
Embracing Innovation: a new methodology for feature film production in Australia

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A new methodology for feature film production in Australia

The AFTRS Centre for Screen Business is pleased to introduce Robert Connolly's new paper on the Australian film industry. Robert has put together a bracing analysis of the challenges and opportunities facing this sector, based upon his own experience and on research covering overseas industries. The paper consists of two main parts, as follows:

Part 1: Why do we need a new methodology?

In this section, Robert offers an overview of the feature film industry, including the opportunities for innovation and the entrenched practices that he believes are holding it back.

Part 2: Key issues and proposed changes

Here, Robert cuts to the main areas of concern. He puts together a list of 10 constructive proposals designed to move the industry forward. These are:

1. Create positive incentives
2. Allow a first dollar share for filmmakers
3. Offer cast and crew a realistic share of returns
4. Base fees on value and experience, not on percentages
5. Match budget models to projects, markets and personnel
6. Match cast fees to marketplace investment
7. Adapt insurance requirements to reflect the scale of the project
8. Adopt reasonable reporting obligations
9. Simplify agreements and cap legal fees
10. Create delivery items when required, and as a cost of sale

We think these ideas are worth debating. If you have a view on them, please let us know.

David Court and Allan Cameron
AFTRS Centre for Screen Business, February 2008

Introduction

Feature film production throughout the world has been undergoing significant change in recent years as traditional production and financing models become unviable. New technologies in production, distribution and exhibition have prompted a necessary re-imagining of the film industry. There is no doubt that those holding on to an antiquated notion of what cinema is and how it is exploited will struggle in this new landscape.

In recent years production of Australian cinema has fallen to a dangerous low. Some believe that levels are already slipping beneath a sustainable critical mass. In these difficult times, the Australian film industry has focused its energies on exacting greater subsidies from the Federal Government. This has led to the recent introduction of a new offset scheme and the planned merger of the key film agencies to form a new screen authority, Screen Australia.

Representations to Government have been based on an underlying belief that the current production methodologies are appropriate and should be better resourced. Very little attention is given, however, to reviewing the entrenched practices driving film production in Australia.

In contrast, other national cinemas have been much quicker to embrace the potential offered by new technologies and innovation in production. There have been distinct movements within cinema in this regard, driven by US independent filmmakers, the Dogma movement in Europe, the renewed dynamism in Central and South American cinema, and most recently the exciting contribution of cinema from the Balkans.

Most filmmakers would agree that there is a close relationship between the production methodology used to create a film and the final product. Hence, for example, Hollywood cinema's excessive production methodology often results in a bland and predictable aesthetic. In contrast, recent Mexican filmmakers have achieved a dynamic aesthetic and narrative style that is clearly the result of a looser methodology.

While some will argue that this is a generalisation, citing successful studio films, the performance of Australian film on the international stage warrants comparison with other national cinemas. We have in Australia an entrenched feature film production methodology that is in essence a mini-studio model. Indeed, many of our ideas on how films should be made are based on the inappropriate template of the Hollywood film.

The planned establishment of Screen Australia provides us with an excellent opportunity to review this entrenched methodology and re-imagine not only the way we make our films but also the way we finance and exploit them. We have a chance to re-invent our industry, putting in place the solid foundations needed to effectively confront the changing landscape for feature film production in Australia and throughout the world.

This paper looks at 10 key issues that have contributed to the current status quo in filmmaking practice in Australia, puts forward alternative approaches for discussion and presents an argument for a more innovative industry better suited to the challenges ahead.

Part 1: Why do we need a new methodology?

A much-discussed trend in international cinema is the polarisation between huge budget blockbuster movies and much cheaper, innovative films. Contrary to the supposed death of cinema, big blockbusters continue to succeed in a crowded marketplace – witness the ongoing release of such Hollywood sequels as *Spiderman 3* and *Pirates of the Caribbean 3*. Meanwhile, smaller-budget cinema has also increased its niche. For example, the success of Village Roadshow's Europa cinema chain in Victoria shows there is a broad appetite for alternative cinema outside of traditional art-house circuits.

These independent films have benefited from the renewed eagerness of marquee cast to appear in quality projects, leading to ensemble films that punch far above their weight. Some recent examples from the US include the Oscar-winning Best Film *Crash*, *Lost in Translation* and Rowan Woods's soon to be completed *Winged Creatures*, which features an ensemble of seven marquee names including Forest Whitaker, Jennifer Hudson and Dakota Fanning.

Australian cinema therefore heads out into a tough, competitive English-speaking market where our films must go up against lower budget films with much greater marquee value, not only from cast but also name directors. It is not surprising that recent Australian films have failed to make any impact in this increasingly conservative market place, where a high profile cast is seen as the only way to mitigate a basic level of risk.

Our typical financing methods fail to address these changes. At the 2007 Cannes Film Festival various sales agents made the same observation: that Australian films were being presented to them for investment at too high a budget level to be competitive in the international market. In fact, this observation has been made for some time now, yet Australian budgets are increasing rather than decreasing.

These unrealistic budgets are driven by a number of factors, stemming from different parts of the industry. For example, while marquee cast in other parts of the world often work for lower fees on smaller independent films, many Australian marquee cast have been seeking seven figure fees for Australian projects that may have up to 70 per cent direct government subsidy. This has had an inflationary impact on the budget levels for Australian films and, as I will argue later in this paper, has been one of the key inflationary factors damaging our industry.

Whereas world cinema is largely polarised between the successful huge budget studio productions and a smaller scale, bolder form of cinema, Australian films have increasingly fallen into the middle. These films occupy a no-man's-land budget range: they are neither large enough to compete in the multiplexes, nor small enough to provide the basis for a sustainable and innovative industry.

The failed business model for feature filmmakers

In no other area of creative endeavour are the creators of content so unrewarded financially for the commercial success of their work. In the publishing industry authors receive a percentage of the sale price of each book, while in the music

industry publishing income flows directly to the composer or song writer. In the film industry, by contrast, content creators are effectively exploited by an entrenched recoupment system.

Let's take a quick look. In Australia an average of 60 - 70 per cent of the gross revenue is retained by the exhibitor, leaving gross film rentals of 30-40 per cent. Australian films tend to earn lower rentals than US films. This is because Hollywood studio releases are backed by more negotiating muscle and larger marketing campaigns, which drive high opening weekend returns (when the distributor's share is at its highest). On an Australian film, if we follow the revenue from a \$15 ticket and assume a 33 per cent average return to the distributor, \$10 will be retained by the exhibitor. The remaining \$5 flows to the distributor, who in turn repays marketing costs and deducts a 25-30 per cent commission (\$1.25). In a few cases only, a small amount will trickle back to the investors, who in turn need to recoup the full equity value of the film before any profits are shared with the creative participants.

If we assume that exhibition and distribution will continue to have a stranglehold on the income stream, then the only income a producer can expect is from the fees and overheads within the film's production budget. As discussed later, this has the perverse effect of encouraging the producer to increase the budget.

A more sustainable business model would be one driven by a lower cost of production, a tighter turnaround between productions, and a share of gross revenues for the producer. This would create a virtuous circle where the interests of producers, distributors and exhibitors were all aligned around the objective of making successful Australian films.

The need for innovation

The Australian Government's innovation policy can be found at www.innovation.gov.au. It clearly identifies the need for innovation in business to increase productivity, promote growth and generate higher quality product.

Innovation within business is usually broken down into four key areas:

1. Procedural – management-determined innovations in rules and procedures;
2. Personnel – innovations in selection, training and HR management;
3. Process – new methods of production and manufacturing; and
4. Structural – modifications to equipment and facilities, and the structuring of work units.¹

In each of these areas the Australian film industry must at least keep pace with the level of innovation in rival national cinemas. At best, it should be ahead of the game in pioneering new strategies for production.

According to the Australian Government's statement on the subject, innovation "thrives in a culture that is not afraid of risk-taking, promotes the value of experimenting, is adaptable and rewards enterprise."² In contrast, the feature film industry has maintained a financing and production methodology where key processes are set in stone, including budgeting, scheduling systems and crew structures.

An interesting point of comparison is the music industry. With the introduction of digital technology, musicians have been able to record and master their recordings at a significantly reduced cost. Despite resistance from the larger more established recording studios, technological innovation has ultimately led to a revision of the music industry's business models. Innovation has spread from production to consumption (the iPod and equivalent digital media players), and most recently to distribution (with the success of music distributed independently on the internet via MySpace, iTunes etc).

We have the opportunity to anticipate and adapt to a similar transformation of the film industry. However, we will miss this opportunity if we do not overcome our ongoing attachment to the status quo.

The Long Tail

Our culture and economy are increasingly shifting away from a focus on a relatively small number of hits at the head of the demand curve, and moving towards a huge number of niches in the tail. In an era without the constraints of physical shelf space and other bottlenecks of distribution, narrowly targeted goods and services can be as economically attractive as mainstream fare.

Chris Anderson, *The Long Tail*.³

The Australian film industry predominantly finances films using a combination of subsidised equity, international pre-sales and advances against rights. The success of a film is subsequently determined by the international release and territory by territory sales.

In many ways this approach to financing and exploitation harks back to the performance of films like *Shine*, heralded by huge sales deals made by studio executives usually out of film festivals. While we have seen a tremendous result last year for the film *Clubland* at the Sundance Film Festival, few films can expect this kind of breakout success. Certainly, a business model built around the expectation of large US sales contributes little to a broader agenda for a viable industry driven by a realistic approach to sales.

Alternative distribution methods have seen producers looking beyond the distribution advance model, forgoing this traditional income stream in favour of long-term partnerships with distributors in each territory, who then share income and pool marketing resources. For example, a producer could work with UK, US and Australian distributors on an international campaign, sharing marketing costs and crossing income to mediate risk. Other territories that remain unsold in a traditional sales environment could subsequently be distributed globally using internet-based techniques. The film *The Secret* is an excellent example of this, with the Melbourne-based company Vividas providing video-on-demand downloads simultaneously with a worldwide DVD release.

In *The Long Tail*, Chris Anderson argues that media businesses should move from depending on (rare) hits to exploiting niches. This insight can certainly be applied to independent cinema, where the strike rate for hits has fallen far below the generally-quoted figure of 1 in 10. If we are to address niche markets effectively, we will need to make innovative films at a lower cost.

A competitive advantage

In any other area of business, new technologies that allow the same product to be made at a lower cost are vigorously pursued. In the film industry, however, an 'industry standard' production cost has been set, with insufficient attention to the value of cost-reduction.

In an overcrowded marketplace for genre films (particularly horror films in recent times), the cost of production should provide a competitive advantage for Australian producers. Greg McLean's *Wolf Creek* is an excellent example. Where equivalent studio genre films fall in the \$10 million plus range, *Wolf Creek* cost only \$1.3 million to produce.

In this long tail environment, Australian cinema should also be able to work in niche markets not addressed by the US studios. The success of Rolf de Heer's *Ten Canoes* is a great example of this: a period film made entirely in an indigenous language and with an Aboriginal cast.

Both *Wolf Creek* and *Ten Canoes* used their production methodology and realistic budgets to great advantage. Not only were they both critical and commercial successes; more importantly, the producers created these films within a sustainable business model, making possible the creation of an ongoing body of work. This contrasts markedly with the usual four- to five-year cycle, in which producers struggle to survive between productions.

The myth of poor safety and exploited crews

It is not uncommon for our industry to criticise any attempt to address the scale of production and methodology in the Australian feature film industry on the basis that any proposed alternative is unsafe and exploitative of cast and crew. While there may be occasional examples of unsafe work practices in small and large films, and examples of cast and crew being exploited at both ends of the budget spectrum, this paper is based on the following assumptions:

- a. That all films, regardless of budget level, are governed by occupational health and safety obligations and industry codes of practice.
- b. That lower budget films are governed by industry awards for the payments of cast and crew.

Contrary to the myth of the exploited crew, smaller crew structures on films with an innovative approach to production can allow equivalent wage structures to larger films and longer periods of employment. This paper also proposes recoupment structures that allow for a realistic chance of additional returns. Certainly, a healthy and sustainable industry with a larger number of films in production would also provide an overall increase in employment levels.

The arguments in this paper should be considered on the basis that industry safety obligations are established and enforceable in law, and minimum payment structures driven by industrial agreements enforceable by the MEAA. It in no way proposes a production methodology that works outside these legal and industrial obligations.

An entrenched and inflexible model

There are various reasons that the current production methodology has become entrenched and inflexible in Australia.

For one thing, the presence of US studio production in Australia has familiarised local crews with a larger scale of production. This isn't a negative factor in itself. However, having produced in Sydney on the back of *The Matrix* and *Mission Impossible 2*, I found a growing consensus that there was one correct way to work; any innovation outside of this was out of line with 'standard industry practice'.

The problem here is the stigma attached to low budget productions. What is often forgotten in the rush to judgement is the need to decide the appropriate budget for any film, taking into account the mix of creative elements, production requirements and business models.

In the following section, I identify 10 key problems contributing to the current impasse, and make some suggestions as to how they might be addressed.

Part 2: Key issues and proposed alternative approaches

1. Perverse incentives

Perverse incentives are factors that reward individuals or organizations for taking actions that produce negative consequences. Identifying and removing perverse incentives is relatively commonplace in other industries. In the film industry, a range of these incentives have served to entrench counterproductive and costly business practices. They include:

- a. Fees based on a percentage of the budget - forcing producers to increase the budget to achieve a reasonable fee
- b. Income and profit arrangements that fail to reward producers for successful films - encouraging producers to seek greater fees and income from within the budget
- c. Government investments that are sometimes conditional on the attachment of marquee cast, creating inflationary pressure on above the line costs
- d. Government investments that are driven by the percentage of the budget raised by the producer, encouraging the producer to use expensive financing mechanisms (like bank gap) to trigger the support, rather than valuing the strength of the sales and distribution partners.

Producers have thus been encouraged to increase budgets, not because it is beneficial for the project or the industry as a whole, but because it is financially expedient. Cumulatively, these incentives have driven up the cost of feature filmmaking, thereby reducing the chance that films will recoup their costs.

PROPOSAL – ELIMINATE PERVERSE INCENTIVES

Agencies and the industry should eliminate perverse incentives by discouraging percentage-based remuneration and financing arrangements that are driving up budgets. One approach would be for the industry to commission a special investigation into this question and make recommendations to the appropriate authorities.

2. Income models

Existing film financing models in Australia provide little financial benefit to the producers of successful films. As a result, producers are encouraged to glean their income from within the budget rather than from a sustainable business model.

There have been attempts to rectify this, with the AFC introducing a first dollar corridor and the FFC's marketplace financing path also providing a corridor to the producer. The new offset scheme is also a very positive step in this direction, since it gives producers equity in their own films.

Recent changes to the AFC's guidelines have made significant progress in this direction, eliminating premiums on development, allowing producers access to Screenrights income, providing grants rather than investments on short form content, and rolling over their development investment into production.

These approaches could be extended further, so that producers could negotiate an increased corridor from first dollar returns, on the basis that the film had been made at a lower budget due to discounted fees, the expertise of the filmmakers and the need to match the budget to the size of the market.

It would be hard to imagine distributors and exhibitors readily agreeing to a system that rewarded filmmakers with a share of each ticket sold. Nonetheless, government agencies investing in film should continue to develop financing structures that reward filmmakers for their efforts, and acknowledge the true value of their discounted contribution on lower budget films.

At the same time, financing models could include incentives based on box office returns and their relationship to the budget. In France, for example, production aid granted by the national funding agency, the Centre Nationale de la Cinematographie, reflects the box office returns of the producer's previous film. This system provides producers with an incentive to achieve commercial results. Such aid is provided on an 'automatic' basis. The CNC also offers 'selective' support through its famous system of 'avance sur recettes' (literally, 'advance against revenue'), an interest-free loan repayable either from income or from any automatic aid granted to a film.

Other examples of positive incentives based on box office returns include: a Finnish scheme granting the producer EUR 3.50 per local viewer, up to a set limit; a capped Norwegian 'box office bonus' amounting to 55 per cent of ticket revenue; automatic support programs in Germany covering production, distribution and exhibition, which require that funds be reinvested in further films; and similar variants in Spain, Canada, Sweden and Austria.⁴

Ideally, these positive incentives would motivate the producers and creative teams to make their film at as realistic a budget range as possible, on the basis that an ongoing income stream from each project would contribute to a more sustainable business model not merely driven by fees from each budget.

PROPOSAL – ALLOW FILMMAKERS A REASONABLE SHARE OF INCOME

Create incentives for experienced filmmakers to work more innovatively with smaller budgets. Firstly, allow filmmakers to access income streams from first dollar returns, better acknowledging the value of their contribution.

Secondly, consider the introduction of positive incentives that trigger government support in accordance with the producer's track record. Generally speaking, incentives based purely on gross box office should be avoided, as they could encourage excessive expenditure on the release of a film.

These income streams will assist in establishing sustainable businesses and a faster turnaround between productions.

3. Wages

In order to negotiate a workable industrial model for wages on lower budget films we need to find a reasonable combination of award minimums and a meaningful share of the film's income. Existing MEAA provisions are understandably underdeveloped in the absence of any meaningful return to cast and crew from the exploitation of each film. Other national cinemas have developed various approaches that could perhaps be considered in order to develop a workable structure for Australian films.

MEAA, for example, will agree to a partial deferral of a crew member's wages on an approved low-budget project under certain circumstances, but places huge restrictions on filmmakers who wish to take up this option. In particular, the 'No Budget/ No Commercial Release Policy' demands that deferred fees be paid prior to any commercial release/exploitation/exhibition of the completed production, and that the producer have no previous feature film credits.

Other countries have developed more flexible and realistic low-budget models for reimbursing cast and crew. Examples include:

- Screen Actors Guild awards in the US. The low-budget agreement allows scaled-back cast fees for films with budgets below US\$2.5m. An additional modified low-budget agreement offers further concessions for films below US\$625,000. These agreements have a scale of wages rather than a deferral component, although an ideal model would combine both.⁵
- In Canada and the US, the IATSE Agreement Low Budget Theatrical Motion Picture Agreement, (covering technical crew) applies to shoots of US\$9 million or less, with the limit indexed to go up 4.1 per cent every year.⁶
- The ACTRA Agreement (covering Canadian performers) accommodates low-budget deals for budgets below CDN\$1.5m. These agreements are based on an agreed percentage discount allowable against a scale of decreasing budgets (with a maximum discount of 45 per cent), coupled with a percentage share of the Producer's gross returns.⁷
- In the UK, a film with a budget below £1 million can be registered with PACT (the producers' organisation) as a Very Low Budget Film (VLBF). A film with a budget below £3 million can be registered as a Low Budget Film (LBF). Registered low budget films are allowed lower cast fees: a minimum performance salary + 50 per cent on a VLBF, and + 75 per cent on a LBF. These fees allow the producer to exploit the film across the board until the film recoups. Once this happens, further uses must be paid for.⁸

These models could provide the starting point for a workable model for lower budget feature films made in Australia.

PROPOSAL – OFFER CAST AND CREW A REALISTIC SHARE OF RETURNS

While it is outside the scope of this report to come up with a new basis for wages for cast and crew on lower budget films, the industry should explore new models that better combine the discounted value of the cast or crew members' contribution with a meaningful share of income from the film's returns. As long as current financing structures prevent revenue sharing, it is impossible to expect cast and crew to agree to a standardised model for reduced wages on lower budget films. This could be possible, however, if an industry model allowing returns from first dollar were introduced.

4. The danger of percentages

The Australian Film Commission's guide to feature film budgets identifies many key budget categories driven by industry standard percentages.

For example, a director's fee is usually 3 per cent of the budget, as is the fee for the writer, and in most cases the producer. While these figures are negotiable based upon the marquee value of the writer or director, this is rarely the case, and the fees have over time become firmly entrenched.

This approach to determining fees has created one of the most damaging perverse incentives: producers are forced to raise budgets in order to achieve the fees necessary to sustain their business. A \$30,000 fee on a \$1 million budget makes absolutely no sense for an experienced producer running an office with staff and overheads. Industry standard percentage fees therefore create an inflationary pressure, driven by creative above the line participants who have no other potential income from the film.

An alternative approach would be for the industry to value the contribution of the director, writer and producer not as a percentage of the budget, but as a figure based on their time, commitment and experience. Thereafter, the participant would be able to use this amount to purchase an equity position or acquire ownership of rights in the project, assuming that the budget could only cover a small percentage of this fee. For example, a producer who has previously received fees around \$150,000 on films around the \$5 million budget range should be granted an equivalent fee on a lower budget film, on the basis that the workload is similar. Any part of this fee that the budget could not sustain would be reinvested to establish greater capital in the film and its rights.

The combination of a reasonable fee and an advanced recoupment position would act as an incentive for the producer to finance films at a more realistic budget level. It would also incentivise their exploitation of the film by offering a realistic chance of financial returns.

PROPOSAL – BASE FEES ON VALUE AND EXPERIENCE, NOT ON PERCENTAGES

Key creative participants should be valued for their time and expertise in a way that creates an incentive to make films at realistic budget levels. While a \$2 million film may be unable to support a \$150,000 producing fee, the producer's workload is no different than on a \$5 million film. If the fee is valued accordingly, the producer could use this to create capital in their film.

5. Unrealistic budgets, budget templates and inflexibility

The traditional development cycle usually concludes with a state or federal agency providing a producer with funds to pay a production manager to budget the film. The project is then taken out to the market for financing at that budget level. This has seen a large number of Australian projects budgeted at levels that exceed what they could expect to attract in financing.

A more effective approach is to take a developed screenplay and the proposed creative team, and then calculate a budget level that could realistically be financed. The project can then be budgeted accordingly around a production methodology that works within those resources.

The Australian Film Commission has developed a Production Manual, a detailed guide to the existing production model, which is coupled with an industry standard budget template. While this manual and template provide a transparent way for the funding agencies to assess the relative merit of each film's budget, they have had the unintended effect of further entrenching the film production model we so urgently need to break away from, despite the recent inclusion of a low budget section in the revised manual. This is not to dismiss the excellent information the manual provides on all areas of production, but rather to identify the danger of the AFC and other government agencies using it as a rigid template.

For example, the AFC budget template follows the traditional linear path through production, from pre-production to the shoot and post-production. It also provides a standard breakdown of crew structures and roles. While the manual itself describes the AFC budget template as 'not set in concrete', it has become an increasingly rigid template for film budgeting.

For example, the AFC guidelines insist that all films are budgeted on the AFC template. At the AFC, even short films are required to use an equivalent template. Subsequent financing from state and federal financing agencies involves exhaustive scrutiny of these budgets. It also involves, more often than not, requests to add figures to sections of the budget - not necessarily because they are critical to the making of the film, but because the template itself draws attention to their absence.

A group of short filmmakers was recently asked by the AFC whether their short film resources should be used for two or three \$200,000 films, or spread more widely so that a larger group of filmmakers could work more innovatively with smaller amounts of money. The filmmakers replied that they would rather take their chances with a smaller number of larger budgeted films because they needed to learn how to make films 'the way feature films are made in the industry'. Thus, innovation at the low risk end of the market is being sacrificed so that emerging filmmakers can be taught a traditional methodology that is increasingly being put in question by market developments.

PROPOSAL – MATCH BUDGET MODELS TO PROJECTS, MARKETS AND PERSONNEL

Establish an industry-wide mechanism for assessing the budget level for each film, based on the screenplay, the proposed creative team, and the film's financing prospects. With this budget in mind, a financing plan can be developed along with an appropriate budget, and an innovative production methodology developed to work within those resources. We need to avoid budgeting films in isolation from a realistic financing model.

The new agency, Screen Australia, could also assess the experience of the practitioners, the scale of production, and level of innovation when assessing budget items relating to insurance, reporting and other requirements. The current one-rule-suits-all does not reflect the different levels of risk management required for larger budget productions as opposed to smaller scale films. These smaller scale projects may be driven by an innovative model that requires a more flexible approach from the financiers.

6. Cast fees

Cast fees on Australian films have become polarised in recent years. On the one hand, experienced working actors report that their wages have moved very little over 10 years. On the other, some marquee cast now receive as much as \$1 million on independent Australian films.

There has been little if any acknowledgment by the industry that the inflationary impact of marquee fees for cast has kept the average wage paid to other cast at a minimum. Historically, the payment structure for actors was based on a personal margin above the award minimum that was dependent on not only the value of the cast member but also a shared acknowledgement that this margin should relate to the budget of the film. For example, while the award minimum for cast may be around \$800 a day, on a \$5 million film most cast were usually paid between \$1,200 and \$1,500 a day for no other reason than a perception that this was fair and reasonable.

This has all changed in recent years. With marquee Australian cast now expecting as much as 10 per cent of the total budget as their fee, together with Hollywood

studio style treatment and the associated costs, producers no longer have the margins available to spread their budget allocation amongst the experienced working actors who make up most of a film's cast. A recent industry-wide attempt to cap marquee cast fees on films financed by the FFC failed. Agents and the MEAA believed (incorrectly I feel) that it capped the necessary marquee value these cast members deserved.

Cast have traditionally been paid a premium because their participation increases the film's ability to attract finance and helps attract an audience in release. In such cases, the cast member is rewarded for helping attract finance with a larger fee, and rewarded for attracting an audience with a share of the film's profit. This in itself does not seem unreasonable, and is the basis on which independent US cinema deals with marquee cast. For example, if a film is being made for a small budget there is an acknowledgement by the cast that their attachment to the film has not helped attract a larger budget and so they take a smaller payment. In the event that the film is successful and benefits from their marquee value, they receive a reasonable share of returns.

This fair and reasonable approach is one taken by many cast members in Australia. I have been the beneficiary of this approach on recent films including *Romulus*, *My Father*. It is not a position, however, that film producers have found commonplace in Australia. Reported fees have exceeded \$500,000 and in some cases \$1,000,000 – these are substantial outgoings for films that are usually 70 per cent financed by government agencies.

A new methodology should make sure that marquee cast fees relate to the level of non-government marketplace attachment, so that there is a clear justification for the fee. For example, it seems reasonable for 'creative evaluation' films that attract a 60 per cent FFC and usually a 10 per cent state agency investment to cap these cast fees. Meanwhile, market-driven projects with a much smaller amount of government subsidy could more justly reward the cast member for their value in attracting finance.

With an industry at unsustainably low production levels, making films at budget levels that have no realistic chances of recoupment, this unchecked inflationary pressure must be addressed as a matter of urgency.

PROPOSAL – MATCH CAST FEES TO MARKETPLACE INVESTMENT

Introduce a cap on marquee cast fees on films that are unable to achieve a high enough market commitment as a percentage of the budget. This will better acknowledge the real value of cast in attracting non government funds. Marquee value during a release can be rewarded through a meaningful position in the recoupment structure. On the basis of this cap, raise equity minimums for working actors who have suffered disproportionately low fees in the face of huge inflation in marquee cast fees.

For example, a film that has raised 50 per cent of its budget against international pre-sales due to the attachment of a marquee cast

member could justify an increased wage, based on a clear relationship between the scale of international commitment and the cast member. A film, however, that is financed with a combination of a 60 per cent FFC contribution and 10 per cent from a state agency would need to reflect the smaller level of market commitment in reduced above-the-line cast fees.

7. The role of the completion guarantor and insurance

A completion guarantor provides an investor with certainty that a film will be completed on schedule and delivered on budget. Although the involvement of guarantors has helped producers raise private investment, it is also a requirement of state and federal government funding agencies.

The completion guarantor scrutinises the budget and decides whether to provide a bond for the film, after giving notes on the AFC budget template and insisting on any revisions it feels are necessary.

Part of a completion bond fee is a margin paid to the bond company to cover their costs. The rest of the fee is the cost of the insurance premium required to guarantee completion. Producers often request a 'cut-through' arrangement so that they can deal directly with the insurer and see the margin between the insurance costs and the total fee.

Smaller budget films are in many cases majority funded by a government agency. For example, the Indivision initiative films are usually around 90 per cent financed by the AFC, with budgets around \$1 to \$2 million. The funding agencies currently insist on a completion bond for these films.

One way to reduce the costs in this instance would be to pay the bond company their margin only. This would require their involvement as per the usual completion bond, but without the expensive insurance premium that sits behind their usual arrangements. In this case, the AFC would be taking on the risk while still giving the completion guarantor the power to intervene to complete the film if necessary.

It would be an interesting exercise for the new screen agency to look at the number of Australian films that have required an insurance payout from the guarantor versus the number of times the guarantor has been required to intervene to ensure delivery without an insurance claim needing to be made.

Whereas in other areas of insurance a 'no-claim bonus' allows the insured to negotiate a reduction in the premium, a film producer's level of experience and track record play only a small role in calculating the costs of the completion bond.

The AFC's production budgeting manual also identifies various forms of insurance required for a feature film, which when coupled with the completion bond make up in excess of 6 per cent of the total budget. These insurance amounts cover workers' compensation, film producers' indemnity, negative film risk, public liability, errors and omissions and the bond itself.

As with the completion bond, it is difficult for producers to use a strong track record and many years of experience as a negotiating point when working out how to reduce insurance costs. Similarly, lower budget films are assumed to be as large a risk for investors as larger films, despite the much smaller amount of investment. An alternative approach would allow experienced producers choosing to work on smaller budget films the opportunity to negotiate, on a case by case basis, a reduction in the amount of security required through costly insurance premiums.

PROPOSAL – ADAPT INSURANCE REQUIREMENTS TO REFLECT THE SCALE OF THE PROJECT

On innovative, smaller budget films, government agencies could explore different ways of working with the completion guarantor that do not require a large insurance premium sitting behind the guarantee. There are already examples of this in documentary, and one could imagine it working well on the current Indivision films. Screen Australia could perhaps consider a budget threshold beneath which there will be flexibility in assessing the need for a completion bond, also taking into account the experience of the producers.

The industry should also review the level of insurance required and the relative risk of reducing these requirements on lower budget films. Experienced producers should be allowed some negotiating position when working on more innovative, lower budget films, where the risk of failure is mitigated by the reduced scale of production.

8. Reporting

On a recent film I produced, the accountant commented that two in every five days she was employed were spent preparing reports to show investors that we were expending our budget as promised. This is clearly not an ideal situation. A standard production office now includes a producer, line producer/ production manager, production co-ordinator, production secretary and runner.

It is a requirement of the government agencies and the completion guarantor that a production reports weekly during pre-production, daily during the shoot, and monthly in post-production. With significant government investment, it is argued, this level of accountability is justified. This accountability however, is excessive when compared with other areas of industry.

Publicly listed companies in Australia are subject to ASX rules that require two key types of reporting, continuous and periodic. Periodic reporting is usually half yearly and annually, and occasionally quarterly as in the mining industry.

Under continuous disclosure a company must report if certain events occur. This frees up the business from time-consuming and costly reporting obligations, without removing the checks and balances expected by the ASX.⁹

In the film industry, the completion guarantor and investors currently receive far more information than they require, via a complex daily progress report that usually involves two members of the production office for several hours each day. An alternative would be for the producers to take on strict continuous reporting obligations. Rather than report daily, they would only report in the event that any of a number of events had occurred: an accident on set, an inability to film that day, a failure to complete the call sheet and so forth.

Australian film industry reporting obligations have not changed in over 20 years. Even the template daily progress report has undergone little change and still includes a mechanism to report on sound recording on magnetic tapes, at a time when even DAT tapes have been superseded by hard disk recording! It would be an appropriate time for investors and the completion guarantor to review what information they require during production, and work out whether this could be achieved through reduced periodic reporting, combined with the maintenance of continuous reporting obligations.

PROPOSAL – ADOPT REASONABLE REPORTING OBLIGATIONS

Allow reporting obligations to be negotiable depending on the experience of the production team, and bring these obligations into line with reporting practices in other areas of industry. Introducing continuous reporting obligations offers a more time-efficient way of ensuring the full disclosure of critical issues, without creating an onerous reporting regime.

9. Legals

Legal requirements and costs have also spiralled out of control in recent years. It is not uncommon for legal fees on a feature film to exceed \$100,000. Lower budget films suffer most from this, because the fee structure for legals is relatively standard, regardless of the cost of production. Whereas the director's and producer's fees are tied to a budget percentage, legal costs remain negotiable in good faith on a case-by-case basis with each lawyer.

On a typical Australian film it would not be unusual to find more than 10 lawyers representing various parties, with significant duplication of responsibility. For example, the FFC, state agencies and completion guarantors collaborate on many productions each year, and yet on each film the basis of this relationship comes up for scrutiny and revision. Government agencies have sought to alleviate the financial burden of this increased scrutiny with increased administration and legal fees payable from the budget.

Legal documentation has not always been such an overwhelmingly complex and inefficient part of the filmmaking process. Surprisingly, while Australia has increasingly followed the US industry's litigious approach, the local film industry has put up little if any resistance and attempts to standardise agreements have been dismissed on the basis that films must be assessed on a case by case basis.

With so few sales agents and distributors working with the FFC, it may be more effective for each company to negotiate its standard terms of trade when working with the FFC on the basis of an annual review. This would avoid the duplication of legal advice across each project.

PROPOSAL – SIMPLIFY AGREEMENTS AND CAP LEGAL FEES

Establish a system of simplified agreements based on industry precedents, and adopt an industry-wide standard practice of capped legal fees or at the very least an average fee structure to be used as a guide to identify excessive legal requirements.

Simpler documents could be negotiated by the guilds and used as a precedent for future productions.

Key sales agents and distributors could negotiate blanket agreements covering the terms of their relationship with the government agencies over a negotiated period of time.

10. Delivery

An international sales agent based in Australia in the 1990s commented that international distributors often mentioned how well delivered Australian films were. By this, he meant that Australian releases included high quality tape and sound masters, as well as all the laboratory elements, complete and standing by. The only problem he noted was that none of the distributors were actually buying Australian films at this time. Instead, they were buying US independent films, which often lacked delivery materials but made exciting cinema. The distributors would then spend whatever it took to create the delivery materials needed to release these films.

International sales agents and distributors have become accustomed to the onerous delivery requirements supported by the completion guarantor and investors in Australia. They now demand the complete package of delivery requirements for a US theatrical release, so that they are covered in the event a sale to the US actually goes ahead. The excessive costs associated with creating these materials are in most cases unnecessary. The vast majority of films do not receive a US theatrical release and are more likely to sell directly into ancillary markets, where delivery is much simpler and less costly.

In recent years, the FFC has also directed marketing costs into the production budget, further shifting costs away from the distributor or sales agent, who are in effect delivered a full collection of elements and marketing materials at no cost.

**PROPOSAL – CREATE DELIVERY ITEMS WHEN REQUIRED,
AND AS A COST OF SALE**

It is possible to create a reduced package of delivery materials that would allow the speedy creation of additional materials if and when required as sales occur. Furthermore, delivery costs should be shifted back on to the distributor and sales agent. More expensive delivery materials, including those required for US distributors, should be created as a cost of each sale when they occur.

Conclusion

Our innovation, our inventiveness, according to some authorities, appears to have reached a historic low after the triumphs of the late 19th century and 20th century. We may be trying to supply a voracious market, but we are not even pretending to build tomorrow.

Richard Watson, *Future Files: A History of the Next 50 Years*¹⁰

This paper is in no way trying to dismiss the value of larger budget film productions. For good reason, such recent larger-budget Australian films as Bruce Beresford's *Mao's Last Dancer* and Phil Noyce's *Dirt Music* are creating considerable excitement within the industry.

These larger budget films are, however, only intermittently produced and only financeable with the attachment of experienced directors advanced in their career and with a significant international reputation. A strong, sustainable industry can't depend on this scale of production. Instead, it must be driven by the sort of innovative filmmaking that has in recent years introduced such a strong collection of actors, directors and writers to world cinema.

Our ability to make these films has, however, clearly weakened under inflationary pressures and the embrace of outdated methodologies. Our cinema has been pushed into a budgetary no-mans land: neither large enough to compete with the studios, nor small enough to stand a chance of being commercially viable in a market flooded with independent films.

While our films are all well-made, they risk being marginalised in the international market as polite and well crafted but lacking innovation and originality. With so many checks and balances in place and a risk-averse culture that has entrenched an industry standard way of working, it is no wonder that our films no longer make a mark on international cinema.

There are clear ways forward. Filmmakers could be better rewarded for innovation, rather than forced to comply with a rigid model in order to achieve financing. Requirements to work within existing budget templates should be challenged, and low budget filmmakers given greater freedom to push the boundaries. Emerging filmmakers supported by government agencies should be encouraged to pioneer new production methodologies rather than use short filmmaking as an exercise to learn the entrenched production methodology.

The establishment of Screen Australia provides us with an exciting opportunity to revisit the ways we make films in Australia, the way we share the returns, the risks we are collectively willing to support and the possibilities for rewarding innovation. If cinema is to remain a dominant contributor to the way we tell our nation's stories, then it is critical that we reinvigorate our approach to ensure it is dynamic, innovative and audience-focused.

Notes

¹ C. Koberg, D. Detiennde and K. Heppard, "An Empirical Test of Environmental, Organisational, and Process Factors Affecting Incremental and Radical Innovation," *Journal of High Technology Management Research* 14 (2003): 24.

² Australian Government, "Getting Started - How Do I Make My Business More Innovative?" From *Innovation for Business: the National Innovation Website* (2007):
<http://www.innovation.gov.au/index.cfm?event=object.showContent&objectID=01653455-0F82-3662-DED144DFDB89583F>.

³ Chris Anderson, *The Long Tail: Why the Future of Business Is Selling Less of More* (New York: Hyperion, 2006), 52.

⁴ For a fuller overview of these positive incentives, see the UK Film Council's *Film File Europe* (2007): <http://www.filmfileeurope.com/profiles/funder.asp?f=48>, as well as the AFC's *Submission to DCITA's 2006 Review of Australian Government Film Funding Support*, Appendix E: International Automatic Support Schemes (2006): http://www.afc.gov.au/policyandresearch/policy/film_industry.aspx.

⁵ See the Screen Actors Guild rates and agreements (2007) at:
<http://www.sag.org/sagWebApp/application?origin=page1.jsp&event=bea.portal.framework.internal.refresh&pageid=Hidden&cp=home&templateType=multipage&portletTitle=Check+Rates&contentType=Check+Rates>.

⁶ The Camera Guild's website (2007) covers the basics of the IATSE agreement:
http://www.cameraguild.com/index.html?news/guild/07_01_05_Low-Budget-Agreement.html~top.main_hp

⁷ ACTRA low-budget agreements (2007) are accessible here:
http://www.actratoronto.com/producers/agreements_lbnb.html

⁸ *Cinema Films Agreement between Producers Alliance for Cinema and Television (PACT) and Equity* (2002): 42.

⁹ Australian Stock Exchange, *Continuous Disclosure: The Australian Experience* (2002): 11.

¹⁰ Richard Watson, *Future Files: A History of the Next 50 Years* (Carlton North: Scribe, 2007).