



**Australian Writers' Guild
Australian Writers' Guild Authorship Collecting Society**

Create NSW

'A New Look at Culture' consultation

31 August 2023

The Australian Writers' Guild acknowledges we live and work on Aboriginal land. We pay our respects to Elders past and present. We thank them for their custodianship of land and waterways, stories, and song, and pay our respects to the oldest storytelling civilisation in the world.

WHO WE ARE

The Australian Writers' Guild (**AWG**) represents Australia's performance writers: playwrights, screenwriters for film and television, showrunners, podcasters, comedians, game narrative designers, dramaturgs, librettists, and audio writers. We represent 2,500 performance writers in Australia. Established by writers for writers, the AWG is a democratic organisation run by its members, who each year elect a National Executive Council and State Branch Committees. Our members work together to represent their fellow writers across the industry in a number of committees such as the Theatre, Television and Games committees to negotiate for fair pay and conditions, advocate to government, and serve members' professional needs.

The Australian Writers' Guild Authorship Collecting Society (**AWGACS**) is a not-for-profit collecting society for screenplay authors. With more than 2,000 members and 32 partnerships with overseas collective management organisations, AWGACS has collected more than \$25 million in secondary royalties and distributed the monies owed to screenwriters from Australia, New Zealand and around the world. AWGACS continuously advocates for the rights of authors to ensure they are fairly remunerated for the secondary exploitation of their works.

Executive summary

The creative industries welcomed the announcement of the federal Government's National Cultural Policy, *Revive*. It represented a return to actively enabling our sector to grow. It showed confidence in the world class work of Australian artists and a dedication to giving us the stage we deserve to showcase our work. It provided a framework for understanding the priorities of government and set out how it intended to regulate and invest in our sector.

It is gratifying to see that the NSW Government shares those sentiments.

As the professional organisation representing writers working in screen, theatre and games and interactive media we look forward to seeing the ways in which the NSW Government can create better, more inclusive pathways and support for practitioners in those industries.

We strongly support ongoing funding to professional development opportunities for emerging writers, particularly those from First Nations and minority backgrounds, but emphasise that part of that funding must ensure that the mentors that share their time and expertise with the new generation of creators are fairly remunerated.

To ensure that a career within the arts is a sustainable one, and that emerging creatives are not pushed to work in other more lucrative industries or jurisdictions like the US and the UK, we support the enforcement by Screen NSW of industry-agreed minima consistent with their Terms of Trade.

Finally, to ensure that the creative sector survives into the future, we recommend urgent action on the issue of artificial intelligence in the arts.

Claire Pullen
Group CEO

1. First Nations first

Whenever First Nations stories are being told on our screens and stages, First Nations creatives must be front and centre in the project's development and production. Production companies looking to produce First Nations content must genuinely engage with the story holders and communities who have given permission to share their cultural knowledge or stories. State and federal funding agencies must emphasise the training and professional development of First Nations creatives as writers, series creators and producers whenever First Nations-specific funding is granted.

The NSW Government has the opportunity to grow the sector through increased funding for First Nations-specific initiatives, particularly funding for grassroots projects involving emerging writers, state and federal funding for mid-career writers, and more accessible funding for First Nations creatives who live on country or in regions outside the city.

However, while increased funding for projects led by artists from minority backgrounds is essential, it is just as important to fund the pathways which will foster emerging talents. This means creating a system that incentivises the development of creatives from diverse backgrounds, not merely tokenistic attachments to generate funding. Every level of talent needs to be invested in to wrap support around emerging diverse creatives. Excellence in craft is developed over time, and direct investment is needed both to support emerging practitioners and the mentors who share their time and expertise.

Recommendations:

- Emphasise the training and professional development of First Nations creatives as writers, series creators and producers whenever First Nations-specific funding is granted.
- Ensure that the mentors working with the emerging artists, and sharing their time and expertise, have adequate time to do so and are remunerated fairly.

2. A place for every story

Good Australian stories are found everywhere, and we will all benefit from their telling. AWG is pleased to support the work of regional, Western Sydney, and First Nations language organisations and community groups to tell their stories, preserve their language and to create copyrightable properties.

We reiterate the recommendation that it is essential to fund the pathways which will foster emerging talents such as the AWG's ongoing work with organisations like the Arts and Cultural Exchange (ACE).

In the past, emerging screenwriters would undertake an 'apprenticeship' that would lead to their first on-screen writing credit. They would work as a notetaker in a writers' room, and then from there they may progress through a number of roles within the script department before they were given the chance to write their own script.

The opportunities for work in screen are shrinking and script departments are getting smaller and smaller. There are therefore far fewer opportunities for emerging screenwriters to gain a foothold in the small local industry. It is an intensely competitive industry, with few entry points.

To rebuild this old model of 'apprenticeship' and to ensure that the next generation of NSW writing talent has a chance to develop their skills, funding professional development pathways are essential. The new generation of writers need guidance and training; writers in the middle of or late in their careers are capable of delivering solid mentorship programs but must be given adequate time and paid fair remuneration to do so.

Recommendations:

- Increase funding directed towards the training and professional development of emerging writers and the experienced practitioners that would be employed in a mentorship capacity.

3. Centrality of the artist

Writing work is insecure. Writers work on a commission basis and have little job security. The hours are irregular and there is often an expectation of engaging in unpaid work. It is common for writers not to be paid superannuation. Artists are workers and ensuring adequate remuneration is critical to allowing artists and creatives to have the enduring practice to create great work over a lifetime.

The federal government intends to implement reforms concurrent with the work to implement the National Cultural Policy. We encourage the NSW Government to similarly adopt the principles set out in *Revive*, that:

*“Funding bodies should continue to affirm the principle that artists should be paid for their work, including through recognition of Awards, mandated rates of pay and codes of practice such as...**Australian Writers’ Guild benchmarks.**”*

The Government must soon turn its attention to the issue of Artificial Intelligence (AI) as it relates to the creative industry. We intend to make a separate submission to the NSW Government inquiry in October but feel that the issue is sufficiently urgent to be addressed here.

Generative AI has already been adopted in the creative sector. It is being used by art departments in the screen sector to quickly generate visual content that would ordinarily be a task given to an entry-level practitioner. Both Automated Decision Making (ADM) and Large Language Model (LLM) technology is being used in the development of video games. Games companies like Ubisoft and Square Enix are hiring smaller writing teams, in some cases dramatically smaller, and reducing the number of voice actors employed as a direct (and desired) result of AI use.

These trends foreshadow how the creative industries will be affected by unregulated generative AI. It is our position that just because AI is ‘new’, it does not follow that it cannot, or should not, be regulated.

Generative AI “scrapes”, “mines”, “listens to”, “trains on”, or to use another word, *copies*, existing artistic work in order to create its outputs. There is little transparency as to which creators’ work is used to train these LLMs without their consent. The creators are not credited in the final output. Therefore, it is an infringement of the artists’ copyright and the right of attribution under s 193 of the *Copyright Act 1968 (Cth)* (the right of an author to be credited as the author of their work).

Screen NSW’s Terms of Trade states at clause 1.2 that:

Screen NSW also expects all recipients of funding support to act fairly and reasonably in relation to third parties involved in the funded project. Fairness and reasonableness include:

- *paying at least award minimum rates or, where applicable, any minimum agreed between the relevant guilds, for all work performed by third parties on their project, including Key Creatives, cast and crew;*
- *respecting the rights of all relevant persons, whether those rights be copyright or other intellectual property rights, moral rights or Indigenous Cultural and Intellectual Property rights.*

As the Committee would be aware, the majority of businesses that employ Australian creatives are at least partially reliant on state and federal government funding and tax concessions. It is a key enforcement tool not available in many workplaces.

Clause 1.2 of Screen NSW's terms of trade clearly intend to ensure that funding recipients must respect the intellectual property rights of third parties and ensure that creative workers are fairly remunerated for the exploitation of their intellectual property.

Any funding recipient that uses AI as a replacement (in whole or in part) for work that has traditionally been done by a creative worker necessarily contradicts these terms of trade.

Recommendations:

- **Requiring artist and creative minima be paid as a part of any contract or grant.** No government money should be given in grants where there is not a guarantee that the creative workers engaged are paid an appropriate minima, and there was fair dealing on the terms of any contract. The creative agencies should set up and enforce regular checks on the payment of artists, similar to the work beginning to be undertaken by the Centre for Creative Workplaces. Recipients of grants, whether they be theatre companies, screen producers, game studios or other bodies should be required to warrant they contract under established industry minima. Where an agency becomes aware that an artist or creative worker has been treated unfairly or underpaid, the person or entity in receipt of government funds should lose them and be ineligible to apply for further funding.
- **No state funding for AI projects:** State and territory funding agencies must not fund any creative projects that use AI technology as a replacement (in whole or in part) for work that has traditionally been done by a creative worker at least until the copyright concerns raised in this submission are addressed by the federal government.

- **Active disclosure:** Any person or company applying for Screen NSW funding must, throughout the grants process, have obligations to actively disclose any use of AI technology.