



**media, entertainment & arts alliance**  
the people who inform and entertain

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**Submission to the  
Advisory Group on reform of Australian  
Government Administration**

**Re: Reform of Australian Government  
Administration Review**

**November 2009**

**The Media, Entertainment & Arts Alliance**

The Media, Entertainment & Arts Alliance (Alliance) is the industrial and professional organisation representing the people who work in Australia's media and entertainment industries. Its membership includes journalists, artists, photographers, performers, dancers, symphony orchestra musicians, freelance musicians and film, television and performing arts technicians.

The Media, Entertainment & Arts Alliance (the Alliance) welcomes the opportunity to provide comments to the Advisory group on reform of Australian Government Administration.

The Alliance provides comment where appropriate.

## **Ch. 2 Challenges in the strategic environment**

***What are the most important challenges facing the public sector over the next 10 years?***

### **Increasing complexity of policy challenges.**

The Alliance agrees with the Advisory Group that there are a number of public policy challenges that do not fit neatly within one ministerial portfolio or a single agency's set of responsibilities. This is precisely the case when it comes to supporting Australia's screen culture. The Commonwealth has established a number of measures that support the creation of Australian audiovisual content. These include:

- Direct subsidy through the Screen Australia and the Australian Children's Television Foundation;
- Indirect support through taxation concessions for investment in feature films, television miniseries and documentaries which includes –
  - The Producer Offset;
  - The Location Offset;
  - The PDV Offset.
- Australian content rules under the Broadcasting Services Act for free-to-air commercial television, advertising and subscription television administered by the Australian Communications and Media Authority;
- International marketing support via AusFilm;
- Regulation of temporary entry of foreign actors and crew under immigration regulations;
- International co-production treaties and MOU arrangements;
- Rules governing foreign ownership of media;
- Funding of national broadcasters – ABC, SBS and NITV;
- Direct support for training through the Australian Film, Television and Radio School; and
- Support for preservation of Australia's audiovisual culture through the National Film and Sound Archive.

Managing this program currently includes three Departments – the Department of Environment, Water, Heritage and the Arts (DEWHA), the Department of Broadband, Communications, and the Digital Economy (DBCDE) and the Department of Immigration and Citizenship (DIAC) – as well as a panopoly of agencies including the

Australian Tax Office, Screen Australia, Ausfilm, the Australian Communications and Media Authority, ABC, SBS, NITV, the NFSA, the Australia Council etc.

While acknowledging the shape of the Ministries to be the prerogative of the government, there remains one key curious anomaly. This is that the Arts portfolio lies with the Environment, Water and Heritage and not the Communications and Broadband area. This is significant as the two portfolios, and the policy decisions made within them have complimentary and contradictory impacts upon each other. The Alliance remains concerned that with the Arts portfolio remaining outside of the Communications Department, policy impacts upon the Arts portfolio may not be considered up front in any development of policy within the Communications Department and vice versa.

For example, the introduction of the NBN legislation and discussions around this new initiative has moved forward with little consideration as to the impact upon the content industries. Responsibility for the NBN lies with the DBCDE while the content industries and government support to them are largely supported via DEWHA.

While the Alliance is not suggesting that they have been sidelined on purpose, it would certainly be more synergistic to have the Arts portfolio sit with the Communications area as it did under the former government.

If this is not taken up it is therefore critical that strong links are made between these two departments, including joint monthly meetings and calls for input into Discussion Papers or Reviews from the Department before being released to the public.

While interdepartmental synergies may be currently lacking there are also serious problems with intra-departmental synergies.

A good example of this is the Foreign Actor Certification Scheme (FACS) administered by DEWHA but is impacted upon by decisions made by Screen Australia. The FACS Guidelines are the basis on which the Arts Minister determines whether to allow a foreign actor to enter Australia to work on a film or television production pursuant to the Migration Regulations. The Guidelines are intended to achieve key Government cultural objectives by ensuring that Australian industry personnel are given a fair chance of securing employment in film and television productions shot in Australia, and that Australian voices are heard in Australian productions.

However, currently DEWHA's agency Screen Australia does not take into consideration the guidelines when making funding decisions leading to the absurd situation that Screen Australia could possibly find itself supporting projects that may not eventuate due to their inability to meet the FACS. This is an administrative waste of time and resources and one that is clearly easily resolved. Screen Australia needs to work more closely with DEWHA with regards to the FACS to ensure that the process is smooth. The current situation is that one Government agency will for all intents and purposes be disregarding the requirements of its parent Department.

This situation places DEWHA in the invidious position of possibly having to reject projects already in receipt of Government support.

The Alliance believes that this is a critical issue. Screen Australia's provision of production funding, the DEWHA administration of the FACS and the Department of Immigration and Citizenship's Immigration regulations are all arms of Australian Government cultural policy and to this end need to work together as seamlessly as possible.

Another issue of concern to the screen industry is the impediments in the sharing of information between internal departments of agencies. A number of members of the screen industry are, for example, being asked up to three times for the same information from Screen Australia. A co-production utilising the Producer Offset will need to provide the same information to the Producer Offset section of Screen Australia, the Co-Production section and the Research section for statistical purposes such as the data-gathering for the National Drama Survey. The Alliance understands the need for privacy but believes that systems could be put in place to ensure that commercially sensitive material is not released.

The Alliance points to the UK where the Department for Culture and Sport and the UK Film Council have developed a Memorandum of Understanding on Information Sharing between the two organisations. The purpose of the Memorandum is specifically to put into place a formal mechanism for the sharing of information in relation to the issuing of a 'Certificate of British Nature of a Film.' The information shared includes all information on all co-production and cultural test application forms. Certification Information is also allowed to be shared with the UKFC's Research and Statistics Unit ("RSU") in order to provide research data and market intelligence. Information collected by the RSU is however anonymised and aggregated so that individual films cannot be identified. With further respect to privacy concerns the agreement acknowledges the two organisation's legal obligations under the Human Rights Act 1998 (UK), the Data Protection Act 1998 (UK) and the common law duty of confidentiality

The Alliance believes that such an arrangement should be reached within the separate departments of Screen Australia. However this or any alternate solution has yet to be implemented.

### **Technological Change**

The Alliance notes that one of the challenges APS agencies face is delivering services using the latest technology. The Alliance notes that only recently have some Department's embraced the use of a central email for queries rather than using the email addresses of individuals that can at times change. The Alliance further notes that a number of Departmental websites are difficult to navigate.

The Alliance is aware of the Government Web 2.0 Taskforce and supports their aims. However the Alliance would like to point to one particular area that needs work. This is record keeping and online archiving of policy reviews.

### *Record keeping*

The Alliance has found in dealing with some Departments that there has been in the past poor record keeping practices. The Alliance has had to provide its own records to government Departments that it works closely with to provide historical records. This is a critical area that needs to be supported.

### *Archiving of policy reviews*

The Alliance believes that this record keeping needs to be extended to digitising all government reviews undertaken prior to the widespread use of the Internet. Currently, only reviews held after the inception of web-based access are available on line. All reviews prior to the mainstreaming of the Internet are either kept in hard copies in relevant agency libraries (eg Screen Australia or the Australian Film, Television and Radio School) or sit in a file somewhere within the Department. These are difficult to access, search for or find, if they exist at all. These are however valuable guides to current and future Reviews that provide context for current and future policy debates. Knowing why certain administrative decisions were made in the first place, arising out of initiating reviews held in the 1950, 60s, 70s and 80s is critical in deciding the future direction of particular programs.

For example, the Alliance is currently an interested stakeholder in the Department of the Environment, Water, Heritage and the Arts Review of the Foreign Actor Certification Guidelines. One issue at stake here is whether television commercials are considered a 'cultural' form of screen production by the government. DEWHA currently do not believe it is. They have provided no grounds for this belief. However, the Alliance was able (after much searching) to find that DEWHA's antecedent, the Department of the Arts, Sport, the Environment, Tourism and Territories made a submission to the 1992 Inquiry into Australian Content on Commercial Television by the Australian Broadcasting Tribunal, where it stated that

*"[The Department] submits that the overriding justification for continuing with current standards[for television commercials] is for cultural reasons. The very nature of advertising is to promote and project attitudes and values. It is important that these remain overwhelmingly Australian."*

This information demonstrates a policy disconnect within the Department. However the point is that records, prior policy documents, reviews and submissions are all critical to an understanding of the formation of policies driven by the public service in the first place. These must be made available to the Australian public. The Alliance recommends a program be put in place to ensure such information is made available for the future.

### **Ch 3. An Aspiration for Australia's public service**

#### **Characteristics of a highly performing public service**

##### ***What do you think is an appropriate aspiration for the Australian Public Service?***

The Alliance has recently experienced frustration in its dealings with particular Departments and their policy and decision making processes and implementation. This has arisen from a stated service delivery ethos that seeks to "service clients". In the area of immigration for example, this is particularly, problematic as the client could be any number of people. It could be the foreign visa applicant, it could be the applicant sponsor for a visa or it could be the Australian public whose will is expressed via Government policies in this area. It is the Alliance's experience that the Department takes the attitude that it is servicing the needs of the client sponsor applicant. This is borne out in decisions and actions by the Department that where there are grey areas fall on the side of the "client" rather than implementing the spirit of the regulations or legislation.

The Alliance takes the view that regulations have been put in place by Government to implement policies that work to assist the Australian people. In the immigration and employment area, the Migration Regulations have been put in place to ensure that where there are areas of high unemployment, importing of workers is strictly limited. This need to be implemented by the APS. It is the Alliance's experience that strictly literal meanings have been imposed upon regulations, ignoring the spirit and policy intent behind the regulation itself, leading to an undermining of the original program and requiring future reviews, amendments and changes down the line.

The Alliance would therefore expect that a high performing public service would serve the needs of Australian citizens – both in terms of the Australian citizen that they deal directly with (be it a sponsor of a visa) and Australian citizens with whom regulations are in place to support.

### **Ch. 4 A values driven culture that retains public trust**

#### **The role of senior leaders**

##### ***How do we ensure that APS leaders fulfill their responsibilities to promote and uphold the values?***

The Alliance supports the current APS Values as detailed in the Public Service Act 1999 but supports the updating of these to include the need to work collaboratively to achieve cross-portfolio outcomes as mentioned in the discussion paper.

APS senior leaders recruited internationally should necessarily be provided with training in APS values. The Alliance is aware of more than one example of

government agency Chief Executives that have been recruited either from foreign bureaucracies or from international private corporations that have acted contrary to the values espoused by the APS. One drew on public resources for personal use – something commonly undertaken in the private sphere internationally but not accepted in the public sphere - and was forced to repay the Government. Another has called upon employees to undertake work of a personal nature. These actions are clearly unacceptable under the APS values and the APS needs to ensure that training is put in place for the entire APS workforce.

### ***Accountability and trust***

The Alliance believes that in every review undertaken by a Government Department or Agency that details of the consultations undertaken should be made public with a register of meetings, roundtables, correspondence as well as submissions.

The Alliance believes that all stakeholders of a policy need to be identified and invited to make a submission. This for the most part occurs and reviews are, generally speaking, undertaken smoothly and with wide consultation. However, there have been times where reviews of programs of interest to the members of the Alliance have not involved any consultation of the Alliance or other stakeholders for that matter.

Changes to guidelines (for example, the Guidelines to the Significant Australian Content Test of the Producer Offset as administered by Screen Australia) have been undertaken with little or no consultation necessitating further changes down the line. The Alliance believes that the APS needs to examine its consultative processes and ensure that transparency processes are in place to ensure accountability and trust.

Furthermore, there is a significant lack of transparency in government administration of the new Producer Offset. The Alliance understands that Screen Australia has been advised that it cannot disclose the names of specific productions in receipt of the Producer Offset due to the privacy provisions of the Tax Act. The Alliance argues that such information is important to know.

Firstly, the Industry has an interest in knowing which productions received Producer Offset support and therefore meet the Significant Australian Content test currently in place. As has already been clear there are a significant number of productions that are “borderline” with regards to whether they could be considered “Australian” for the purposes of the Producer Offset. The industry and members of the Alliance have a keen interest in knowing that bona fide Australian productions are being certified. Without this knowledge, certain productions that the industry or the Alliance would consider to be not Australian could be deemed Australian by Screen Australia. However, the industry will be none the wiser given the secrecy of the information.

In the light of there being no points test as occurs in the UK and now in New Zealand, and the lack of known precedents, there will be continuing uncertainty for producers

in the application process increasing in administration and work for both the industry and the organisation itself.

In the UK, films that are certified British<sup>1</sup> and eligible to apply for UK Film Council funding and for the benefits of the UK's tax relief system are publicly listed on the UK Film Council's website: <http://www.ukfilmcouncil.org.uk/ctproductions>. There is no evidence that in the UK transparency inhibits investment. By having a points test and providing the names of those films, the industry is assured that the cultural test is working. The Alliance acknowledges that the right to privacy is an important principle but suggests that if the UK Government is able to release a list of the titles of films, then Australia should be able to find a way too.

The Alliance believes that the decision to keep Producer Offset recipients secret is contrary to the principles of open government. The public service needs to be as open as possible with the functioning of the Producer Offset and the Significant Australian Content test. The Alliance recommends processes put in place to enable the release information to the industry with regards to those productions in receipt of the Offset.

## **Ch 5. High quality, forward looking and creative policy advice**

***How can internal and external collaboration be strengthened to improve policy development and implementations?***

***What should be done to continuously improve the capability of the APS workforce in policy formulation and implementation?***

The basis of all good policy development has always been real world evidence. The Prime Minister has acknowledged as such in listing it as one the seven key elements for a strong APS. Evidence-based policy development is critical if the government is to be fully informed to make decisions that impact upon the community.

As such the APS must be skilled in collecting data, it must invest in high quality research and statistics and its policy officers needs to have the appropriate skills to read and interpret the data to discern the reliability of evidence and develop responses to them.

Evidence based policy development in the cultural sector, just as in other areas is essential but up to now has fallen far short of this ideal. The Alliance raises two fundamental issues that remain of concern to the industry to demonstrate this.

The first is the paucity of data regarding the cultural industries. This has long been a serious problem for policy development and planning in our sector. ABS data is

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<sup>1</sup> Under either the Cultural Test of the Films Act 1985, the European Convention on Cinematographic Co-productions or one of the UK's official bilateral co-production treaties are

patchy and it is unable to dedicate the resources necessary to establish and maintain robust data. The film and video industries are only irregularly canvassed. This is compounded by the very dramatic changes that are occurring in some sectors of the cultural industries. The Statistical Working Group is also under-resourced. The Australia Council surveys practising professional artists in the series *Don't Give Up Your Day Job: An Economic Study of Professional Artists in Australia*. The last study, the fourth in a series undertaken over the past 20 years, covered the financial year 2000-2001 and was released in 2002. Fortunately, the study is being conducted again this year. Valuable as it is, it would better serve the industry if the Australia Council were resourced to undertake the study on a more regular basis.

The second issue that the industry faces with regards to data relates to the soundness of ABS data relating to employment in the cultural industries. One of the most reliable sources of data is, of course, the census. Unfortunately, the census only measures people's employment by reference to the primary job undertaken in the week prior to the day on which the census form is completed: "the main job held last week, i.e. the week before Census Night".

The very nature of the cultural industry and the intermittent nature of work will necessarily miss a large number of workers and careers based in the cultural sector. The census is able to capture those in the sector in full-time employment, but given that almost all performers and musicians have, of necessity, more than one income stream, and given the high number of freelancers in the sector, many working in the cultural industries are not captured at all.

If this data is used by Government to assist in policy development in areas of planning, then accounting for the prevalence of employment in the cultural sector and basing policies upon these figures will be undermined. Policy development must be based upon the real numbers and the ABS census as currently designed does not reflect reality, under reporting on the levels of employment in the cultural sector significantly.

Another issue central to improving policy development processes is to ensure realistic timeframes for reviews. On the 4 December 2009, the Minister for Broadband, Communications and the Digital Economy, Senator Stephen Conroy announced a review of Commercial Television Multi-channels. Submissions are due on the 31 December. Providing only three weeks over the Christmas period is not effective genuine consultation. The Public Service needs to reform the review and submission process to ensure set, realistic time periods for reviews, with set time periods for responses.

## **Ch 7. Flexibility and agility**

### ***How could recruitment practices be enhanced within Australian Government entities?***

The Alliance notes that the discussion paper refers to skills gaps in “overall strategic policy capability” with “many policy officers lacking a sufficiently diverse range of public service employment experiences.”

The great strength of the basic concept of the APS is the neutrality of APS employees. The Alliance supports this basic tenant.

However, the Alliance wishes to point to a critical issue that this raises. It is the Alliance’s experience that the APS places employees with no experience in dealing with an industry in positions where they require expertise. While APS employees are expected to become familiar with the industry they deal with and balance the issues as they see them, there sometimes remains a fundamental lack of understanding of basic processes of the industries they deal with and the impact that some decisions have upon them. This is unacceptable since administrative decisions are made with no regard to the impact they may have upon an industry.

While the Alliance supports wholeheartedly the neutrality of the Australian Public Service, the APS needs to recruit from outside its ranks, from the industries it deals with more in order that practical knowledge is imbued in the decision-making process.