

1 April 2011

Fiona Cameron  
Chief Operating Officer  
Screen Australia  
GPO Box 3984  
Sydney NSW 2001

Dear Ms Cameron

### **Draft Guidelines: Convergent Television & All Media Funding**

Free TV welcomes the opportunity to comment on Screen Australia's *Draft Guidelines: Convergent Television & All Media Funding*. As with our submission on the *Television Funding Blueprint*, this submission focuses on the proposed terms of trade and program guidelines for the Convergent Television Fund, as the most relevant element of the Guidelines for broadcasters.

Free TV is generally supportive of the changes that have been made to Screen Australia's proposed terms of trade since the Blueprint. We note that Screen Australia appears to have taken on board feedback from the industry regarding the importance of flexibility in commercial negotiations, with the proposed Guidelines being far less prescriptive and more adaptable than the terms of the Blueprint.

In particular, Free TV believes the following changes substantially increase the flexibility of Screen Australia's terms of trade:

- the removal of the requirement for mandatory holdback periods, allowing them instead to be freely negotiated by the parties involved;
- the replacement of the proposed single series funding limit with a flexible preference for funding 26 hours of any one project, with longer funding available in exceptional circumstances;
- the change of the strict requirement that every project include a digital media platform as an attachment to a more flexible expectation that this will be the case. Free TV also appreciates the explicit reference to catch-up television services, to clarify that such services do qualify for this requirement; and
- the extension of eligibility to programs based on foreign formats, subject to the caveat that preference will be given to original formats.

Free TV also appreciates feedback provided directly by Screen Australia indicating that the rules surrounding their television funding programs are intended to be merely guidelines, and are always able to be varied for exceptional or unforeseen circumstances.

Free TV is, however, still highly concerned with the prescriptive nature of a number of the provisions that remain in the guidelines. In particular, Free TV objects to the inclusion of mandatory licence fees, and the unjustified increases in these fees proposed for both adult and children's drama. The mandatory licence fees currently required for Screen Australia funding are already out of line with market conditions both nationally and internationally, and act as a substantial disincentive for investment in diverse television shows. The increased fees will only reduce production levels, harming the industry and Australian culture.

### **Adult Drama Licence Fees**

As Free TV has pointed out in previous submissions, broadcasters contribute substantial funding and resources to productions over and above the free-to-air licence fees. For example, broadcasters often provide upfront payments in the form of development financing, equity investment and distribution advances/guarantees which are key to enabling projects to go ahead. Commercial broadcasters also provide significant creative input during both the development and production of a project through their drama departments, and cover substantial promotion and publicity costs. These contributions represent significant risk-taking by the broadcaster, despite the fact that all the gain in terms of intellectual property rights and ongoing royalties and distribution rights go to the producer.

The introduction of the Producer Offset has not significantly affected the provision of such input, which has instead increased in recent years. In effect, broadcasters are now providing significantly more resources to independent productions than they were 10 years ago. In this context, a rise in licence fees is entirely unjustified.

Indeed, as a result of convergence and the introduction of multi-channels, audiences for individual programs have declined in recent years, meaning that the value of those programs has also declined. As such, any increase in licence fees will likely result in lower levels of overall production or lower production budgets being necessary to ensure broadcasters are still able to fulfil their Australian content quotas.

Screen Australia does not provide any justification for the fee increases or evidence of a market imbalance that needs to be addressed. As Screen Australia itself has admitted, the television drama fund is aimed at large projects, which could only be undertaken by a small handful of well established production houses in Australia. These production houses are large, well resourced corporate entities that have substantial market power and are able to command



licence fees well in excess of the minimum fees currently set by Screen Australia. Further government interference is simply not justified in this market.

### **Children's drama licence fees**

As Free TV and other industry submissions to Screen Australia, most notably the Screen Producers Association of Australia, the Media Entertainment and Arts Alliance and children's television producers Stewart and Wall in the online forum, have pointed out, the licence fee increase for children's drama is particularly unjustified. Children's television production is already at very low levels as a result of the lack of market viability in this sector and the increasing restrictions on advertising permitted during children's programming.

While Free TV appreciates that Screen Australia has reduced the amount it proposes to increase children's drama licence fees by since the Blueprint, Free TV still maintains that any increase is unsustainable. We would also appreciate further clarity regarding the arrangements for sublicensing and how this would impact on the licence fee.

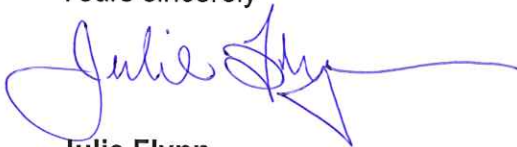
### **Other issues**

Free TV also provides the following comments:

- Free TV is concerned regarding the requirement for there to be an allowance in a budget for distribution on a digital platform. This should be a matter that is determined on a case by case basis as additional expenditure is not always required. For example, additional expenditure is not required for content made available via online catch-up services.
- Free TV assumes that the proposed licence fees will not be subject to CPI increases and would appreciate clarification of this point.
- Free TV argues against compulsory holdbacks in both children's and adult's drama. As previously argued, there should be maximum flexibility in the commercial arrangements for these productions.

Thank you again for the opportunity to comment on the draft Guidelines. Please contact me if you would like any further input or require clarification.

Yours sincerely



**Julie Flynn**  
**CEO**