



Australian Government

SCREEN  
AUSTRALIA

## Reversion of Recoupment Entitlements Guidelines for titles approved before 1 January 2009

Screen Australia reverts its recoupment entitlement in favour of the producer in accordance with the Terms of Trade applicable to production investments approved **after 1 January 2009**. See

[www.screenaustralia.gov.au/funding/business/Terms\\_of\\_trade.aspx](http://www.screenaustralia.gov.au/funding/business/Terms_of_trade.aspx)

These guidelines set out Screen Australia's policy regarding titles approved by Screen Australia and its predecessor agencies **before that date**.

If you have further questions after reading these guidelines, please contact Screen Australia's Recoupment staff via email at [reversion@screenaustralia.gov.au](mailto:reversion@screenaustralia.gov.au)

### Q1. Which titles are eligible?

The policy regarding titles funded before 1 January 2009 varies according to which agency provided the production investment and when.

- For titles *commissioned*\* by **Film Australia**, or by Screen Australia between 1 July 2008 and 31 December 2008, there is no reversion of recoupment. See also Q5.
- For **AFC** production investments, Screen Australia continues the policy of the former AFC of reverting recoupment to the producer after a 'Recoupment Period' (see Q2) of seven years has elapsed. For more details see Q3.
- For **FFC** titles, and Screen Australia titles (other than *commissioned* documentaries) approved between 1 July 2008 and 31 December 2008, Screen Australia will revert its whole entitlement from 1 January 2016, or at the end of the seven-year Recoupment Period, whichever is the later. Interim arrangements apply to titles where the seven-year Recoupment Period elapses before 1 January 2016. For more details see Q4.

### Q2. How is the 'Recoupment Period' calculated?

The Recoupment Period is seven years from 'delivery' of the project. For the purposes of this policy, the indicator that a title has been 'delivered' will be:

- for AFC titles, the date of the last drawdown (last payment by the AFC of its production investment);
- for FFC and Screen Australia titles, the first to occur of the following:
  - the date of the first disbursement of gross receipts derived from marketing the title,
  - the date of the first theatrical screening, broadcast or other communication of the title to the public in a territory defined as Major Territory in the Production Investment Agreement for the title.

### Q3. What is the policy for AFC-funded titles?

In keeping with the policy announced by the AFC in April 2008, Screen Australia will revert its recoupment entitlement to the producer on application, provided that the Recoupment Period has elapsed. However, the producer must also assume Screen Australia's collection, distribution and/or disbursement obligations under the Production Investment Agreement.

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\* 'Commissioned' titles were typically executive-produced by Screen Australia and its predecessor Film Australia, with copyright owned by the agency.

In order to give effect to reversion of an AFC title, you must enter into a Reversion Deed. Under this Deed, you will be entitled to Screen Australia's share of all revenue generated by the title after 1 April 2008 (the date the policy was announced) or the end of the Recoupment Period, if that is after 1 April 2008. Screen Australia will remain entitled to its share of revenue generated before the relevant date (even if the Recoupment Period ended earlier). To be clear, even where revenue generated by the title before 1 April 2008 is not collected or received by the producer until after 1 April 2008, Screen Australia will remain entitled to its share of that revenue.

Reversion should be requested using the form available on the Screen Australia website, [www.screenaustralia.gov.au/recoupment\\_reversion](http://www.screenaustralia.gov.au/recoupment_reversion).

A fee will be charged for preparation and execution of the Reversion Deed. The standard fee will be \$100 for non-theatrical documentaries and \$300 for all other productions. In more complex circumstances the fee will be determined case by case, taking into account the amount of time taken to review and prepare the legal documentation. The fee is payable on signing the Reversion Deed and reversion will not be effected until the fee is paid.

#### Q4. What is the policy for FFC-funded titles?

The policy for FFC titles is as follows:

4.1 Screen Australia will revert its **whole entitlement** to revenue in favour of the producer seven years from 1 January 2009, that is, from 1 January 2016, or from the end of the seven-year Recoupment Period, whichever is the later.

4.2 Until then, the following **recoupment sharing** arrangements will apply:

- Where the seven-year Recoupment Period elapsed on or before 1 July 2010, Screen Australia will share its entitlement to revenue generated by the title after 1 July 2010 on a **50:50 basis with the producer** until 1 January 2016, at which point the recoupment entitlement will entirely revert in accordance with paragraph 4.1.
- Where the Recoupment Period elapses after 1 July 2010, the producer will be entitled to a 50 per cent share of Screen Australia's recoupment from the end of the Recoupment Period to 1 January 2016, at which point the recoupment entitlement will entirely revert in accordance with paragraph 4.1.

In addition, and for the avoidance of doubt:

- The producer's share of Screen Australia's recoupment under this policy is **inclusive** of any existing entitlement to a share of Screen Australia's recoupment from the title (including entitlements based on the 'corridors' introduced by the FFC known as the Producer Revenue Entitlement and the Producer Revenue Split). Note that it is not Screen Australia's intention that the 50:50 arrangement act as a cap on the producer's revenue entitlements. The producer's share under this policy (pending reversion of the whole of Screen Australia's entitlement) will be the producer's existing entitlement or 50 per cent, whichever is the greater.
- This recoupment sharing policy applies to revenue generated after the policy came into effect: 1 July 2010. It does not apply to sales or other rights exploitation concluded before the policy came into effect, even where the revenue generated by the title before 1 July 2010 is not collected or received by the producer until after that date.
- Recoupment sharing for titles where the Recoupment Period has elapsed must be requested by the producer, using the form available on the Screen Australia website, [www.screenaustralia.gov.au/recoupment\\_reversion](http://www.screenaustralia.gov.au/recoupment_reversion).

No fee will be payable on application for recoupment sharing; however, a fee will be charged for full reversion after 1 January 2016.

- When an application for recoupment sharing is made, the producer must be up to date with all reporting obligations and payments due to Screen Australia.
- Where returns are received directly by Screen Australia from a third party, and the title is subject to recoupment sharing, Screen Australia will disburse the producer's share twice a year at the end of April and end of September.

#### **Q5. What if there is investment from more than one agency?**

If the AFC investment is a rollover of development investment, the title will be treated as an FFC title for the purposes of reversion (see Q4).

Where the FFC had equity in a title commissioned by Film Australia, and a producer other than Film Australia also has some recoupment rights, only the recoupment due to Screen Australia as a result of the FFC equity could revert to the producer under the FFC reversion policy (see Q4). Similarly, if the AFC had equity in a Film Australia title, only the AFC-related recoupment could revert under the AFC reversion policy (see Q3). It's important to note that the recoupment entitlement associated with the agency's *commissioning* role – as Film Australia, or as Screen Australia for the period 1 July 2008 and 31 December 2008 – does not revert under any circumstances.

#### **Q6. What is the policy for Screen Australia-funded titles?**

As noted above, there is no reversion of documentaries *commissioned* by Screen Australia between 1 July 2008 and 31 December 2008.

Screen Australia titles approved before 1 January 2009 will be treated in the same way as FFC titles (see Q4).

The terms governing reversion of titles approved after 1 January 2009 will be as set out in the relevant Production Investment Agreement.

#### **Q7. What about copyright and reporting obligations?**

Screen Australia will retain a 1 per cent copyright interest in all projects.

Screen Australia will also continue to require annual reporting on sales and exploitation of the project for the purposes of Screen Australia research and analysis.

**Summary: Timing of recoupment reversion for predecessor agency titles**

For the definition of 'Recoupment Period', see Q2.

## RECOUPMENT REVERSION

KEY DATE	SCREEN AUSTRALIA TITLES (see Q6)	AFC TITLES (see Q3)	FFC TITLES (see Q4)
April 2008		<b>AFC announces reversion policy:</b> The AFC intends to revert its recoupment entitlement to the producer after seven years.	
1 Jan 2009	<b>New Screen Australia Terms of Trade released, including Recoupment Reversion policy:</b> For all projects funded from 1 January 2009, once a seven-year Recoupment Period has elapsed, Screen Australia's entitlement to recoupment revenue generated after the end of the Recoupment Period will revert to the producer.	<b>AFC policy is continued by Screen Australia:</b> For AFC titles, once a seven-year Recoupment Period has elapsed and a Reversion Deed is signed, Screen Australia's entitlement to recoupment revenue generated after 1 April 2008 (or the end of the Recoupment Period, if that is after 1 April 2008) will revert to the producer.	
1 July 2010			<b>Revised Terms of Trade, including current recoupment-sharing policy for FFC titles, come into effect:</b>  Where the Recoupment Period has elapsed on or before 1 July 2010, Screen Australia will share its entitlement to recoupment revenue generated after this date 50:50 with the producer until 1 January 2016.  Where the Recoupment Period elapses after 1 July 2010, Screen Australia will share its entitlement to recoupment revenue generated after the end of the Recoupment Period 50:50 with the producer until 1 January 2016.
1 Jan 2016			<b>Seven years from announcement of original Screen Australia reversion policy:</b>  Once the Recoupment Period has elapsed and a Reversion Deed is signed, Screen Australia's entitlement to recoupment revenue generated after 1 January 2016 (or the end of the Recoupment Period, if that is after 1 January 2016) will revert to the producer.

SEVEN YEARS