



Australian Film Commission

INVESTIGATION INTO THE ASSESSMENT OF FILM
FUNDING APPLICATIONS

May 2007

Report by the Acting Commonwealth Ombudsman,
Dr Vivienne Thom, under the *Ombudsman Act 1976*

REPORT NO. **02** | **2007**

Reports by the Ombudsman

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PART 1—INTRODUCTION

The complaint

1.1 On 10 March 2006, the Commonwealth Ombudsman’s Perth office received a complaint from an applicant for Strand I funding from the Australian Film Commission (AFC). The complainant said that he had asked the AFC several times ‘to be provided with more relevant and timely information about the determination process and guidelines relevant to eligibility (for short and feature film funding)’. He was dissatisfied with the responses he had received.

1.2 The complainant contended that ‘the AFC charter specifies providing comprehensive information about our services, application requirements, funding criteria and priorities in guidelines’, but the Commission did not publish that information. He contended also he had been denied ‘any real accountability or transparency of decision making, in a manner that is simple and easily understood’.

The investigation

1.3 On 29 March 2006, we wrote to the Acting Chief Executive of the AFC and in accordance with s 8 of the *Ombudsman Act 1976* (Ombudsman Act) notified him that we were investigating the complaint. Subsequent investigative activities were undertaken by our Perth office primarily through a specific officer of the AFC. The AFC responded to our enquiries cooperatively and comprehensively.

1.4 By the end of May 2006, the AFC had provided sufficient information to enable us to inform the complainant that our enquiries into the specifics of his complaint had ended. We wrote to him on 29 May 2006, and said that in our view the recent interaction between him and the AFC had resolved the most important of the concerns he expressed to us. We said also that we did not consider there was a proper basis on which we might continue our enquiries into the specifics of his complaint, although we proposed to pursue further enquiries into the broad ‘policy’ aspects of it.

1.5 We subsequently obtained further information from the AFC about the application and decision-making processes applicable to the administration of Strand I funding. Our analysis of the information led us to the view that there were procedural and policy issues that would be appropriate to raise with the AFC.

1.6 The discussion and recommendations in this report draw from the analysis of Strand I funding decisions in 2006, but are otherwise framed in terms that apply more generally to the policies and procedures of the AFC. It should nevertheless be noted that this investigation did not look at the policy and procedures for the 35 or so other funding programs administered by the AFC. Whether this report has a broader relevance is a matter for consideration by the AFC. I confirm too that it is not expected that the AFC should respond to this report by reconsidering any past decision, including the decision in the specific case referred to above.

The process

1.7 The assessment and notification process for Strand I funding applications comprise the following steps.

- Applicants submit their funding applications to the AFC in accordance with published eligibility criteria and submission deadlines.
- The applications are initially scrutinised by administration staff who examine eligibility and the provision of appropriate supporting materials. Those staff may contact applicants for further information or materials. Applications may be modified or withdrawn before proceeding to the next assessment phase.
- A Project Committee is formed to oversee the processing of the applications. The Committee comprises the Director of Film Development and a minimum of four Project Managers.
- Each application is read by a team of either two Project Managers (AFC officers) or a Project Manager and an Outside Consultant (the latter an experienced industry practitioner). Applications for production funding (as opposed to development funding) have an industry practitioner with relevant experience assess the proposed production budget’s viability.
- The teams report in writing (Recommendation Reports) on the merits of the applications they have read. The reports are distributed to all of the Project Managers and the Director of Film Development.
- The Project Committee discusses the applications and examines the recommendations made by the teams. It then approves or rejects those recommendations.
- All applicants are notified by pro-forma letter of the outcome of their applications. Successful and shortlisted applicants are also contacted by a member of the teams and may be provided with a summary of the assessors’ Recommendation Report on their application.

PART 2—BROADER ISSUES

Transparency and accountability

2.1 The AFC operates within an extended legislative environment, which imposes on them various accountability requirements. These include the obligations imposed by the *Commonwealth Authorities and Companies Act 1997* and the *Public Service Act 1999*. The first of those Acts provides a framework for the proper control and management of public money by agencies like the AFC. The second establishes certain values held by the Australian Public Service (APS), including observation of ‘the highest ethical standards’ and being ‘openly accountable for its actions, within the framework of Ministerial responsibility to the Government, the Parliament and the Australian public’. In addition, the APS Code of Conduct in the Public Service Act provides that APS employees ‘must use Commonwealth resources in a proper manner’. Though not all AFC employees are engaged under the Public Service Act, the ethical principles enshrined in that Act are generally relevant to public sector agencies. Of similar relevance is that the AFC’s activities are subject to scrutiny by external agencies like the Auditor-General, the Australian Public Service Commission and the Commonwealth Ombudsman.

2.2 There is a community expectation that the expenditure of public funds by an Australian Government agency will be managed in a properly accountable and transparent manner, based on objective and rational decision-making processes. That expectation is echoed by government itself, as demonstrated by the legislative environment referred to above. The expenditure of public funds should produce results, which can be objectively measured against documented criteria, and should result in a record of decision making, which can be examined by external agencies such as the Auditor-General and the Commonwealth Ombudsman. The relevant records should also demonstrate that the expending agency has acted consistently with public law values and high ethical standards.

2.3 The Administrative Review Council in its report, *Administrative Review and Funding Programs (A Case Study of Community Services Programs)*, Report No 37, 1994, examined a number of Australian Government funding programs to assess whether a coherent set of review mechanisms were appropriate for government funding program decisions. While the Administrative Review Council considered that merits review of such decisions was inappropriate, it did consider that Ombudsman review was appropriate for these decisions (see Recommendation 8(a) of the Council’s report). The Council further recommended that funding decisions have in place:

‘the following criteria, consistent with administrative accountability ...

- the criteria for funding and government policies should be made clear at the outset and decisions should be made based on the publicly-available criteria only
- if funding is provided on the basis of a pre-determined needs analysis that should be made available to applicants
- the process of decision making should be clear, including the timetable for making decisions and who would be making those decisions
- all applicants, whether successful or unsuccessful, should be provided with an explanation of the decision made on their application, including whether or not they were considered to

have met the criteria for funding and whether they were unsuccessful simply because there were insufficient funds to go around’ (see Recommendation 8(b) of the report).

The AFC environment

2.4 In the course of our investigation of the specific complaint referred to in Part 1 of this report, the AFC told us that several factors influenced its approach to the recording of its administrative actions and the giving of reasons for its decisions.

- Due to the large number of applications received, and the limited time available, ‘the AFC is unable to give feedback to unsuccessful applicants; nor are they able to give written assessments of applications, whether successful or unsuccessful’ (Film Development Funding Guidelines).
- ‘A very small pool of money’ is available to fund ‘a very large group of applications’ (email between two AFC officers on 9 May 2006).
- ‘Script assessment is a subjective process’ (AFC’s letter to Ombudsman’s office dated 26 May 2006), and is a ‘domain that cannot be evaluated statistically and has to be subject to human opinion’ (email between two AFC officers on 9 May 2006).
- The volume of telephone calls made to the AFC means that the two administrative staff who receive them are not able to make documentary records of them (AFC’s letter to Ombudsman’s office dated 27 April 2006).
- There is ‘fierce competition’ for ‘limited resources’ and a decision to offer funding ‘will necessarily take into account the relative merits of competing projects’ (AFC’s letter to Ombudsman’s office dated 26 May 2006).
- The list of funding criteria is ‘not an exhaustive list and, being necessarily qualitative in nature, it is very difficult to assign weighting to the criteria’ (AFC’s letter to Ombudsman’s office dated 26 May 2006).

Comparable environments

2.5 Other Australian Government agencies are responsible under legislation for the discretionary awarding to applicants of funding grants. The decision-making processes of agencies with comparable funding responsibilities have received both judicial and auditing attention. Two such agencies are the Australia Council and the Australian Research Council.

Australia Council

2.6 Provision by the Australia Council of reasons for decision in the case of an applicant, Mr Sasha Soldatow, were pursued by him through the Federal Court of Australia some years ago under the provisions of the *Administrative Decisions (Judicial Review) Act 1977* (ADJR Act). The circumstances of Mr Soldatow’s application to the Australia Council are of course not identical to those of applications to the AFC. They are comparable, however, and illustrative of identical principles. The Court in *Sasha Soldatow v Australia Council* (1989) 28 FCR 1, 103 ALR 723, noted the decision at issue was made by a Committee which had before it many applications for grants, that each application was assessed initially by two members of the Committee and that each assessor subsequently answered ‘yes’ or ‘no’ to the question ‘application recommended’. The Court observed also, in respect of relevant information which may have been considered by the Committee, that ‘Mr Soldatow is entitled to know what material the Committee took into account and what findings it

made, if findings were made’. The Court ordered that the Australia Council provide to Mr Soldatow a statement of reasons in accordance with the ADJR Act.

Australian Research Council

2.7 Some of the principles discussed in the *Soldatow* case are addressed in the Auditor-General’s Audit Report No 38 of 2005–06, *The Australian Research Council’s Management of Research Grants*. One of the objectives of the report was to examine ‘the processes for assessing and selecting ARC grants’. The Auditor-General noted that one of two main functions of the Australian Research Council (ARC) was to ‘administer grants through the National Competitive Grants Program’. In doing so, the ARC would ‘score and rank each application based on ARC’s grant selection criteria’. Each application was sent to several assessors and then to one of ‘six selection advisory panels constituted from ARC’s College of Experts’. The advisory panels then made ‘recommendations for successful and unsuccessful applications to ARC’s Board’, which endorsed the recommendations and forwarded them to the Minister for approval. The Auditor-General’s report made several recommendations ‘aimed at improving the ARC’s management of research grants.’ Among them were that the ARC:

- develop ‘clear instructions for applicants and assessors on how sub-points (sub-criteria) should be addressed’
- adequately document ‘decisions and recommendations of selection advisory panels’
- ‘strengthen its processes for managing conflicts of interest’.

2.8 The ARC’s *Funding Rules for Discovery Indigenous Researchers Development* published in 2007 amplify principles contained in the Funding Guidelines used by the AFC. For example, the ARC Rules set out an assessment and selection process, which first determines whether an application meets the eligibility criteria. If it does, and there are no other impediments, the application is assigned to assessors for examination and report. Comments are then sought from the applicants on the assessors’ reports. Each application is then ranked ‘relative to the others’, and the funding required is then assessed before funding recommendations are made to the Minister. Applications are assessed according to published selection criteria, each one of which is assigned a weighting to be applied in the final calculations.

Auditor-General’s view

2.9 The Auditor-General published a Better Practice Guide to the Administration of Grants in May 2002. The foreword to that guide identifies its main focus as being on ‘the administration of discretionary grants to community organisations selected on the basis of merit. However, the principles outlined in the guide also apply to other types of grants made to individuals’. The guide addresses several principles with the following comments:

- All administrators of grant programs, whether they are bureaucrats or other parties are vulnerable to complaints of inequitable treatment, political and other forms of patronage or bias. The design of a grant program should ensure that decisions in relation to the approval or refusal of applications for grants are transparent and well documented. A transparent and systematic appraisal process assists in informing decisions and enhances confidence in the selection process and program outcomes for both program stakeholders and the public (section 2.61).

- The criteria and basis for recommendations and decisions at all stages of the grant process, including appraisal and approval, must be effectively documented (section 2.62).
- A conflict of interest could arise where decision makers or officers involved in grant program administration have a direct or indirect interest in the selection of a particular project for funding. Actual or perceived conflicts of interest can be potentially damaging to a funding organisation and its programs. Ensuring that relevant guidelines clearly outline what constitutes a conflict of interest, and that procedures are in place for staff to declare their interests, can mitigate this risk (section 2.67).
- Information supplied with application forms should set out:
 - a statement of the program objectives
 - the information required to assess the application
 - the appraisal criteria to be used when assessing applications for approval and their relative importance (section 3.5).
- Record keeping is a key component of good corporate governance and business practice. Good record keeping assists organisations to meet their corporate accountability obligations and to demonstrate that due process has been followed in actions and decisions. It also assists business performance by better informing decision making and exploiting corporate knowledge (section 3.7).
- Some consideration should be given to the method and scale of rating projects. The process should be able to effectively discriminate between projects of varying merit in terms of the selection criteria and the objectives of the program. Numerical rating scales have the advantage of being able to discriminate quite effectively between individual projects and classes of project (section 3.10).

PART 3—ISSUES ARISING FROM INVESTIGATION

Overview

3.1 The Commonwealth Ombudsman’s office receives few complaints about actions of the AFC, averaging less than one each year over the past thirty years. Because of that infrequency of complaint, we have not developed any investigation protocols with the AFC. Our investigation of the most recent complaint began relatively informally, partly because of that lack of investigation protocols. At that time we were of the view that the subject of the complaint was straightforward and could be readily resolved. However, the information received in response to our initial enquiries led us to ask further questions about some of the assumptions we had made regarding the funding processes applicable to Strand I funding. As indicated in Part 1 of this report, once the focus of the specific complaint had been resolved we turned our attention to the broader issues of policy and process from which it sprang. The observations that follow arise from that scrutiny.

Funding criteria

Criteria completeness

3.2 The AFC publishes in its Film Development Funding Guidelines (Funding Guidelines) the criteria against which funding applications are to be assessed: page 14 of the document lists nine ‘assessment criteria’ used by the AFC. When we asked the AFC what assessment criteria were used, it responded by reproducing the ones listed in the Funding Guidelines (letter of 27 April 2006). The same criteria are listed in the Reader Guidelines given by the AFC to the assessors of funding applications. It appears, however, that those criteria are not the only ones applied by the AFC when assessing funding applications. Additional criteria are apparently used by the AFC. In a letter to our office dated 26 May 2006, the AFC noted that the published criteria was ‘not an exhaustive list’. The letter informed us that an experienced assessor ‘will also consider such matters as ...’, and went on to identify eight further criteria considered when making a ‘decision whether or not to fund a project’.

3.3 We have not seen evidence that the eight assessment criteria listed in the AFC’s letter of 26 May 2006 are published or otherwise made available to either funding applicants or the assessors of applications. While some of the eight criteria overlap to one degree or another with the nine published criteria, it seems that there exists an unpublicised set of assessment criteria used by some AFC assessors but not made available to applicants, and possibly not to all assessors.

3.4 In addition to the nine funding assessment criteria identified as such in the Funding Guidelines, and the eight unpublished criteria apparently used by the AFC, there are several ‘de facto’ criteria listed in the Funding Guidelines in the section on Strand I funding, under the heading ‘Assessment and funding’. In part, they provide clarification of the nine criteria listed earlier in the Funding Guidelines: ‘the proposed budget’ criterion is clarified by the comment that low-budget projects are preferred. In part, however, the latter list appears to introduce new criteria: it notes that ‘The assessment of projects will focus on script, direction and performance opportunities rather than high production values’.

3.5 The Auditor-General’s Best Practice Guide referred to in 2.9 above emphasises the importance of ensuring that the ‘criteria and basis for recommendations and decisions at all stages of the grant process—including appraisal and approval—must be effectively documented’. The Guide says that information provided to applicants with the application forms ‘should set out ... the appraisal criteria to be used when assessing applications for approval and their relative importance’.

Criteria clarity

3.6 The funding criteria currently applied by the AFC may not be appropriately objective or clear in their intent. For example, one criterion is ‘the proposed budget’. The Funding Guidelines do not explain what that criterion means in practical terms, although the inference can be drawn that the proposed budget should meet certain performance measures. One of those measures is identified elsewhere in the Funding Guidelines: preference is given to a project which employs ‘strategies to keep (the budget) as low as possible’. Our enquiries have not seen evidence of additional documentation to explain the range of measures to be applied to proposed budgets. It is clear, however, that other measures are applied by the budget assessors: the assessment of the budget for a particular production includes comments that a certain component of it is ‘adequately budgeted’, another component has a ‘\$6000 shortfall’, and another is ‘slightly under budgeted’.

Criteria weightings

3.7 We asked the AFC about any weightings given to the criteria used in assessing funding applications. We were informed in a letter dated 26 May 2006 that the criteria used were ‘not an exhaustive list and, being necessarily qualitative in nature, it is very difficult to assign weighting to the criteria’. The funding criteria are not weighted but, rather, are published as though each criterion carries equal importance in the AFC’s assessment process.

3.8 The ARC’s 2007 *Funding Rules for Discovery Indigenous Researchers Development* lists three primary assessment criteria, which are weighted 40%, 40% and 20%. The 12 components of those three criteria are all subjective ones. The Auditor-General’s Better Practice Guide notes that: ‘Some consideration should be given to the method and scale of rating projects. The process should be able to effectively discriminate between projects of varying merits in terms of the selection criteria and the objectives of the program.’

Criteria dissemination

3.9 The AFC’s funding criteria may not be adequately publicised. Applicants have available to them only the criteria listed in the Funding Guidelines (and available on the AFC’s website). There appears to be no documentation available to applicants regarding the additional criteria apparently used by ‘experienced assessors’. The Reader Guidelines, which are provided to assessors, (but not to applicants) reproduce the criteria listed in the Funding Guidelines, but say they are taken into account only when ‘assessing scripts’. This appears to significantly limit the scope of the assessor’s role, given that the Funding Guidelines list criteria to be used when assessing applications as a whole.

Rigour in assessment

3.10 As already noted, the published selection criteria are to be used by the Project Teams with the responsibility for providing a report and recommendation following their assessment of applications. The evidence provided shows that in the

funding round under examination there were 27 eligible applications, of which 10 were shortlisted.

3.11 Below is a table we compiled showing the Strand I applications divided into shortlisted and non-shortlisted groups. Each group is further categorised according to the recommendations made by each of the two assessors for each application. The column headed ‘Criteria?’ lists Ombudsman officers’ estimates of the extent to which each assessor addressed the published assessment criteria when considering each application. For example, for application number 11543, one assessor addressed approximately 70% of the criteria and the other assessor addressed approximately 25% of the criteria.

3.12 It is important to note that the percentages cited in the table are only approximate, and very broadly so. They are cited to illustrate a principle rather than to identify any individual shortcoming, and may well be inaccurate to a significant degree, although not to the point where any assessment would represent either a complete or an adequate matching of a given application’s merits with the published selection criteria.

Application number	Funded amounts	Assessors’ recommendations			
		Project manager		External assessor	
		Recommend?	Criteria?	Recommend?	Criteria?
Shortlisted applications					
11607	\$880,000	Yes	75%	Yes	40%
11545	\$500,000	Yes (strongly)	70%	Yes	40%
11551	\$600,000	For discussion	70%	Yes	30%
11553	\$38,000	For discussion	75%	For discussion	30%
9465	Nil	Yes (for \$20,000)	60%	For discussion	25%
11542	\$120,000	For discussion	50%	For discussion	25%
9424	Nil	For discussion	70%	No	20%
11543	Nil	No	70%	No	25%
11546	Nil	No	75%	No	20%
11646	Nil	For discussion	70%	For discussion	30%
Non-shortlisted applications					
11602	Nil	No	15%	No	10%
11548	Nil	No	5%	No	5%
11554	Nil	No	20%	No	10%
11557	Nil	No	20%	No	5%
11558	Nil	No	20%	No	10%
11550	Nil	No	15%	No	5%
11541	Nil	No	20%	No	10%
9427	Nil	No	15%	No	15%
11556	Nil	No	20%	No	15%
11549	Nil	No	20%	No	15%
11539	Nil	No	20%	No	15%
9423	Nil	No	20%	No	10%
11555	Nil	No	20%	No	10%
11538	Nil	No	20%	No	15%
11606	Nil	No	10%	No	10%
11537	Nil	No	15%	No	15%
11609	Nil	No	15%	No	10%

3.13 The evidence is therefore that in no instance did an assessor apply all of the published selection criteria to the facts of an application when drawing up the written reasons for assessment. Accordingly, it may be that in the case of application 11607 the applicant was granted funding of \$880,000 on the basis that in drawing up a recommendation one assessor applied about 75% of the selection criteria and the other assessor about 40% of the criteria. It is not known to what extent, if any, the Project Committee may have examined the ‘missing’ criteria before deciding to award the funding.

3.14 More generally, the assessment process may be inadequate because the assessors’ reports are not required to be structured in accordance with the funding criteria to be addressed. The Reader Guidelines list nine assessment criteria, say those criteria are applicable only to scripts, do not list either the ‘supplementary’ criteria contained in the Funding Guidelines or the criteria used by ‘experienced assessors’, and do not specify a reporting format which directly links the assessor’s views to the assessment criteria.

Ranking of applicants

3.15 The AFC’s Reader Guidelines say it is ‘important to remember that any decision to fund will be made in the context of fierce competition for limited resources and will necessarily take into account the relative merits of competing projects’. The AFC’s letter dated 26 May 2006 reiterates that important aspect of the funding process. An officer of the AFC, in an email to a colleague on 9 May 2006, related how in conversation with the funding applicant she had ‘used the word “compete”, stressing that this is in the context of being one application in a very large group of applicants all seeking a very small pool of money, in a domain that cannot be evaluated statistically and has to be subject to human opinion’.

3.16 The AFC informed us that a decision to offer funding ‘will necessarily take into account the relative merits of competing projects’ (letter to this office dated 26 May 2006). Notwithstanding, we have seen no evidence or record of how the AFC ranked applicants in the Strand I funding approval process, nor how the AFC assessed the merits of any given application against the relative merits of any other one.

Record keeping

3.17 The AFC’s documentary evidence of the decision-making process in any given Strand I application decision appears to be limited to:

- the recommendations completed by each member of the team assigned to examine the application
- the budget assessment of the proposed project
- the minutes of the Project Committee meeting which considers the team recommendations, and the Results Sheet arising from the meeting.

3.18 As noted in paragraphs 3.10 to 3.14 of this report, it appears from the recommendation documents that none of the assessors reported on whether the applicant satisfied all of the assessment criteria. In other words, it is not possible to tell from the records whether in any given instance the assessor weighed all of the applicant’s claims against all of the assessment criteria.

3.19 The AFC has told the Ombudsman’s office that: ‘The Recommendation Forms are the basis on which decisions are made’ (letter of 26 May 2006). That is,

they are the basis on which the Project Committee decides which applications are successful and which are not. We asked the AFC about records made of the Project Committee’s deliberations and we were informed that ‘All Project Committee meetings are minuted’ (letter of 26 May 2006). A representative sample of such minutes, from a Committee meeting of 2006, reveals only that ‘[XX] and [YY] presented the Strand I applications. General discussion followed. Please refer to results sheet’. The results sheet in question lists applications, which have been approved, rejected or approved pending other actions. The results sheet does not give reasons why the listed applications were rejected. We asked the AFC about the absence of a record of the Committees discussions and were informed the AFC did not think it necessary to keep such a record because the discussions were ‘highly detailed and lengthy’ (letter of 26 May 2006).

3.20 The AFC informed us that in all ‘production’ round applications (which include Strand I) the assessors will interview the key creative teams behind each application. We have seen no evidence of a substantive documentary record being made and retained of such interviews. The AFC says at section 3 of its Reader Guidelines that ‘In arriving at a recommendation, Project Managers routinely discuss projects with applicants and provide their own comments and analysis directly’. The reports compiled by the assessors sometimes make it clear an interview has been conducted with one or more of the applicants (‘At the interview ...’), and sometimes imply an interview or a meeting has been conducted (‘The director says that ...’). Sometimes the reports make no mention of an interview.

3.21 We are informed by the AFC that the two assessors of an application travel to the city where the creative team lives and interview (usually) the producer and director and (sometimes) the writer. The interviews last between one and three hours. No notes are made and retained of the content of an interview ‘other than the informal notes of each assessor which may be fed into their overall assessment and be referred to in their recommendation papers’ (email from the AFC dated 16 October 2006). Details of the names, date and location of the interviews are drawn up into a schedule and retained.

3.22 In summary, it seems that the only documentary record of the reasons for any given funding decision lies in the recommendation forms submitted to the Project Committee. Those recommendation forms consistently address less than 100% of the published assessment criteria, addressing on average, for shortlisted applicants, perhaps 70% (Project Manager) or 30% (External Consultant) of the criteria. There is no record kept of the deliberations of the Project Committee, which decides the applications, no record kept of the reasons why some are approved and some are rejected, and no record kept of the extensive interview by the assessors of the creative teams behind each application. In the funding round we investigated, application number 11542 was marked ‘For discussion’ by both assessors, as was application number 11646. The former application was approved for \$120,000 funding. The latter application was rejected. It is not possible to determine from the documentary record why one succeeded and one did not.

3.23 The benefits of an agency keeping records not only of its decisions but also of the reasons for those decisions are several.

- The records allow for the accumulation of corporate knowledge and experience about why some applicants succeed and others do not.

- The records provide a trail of evidence and rationale, which can be inspected by the agency itself (for its own purposes) or by third parties charged with oversight functions.
- The records assist in the development of a decision-making rigour, which may be absent where reasons are not required to be retained.

Reasons for decision

3.24 Neither the *Australian Film Commission Act 1975* nor the policy directions issued by the AFC require the giving of reasons for decision when applications for funding are refused. The Funding Guidelines make it clear that applicants will not be given ‘written assessments of applications’; the reason given is ‘the high number of applications’ received by the AFC. The pro forma letter sent by the AFC to an unsuccessful funding applicant informs the recipient that:

- their application has been unsuccessful
- the applications received outweigh the available funds
- the decision-making process is ‘very competitive’
- the AFC is ‘not resourced to provide detailed feedback on drama scripts’.

3.25 There are well-established contemporary standards of good administrative practice among Australian Government agencies in respect of the giving of reasons for decision. Those standards normally require that a person adversely affected by an agency decision be informed of the reasons behind it. The statement of reasons should be tailored to the particular decision in question, rather than simply explain the decision-making process of the agency.

3.26 In the course of our enquiries, we asked the AFC if funding decisions like the ones under discussion are subject to the provisions of the ADJR Act. The AFC’s view is that they are not. It may be that the situation is less clear-cut than the AFC believes, because even if the ADJR Act does not apply to the AFC’s funding decisions, good administrative practice requires the giving of adequate reasons for an adverse decision.

3.27 A complaint against the AFC can be the subject of an investigation by the Ombudsman under the *Ombudsman Act 1976*. Section 15(1)(c)(ii) of the Ombudsman Act provides that the Ombudsman can issue a report if he is of the opinion that ‘a complainant should have been furnished, but was not furnished, with particulars of the reasons for the decision ...’. Less prescriptive, but also relevant, is the *Freedom of Information Act 1982*, which requires Australian Government agencies to provide public access to documents of the agency.

3.28 The fact that the AFC is subject to these accountability mechanisms suggests that it is intended to be answerable for its processes, and should be providing reasons for its decisions when requested to do so by an unsuccessful applicant. The reasons need not necessarily be extensive, but should explain to a person why their application was assessed as being uncompetitive in terms of the assessment criteria applied by the AFC.

Conflict of interest

3.29 The AFC’s letter to our office dated 26 May 2006 pointed out that the Commission’s Project Managers ‘are all experienced filmmakers; either writers,

directors or producers—well respected industry practitioners’. The letter pointed out also that the Outside Consultants appointed to assist Project Managers in assessing funding rounds ‘are also experienced industry practitioners possessing specialist skills and experience in the particular genre or format of the round they are assessing’. Given those circumstances, and the size of the Australian film industry, there would appear to be a strong likelihood that the decision-making and assessing personnel in any given funding round would know some of the applicants or the creative teams associated with an application. The potential therefore arises for a conflict of interest on the part of an AFC officer or Outside Consultant.

3.30 As noted in paragraph 2.1 of this report, the Public Service Act requires that members of the APS conduct themselves to ‘the highest ethical standards’. The Code of Conduct established by s 13 of the Act provides that: ‘An APS employee must disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with APS employment’.

3.31 As the Auditor-General’s Better Practice Guide notes at section 2.67: ‘Actual or perceived conflicts of interest can be potentially damaging to a funding organisation and its programs. Ensuring that relevant guidelines clearly outline what constitutes a conflict of interest, and that procedures are in place for staff to declare their interests can mitigate this risk’.

3.32 The AFC’s Funding Guidelines do not mention the subject of conflict of interest. A search of the subject on the AFC’s website does not produce a result. The AFC’s Reader Guidelines (dated 1997, but in the process of revision according to the AFC’s letter dated 26 May 2006), which are used by the assessing teams, include a paragraph headed ‘Confidentiality and conflict of interest’. The paragraph says in part that: ‘At the time of initial approach to consider a project, readers should declare any association, whether business or personal, with the principals involved in the project, which may prejudice their evaluation’. The paragraph does not go into detail about how interest should be declared, nor refer to any associated procedures or documents. The Reader Guidelines elsewhere (section 9) appear to recognise the potential for conflict of interest to arise when they comment that ‘material submitted by one’s mates or prospective employers’ might evoke an inappropriately superficial response from the application assessor.

3.33 It does not appear that the Reader Guidelines are made available to the externally-appointed Budget Assessor for a given funding round, and hence it seems unlikely that the Budget Assessor will receive any written advice of the AFC’s policy on conflict of interest.

PART 4—SUMMARY AND CONCLUSIONS

4.1 Based on the analysis of Strand I funding decisions in 2006, in our view the AFC’s arrangements for assessing and deciding applications do not reflect contemporary best practice, and leave the agency open to criticism from its clients or external scrutineers. The reasons behind that view have already been mentioned in this report, but are set out in summary form so that they are clear.

1. Funding criteria

The AFC has failed to establish and make available to all interested parties a definitive and unambiguous set of funding criteria, to assign appropriate weightings to the criteria currently in use, or to rank applicants in order of merit.

2. Assessment process

The AFC has failed to consistently and fully apply the current assessment criteria to the circumstances of individual grant applications and has failed to ensure the assessors’ reports are structured in line with the criteria to be addressed.

3. Record keeping

The AFC has failed to ensure that there is an adequate documentary record of the assessment process. The documentary record does not sufficiently indicate why some but not other recommended applications were successful, or why funding was given at a particular level.

4. Reasons for decision

The AFC’s policy of not providing unsuccessful applicants with written reasons for decision is contrary to the principles of good administrative practice. The AFC has failed to create and maintain an administrative environment conducive to the provision of reasons for decision on request, and failed to keep a documentary record sufficient to allow such reasons to be discerned.

5. Conflict of interest

The AFC has failed to adequately address the potential for problems arising from a conflict of interest held by members of the assessment teams and the Project Committee. Specifically, the AFC has failed to create, publicise and make available to all members involved in the assessment of funding applications a comprehensive statement on the subject.

PART 5—SUBMISSION BY THE AFC

5.1 In accordance with the provisions of section 8(5) of the Ombudsman Act the principal officer of the AFC was invited to make a submission in response to the draft form of this report. That invitation was accepted, and a submission made that the issue of a final report was not warranted.

5.2 The AFC’s submission is comprehensive and detailed. It argued that the Ombudsman’s office did not fully understand the information obtained during investigation, or failed to obtain all relevant information, or relied on information provided by an AFC officer not qualified to provide it, or failed to correctly interpret relevant information. The AFC provided additional information in their submission. Additionally, the AFC asserts that the high regard in which it is held by its stakeholders demonstrates the appropriateness of its administrative procedures.

5.3 The AFC advised us that since the draft report was issued, it has either instituted, or proposes to institute, changes to its procedures that will address the concerns in the report. We are of the view that the changes in question do not fully address the recommendations set out in this report.

5.4 The AFC has also provided us with undertakings to consider our recommendations as part of the annual review of Film Development Funding Guidelines, to review its procedures for the handling of formal complaints, and to negotiate appropriate protocols between our two offices regarding complaint investigation. We note that the relevant undertaking is the one relating to the recommendations in the report, and that undertaking is to do no more than ‘consider’ those recommendations.

5.5 Although the Ombudsman’s office is not persuaded that the information and argument in the AFC’s submission is such that this report should not be issued, it is appropriate to acknowledge that the AFC has said that it:

- recognises that the funding assessment criteria could be further clarified, and is considering how criteria weighting and application ranking protocols could be introduced
- is devising an assessment model to ensure assessors specifically address funding criteria when making recommendations
- recognises the potential for significant improvement in its record-keeping practices, and has already begun to consider improvements that might be made.

5.6 Those actions, and other comments made in the AFC’s submission, go some of the way towards accepting the Ombudsman’s recommendations. They do not, however, go as far as an acceptance of all recommendations.

PART 6—RECOMMENDATIONS

6.1 We recommend that the AFC review its policy and procedures for the assessment of funding applications, having regard to the criticisms in this report of the Strand I funding assessment process for 2006. The review should address the following issues.

- The AFC should adopt, publish and provide to all interested parties a definitive set of weighted criteria for each funding program.
- The assessment process should have proper regard to all of the assessment criteria, recommendations for funding should be ranked according to those assessment criteria, and an adequate documentary record should be maintained of all steps in the assessment process.
- An unsuccessful applicant should upon request be given a statement of reasons that adequately explains why their application was not successful, and the ability to request such a statement should be explained in the letter notifying the outcome of the application.
- The AFC should ensure that those persons engaged in the assessment process are aware of their responsibilities in providing reasons and being accountable for those reasons.
- The AFC should develop comprehensive guidelines on conflict of interest and disseminate them to all involved in the assessment process.

GLOSSARY

ADJR Act	<i>Administrative Decisions (Judicial Review) Act 1977</i>
AFC	Australian Film Commission
APS	Australian Public Service
ARC	Australian Research Council
Ombudsman Act	<i>Ombudsman Act 1976</i>
Public Service Act	<i>Public Service Act 1999</i>
Strand I	AFC funding stream for IndiVision low-budget feature productions