

Introduction: Structural Gaps in Cultural Policy and Creative Labour

To support arts workers, cultural policy reform must extend beyond voluntary industry standards. Stronger employment, contracting and industrial relations frameworks are needed to close long-standing gaps affecting freelance and non-standard creative work arrangements.

Industry guidelines are important, but they do not reach every creative worker or workplace. Strengthening accountability, fair remuneration and workplace protections across these gaps is essential to building a more equitable and sustainable creative sector.

This submission focuses on three interconnected structural issues:

1. Commercial creative work and advertising within Australia's cultural economy
2. Misclassification and enforcement in freelance, gig-based and project-based creative labour
3. Structural gaps in minimum employment protections affecting creative workers

These issues sit across cultural policy, industrial relations, and the broader creative economy. They should be considered as part of an integrated policy approach rather than isolated concerns.

Advertising and Commercial Creative Work

The next National Cultural Policy should clearly recognise commercial advertising and promotional work as a major part of Australia's broader creative economy. As the Minister's message notes, in 2023–24 cultural and creative activity contributed \$67.4 billion to Australia's economy and employed more than 591,000 people.

This measurement from the Bureau of Communications, Arts and Regional Research (BCARR) includes domains such as advertising and promotion, print media and publishing, alongside film, television and other recognised creative industries.

Given commercial creative work significantly contributes to Australia's recognised cultural economy, it should not sit outside discussions of fair remuneration, creative rights and accountability.

Long-standing gaps in advertising remuneration and usage rights remain a key structural issue.

Remuneration frameworks for usage rights, release rights and buyouts remain shaped by private negotiation rather than clear baseline protections. This can create significant imbalances where low one-off payments are exchanged for broad, repeated or indefinite usage rights.

In many cases, extended campaign use may also limit career mobility by restricting talent from working with competing brands while remuneration remains disproportionate to ongoing commercial value.

Talent and creatives play a key role in the success of commercial campaigns and should be fairly paid to recognised industry standards where their work directly contributes to commercial outcomes.

This reflects a broader gap in how creative labour is recognised within commercial sectors of the cultural economy.

Suggested Policy Actions

1. **Minimum Buyout and Usage Benchmarks**
Introduce clearer minimum buyout benchmarks and baseline usage and release rights and campaign duration. This would reduce disproportionate one-off payments being exchanged for broad, repeated or indefinite commercial usage.
2. **Stronger Contracting and Remuneration Accountability**
Investigate where employment, contracting and industrial relations mechanisms can better strengthen protections for freelance, contract and non-standard creative work beyond voluntary industry standards. Stronger sector-specific advertising frameworks could improve transparency and reduce over-reliance on private negotiation.
3. **Fairer remuneration in profit-driven campaigns**
Revenue-generating commercial campaigns intended for profit should more consistently align with industry-standard remuneration benchmarks where creative labour directly contributes to commercial outcomes.

As the consultation paper notes, digital tools and platforms are changing how creative work is produced, distributed and monetised, raising important questions around authenticity, creative rights and fair remuneration. While AI is rightly becoming a major policy focus, long-standing labour and accountability gaps that pre-date AI should not be overlooked.

Structural issues around contracting, remuneration and worker protections remain highly relevant across both the commercial sector and the broader creative industries.

Employee / Contractor Misclassification Reporting and Oversight

Current reporting and enforcement processes are poorly designed for widespread low-value misclassification, particularly in gig-based sectors such as festivals, live events and the creative industries.

While Fair Work complaint pathways and anonymous tip-off mechanisms exist, enforcement remains largely reactive and dependent on individual workers pursuing complaints.

For workers engaged on short-term or one-off gigs, the financial loss from unpaid superannuation or denied entitlements may be relatively small in isolation. However, the time, stress and administrative burden of navigating complaints, mediation or tribunal processes can outweigh the practical benefit of pursuing action.

This creates a structural imbalance: the burden of enforcement sits with the worker, while the commercial risk of non-compliance can remain comparatively low for businesses.

Where small underpayments or entitlement breaches are repeated across high volumes of short-term workers, the cumulative savings to businesses may be significant, while individual workers are often discouraged from escalating low-value claims.

As a result, underreporting should not be mistaken for low incidence. In many cases, it reflects a system that is difficult to engage with and poorly suited to diffuse but repeated breaches.

From firsthand experience and ongoing industry conversations, I have repeatedly encountered contractor arrangements across the festival and creative sectors that may raise serious worker misclassification concerns under the multi-factor test.

This includes work across festivals and live creative events where contractor-style arrangements resemble employee-style engagements.

The scale at which these concerns arise within government-funded or publicly supported projects is significant and warrants stronger oversight and accountability.

Where contractor arrangements repeatedly resemble employee-style engagements, there should be clearer scrutiny of labour practices and stronger reporting mechanisms that do not rely solely on individual workers carrying the burden of enforcement.

This issue reflects a broader structural gap between employment frameworks and the realities of freelance and project-based creative work.

Suggested Policy Actions

1. Enhance Enforcement and Penalties
Implement stricter penalties for entities found guilty of misclassifying workers or misusing ABN arrangements to incentivise compliance.
2. Accountability for Non-Award Engagements
Large businesses that choose not to engage under award-based arrangements should provide written disclosure to justify paying non-award rates. This would improve transparency and help distinguish operational necessity from avoidance of obligations.
3. Targeted audits
Where misclassification risk appears widespread, repetitive and structurally underreported (e.g. festivals), targeted compliance audits should be undertaken.

Strengthening the National Employment Standards

While the NES establishes a framework for minimum employment conditions, it does not specify mandatory rest breaks or minimum shift turnaround times.

Consequently, employees operating under non-award arrangements lack standardised protections for rest periods and shift intervals, potentially impacting health and safety.

While WHS guidelines emphasise fatigue management, responsibility is largely placed on employers without clear enforceable minimum standards.

This reflects a broader gap in baseline protections for workers engaged in non-standard or project-based employment arrangements.

Proposed Action

Enhance NES protections by introducing mandatory paid rest breaks and establishing clear minimum shift turnaround times.

These measures would ensure that all workers, including those in the creative sector, have sufficient opportunities for rest and recovery between shifts.

Implementing clear and enforceable rest and turnaround provisions is crucial for protecting workers' health and wellbeing, particularly for creative professionals working non-standard hours or intensive project-based schedules.

Conclusion

These issues are interconnected and reflect structural gaps in how creative labour is recognised and regulated across cultural policy, commercial creative industries, and employment frameworks.

Cultural policy reform must explicitly engage with commercial creative work, freelance and gig-based employment conditions, and baseline workplace protections if it is to reflect the realities of Australia's creative economy.

By addressing these gaps together, policy can better support fair compensation, sustainable creative careers, and a more equitable cultural sector.

Bio

Daniel McBurnie is a former circus performer who transitioned into a professional actor, with experience in theatre, film, television, and advertising. He is also an experienced arts administrator, having worked with leading arts organisations across Australia. Passionate about storytelling in all forms, Daniel currently volunteers as a news reporter at a community radio station.