances.

A successful application does not imply additional funding for the applicant, the funded project or any other project or activity.

D. Funding types, limits, and terms

1. Funding types

Screen NSW gives funding to recipients either as a **grant** or as an **investment**.

Development funding is initially an investment.

Production funding of \$100,000 or less is provided as a grant. Production funding of more than \$100,000 is provided as an investment unless Screen NSW chooses to provide the funding as a grant.

2. Funding limits

Screen NSW does not contribute more than the following:

- \$50,000 as development funds per application.
- \$100,000 for a development slate of 3 projects.
- \$2,500,000 as production finance per project.
- \$175,000 under the Regional Filming Fund per project.
- Generally, \$10,000 as industry or audience development funding for a single year activity.
- Generally, a total of \$30,000 as industry or audience development funding for multi year activities.

3. Funding terms

General funding terms

Payments

Screen NSW usually pays funding in instalments (drawdowns). However, for some programs, for example, industry and audience development, funds are paid in lump sums for the relevant financial year.

The amounts paid and dates are outlined in the funding contract, which sometimes includes an instalment/drawdown schedule. Production funding is usually tied to contracted production milestones. Production grants are usually paid in 3 instalments, production investments in 5 instalments.



There are usually preconditions to payment, for example, Screen NSW receiving particular documents such as a satisfactory solicitor's opinion.

Screen NSW may withhold a payment/drawdown if a recipient or related party has not complied with any contract with Screen NSW, Create NSW or any predecessor agency.

Funding is only paid in Australian dollars.

GST may be payable. If you are registered for GST, Screen NSW will require a Tax Invoice that satisfies GST Law requirements for each payment.

Screen NSW uses best efforts to pay funding within 30 working days of receipt of a correct invoice and all payment preconditions to the payment being satisfied.

Recipients of production funding are required to establish a separate bank account for the project.

Approval and consultation rights

Screen NSW will require consultation and approval rights over some aspects of your project or activity, for example, Key Creatives and cast, Key People, the Finance Plan, the budget, and instalment/drawdown schedules. Details will be contained in the funding contract.

If there are major changes to the details Screen NSW has approved, you must advise Screen NSW even if they occur after you sign your funding contract.

Finance Plans and budgets

Projects and other activities must be fully financed at the time of application, except for the contributions being sought from Screen NSW and other Australian government funding agencies and, sometimes, except in relation to Official Treaty Coproductions.

If a recipient proposes to make a cash contribution to the funded project or other activity, Screen NSW may require the recipient to verify it has sufficient funds to do so, for example, by providing an accountant's opinion.

Covid 19

Subject to current NSW or Federal Health Department advice, before a project is produced or an activity is undertaken, a recipient must:

- ✓ submit a COVID-19 Plan to Screen NSW;
- ✓ make themselves aware of and comply with all applicable law and government and industry directions and guidance relating to COVID-19, including in relation to the health and safety of workers, business continuity plans, insurance coverage and travel arrangements;



- ✓ make themselves aware of and comply with the COVID-Safe Sustainability Guidance advice, to the extent relevant; and
- ✓ use all reasonable efforts to mitigate costs that may arise from or are connected to COVID-19.

Credits and other acknowledgments

Anyone receiving Screen NSW funding must acknowledge this support, including in promotional materials.

The specific credits and other acknowledgments will be set out in your funding contract. All credits and acknowledgements will require Screen NSW approval/sign-off.

If Screen NSW provides development funding for a project, it expects a credit in the project when produced even if Screen NSW does not give production funding.

Delivery requirements and reports

Specific delivery requirements, including reporting, will be set out in the funding contract. Delivery materials will vary, depending on the stage, project or activity being funded. All costs to produce and deliver the required delivery materials and reports must be budgeted for in the Screen NSW approved budget.

Reports generally require a recipient to show they used the funding for the purpose and in the way agreed with Screen NSW, especially in relation to the amount spent in New South Wales. Sometimes, statutory declarations and audits are required to evidence this.

Recipients may be required to give information about the funded project or activity while it is being funded and afterwards. For example, they may be required to give details of where and when screen content is screened. Screen NSW needs this for its strategy, research, and accountability purposes.

Screen NSW reserves the right to audit books and records relating to a project or activity to check that the funding expenditure complies with contract promises.

If a project is required to engage production attachments, reports about the attachment will be required from both the producer and the person engaged.

Underspends

A recipient must repay Screen NSW any part of a Screen NSW grant not spent on the funded project or activity according to the funding contract.



NSW Spend

This means all services provided by and invoiced by a NSW-Based funding recipient, contractor or other supplier. Screen NSW only funds the NSW Spend.

Specific exclusions include application fees for the Producer Offset, screen agency administration fees, SPA fees and financing costs (administration and interest).

The (eligible) NSW Spend is presented in the production investment agreement (PIA) or grant agreement (PGA) as both a dollar amount and as a percentage of the budgeted cost. This is determined at the time of application and is a contractual obligation under the funding agreement. The producer must provide an audited statement of NSW Spend as part of the final audit for investments (the PIA) OR provide a statutory declaration of NSW Spend for grants (the PGA) together with a NSW production report at final delivery.

Specific funding terms

Project development funding

Standard funding contract

Development funding is given to recipients on the terms of a standard development investment agreement (DIA). **Screen NSW does not negotiate the core terms of a DIA.**

Underlying Rights

If the project is based on an existing work owned by another person or organisation, before a funding contract is signed, Screen NSW requires the applicant to acquire on appropriate terms an option in relation to the existing work with an initial option period of at least 18 months from the time of application with at least two extensions of at least 12 months each.

Screen NSW development funding cannot be used to purchase or renew rights or options.

Screen NSW may request a satisfactory chain of title opinion letter from a qualified solicitor (Solicitor's Opinion) if the chain of title is particularly complex or Screen NSW considers there are exceptional circumstances.

Repayment of development funds

Screen NSW keeps a cumulative total of all development funding it contributes to a project (**Total Development Funding**). If the project goes into production, the Total Development Funding must be included in the production budget. This applies whether or not Screen NSW provides production funding.



Screen NSW encourages increased production activity in NSW and by NSW-Based people and organisations. As part of this encouragement and support, Screen NSW will not ask for Screen NSW development funding to be repaid if:

- the project will be 100% produced or 100% post-produced in NSW (or both); and
- the producer is:
 - NSW-Based; and
 - not in breach of any agreement with Screen NSW or Create NSW or any predecessor agency.

Otherwise, Screen NSW requires the Screen NSW development funding to be repaid to Screen NSW on or before the first day of principal photography (or, if an animation, the first day of production).

Project production funding

Project grant funding is given to recipients on the terms of a standard production grant agreement (PGA). **Screen NSW does not negotiate the core terms of a PGA.**

Project investment funding is given on the terms of a production investment agreement (PIA). PIAs and specific transaction documents are negotiated.

Terms that apply to production grants and investments

Underlying rights

Screen NSW will require the producer to provide a satisfactory solicitor's opinion from a qualified solicitor to the effect that the recipient has all underlying rights necessary to make and exploit the project without infringing copyright.

NSW connection

Producers will be required to spend a minimum amount in NSW, to agree that the minimum NSW spend will not be less than an agreed percentage of the budgeted cost, and to ensure at least specified percentages of the shoot and post-production occur in NSW.

If funding is received under the Regional Filming Fund, a minimum regional shoot percentage and a minimum NSW regional spend will be required.



Producer offset

If a producer is applying for the producer offset, Screen NSW requires the producer to cashflow at least 90% of the projected offset value. If the producer itself is cashflowing the producer offset, Screen NSW may require the producer to verify it has sufficient funds to do this.

Screen NSW requires the producer to obtain Screen NSW's approval of any fees, interest or other amounts charged to the budget that are associated with the cashflowing of the producer offset (whether by the producer or a third party).

The amount of any projected producer offset cashflowed to a project's budget is to be treated as producer equity in addition to any other producer equity.

Screen NSW may require the producer to obtain a Provisional Certificate relating to the Producer Offset from Screen Australia (in its capacity as the Film Authority administering the Producer Offset under Division 376 of the *Income Tax Assessment Act 1997* (Cth)), on a case-by-case basis.

Production attachments

Projects receiving Screen NSW funding must engage people as paid production attachments, in accordance with the *Program Guidelines* but at a minimum:

- For projects receiving funding of \$150,000 up to \$750,000, 1 NSW-Based production attachment to any above or below the line position paid for from the approved budget for a minimum of 6 weeks, plus an additional week (capped at 12 weeks) for each full \$50,000 Screen NSW invests above \$150,000;
- For projects receiving \$750,000 or more: 2 NSW-Based production attachments to any above or below the line position paid for from the approved budget for a minimum of 6 weeks plus an additional week (capped at 12 weeks) for each full \$50,000 Screen NSW invests above \$150,000; and
- on no less than industry award rates (for 40-hour weeks, Level 1 MPPA rate, not including scheduled or standard overtime).

If Screen NSW agrees, the producer may engage several people as production attachments for shorter periods instead of one or two people for a longer period.

Insurance and completion guarantees

Unless Screen NSW agrees otherwise, it will require the producer or the production company to take out and maintain the following insurances:

- public liability (for not less than \$20,000,000);
- workers' compensation insurance;
- content media insurance;
- multi-risk insurance;

- FPI;
- errors and omissions insurance; and
- any other insurances reasonably required, considering the nature of the project and the budget.

Screen NSW requires a completion guarantor to be appointed. However, applicants may submit a written request to waive the appointment of a completion guarantor at application stage. Screen NSW will consider the waiver request on a case-by-case basis taking into account:

- the nature of the project;
- the level of Screen NSW funding and the budget;
- the experience and track record of the producer and creative team;
- the risk of completion; and
- whether any co-financiers have agreed to waive the requirement for a completion guarantee.

For projects that do not require completion guarantees Screen NSW:

- will require a 10% contingency;
- may require its funds to be cashflowed into the production later than other funds;
- may require at least some of the producer's fees and production overheads to be withheld until post-production starts; and
- may take other steps to address any potential risk, including requiring the applicant to provide an independent budget assessment from a suitable third party.

Promotional uses of the project, stills, and marketing materials

Screen NSW expects the producer to collaborate on promotional activity (including set visits) to jointly identify opportunities to generate high media coverage and shape public awareness of a funded project. Recipients should contact their Screen Investment Manager.

Screen NSW requires a permanent, non-exclusive right to use no more than 3-minute excerpts from a funded project, still photographs, and a project's marketing and other delivery materials, to promote the project and for Screen NSW's non-commercial corporate and promotional purposes, for example to promote the NSW Government's support for the screen industries and the NSW screen content industries. Screen NSW also requires a permanent, non-exclusive right to screen the whole project to staff, members of the Film and Television Industry Advisory Committee, a limited number of invited guests, and for Parliamentary screenings.

Screen NSW's rights must extend to online use of project excerpts on its website, YouTube channels, Instagram, Facebook, X (formerly Twitter), and other social media platforms, and may include using excerpts in sizzle reels. Screen NSW may crop stills.

Recipients must ensure all clearances are obtained for these uses.

Delivery Materials

Funding contracts will require producers to deliver specific materials to Screen NSW and to deliver certain materials to the NFSA.

For Screen NSW:

The relevant Screen Investment Manager is to be contacted before any delivery materials are uploaded, emailed, or posted.

Emailed deliverables and reports are to be sent to:

- deliveries@create.nsw.gov.au; and
- the relevant Screen Investment Manager.

Physical items are to be sent by registered post to the address specified in the Notices Schedule of the funding contract.

For the NFSA:

All materials to be delivered directly to the NFSA are specified in the NFSA Delivery Deed Screen NSW requires the producer to enter.

Specific production grant terms

If Screen NSW gives funding as a grant, Screen NSW will not own any project assets such as copyright and will not require a share of receipts. However, a recipient must first obtain Screen NSW's consent to give any of its copyright to other people or organisations, and Screen NSW's consent to any subsequent copyright assignments.

Specific production investment terms

Screen NSW will:

- require 1% of the copyright in the project for the duration of copyright, and a 1% ownership share of certain other project assets, unless the ABC is a co-financier, in which case Screen NSW will require a pro rata share of other project assets based on its percentage contribution to the budgeted cost of the project.

- seek repayment (recoupment) of its investment from revenue from the project. Details of recoupment are approved for each project. However, Screen NSW does not require any copyright collecting society revenue to form part of its receipts.
- consider its position on private investment recoupment on a case-by- case basis. In all other circumstances, Screen NSW will generally not subordinate its recoupment right to other equity investors and requires its investment to be recouped at the same time as other equity investors proportionate to their investments.
- if the project goes into profit, require a fixed 50% of the profit be allocated to the producer and that Screen NSW shares the other 50% at the same time with the other equity investors proportionate to their investments. If a producer contributes equity to a project's budget, then the producer shares in the equity investors' 50% share in addition to the producer's fixed 50% share.
- generally, require an independent collection agent it approves to be appointed for all territories except Australia and New Zealand. Screen NSW may permit the producer to disburse revenue generated in Australia and New Zealand if no other financier requires a collection/disbursement agent.
- require an independent audited statement of the actual NSW Spend as part of the final audit.
- require a fee to be paid at the latest on the first day of principal photography, or on the first day of production for an animated program, if a prequel, sequel, spin-off, remake or project based on the original format is to be produced by the original producer or a related party.

The fee will be calculated as follows:

- for feature films: 1.5% of budget uncapped;
- for adult TV and documentary series (less than 6 episodes): 1.5% of budget capped at \$125,000;
- for children's TV: 1.25% of budget capped at \$125,000.

If an amount is paid for the licence or option by a related party that is more than the amount to be paid as a fee to the equity investors, the excess amount must be treated as part of the original project's gross receipts and go through the original project's recoupment waterfall.

- require payment for any licences (and options granted) to a third party (who is not the original producer or a related party) to make a prequel, sequel, spin-off, remake or other project based on the original format. These payments must be treated as part of the original project's gross receipts and go through the original project's recoupment waterfall.

Post-production funding

Applicants for post-production funding must submit an assembly with their funding application if principal photography (or, for animations, production) has been completed before the application is made.



4. Feedback

Screen NSW acknowledges that feedback from stakeholders about its policies, guidelines and the way in which funding programs are delivered is an important means of gauging the effectiveness and efficiency of its activities and identifying areas of improvement.

Change Log

Date of change	Section of ToT	Topic	Change
2 Nov 2023	D. Funding types, limits, and terms, 3. Funding terms	NSW Spend	Term added
20 Nov 2023	D. Funding types, limits, and terms, 3. Funding terms	Specific production investment terms	The following clause regarding fee payments was removed: <i>Screen NSW will share the fee with the other equity investors proportionate to their investment in the original project.</i>
5 Feb 2024	B (1), C and D (3)	NSW Spend	Clarifications regarding NSW Spend, including amendment of entitlement to claim contingency.
	C (2)	Assessments	Clause added regarding diversity of applicants and slate of projects.
21 Mar 2024	Overview, Terms of Trade and Program Guidelines	Digital Games Seed Development Program	Digital Games Seed Development Program added to the list of programs and incentives that are not covered by the Terms of Trade.