Review of Australian Government Film Funding Support

Submission to the Department of Communications Information Technology and the Arts

By

Nick Cole

August 2006

REVIEW OF AUSTRALIAN GOVERNMENT FILM FUNDING SUPPORT

EXECUTIVE SUMMARY

The Australian film industry is undergoing rapid transformation and facing significant challenges. So much so, that the Australian film industry now finds itself at a critical cross road. It must meet the challenges and adapt to the future or face an uncertain future where its own existence may be called into question.

These challenges are not unique to Australia and confront the global film and media industries generally. They are also symptomatic of a profound and far reaching revolution in digital technology that *The Economist* likens to the early stages of a media revolution of similar proportions to that sparked by Johannnes Gutenberg's 1448 invention of movable type.[1] It's a point also acknowledged by Rupert Murdoch in his address at the Annual Livery Lecture when he said:

> *"From the wheel to the web, from the printing press to the fibre optic cable it has always been technology that has driven history. Those in the driving seat have always been those who fully understood and used that technology"*[2]

Despite forecasts that suggest the media and entertainment sectors of the economy will grow at an average rate of 7.3%, from $1.8 trillion in 2005 to more than $2.4 trillion by 2009[3] the Australian film industry remains fragile. It is now incumbent on both the Government and the film industry itself to work together to devise strategies and policies that will position Australia to participate in an industry sector that has the potential to be worth $37.6 billion by 2014 - 2015, placing it ahead of industries such as agriculture and communications.[4]

In its short history, the Australian film industry has proven its capability many times over. There is no need to repeat the list of films that are well known to us all or to list the talented individuals whose technical and creative excellence is recognised the world over.

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[1] 'What sort of revolution' *The Economist* Survey on New Media, 22 April 2006

[2] Rupert Murdoch, 'The Dawn of A New Age of Discovery:Media 2006', Speech at the Annual Livery Lecture at the Worshipful Company of Stationers and Newspaper Makers, 13 March 2006.

[3] *'Unlocking the Potential'*, Strategic Industry Leaders Group Report to the Australian Government, November 2005, at page 8

[4] Ibid at pages 17 – 18.

Notwithstanding the position of leadership that many individual Australians command within the global film industry, the local industry remains depressed. It is ironic that Australians such Peter Weir, Nicole Kidman, Russell Crowe, Cate Blanchet, Baz Luhrmann, George Miller, Dion Beebe, Andrew Lesnie, John Seale, Don McAlpine and Jill Bilcock can each achieve so much on a global scale but the industry that created them struggles to remain viable.

It is an unacceptable fact that the most talented Australians are required to leave in order to forge a career. In many ways talented Australians are like our mineral exports. We export our natural resources overseas where they are manufactured into value added commodities that are simply too expensive to bring back home. Nicole Kidman and Russell Crowe were actors with potential when they left Australia but it was Hollywood that turned them into "stars".

With the right policy and support mechanisms in place, the Australian film industry has the talent and capacity to fulfil the promise of many solid years of development. And while mistakes may have been made in the past, it is time to look forward and create the right environment for the industry to increase its chances of success and sustainability.

I am a passionate believer in a distinctly and uniquely Australian film industry and this submission is a personal viewpoint of how that may be achieved.

1 <u>What does the Australian film industry need to do to increase its chances of success and sustainability?</u>

There are many challenges currently facing the Australian film industry. They are too numerous to list here. Perhaps the most significant single challenge is the question of how to address the structural transformation being driven by a revolution in digital technology.

Digital technologies are rapidly transforming the production, distribution and consumption of audiovisual content on a global scale. In this new century consumers will have access to content on an unprecedented scale. True video-on-demand (VOD) services will deliver a vast range of audiovisual content to home and mobile devices as and when consumers so desire. New forms of technology will potentially enable producers or makers of content to distribute their output directly to consumers on a worldwide scale. Producers may also be able to repackage content for different platforms and exploit it many times over.

Notwithstanding these changes, there currently exists a highly sophisticated business model for audiovisual content by which rights-holders seek to obtain maximum value of return from audiovisual content by exploiting it over a series of sequential release windows. For example, in the film industry, these windows are particularly well defined - theatrical followed by DVD, Free to Air TV and Pay TV.

New forms of delivery are transforming the traditional models for the exploitation of audiovisual content, particularly by VOD services:

- For films, the traditional video rental and linear television windows are likely to be replaced by more flexible on-demand versions of these windows.

- For television programmes, an increasing proportion of viewing will be via on-demand catch-up windows using personal video recorders (such Sky+ or TiVo) or VOD services

- For documentaries, it will become technically feasible for producers to either self-distribute via broadband on their own websites or target niche, subject specific distribution outlets. As the internet enables target audiences to be aggregated globally, there is likely to be subject specific websites or digital channels that are defined by region, age and gender, specialist interests, subject or for any number of reasons that result in the aggregation of an audience.

Film and television companies will be forced to embrace new forms of technology and delivery platforms because, if they don't, they risk obsolescence. Companies such as News Corporation are all ready investing heavily in new forms of media and technology. According to press reports, News Corp is planning to spend $1 billion on adding broadband to DriectTV[5] and, in Britain, bSkyb has spent £211 million buying Easynet, a broadband internet-access company[6]. News Corp is also reputedly storing as many popular television shows and movies as it can on digital video recorders for instant playback in anticipation of VOD becoming the next major form of distribution.

At the 2005 Small Screen Big Picture Conference, Tom Gutteridge, a former Chief Executive Officer of Freemantle Media in North America, delivered the keynote address and said:

> *"I worked for 12 years in the BBC, for 17 years running the biggest production company in Britain, then ran one of the biggest production companies in the US, and I can tell you that there will be more changes to our industry in the next 2 years*

[5] Newsweek, 2nd February 2006

[6] The Economist, 21st January 2006

> *than happened in the last 30. In the last 30 years we moved from cutting 2-inch video tape with a razor blade to the Avid. But in the next few months we will be watching content on video iPods, downloading it onto mobile phones, streaming it into our broadband-equipped homes, watching it on trains, planes, in cars, in taxis, on our fridges, on our wristwatches, in the toilet…There'll be so many platforms, so much opportunity for content."*

Mr Gutteridge then provided the following examples of how new forms of technology are transforming media:

- In four year's time, more than 50% of the population of the United Kingdom will be using broadband.
- In Australia, total broadband subscribers numbers have risen to 2.3 million.
- In Hong Kong, where broadband speeds are fast, people use it to watch conventional television.
- More than 75% of internet users locate their content through search engines.
- Already 60-80% of all traffic on the internet is file sharing.
- In 18 months time, 10% of all UK homes will have a timeshifting device enabling them to skip the commercials and set their own TV schedule.

There is no doubt that digital technology will both challenge and transform existing business models for the entire audio-visual industry – film, television, games and digital content generally.

Under the current business model, Producers and rights-holders maximise the value of their content by exploiting it sequentially across a range of platforms or windows. The table below sets out the traditional model or pattern of release[7]:

[7] "*New Business Models for Audiovisual Content*", Report by the British Screen Advisory Council, Prepared by Jonathan Simon, 9 September 2005 at page 11

Window	Typical Price	Months After Theatrical Release	Number of Viewings	Other restrictions
Theatrical	$12.50		1	Must go to cinema to view
DVD/Video rental	$8 - $10	4 - 5	Unlimited over rental period	Must return DVD or tape to the store
DVD/Video sell through	$10 - $15	4 - 5	Unlimited	None
Pay-per-view	$8 - $10	9	1	Films start at fixed intervals (eg: Every hour)
Premium Pay TV	$60 - $80 per month	18	Multiple over a period of weeks	Films shown at fixed times determined by the schedule
Free to air TV	Nil	30	Several over period of years	Films shown at fixed times determined by the schedule but interrupted by commercials

Over the past ten years there have been key technological innovations that are transforming the traditional audio-visual business model. These technological innovations include[8]:

- Digitisation of content
    - o Traditional analogue systems have now been virtually replaced by digital equivalents that are cheaper, faster and allow electronic dissemination on a global scale.

[8] "*New Business Models for Audiovisual Content*", Report by the British Screen Advisory Council, Prepared by Jonathan Simon, 9 September 2005. See generally at pages 14 – 18.

- Growth of computer processing power
  - The exponential growth of computer processing power has made computers increasingly cheap and powerful.
- Expansion of computer storage capacity and a corresponding reduction in price
  - Home computers now have significant storage capacity that will permit consumers to store a range of audio-visual content. By way of example, the storage capacity of an iPod has increased 12-fold in just three years (from 5GB to 60GB)
- Growth of broadband internet services
  - In Australia, total broadband subscribers numbers have risen to 2.3 million. In the half year to December 31, Telstra alone added 317,000 retail subscribers. In the UK, where there is increased competition between suppliers, there is a proliferation of faster and cheaper services. As the roll out of high-speed services continues, true live streaming of content at full quality is not far away.
- Growth of digital distribution
  - To a certain extent digital distribution is encompassed by the previous heading. However, digital distribution mechanisms are enabling a range of alternative forms of distribution, including satellite, cable and terrestrial television. At the extreme end of this, it is conceivable that content creators could retain complete control of their product by self-distributing it via broadband on their own websites. Documentary filmmakers such as Michael Moore are a strong enough "brand" to be able to embrace this model.

These technological advances are, in turn, leading to content being made available to consumers as a true on-demand service. That is, content being available to consumers on any device, at any time, in any place. The platforms that will permit delivery of these services include:

<u>Video on demand (VOD)</u>

True VOD is becoming available via ADSl and broadband service providers. In the UK, Sky has completed its £211 million acquisition of broadband service provider Easynet, and is preparing to roll out consumer services in the second half of 2006. The company will spend an additional £35 million installing equipment in around 750 telephone exchanges by the end of the year. Sky recently launched a broadband service, offering premium service subscribers free access to movies and sports material. In the first three weeks after launch around 52,000 customers joined the service, generating over 70,000 movie downloads. In Australia, Telstra recently announced the launch of "Cable Extreme", a cable internet service with a theoretical maximum speed of 17Mbps and which will provide the conduit for its forthcoming movie download service. Telstra's cable network, which it shares with Foxtel, passes 2.6 million homes.

Personal Video Recorders (PVR)

PVR's such as Sky+ and TiVo that are linked to a digital television platform's electronic programme guide can be used to download a range of content that is tailored to the particular tastes of the consumer. These devices effectively provide a VOD service as they permit consumers to select the programs that they wish to view, time shift or watch whenever they like.

Home Media Centres

The increasing sophistication of consumer electronics is such that many consumers now have "home media centres". Many consumers no longer feel inclined to go out and watch films in the cinemas because they are satisfied with the "home media" experience. With the advances in computer technology, digital television, VOD, PVR's and games consoles, these home media centres are increasingly likely to combine and merge the functionality of several platforms into one.

Portable Devices

Portable devices such as mobile phones, MP3 players and iPods are increasingly becoming a platform where content is either repackaged or used as a marketing tool. In the US, for example, Fox has begun downloading mobile episodes or "mobisodes" of its hit series "24". These "mobisodes" are one-minute spin-off episodes from the long form episode. In the UK, Channel 4 offered twenty four hour "Big Brother" streaming to mobile devices.

Digital television

In Australia, digital television transmissions started in major cities in January 2001 and are now available to 95 per cent of all households. Digital television offers better picture and sound quality, interactivity, more channels and extra information on weather, news and sport. Analogue television is currently due to be switched off between 2010 – 2012.

Overall, there is likely to be a proliferation in the supply of archive, global, niche-interest, user-generated and interactive content. Additionally, platform convergence will encourage the development of entirely new forms of audio visual and interactive services to home and mobile devices. Ultimately, the delivery of content will be about providing consumers with choice to watch anywhere at any time. The table below sets out changes that are likely to occur to the traditional distribution windows[9]:

Window	Summary of key developments	Likely impact on window
Theatrical exhibition	Roll out of digital distribution & projection Theatres to have duplicate functions. That is, digital film exhibition will occur along with live sports and music concerts Impact of internet: global marketing & piracy	Shorter windows Partial convergence of release dates
DVD/Video rental	Development of online DVD rental models Competition from VOD	Moves closer to theatrical release Will eventually be replaced by VOD
PPV	Greater choice as digital platform capacity rises Competes with video rental and VOD	Moves closer to video release Will eventually be replaced by VOD
DVD/Video Sell through	Continues to satisfy demand for physical ownership	Coincides with DVD/Video rental
VOD (New)	Services will offer increasing range of new content	Coincides with PPV and will move closer to video rental Will eventually replace both

[9] "*New Business Models for Audiovisual Content*", Report by the British Screen Advisory Council, Prepared by Jonathan Simon, 9 September 2005 at page 32

Premium Pay-TV	Greater choice as digital platform capacity rises Growing competition from VOD	Will eventually be replaced by VOD
Free-to-air TV	PVRs/ad-skipping technology puts pressure on network TV channels	Window will remain so long as free-to-air network TV model remains viable
VOD (Archive)	Services will offer growing subset of all films (and other content) ever released	Will emerge as the final, permanent window Range of payment options and bundles according to consumer tastes etc.

It is expected that VOD will ultimately replace DVD/Video rental, pay-per-view and premium Pay-TV services. Therefore the migration of value from traditional forms of distribution to new VOD and new forms of distribution will have implications for film financing. New forms of distribution rights will be sold as part of a broader package of rights alongside the traditional windows which are likely to diminish in value.

For film, it is becoming increasingly apparent that theatrical windows are shortening. Theatrical release is often used simply as a marketing campaign or loss leader to drive revenues from exploitation in other windows. A recent example of this is the Steven Soderbergh film "Bubble" which is the first of a series of six low budget films that Soderbergh plans to shoot on digital video for release at the same time in theaters, on the HDNet cable channel and on DVD. "Bubble" is viewed as a small test case for the potential future of film distribution, a model in which movies could be released simultaneously in all formats. The film which was made for a budget of $1.6 million reportedly took $5 million at the box office in its first weekend.

This model of simultaneous release also counters the impact that illegal copying and downloading can have on a film's release.

There are also opportunities for Producers and/or content creators to bypass distributors all together and self distribute or create websites where consumers can download their content. As stated previously, some documentary film makers are a strong enough "brand" to be able to embrace this model. Others may choose to use distribution networks such as "Amazon" to self distribute. This model is particularly appropriate for content that is easily identifiable through its subject matter, such as wildlife documentaries or travel documentaries.

With new platforms there are considerable opportunities for the exploitation of content in new and innovative ways:

- With existing content, there is the opportunity to repackage it for a new platform. For example, there is a growing demand for mobile phone content in the form of ring and dial tones. Some documentary filmmakers are recycling archival footage by supplying wildlife images to mobile phone aggregators.

- With new content, there are opportunities to create platform specific content. An example of this is the new SBS/ScreenWest initiative *“Marx and Venus”*. The programs are to be used as interstitials in SBS' schedule, to be shown five nights a week in primetime, with each episode being only five minutes long. The programs will also be featured on SBS's website where the audience is invited to submit storylines and even write the script the themselves.

As the effectiveness of traditional forms of advertising fail, there is also considerable scope for content sponsored advertising on a range of targeted platforms. A good example of this is the series of content sponsored short films "The Hire" made by BMW. These films can be viewed at www.bmwfilms.com and, according to BMW, have received 100 million film views. The films were produced by Ridley and Tony Scott and directed by John Frankenheimer, Ang Lee, Wong Kar-Wai, Guy Ritchie, Alejandro González Iñárritu, John Woo and Joe Carnahan. BMW took its non-traditional approach one step further by creating DVDs of the films, and distributing them in a targeted fashion at no cost to key audiences. Copies of the DVD were distributed with issues of Vanity Fair magazine. This distribution helped create additional buzz for the film within a key audience. The full DVD collection (with all eight films) was unveiled at The Palais des Festival during the 2003 Cannes Film Festival and they were also inducted into the permanent collection of the Museum of Modern Art (MOMA). BMW also created its own The Hire cable TV channel.

On a longer term scenario, the development of digital cinemas and its convergence with digital technology generally, will allow for greater flexibility in release patterns and cinemas themselves are likely to be "re-invented" as arenas for a multiplicity of events and not just for the cinematic experience. For example, satellite transmission will permit digital cinemas to have global "day and date" release of blockbuster films such as "Harry Potter" and also have live transmission of global events such as the World Cup Soccer or a U2 concert.

The transformed audio-visual business model posited above is the “new model” that the Australian film industry needs to position itself for in order to increase its chances of success and sustainability.

2. How can Government objectives best bet met?

Within the spectre of a transformed audio-visual business model posited above, the risk is that Australian films will be lost amongst a fragmented audience that is both hard to define let alone reach.

Government policy and objectives have a key role to play in ensuring that the Australian film and television has a framework that can lead to successful outcomes.

A simple but effective framework is for Government assistance to be orientated towards films that are “distinctly Australian”. That is, films that:

- Are made with uniquely Australian stories; and
- Are made primarily for Australian audiences.

The clear objective of such a policy is to create a true national cinema that reflects, discerns and records Australian culture.

A policy of “distinctly Australian” is not intended as a “jingoistic” or “flag waving” panacea. On closer analysis such a policy has a sound underlying business case.

When one considers all the Australian films that have been successful both domestically and internationally, they have all been “uniquely Australian”. Films such as “Breaker Morant”, “Man From Snowy River”, “Ten Canoes”, “Gallipoli”, “Strictly Ballroom”, “Muriel’s Wedding”, “Wolf Creek” and “Crocodile Dundee” presented Australian stories that engaged audiences both here and overseas. Their “distinctly Australian” quality gave them a uniqueness that distinguished them in the market place both here and overseas. Conversely, nearly every Australian film that has attempted to present itself as a kind of “universal film” has failed in the market place. Audiences often see these films as being a poor imitation of something that Hollywood does much better.

While there are many instances of “distinctly Australian” films that have done well with audiences both in Australia and overseas, there is not one instance of an Australian film that has failed in Australia but has been successful outside Australia. The point is that Australian films that engage Australian audiences have a better chance of success in both their own market and overseas markets. Australian films that are dressed up as universal films from the global village simply gets lost amongst the mass of content that is generated by Hollywood. The reason they get lost is because of a lack of distinctiveness and an inability to meet the superior production values of Hollywood films.

The Australian film industry cannot compete with Hollywood, nor should it try to. Its best chance of success, both at home and overseas, is to be distinctive, to be unique and to engage with its natural constituency which is the Australian audience.

3. What balance should be struck between direct and indirect funding?

The current level of direct Government funding to the Australian film and television is inadequate for the maintenance of a sustainable industry. Consequently, the current levels of direct Government funding must be regarded as an absolute minimum and increased through additional funding by either direct or indirect means.

Film is a highly speculative industry that offers little or no chance of a return on investment. If either the Government or private investors have, as their primary motive, a profit motive then such an expectation is simply misguided. After 15 years and in excess of 1,000 titles to its name, the Film Finance Corporation still only has 10 – 15 titles that have actually recouped their investment and gone into profit.

Profit from film investments is the exception, not the norm. That is the reality of the film industry worldwide and that needs to be the starting point when considering the relative merits of investment in film.

The Government needs to be pragmatic about what the money that is provided to the film industry actually is – it's not investment, it's cultural subsidy.

Cultural subsidy is the cost of having a national cinema. From time to time, a "break out" film that succeeds at the box office and hits blue sky may offset this. However, for the most part, films are unlikely to achieve a return of anything more than 22 cents for each dollar invested. Or, another way of putting it, is to say that films return a 78 cent loss.

The underlying rationale for investing in Australian film or television is a cultural rationale, not a financial one.

The difficulty with film production is that it is a hugely expensive enterprise which almost certainly could not survive in this country without considerable Government funding. However, if one were to poll Australian's and ask them *"Do you want a national cinema?"* or *"Should the Government provide funding for the Australian film industry?"*, my guess is that the answer would be "Yes" on both counts. The public may, with reason, be frustrated by the quality of Australian films being made, they may even think that the taxpayer's money is being wasted but in their heart of hearts they would find it equally unacceptable if Australia were to have no national cinema at all. Australia is a developed and sophisticated society. It's passionate about its sport, it's devoted to its way of life but no Australian is going to deny that the arts are an integral part of our expression and national identity.

A national cinema is as necessary to the Australian identity as is our literature, music, dance, dreaming, art, architecture and all forms of expression that seek to tell our stories and define our culture.

To ask "what is the cost of having a national cinema" is not really the right question. The right question is "what is the cost of not having a national cinema". In my view, the cost of not having a national cinema is simply too high. Without it we lose a piece of our heritage, identity and cultural legacy for future generations. We also lose our ability to present our culture, share our stories and show ourselves to the world at large.

4 What options are there for stimulating growth in private investment?

When the 10BA tax concessions were first introduced in 1980 the result was an immediate boost in the level of Australian film and television production.

The Australian Film Commission's publication "Get the Picture" summarises the operation of 10BA as follows:

"In the eight years from 1980/81 to 1987/88 when the 10BA concession was at least 120 per cent with at least 20 per cent of income from the investment exempt from tax, production budgets secured through 10BA totalled $959.73 million, an average of $119.97 million per year. A total of 896 projects were financed through 10BA during that time, including 227 feature films (or 92 per cent of Australian features produced in the period.) In the 14 years since the exemption was removed and the concession reduced to 100 per cent (1988/89 to 2001/02), production budgets totalling $614.36 million have been secured through 10BA, an average of $43.88 million per year. A total of 279 projects were financed through 10BA over that period, including 125 feature films (30 per cent of Australian features, including co-productions, produced in those years.)"

In the period 1980/81 – 1987/88 the average number of productions financed through 10BA tax concessions was 112. In 1984/85 (when the level of deductions was 133.33%) there were 170 productions financed through 10BA. The breakdown of 10BA productions for that year was as follows:

- 31 Features
- 20 Telemovies
- 24 Mini-series
- 95 Documentaries

The total number of feature films produced in 1984/85 was 34, which means that only 3 were produced with finances from sources other than the 10BA tax concessions.

The average number of feature films produced during this period was 30.5 per year.

In the period 1988/89 – 2001/02 the average number of productions financed through 10BA tax concessions was 19.93. In 2001/02 (when the level of deductions was 100%) there were 22 productions financed through 10BA. The breakdown of 10BA productions for that year was as follows:

- 10 Features
- 1 Telemovie
- 3 Mini-series
- 8 Documentaries

The total number of feature films produced in 2001/02 was 30, which means that 20 were produced with finances from sources other than the 10BA tax concessions.

The average number of feature films produced during this period was 27.8 per year.

Indeed, since the level of tax deductions was reduced to 100% in 1988/89 it has followed that the level of film and television production availing itself of the 10BA tax concessions as a primary method of financing has fallen away.

<u>What was wrong with 10BA?</u>

There is no doubt that between 1980/81 – 1987/88 when the 10BA tax concession ranged between 150% and 120.20%, there was a high level of film and television production. But for the introduction of the Film Finance Corporation Australia Limited (FFC) in 1988/89, the reduction of the 10BA tax concession to 100% would have resulted in the complete demise of the Australian film and television industry.

The question needs to be asked: if, when the 10BA tax concessions ranged between 150% and 120.20%, this method of financing Australian production was so successful, then why was it effectively abolished?

There were three main reasons. Firstly, the scheme was too successful. The cost to Government as forgone revenue was unacceptably high. In 1984/85, for example, the estimate of forgone revenue to the Government was $93 million.

The second reason is that many films were made that had neither a commercial or cultural imperative. They were simply made so that the investors received the benefit of the tax concessions. It was irrelevant that the films were unlikely to be watched by an audience. Some of these films were never even completed or delivered.

A third reason is that scheme was abused by a small group of rogue Producers. These Producers charged exorbitant and/or multiple fees as a means of rorting what was perceived to be the “10BA bonanza”.

What was right with 10BA?

Notwithstanding its faults, the 10BA scheme was enormously successful in other ways.

Firstly, it made private investment in film and television production an attractive proposition. As a high-risk investment, securing private investment for film and television production is notoriously difficult. Without the benefit of a tax concession in the range of 120% to 150%, private investors have largely avoided investment in the film industry.

Secondly, by facilitating private investment in film and television production it also empowered individual producers. The Australian production industry is not and never will be Hollywood. It is not an industry driven by corporations or studios. Rather, it is driven by independent producers who champion projects that they believe in. By facilitating the alliance of private investment and independent producers, the 10BA scheme enabled independent producers to flourish.

The so called “10BA years” have been much maligned as a time when quality projects were few and far between. However, regardless of whether or not the projects listed below benefited from 10BA tax concessions, the roll call of films produced between 1980/81 and 1987/88 is indicative of a flourishing film and television industry:

Annis Coming Out
Careful He Might Hear You
Crocodile Dundee
Dead Calm
Evil Angels
For Love Alone
The Fringe Dwellers
Gallipoli
Ground Zero
High Tide
The Lighthorseman
Mad Max II
Mad Max III (Beyond Thunderdome)
Malcolm
Man of Flowers
The Man From Snowy River
The Navigator
Phar Lap
Puberty Blues
Silver City
Travelling North
We of the Never Never
The Year My Voice Broke
Year of Living Dangerously
Young Einstein

The roll call of television produced between 1980/81 and 1987/88 is as follows:

A Fortunate Life
A Town Like Alice
All the Rivers Run
Anzacs
The Flying Doctors
Harp in the South
The Heroes
The Last Bastion

Barlow and Chambers
Bodyline
Bodysurfer
Captain James Cook
Come in Spinner
Cowra Breakout
Dirtwater Dynasty
The Dismissal
Dunera Boys
Fields of Fire
Mike Willesee's Australians
Poor Man's Orange
Robbery Under Arms
Scales of Justice
The Shiralee
Shout
Tracy
Vietnam
Waterfront

Why revisit 10BA?

Revisiting 10BA is indeed a case of "back to the future", so why do it? The main reason for revisiting 10BA is to establish a means of attracting private investment back into the film and television industry.

The film and television industry is currently very heavily dependent on either Government subsidization or direct Government investment. This reliance on public money in one form or another is unlikely to ever change. This is largely because Australia simply does not have the population to support a domestic film and television industry.

The size of our population is the key difference between Australia and the three most financially viable film industries in the world – the United States, India and Japan. Each of these countries have a sufficiently large population to enable local films to break even or return a profit on the strength of a successful domestic release alone.

The size of the Australian population is such that Australian films have to be successful both in Australia and overseas in order to return a profit. This is the Australian industry's greatest impediment to achieving financial self-sufficiency and sustainability.

It must therefore be taken as a given that in order for Australia to have a film and television industry at all, then there has to be some form of subsidization of the industry.

The current forms of Government subsidization are:

- Through the FFC which enables the Government to directly invest in film and television production to a level of around $60 million per year;
- Through the AFC which provides grants and development investment to a level of around $20 million per year;
- Through the 10BA tax concessions which allow a deduction of 100% to investors. This form of Government subsidization, through forgone taxation revenue, currently sits at around $20 million per year;
- Around $20 million from the FLICS scheme which also allows a deduction of 100% to investors;

- Additional funds are also available from State Government agencies in the form of development investment, regional grants and production investment.

Because the bulk of investment money comes from Government agencies, the industry is increasingly dependent on these agencies. This, in turn, creates a self-perpetuating cycle that ultimately undermines the entrepreneurial quality that is necessary in order for the film and television industry to flourish.

Revitalization of the 10BA scheme is one way to enhance the entrepreneurial quality that is so necessary for independent Producers and to return private investment back to the film and television industry.

How to remodel 10BA ?

The original 10BA scheme was by no means a failure. If anything the scheme was too successful for its own good. The failure was a failure of regulation.

The following proposal is designed to address the major flaws in the previous 10BA scheme. That is, to limit the amount taxation revenue foregone by the Government and to set adequate controls in place to prevent abuse of the system.

Key features of the proposal are:

- Sliding scale of tax concessions determined by the level of a projects budget;
- Expand the definition of “qualifying Australian film”
- Requirement that Producer’s who use 10BA money are licensed, pay a license fee and are limited to two 10BA projects in any one financial year;
- Requirement that above the line fees are capped within an acceptable range;
- Requirement that multiple fees are capped;
- Government entitlement to a percentage of gross revenue;
- Budgets must be approved;
- Each project must have a completion guarantor; and
- Each project must have a minimum level of market place attachments to either invest, advance or guarantee.

Sliding scale of tax concessions

Budget Range		10BA tax Concession
Min	Max	
Less than	$999,999	135%
$1,000,000	$2,999,999	135%
$3,000,000	$4,999,999	130%
$5,000,000	$6,999,999	125%

$7,000,000	$9,999,999	120%
$10,000,000	$14,999,999	115%
$15,000,000	$19,999,999	110%
More than	$20,000,000	105%

A sliding scale of tax concessions that is linked to the level of a projects budget is one way of limiting the amount of tax revenue that is foregone. The lower the budget and higher the tax concession.

In 2001/02 the average for Australian features was $4.38 million which means that majority of Australian films would be eligible for a concession of 130%.

Qualifying Australian Film

To be eligible to claim a deduction under 10BA, projects must be assessed and certified as a 'qualifying Australian film'. The certification process is in two stages-provisional and final.

To qualify, a film must be eligible, which means it must be a:

- feature film;
- documentary;
- film of a like nature (to a feature film) produced for television; or
- mini-series.

It must also be an Australian film (made wholly or substantially in Australia) or be an official co-production, and have 'significant Australian content'.

Several elements are considered when assessing a film's Australian content including:

- creative control;
- subject matter;
- where the film is made;
- copyright ownership;
- owners of companies involved in the production;
- source of funds;
- production expenditure; and
- any other matters the Minister considers relevant

This definition needs to be expanded to include other forms of audio visual content such as games or new media. This is vital to encourage investment in ancillaries and spin offs which, in turn, generate additional revenue streams to investors. This is also important to enable the building of new or more sustainable businesses.

Producer’s License

Budget Range		10BA tax Concession	Producer's Licence Fee 0.50% of Budget	
Min	Max		Min	Max
Less than	$999,999	135%	$5,000	
$1,000,000	$2,999,999	135%	$5,000	$15,000
$3,000,000	$4,999,999	130%	$15,000	$25,000
$5,000,000	$6,999,999	125%	$25,000	$35,000
$7,000,000	$9,999,999	120%	$35,000	$50,000
$10,000,000	$14,999,999	115%	$50,000	$75,000
$15,000,000	$19,999,999	110%	$75,000	$100,000
More than	$20,000,000	105%	$100,000	+

A requirement that Producer’s be licensed and that they pay a license fee on a per project basis is a way to minimize abuse of the 10BA scheme. It is also a way to ensure that the application of 10BA funds is limited to genuine projects and Producers.

It should also be a condition of the license that no more than half the license fee can be paid out of a projects production budget and that the other half of the fee must be the personal responsibility of the Producer.

The license should also require that a Producer be subject to conditions that are commensurate with those of a Company Director. Although this approach may seem heavy handed, it is important that when Producer’s are receiving the benefit of what is essentially public money (in the form of foregone tax revenue) that they be subject to a high standard of probity and good character. Making Producer’s personally responsible for these conditions would also prevent Producer’s hiding behind the corporate veil in the event that they abused their position. That is:

- to act in good faith
- to act in the best interests of the production
- to avoid conflicts between the interests of the production and the producer’s interests
- to act honestly
- to exercise care and diligence
- to prevent the Production Company trading while it is unable to pay its debts
- if the Production Company is being wound up - to report to the liquidator on the affairs of the company
- if the Production Company is being wound up - to help the liquidator (by, for example, giving to the liquidator any records of the company that the Producer has).

A Producer who fails to perform their duties:

- may be guilty of a criminal offence with a penalty of $200,000 or imprisonment for up to 5 years, or both; and

- may contravene a civil penalty provision (and the Court may order the person to pay to the Commonwealth an amount of up to $200,000); and
- may be personally liable to compensate the Production Company or others for any loss or damage they suffer; and
- may be prohibited from managing a Production Company.

A Producer's obligations may continue even after the Production Company has been deregistered.

Prescribed Schedule of Producer's Fees

Budget Range		**Range of Fee Caps** Expressed as % of the Budget		**Range of Fee Caps** Expressed in Dollar Amounts		**Multi Fee Cap**
Min	**Max**	**Min**	**Max**	(% of Max Budget Range)		
Less than	$999,999	2.50%	4.50%	$25,000	$45,000	6.0%
$1,000,000	$2,999,999	2.50%	4.50%	$75,000	$135,000	6.0%
$3,000,000	$4,999,999	2.50%	4.50%	$125,000	$225,000	6.0%
$5,000,000	$6,999,999	2.25%	4.75%	$157,500	$332,500	6.5%
$7,000,000	$9,999,999	2.25%	4.75%	$225,000	$475,000	6.5%
$10,000,000	$14,999,999	2.25%	4.75%	$337,500	$750,000	6.5%
$15,000,000	$19,999,999	2.00%	5.00%	$400,000	$1,000,000	7.0%
More than	$20,000,000	2.00%	5.00%	$400,000	$1,000,000	7.0%

Another mechanism to minimise abuse of the scheme is to establish a schedule of fees. Again the rationale is that because Producer's are receiving the benefit of public money their fees should be subject to scrutiny and regulation.

Multiple fees for instances where, for example, a person is entitled to above the line fees for both Producing and Directing would also be subjected to a schedule of fees.

Government entitlement to Gross Revenue Participation

Budget Range		**10BA tax Concession**	**Govt Gross Participation**
Min	**Max**		
Less than	$999,999	135%	1.00%
$1,000,000	$2,999,999	135%	1.00%
$3,000,000	$4,999,999	130%	1.50%
$5,000,000	$6,999,999	125%	1.50%
$7,000,000	$9,999,999	120%	1.75%
$10,000,000	$14,999,999	115%	1.75%
$15,000,000	$19,999,999	110%	2.00%
More than	$20,000,000	105%	2.00%

In order to offset the amount of forgone revenue, it is also proposed that the Government should receive a percentage of gross revenue with this revenue being earmarked to be channeled back into film and television development.

Other Requirements

In addition to the proposals set out above, are the following requirements for inclusion in this scheme:

- Budgets to be approved;

All budgets and fees should be subject to approval, again to prevent abuse of public money.

- Each project must have a completion guarantor;

The Completion Guarantor is a safeguard measure to ensure production efficiency and to guarantee that films will be completed and delivered.

- Each project must have a minimum level of market place attachments to either invest, advance or guarantee.

The requirement for market place attachments is to ensure that each project has received commercial assessment and is deemed to be capable of receiving a commercial release.

5 What is the most appropriate model for direct Government support to the film industry? Is the current agency structure a model that is delivering the best possible outcomes?

There currently exists a highly developed network of Government agencies that exist to support the film industry. Within these agencies there is a high level of skill and intellectual capital that is worth preserving.

There are good arguments on both sides regarding the merits or otherwise of merging the agencies. However, on balance, it is my view that the AFC and the FFC should be merged. This would seem to follow from the FFC's system of "evaluation" which can require that scripts be further developed but have no capacity itself to finance that development.

6 Conclusion

The Australian film and television industry has proven itself many times over. It is an industry that is capable of delivering to the World.

Since the 1970's there has been an explosion of people, talent, facilities and resources. This has resulted in many Australian's forging careers all over the World and it has also brought many of the World's great talents here to exploit the talent and facilities that we have to offer.

For this to continue, the industry needs to continue growing. In recent times the rate at which people, talent and facilities has expanded has not been matched by a corresponding increase in the levels of production. The net effect of this is unemployment by many actors and technicians, under utilized studio, production and post production facilities. It has also resulted in many of our best talent having to leave Australia in order to have a career.

If this continues then there is a risk that the Australian film industry will simply disappear, as it did between the 1930's and 1970's.

Australia can position itself to be a major source of content that is capable of delivery to the World. With the rapid increase in distribution outlets – theatrical, free to air television, cable, the internet and new technology – content is poised to be one of the major industries of this new millennium with both significant cultural and economic benefits.

Australia is positioned better than most other countries to capitalize on this important "manufacturing" industry. We are an English speaking country, our work practices are efficient, we have a favourable exchange rate and we have the talent and facilities to make product for the World.

What we need is further stimulus to get the Australian film and television industry to continue growing. This is achievable through a combination of:

- The right Government policy settings;
- Direct Government funding continuing at current or improved levels;
- The use of a revised10BA scheme with commercially attractive tax concessions to bring private investment back into the film and television industry; and
- Expansion of the definition of "qualifying Australian film" to allow for a 10BA deduction for other content genres that can enhance potential revenue streams from films and spin offs.

ABOUT THE AUTHOR

After completing a law degree in 1987, Nick Cole began working in the feature film industry and gained experience in as an Assistant Director, Editor and Director. His credits as a Director include the Network Nine series “**Water Rats”**, **“A Difficult Women”** (2nd unit) and **“Big Sky”** (2nd unit). He has also worked on many well known Australian and international films - **"Paradise Road"**, **“Fearless”, “Strictly Ballroom”, “Green Card”, "Mighty Morphin Power Rangers", "The Island of Dr Moreau"** and **“Death in Brunswick”.**

In 1992 he was one of eight writer/director’s selected for the Post Graduate Diploma in Film at the Victorian College of the Arts (Formerly Swinburne). His graduation film **"The Boatbuilder"**, which he wrote, directed and edited, was awarded the Cinevex Script Prize for Best Short Script, the Worldfest Silver Award at the Charleston International Film Festival and a Gold Award for Best Cinematography (Telefeatures and Short Fiction) at the Australian Cinematographer Society Awards. It has also been screened at the Brisbane International Film Festival, the Charleston International Film Festival and the Sydney International Short Film Festival. Nick has also produced and directed specialist programs for **Loius Vuitton, Krug, Remmy Martin** and was commissioned by **Email** to produce and direct a commemorative video for their 60th anniversary.

In 1995, his feature film script **"Bad Angel"** was nominated for an Australian Writers Guild Award. In 1996, he was one of four writers to be selected as part of the Australian Film Commission's inaugural "New Scriptwriters Scheme" and received script development for **"Bad Angel".**

In 2001 Nick returned to legal practice. He spent two years as an in-house lawyer with the Film Finance Corporation Australia before joining the Technology Media and Communications group at Phillips Fox.

After having worked on some of Australia's most successful feature films and television, Nick has a broad range of experience. He is able to provide a unique combination of legal skills, creative talent and industry experience.