National Cultural Policy Submission

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Submitted: As a worker/professional in an industry who uses arts (e.g. art therapist, tour guide); As an artist; As an individual

Are there any other things that you would like to see in a National Cultural Policy?

The Albanese Government is currently considering introducing content quotas for streamers. In developing a robust and durable policy response that meets the 5 goals of the Creative Australia National Cultural Policy, the Government must gain a greater understanding of the evolving industry context in which screen production occurs, the nexus between the artist and the industry within this context, the policy problems faced by artists, and consider a range of options. The current position of orgaisations that represent screen artists (SPA, AWG, DGA, MEAA) consider that the streamers should be required to invest 20% of their revenues in Australian production. This is a good starting point and in principle, should be supported by government, but given the growing importance of streamers and their increasing market power, as well as other ongoing wicked problems, the design of the solution needs further consideration than that proposed.

Current and future context

- Streamers have entered the market offering significant value to customers – high quality, high volume content on-demand. Streamers, for the first time, have direct access to customer wallets and have access to behavioural and preferential data not previously available. This has changed the market significantly, with implications for content creators.
- Streamers have all but replaced the home entertainment market (DVDs, video rental) which was a significant source of revenue for distributors and producers.
- Streamers directly compete with FTA television networks and Subscription Television, who have seen a significant decrease in eyeballs and consequently, subscription and advertising revenues. These competitors are subject to content quotas, while streamers are not.
- This downward trend in revenues for traditional broadcasters will continue and streaming will eventually replace this traditional media in the home (within 5-10 years) as they afford little competitive advantage, except as providers of news and variety. However, there is no reason why streamers will not be a source of this kind of news and variety in the coming years. The key audiences for FTAs are 55+ (a shrinking market) and disadvantaged households. STAN (Channel 9) and BINGE (Foxtel) should be seen as evidence of preparation for this future, or at least a recognition of its possibility.
- Streaming will replace other ancillary markets for screen content such as airlines, hotels, and education.
- Cinema is a declining market, but the big screen theatrical out-of-home experience and social benefits of cinema-going, will ensure that this market will continue to remain viable if access to content supply remains, but its share of revenues for artists will continue a long term declining trend. Streamers in the USA have begun purchasing cinemas (Netflix purchased Egyptian Cinema in LA; Amazon looks to acquire AMC).
- Streamers are integrating backwards. Netflix has recently purchased Animal Logic, Australian animation production house. Mergers and acquisitions will continue in exhibition, distribution and production.
- Streamers will disrupt the distribution function that sits at the centre of government policy in Australia. Either they will acquire distributors, set up their own in-house distribution function,

or outsource in markets where government policy, market size and value, disincentives them from doing so. This is because third-party distribution adds costs and weakens control.

The future is streaming. At no time since the Studio System between 1912 to 1948, has there been so much concentration of market power in the screen sector.

Other wicked problems

Current government policy has provided enormous power and privilege to players at the end of the marketing channel. Broadcasters, distributors and sales agents are not only the gatekeepers to audiences but also gatekeepers to government funding that enable content creation (both the Producer Offset and Screen Australia funding). This increases efficiency in that it increases the likelihood that Australian content will be available on Australian screens, but it forces a value on Australian content before it is made and limits Australian artists capacity to negotiate terms that make the creative endeavour financially viable[1]. It also requires Australian artists to compromise their creative vision to fit into a programming schedule or a subjective definition of "excellence" of the commissioning editors. There is little evidence to suggest that this cohort is any better at identifying 'hits' than artists beyond their function of making the content available to aggregated eyeballs and creating awareness and attention[2]. In fact, their bias and decision errors may prevent the creation of novelty that audiences desire in lieu of copycat content based on previous success.

What government policy since 1988 has done is socialise the risks of content production, while privatising the rewards – not for Australian artists, but for distributors, exhibitors and broadcasters.

Over the next ten years, without government reform, the negotiating power of artists will be reduced to zero and **Goals 3-5 of the National Cultural Policy will never be achieved.**

Limitations of industry proposal for content quotas:

Simply requiring streamers to invest 20% of their revenues into Australian content will do little to address the concentration of market power sitting at the end of the marketing channel without further design considerations.

The government also needs to consider the following in its policy deisgn:

Problem	Implication
Quotas are ineffective mechanism to promote quality production – 'quota quickies'.	There is no incentive to go beyond the minimum requirements of the quota and in 20% revenue investment quota there is no incentive to create or promote quality through privately held assets. Administration and enforcement of quotas can be both difficult and expensive for government. In screen, with such high levels of concentration, there is always great scope for regulatory and political

[1] For example, https://www.afr.com/companies/media-and-marketing/tv-film-producers-missing-out-in-power-imbalance-with-streamers-20211220-p59iyu

2 McKenzie, J., Rossiter, C., & Shin, Y. (2020). For love or money? Assessing outcomes from direct public investment in film. *The International Journal of Cultural Policy*, *26*(4), 459-475. https://doi.org/10.1080/10286632.2018.1554652

	capture. This limits **Goals 2-5**, and unless there are specific requirements for First Nations content then it will limit **Goal 1** as well. **Solution** - incentivised regulatory settings that promote creation and promotion of quality Australian content through privately owned assets.
Artistic work is cultural R&D. Failure is a necessary part of the R&D process.	Government needs to accept "failure" as a natural part of the creative process in its policy design. This has implications for **Goal 4** by ensuring there is a capacity for failure built into the system. **Solution** – system that incorporates structures and mechanisms that accept and manages the risk of failure in dynamic and uncertain environments. For example, portfolio investment strategies.
"Excellence" is revealed over time. The quality of a creative asset can only be determined after it has been produced. "Talented artists" are only revealed by being prolific. For every 80 first-time directors only 1 will go on to make 5 or more films (but may find careers in TV, advertising, or corporate production).	Government needs to make a big investment in talent development than it currently does if it is serious about **Goal 3.** It will also need to invest in better early indicators of talent and better pathways, making sure that when talent is revealed that there are dedicated resources and avenues for public returns to minimise "brain drain". **Solution:** risk-based regulation with structured pathway processes and investment programs.
Because 'excellence' is temporal, subjective and hidden, artists need many doors and reliance on the "network' of the industry to discover talent is fraught with bias and decision error. While financing of Australian content is made up of 'bits and pieces" from many different sources (marketplace, private investment, government), most Australian films still need government funding from Screen Australia, the last financier – a single door.	If Screen Australia remains the single door of last financier in, then this limits diversity and "excellence" to only where it is defined on the network's terms. The individuals in that agency can and do exert significant control over what, how, who, where, when and why content gets made in Australia. This creates inconsistency in how policy is administered and enforced. **All goals are all affected as a result, but in particular Goals 2 and 4**. **Solution:** many full financing 'doors', not just many financing sources.
Financing is made up equity, debt, and future revenues. Each have a different claim on revenue streams – called the "waterfall". Equity is paid last because of the negotiating power of those who provide future revenue and debt	This impacts **Goal 3** by creating perverse financial incentives. Survival means creating films with as higher budgets as possible as quick as possibly, with the trade-off being quality/excellence.

and transfer risk to artists and other equity owners. This is unofficially endorsed by current government policy who become the default "market" – they get to decide what gets made with no competitive dynamics to encourage innovation or value creation.	This also sets up a negative feedback loop for **Goal 4 and Goal 5** because if quality content is not produced, then audiences disengage. **Solution:** investors need to be in same position return position as artists (ie equity partners).

Proposed Policy Option

Policy Lever	**Augmentation**	**Applies to**
1. Screen Quota a) Requirement that 20% gross revenues paid into a Screen Media Fund **b)** Requirement of a minimum of 20% of drama and documentary Australian content screened (or search and discovery).	**Incentivised regulation:** • If 20% availability is met, then revenue requirement is reduced by 5% • If Australian content performs achieves a performance threshold then revenue requirement is reduced by a further 5% (for example, an Australian film is one of top 5 grossing films at the cinema for the year; or an Australian film/TV series is top viewership)	• Streamers • Commercial FTA • Australian cinemas • YouTube, Vimeo • Other future screens **This ensure that powerful market entities invest in both the production and the promotion of Australian screen content and are <u>incentivised</u> toward quality and excellence. This also ensures platform neutral legislation that is consistent.**
2. Screen Media Fund Public Private Partnership investment fund. Annual investment in a portfolio of Australian screen content. Note: this was an option outlined in the 2020 Supporting Australian stories on our Screen Options paper.	• SMF invests in equity in Australian films. There is no requirement for marketplace funding for eligibility. • Contributors sit on board • Contributors get an equivalent share of returns, commensurate with their level of investment. This includes Government allocations. • Annual auditing of investment decisions. Subject to ICAC. • SMF must have standard terms and conditions and must invest with other equity partners pari parisu. As producers will have access to Producer Offset, the SMF must treat the Producer Offset as	• Current allocation to Screen Australia is diverted to SMF. • Non-production related functions of Screen Australia are spun off to department or other agencies. Includes: o Research to ACMA/Department o Festivals to NFSA o Producer offset to ACMA/Department **This ensures that all parties invested in Australian screen stories carry same type of risk and at the same level as artists, and therefore are incentivised to ensure the success of artsist. Market and producer interests are aligned. Risk is managed**

	producer equity and cannot discount the investment through their terms of trade. • The SMF can only invest in certified "Australian films"	**through a portfolio approach.**
3. State and federal screen agencies as Fund Managers Fund managers are responsible for identifying investments for SMF board consideration and investing allocations. They operate with a high degree of independence in a competitive environment in terms of allocating funds to artists and being allocated funds from the SMF.	**Many doors** • Funding must be available to all producers, regardless of geographic location. • Fund allocations based on level of state government funding, size of local industry. • State agencies can co-invest alongside state-specific funding (but this cannot be used to unduly influence production location decisions and producers can complain directly to SMF, with penalties to state agencies) • State agencies can coinvest with other Australian and international investors. • State agencies can fully finance. • State agencies will be directed by Letter of Engagement (charter letter) from SMF, which will set out strategy and direction of fund every year. This will include format targets, genre targets, diversity targets, and development targets (new talent). **Incentivisation** • Commonwealth share of revenue from SMF investments will be allocated back to fund manager based on their individual performance and contribution to portfolio revenues. These	• Each of the state agencies • Screen Australia **With the relative independence and flexibility of how state and federal screen agencies invest in content (subject to an overarching investment strategy), artists will have access to many doors.** **Competitive incentives are built into the system to encourage excellence and controls are in place to prevent undue influence over creative decisions**.

	"bonuses" will be paid on both financial and non-financial performance.	

A few things to note:

- Artists funded through the SMF will be subject to standardised terms and conditions.
- The Producer Offset remains pivotal in that it provides artists (producers) will an equity stake that is recognised by the new structure. Over time, the Government may want to consider the feasibility of standardising the level of Producer Offset to 30%, but initially the 40% offset for feature films should remain.
- A new and more stringent SAC test will be required. Rather than the current determining factor of a theatrical release. For example, 40% offset for content single story content 90-120 minutes in length that has both Australian setting and Australian characters to differentiate between 'Elvis' and 'Kenny' and incentive the production of films with a high degree of "Australianness".
- Distributors, broadcasters and streamers will no longer be required to act as gatekeepers to production funding which will be the sole domain of the SMF. Fund Managers may require applicants to have a "letter of interest" or a "P&A commitment" from an Australian distributor, or a "pre-sale" from an Australian broadcaster or streamer for some of their programs. This should be left largely to the fund managers to decide and experiment with.
- HOWEVER, it will need to be clear that streamers and broadcasters and distributors will have no right of ownership to copyright or title in SMF funded content. They have equity in the SMF (the fund), and it is the fund that has copyright ownership and equity in content. Therefore, if a contributor to the fund (e.g. Netflix) desires to screen an SMF funded content on their platform then they will need to acquire those rights separately. Contribution to the SMF does not automatically lead to entitlement to screen.
- This may lead to the claim that they pay twice for Australian content, but they are actually participating in different ways. For example, STAN will contribute to the SMF but share in equity returns on all SMF funded content, even those not streamed by STAN. These equity returns are international as well as domestic so represent an additional revenue stream. The government may wish to provide tax relief on SMF revenues (eg 50% tax relief).
- The SMF may wish to allocate a proportion (say 5%) of their annual funds to Enterprise investment – equity investment in companies – which is currently a Screen Australia Program. Unlike current arrangements, which are effectively grants, these would be equity investments on standard commercial terms where the SMF acts like a venture capitalist. This funding should only be available to "experienced" artists that have "revealed talent" (for example, a feature film that has made over $5 million at the box office, or screened at an A list film festival).
- State agencies, as fund managers, will be guided by a charter letter issued by the SMF and co-signed by the Minister. SMF-State funding agreement will govern the funding relationship and the performance of the managers.