

Program name	Cash Flow Facility Producer Offset Loans
Program type	Loan Facility
Maximum funds available	Up to \$3M per project or production company.
Deadlines	There are no deadlines. Applications can be submitted any time following a discussion with the Program Manager.
Overview	<p>Provides funding to cash flow the Producer Offset, pursuant to Division 376 of the Income Tax Assessment Act (1997).</p> <p>Subject to a cap of \$3M per project or company, cash flow loans are also available for distribution guarantees or licence fees from distributors, broadcasters, sales agents and/or game publishers.</p> <p>See separate guidelines for Cash Flow Facility Distribution Guarantees/Licence Fees.</p>
Who is it for?	Screen Producers
Program contacts	<p>Enquiries should be directed to:</p> <p>Program Manager – Victoria Pope, Cash Flow Facility Manager victoria.pope@film.vic.gov.au</p> <p>Prior to submitting an application for a Cash Flow Loan, applicants are required to discuss their application with the Program Manager.</p>

Purpose of the program

Film Victoria provides strategic leadership and assistance to the film, television and digital media industry of Victoria to encourage innovation and the creation of new projects of high quality that are of cultural and economic benefit to Victoria.

Through the Cash Flow Facility, Film Victoria provides secured loans to enable production.

About the program

Funds are available to producers to cash flow the Producer Offset. The maximum exposure to any project, production company or group of companies (including principals of the production company and any associated company, partnership or other related entity), cannot exceed \$3M.

The program provides cash flow loans for projects eligible for the Producer Offset - feature films and non-feature films (television or on-line delivery), including live action, factual and animation.

Film Victoria may cash flow an amount up to the equivalent Qualifying Australian Production Expenditure (**QAPE**) spend guaranteed by a completion guarantor approved by Film Victoria, which will generally be up to 85% of the total anticipated Producer Offset refund. If an approved completion guarantor bonds greater than 85% of the QAPE spend on a project, Film Victoria may consider cash flowing a higher percentage of the anticipated Producer Offset refund, to a maximum of 90%.

About the program (continued)

It is possible to cash flow both the Producer Offset and a Distribution Guarantee or Licence Fee on the same project up to the stated limit of \$3M per project, production company or group of companies. Applications for both the Producer Offset Cash Flow Loan and Distribution Guarantee Cash Flow Loan should be submitted to Film Victoria as one submission however, the loans and related documentation will be contracted separately.

Preference is given to Victorian producers and projects.

Prior to making an application to the Cash Flow Facility for the purpose of cash flowing the Producer Offset, Film Victoria recommends all applicants seek professional financial and legal advice.

This program does not support the following types of projects (as they are ineligible for the Producer Offset):

- (a) Non narrative formats including:
 - Infotainment and magazine shows
 - Short films or short features
 - Sketch Comedy Shows
 - Variety and light entertainment
 - Sports telecasts
 - News and current affairs
 - Corporate or promotional media
 - Training videos
- (b) Community Television and;
- (c) Electronic Games.

Documents explaining the operation of and application process for the Producer Offset can be found on Screen Australia's website.

Outstanding Obligations

Film Victoria will not pay any approved funding to a successful applicant until that applicant (and its associated entities or its directors) has complied with all of its outstanding obligations (including repayment, reporting and delivery obligations) under any other contracts with Film Victoria.

Exclusions

Students are not eligible to apply to Film Victoria's funding programs unless they are post-graduate students or part-time undergraduate students where the application and its subject do not count towards course credits.

Film Victoria will not accept applications from Federal or State Government departments or entities.

Film Victoria will not support capital works or acquisitions.

Film Victoria will not support equipment purchase (with exception of the Digital Media Internship with a Company and Prototyping programs – see program guidelines for details)

If an application is unsuccessful in receiving support, it cannot be re-submitted to Film Victoria unless it has been substantially changed, developed or reworked and the Program Manager has been consulted.

Eligibility Criteria

To be eligible for Film Victoria's Cash Flow Facility for Cash Flowing the Producer Offset, applicants must:

1. be an Australian owned company, incorporated in Australia:
 - (a) which has been established for the sole purpose of producing the project (that is, a special purpose vehicle (**SPV**));
 - (b) which has no trading or tax history;
 - (c) is not part of any tax consolidated group (eg for income tax, GST etc); and
 - (d) is eligible for the Producer Offset.

While a production company is in the process of establishing an SPV, Film Victoria will accept the application from the parent entity or rights holding company (**Production Company**). For the purpose of these guidelines, "applicant" refers to the SPV.

2. demonstrate control of 100% of copyright in the project through the Production Company (i.e. not the SPV) or shared ownership and/or control of copyright under an official co-production arrangement;
3. provide evidence of ownership of the project in the form of all chain of title documents;
4. have secured relevant distribution/broadcast in Australia in order to demonstrate eligibility for the Producer Offset;
5. have received a Provisional Certificate and accompanying letter from Screen Australia quantifying the QAPE and, in the case of feature films, also acknowledging that it has sighted evidence of a legally binding intent to theatrically distribute the project; and
6. demonstrate the cultural and economic benefits of their project for Victoria and the Victorian screen industry.

When To Apply

Applicants are encouraged to discuss their applications with the Program Manager while in the process of finalising their financing structure.

Film Victoria will accept applications only when the entirety of the budget, other than the cash flowing of the Producer Offset, is secured and evidenced by way of letters of offer.

How Applications Are Assessed

Assessment of applications will be based on an analysis of risk, together with an assessment of the economic or cultural benefits to the Victorian industry.

We will acknowledge receipt of your application and inform you of the estimated assessment date within five working days by email. Your application will be assessed by Film Victoria's Credit Committee. Recommendations made by the Credit Committee are presented to Film Victoria Board's for decision. You can expect an answer within approximately 8 - 10 weeks from the application lodgement, depending on the next Credit Committee and Board meetings.

Decisions made by the Film Victoria Board are final. Film Victoria will not publish or make public its reasons for funding decisions.

Application

Each application for a Cash Flow Facility Producer Offset loan must include the following documentation:

1. A completed Film Victoria Cash Flow Facility Producer Offset Application Form.
2. A provisional certificate of eligibility issued by Screen Australia's Producer Offset Unit under Section 376-265 of the Income Tax Assessment Act 1997 (Cth) and associated rules certifying that the conditions as set out in s.376-65(2) to (6) will be met or are likely to be met if the project is completed in accordance with the information supplied to Screen Australia's Producer Offset Unit (**Provisional Certificate**).
3. A letter from Screen Australia accompanying the Provisional Certificate, confirming:
 - (a) the producer's estimate of QAPE; and
 - (b) in the case of feature films, that Screen Australia has sighted evidence of legally binding intent of theatrical distribution.
4. A detailed QAPE spreadsheet indicating the estimated total QAPE and total Producer Offset available to the project (see Screen Australia's website for templates).
5. An opinion, addressed to Film Victoria, from an independent third party production accountant (ie, production accounting firm), approved by Film Victoria, confirming the estimated QAPE for the project (**QAPE Opinion**). See the Film Victoria Industry Online Directory production accountants listing for approved assessors.
6. A signed long form, legally binding agreement or a signed, legally binding deal memo with a distributor, exhibitor or broadcaster, approved by Film Victoria, evidencing, in a form acceptable to Film Victoria, that the film is produced for Australian public release:
 - (a) for feature films – evidence of an agreement for commercial distribution via exhibition in cinemas in Australia where an admission fee is charged. This should evidence a bona fide intent of commercial release; a contrived arrangement for release on one or a very small number of screens will not evidence a bona fide intent of commercial release.
 - (b) for formats other than feature films – evidence of an agreement for distribution on a commercial basis to the public in Australia which may include an Australian television broadcast agreement or commercial delivery via a new media platform (such as online or mobile content) where access to the content is available to Australians.
 - (c) for feature films and formats other than feature films where the applicant proposes self distribution; evidence of bona fide self-distribution or arm's length distribution arrangements in a form approved by Film Victoria.
7. Company history of the distributor, exhibitor or broadcaster together with contact details of the relevant personnel from whom additional information can be sought.
8. ASIC Certificates of Registration and ASIC Company Extract detailing registered address(es), names, addresses and contact details of directors of the SPV and the Production Company or affiliate which own or controls the copyright.
9. Company history of the Production Company as described on the application form.
10. A copy of the script, production schedule and a short synopsis.

Application (**continued**)

11. A copy of the final budget and finance plan for the project, which includes:
 - (a) 85% - 90% of the total estimated Producer Offset (commensurate with the level of QAPE guaranteed by the bond company) on budget. Consistent with Screen Australia's policy, 10-15% of the total estimated Producer Offset is required to be left off budget as a Producer Margin;
 - (b) provision for not more than 75% of Federal funding ie. Screen Australia investment plus total Producer Offset must equate to 75% or less of the total budget;
 - (c) provision for interest and fees, until the end of the financial year in which the project is due to be completed plus additional time for lodgement and assessment of tax return and receipt of the Producer Offset; and
 - (d) details of the anticipated project spend in Victoria.
12. A letter of intent provided by a completion bond company, approved by Film Victoria, evidencing the completion bond company's intent to:
 - (a) bond the film; and
 - (b) guarantee a quantified minimum QAPE spend.
13. Statement indicating full production timeline from preproduction to repayment of the Producer Offset from the ATO.
14. Proposed drawdown schedule indicating cash flow requirements from preproduction to completion and lodgement of tax return and payment of Offset refund by ATO. The drawdown schedule must be structured so that the drawdown of loan is commensurate with QAPE expenditure incurred as at the date of that drawdown. For example, to draw down \$100,000 of the loan for a feature film, \$250,000 in QAPE must have been incurred by the SPV as at the date of the proposed drawdown (as evidenced in a QAPE report). To draw down \$100,000 of the loan for a television project, \$500,000 in QAPE must have been incurred by the SPV as at the date of the proposed drawdown (as evidenced in a QAPE report).
15. CVs of personnel of producer(s), director(s) and key personnel including line producer/production manager, director, production accountant and post production supervisor.
16. All relevant documents in respect of the financing and production of the film including the co-production agreement where the film is an official co-production.
17. A declaration (included in the application form) from the production company that:
 - (a) It is eligible to apply for the Producer Offset; and
 - (b) It has not:
 - (i) claimed a tax deduction under Division 10B; or
 - (ii) been issued with a Final Certificate under Division 10BA; or
 - (iii) been issued with a Location Offset or PDV Offset certificate; or
 - (iv) been issued with a Refundable Film Tax Offset certificate; or
 - (v) received Investment from a FLIC; or
 - (vi) received a production drawdown from the FFC, AFC, AFTRS or Film Australia prior to 1 July 2007.

Application (continued)

Please note that:

- (i) **Film Victoria requires all costs associated with the Producer Offset to be included in the budget (including the costs of forming the SPV, interest and the legal fee and administrative fee);**
- (ii) **Project budget and QAPE analysis provided to Film Victoria must be GST exclusive;**
- (iii) **Film Victoria reserves the right to request any additional information such as financial statements and tax returns as part of the application assessment process; and**
- (iv) **Film Victoria reserves the right to review and amend the terms and conditions of Cash Flow Facility Producer Offset Loans as it deems appropriate.**

If You're Successful

Successful applicants will be required to enter into a Cash Flow Facility Loan Agreement with Film Victoria which sets out the terms and conditions of the loan and security agreements which secure repayment of the loan. The key terms of Film Victoria's loan and security agreements are set out below.

Please allow at least 8 – 12 weeks for contracting. Please see the Resources to Help You Apply section of the webpage for a diagram of a Film Victoria Producer Offset Cash Flow Loan.

Key Terms

1. Film Victoria administrative fee

An annual administration and legal fee is payable, equal to 3% of the total loan amount and capped at a maximum of \$45,000 per annum per loan, calculated monthly and payable in monthly instalments for the period of the loan.

2. Film Victoria legal fee

A one off legal fee is payable per loan and is calculated thus:

Loan Amount	≤\$500,000	Legal fee	\$10,000
	>\$500,000 - \$1M		\$15,000
	≥\$1M		\$20,000

The legal fee is added to the first invoice for fees and interest.

3. Interest arrangements

Interest on Cash Flow Loans is:

- (a) charged at the Reserve Bank of Australia Official cash rate plus a 5% margin;
- (b) fixed on the day of execution of loan agreement for the duration of the loan; and
- (c) calculated daily on the amount outstanding and payable at the end of each calendar month.

Film Victoria will issue an invoice for fees and interest monthly, on strict 14 day payment terms. Penalty interest on overdue amounts will be calculated daily at the statutory penalty interest rate applicable from the date the overdue payment was due.

FILM VICTORIA

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Melbourne Victoria 3000
Australia
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ABN 30 214 952 770

CASH FLOW FACILITY GUIDELINES – Producer Offset Loans

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www.film.vic.gov.au
contact@film.vic.gov.au

If You're Successful (continued)

Key Terms

4. Repayment to Film Victoria for Producer Offset Cash Flow

Film Victoria's loan agreement will include a repayment date for the loan, which will have regard to production schedule, post production schedule, completion date, allowance for slippage, date for lodgement of tax return and likely date of ATO payment of the Offset.

The applicant will be liable for the repayment of the loan in full. If there is any shortfall in repayment to Film Victoria, the applicant will be required to pay the amount of any shortfall to Film Victoria. In certain circumstances, Film Victoria may require a parent or associated company of the applicant to be a party to the loan agreement and/or to guarantee the repayment of the loan.

5. Reporting

Unless otherwise agreed by Film Victoria, recipients of a Producer Offset loan must meet the following reporting requirements:

- (a) QAPE reports weekly in pre-production and production and fortnightly in post production;
- (b) cost reports accompanied by trial balance and statement of investor funds weekly in preproduction and production and fortnightly in post production;
- (c) evidence of remittance of production entity tax obligations (ATO Integrated Account Statement and Business Activity Statement reports) to the ATO quarterly; and
- (d) QAPE spend to date at the scheduled drawdown milestones.

6. Budget, QAPE and drawdown

(a) The applicant will undertake:

- (i) Not to vary the non-QAPE expenditure without prior written approval from Film Victoria;
- (ii) Not to vary any Below The Line budget item by more than 10% without prior written approval from Film Victoria;
- (iii) Not to vary any Above The Line budget item without prior written approval from Film Victoria; and
- (iv) To quarantine an agreed amount of contingency that is recognised as non-QAPE expenditure.

(b) The applicant shall:

- (i) appoint a registered tax agent to lodge its tax return and receive the refund cheque; and
- (ii) provide a written direction to the Tax Agent to pay the full amount of the Producer Offset into the Producer Offset Refund Account as set out in the Loan Agreement. The direction cannot be varied without the written agreement of an authorised representative of Film Victoria.

(c) Film Victoria will determine the frequency of draw downs of the loan. Film Victoria can provide draw downs as frequently as monthly.

(d) Prior to financial close, Film Victoria may require an updated QAPE Opinion where budgets and/or QAPE amounts vary significantly from the amounts estimated at application stage.

If You're Successful (continued)

7. Other

- (a) The applicant shall notify Film Victoria when:
 - (i) the auditor's statement on the final audit has been received by the applicant (and provide a copy to Film Victoria)
 - (ii) the Final certificate has been received from Screen Australia (and provide a copy to Film Victoria);
 - (iii) the Tax return in respect of the Producer Offset has been lodged; and
 - (iv) the Producer Offset refund has been received and banked by the Tax Agent.
- (b) The applicant shall establish a Producer Offset Refund Account for the sole purpose of receiving the Offset Refund.
- (c) The Producer Offset refund must be used to repay amounts outstanding on the Film Victoria loan. The refund cannot be used for any other purpose until Film Victoria's loan is repaid in full.
- (d) The applicant must consult with Film Victoria regarding any changes to the key production personnel.

8. Security

Film Victoria shall secure the loan with:

- (a) a registered charge over all of the applicant's right, title and interest (legal or equitable), both present and future, to and in respect of:
 - (i) payment of the Producer Offset Refund (fixed); and
 - (ii) all other assets of the applicant (floating);
- (b) a registered charge over all of the applicant's and/or Production Company's right, title and interest (legal or equitable), both present and future, to and in respect of payment of gross receipts;
- (c) a Deed of Guarantee and Indemnity from the Production Company in respect of the applicant's performance of all of its obligations under the loan agreement;
- (d) a Power of Attorney, granted by the applicant, pursuant to which Film Victoria may act as the applicant's attorney if there is an event of default under the Loan Agreement; and
- (e) an irrevocable direction to the bank, enabling Film Victoria to appoint signatories to the Producer Offset Refund Account at its discretion.

Film Victoria reserves its right to require additional security for the loan.

9. Insurance

Film Victoria generally requires the applicant to take out and budget for the following insurances:

- (a) Workers compensation insurance
- (b) Completion guarantee, including a quantified minimum QAPE spend guarantee
- (c) Public liability of at least \$10 million
- (d) Film Production Insurance (FPI)
- (e) Negative all risks insurance
- (f) Multi-risk insurance
- (g) Errors and Omissions insurance (E&O)
- (h) Any other insurance that may be deemed necessary

In the case of digital media projects, an indication of proposed planned methods for data protection and retrieval will be required.

If You're Successful (continued)

10. Credit

Film Victoria will receive a credit: "PRODUCED WITH THE ASSISTANCE OF FILM VICTORIA" followed by the Film Victoria logo as a single full frame credit at the end of the Project (alternatively at the end of each episode) and in all publicity material issued about the project.

Any breach of Film Victoria's terms and conditions will constitute an event of default.