



**The Australian Directors' Guild
Application for ACCC Authorisation
for Proposed Conduct
May 2021**

PARTIES TO THE PROPOSED CONDUCT

1. APPLICANT

1.1 Applicant Organisation

Name: Australian Directors' Guild Ltd. (ADG)
Address: Suite 28, Level 2, 330 Wattle Street, Ultimo, NSW 2007
ACN: 002 294 920
ABN: 14 002 294 920
Telephone Number: (02) 9555 7045

All full list of members can be provided by contacting the ADG.

1.2 Applicant Contact

Contact Name: Alaric McAusland
Position: Executive Director
Telephone Number: [REDACTED]
Email Address: [REDACTED]

1.3 Description of business activities

The Australian Directors' Guild (ADG) is a not-for-profit industry association representing the interests of Screen Directors (film, television, streaming and digital media directors). It aims to improve professional standards, conditions and remuneration for Australian Screen Directors, protect and advance the creative rights of its members and promote a cultural voice that is representative of Australia's innate diversity.

In 2015 the ADG was registered as an association of employees under section 26(4) of the *Fair Work (Registered Organisations) Act (Cth) 2009* and is able to collectively negotiate on behalf of its members. Membership is by way of Board approval with members paying an annual subscription based on their level of experience. As of September 2020, the ADG had around 380 full (voting) members and a total of towards 1,200 members including full, honorary and associate (non-voting) members, consisting of employees and contractors.

1.4 Email address for Service of Documents in Australia.

[REDACTED]

2. OTHER PARTIES TO THE PROPOSED CONDUCT

2.1 Other Party Organisation

Name: Screen Producers of Australia (SPA)

Address: Suite 2, Level 1, 36 Fitzroy Street,

ABN: 46 091 470 324

A full list of members can be provided by contacting SPA.

2.2 Other Party Contacts

Contact Name: Zoe Angus, Director Industry & Commercial

Telephone Number: [REDACTED]

Email Address: [REDACTED]

2.3 Description of Business Activities.

SPA is a not-for-profit organisation registered as an 'employer association' under the Fair Work (Registered Organisation) Act 2009. SPA Represents the interests of independent Australian film and television producers on issues impacting the business and creative aspects of screen production. SPA was formed by the screen industry to represent small-to-medium sized enterprises across various types of screen production including feature films, scripted and non-scripted television series and serials.

3. THE PROPOSED CONDUCT

3. Overview of Proposed Conduct

3.1 Proposed Conduct Description

The ADG seeks a new authorisation for the ADG to collectively negotiate on behalf of its current and future members, model agreement(s) with the Screen Producers Australia (SPA) containing model terms of engagement for feature film, television series, and television serials ("Screen Productions").

To facilitate negotiations for model agreement(s), the ADG forms specialised committees of Australian directors chaired by an ADG Board Member Director. The committees are made up of up to eight member directors, who are full members of the ADG, and are currently directing Screen Productions. The ADG submits that the committee will enable a full spectrum of directors to participate and provide input into negotiations.

3.2 Potential Applicable Competition and Consumer Act Provisions

Relevant provisions of the *Competition and Consumer Act 2010* (Cth) (the Act) which might apply to the proposed conduct are:

1. cartel conduct (Division 1 of Part IV)
2. contracts, arrangements or understandings that restrict dealings or affect competition (s. 45)
3. concerted practices (s. 45)
4. exclusive dealing (s. 47)

3.3 Rationale for Proposed Conduct

The model agreement(s) negotiated with SPA, which are the subject to this Application, will contain a common set of terms and conditions to be utilised by ADG Members who choose to utilise the model agreement(s) in their negotiations with producers for Screen Productions. The model agreement(s) may include provisions relating to the rates and terms of pay, copyright and moral rights, credits, royalty and residual payments, conditions of employment, accommodation, travel and transport, rights of termination and dispute resolution.

The rationale for the proposed conduct is to bring a degree of certainty and predictability to the recommended minimum arrangements to apply for engagement of Directors on a Screen Production for the benefit of directors and producers (and production companies) so they do not have to renegotiate minimum terms and conditions on each occasion of engagement, all these engagements being relatively short-term. It also allows an element of certainty for the budgeting of Screen Productions for producers, directors, broadcasters and funders such as the Federal Government screen funding body, Screen Australia. However, the model terms of engagement are not binding on ADG and SPA members who can, and often do, negotiate and adopt different terms when negotiating contracts to engage ADG members.

3.4 Term of Authorisation Sought

Ten (10) years. This is analogous with the 2017 AWG determination, the recent 2021 SPA determination and due to the fact that the engagement, consultation and negotiations involved in concluding a model agreement(s) are likely to be detailed, lengthy, complex and requiring the expenditure of significant ADG resources, so the ADG would prefer to be able to amortise the time and expenses over as long a period as possible.

4. ADG Board Approval for Authorisation Application.

The relevant board Minute is attached separately. Please refer to section 2.5.3.

5. Persons directly impacted by the proposed conduct.

Individual producers and production companies who are current and future members of SPA will be provided with more certainty and predictability on minimum arrangements to apply for engagement of Directors on a Screen Production and will benefit from reduced lead-times and costs than is currently required to negotiate each occasion of engagement.

Individual directors who are current and future members of the ADG will be provided with more certainty and predictability on minimum terms of engagement on a screen production and will benefit from reduced lead-times and costs than is currently required to negotiate each occasion of engagement.

6.MARKET INFORMATION AND CONCENTRATION

6. Services & Geographic Areas

Service Categories:

Screen Directors routinely work across multiple sub-categories of screen Production including series, feature films (genres) and genres are becoming more converged with respect to their release, For example it is now common-place for feature films (scripted drama content generally above 60 minutes in duration) to have a first release on streaming platforms rather than in the cinema, and a TV series (scripted drama content generally below 60 minutes in duration) to premiere in a cinema before launching on a broadcast network or streaming platform. Therefore, for the purposes of this application, the ADG submits that it is not necessary to consider each genre as a separate market. In line with the AWG's Authorization, it is submitted that there is substitutability between directing services for television and feature films more broadly and between television genres.

Service Description:

The ADG submits that for the purposes of this Application the market is for the supply of directing services for Screen Productions to producers as well as any intellectual property and goods provided in connection with such services. Australian directors are critical to the creation of Screen Productions. They make creative decisions about what will appear on screen through input into creative elements such as the development of the script, the cinematography and its style, the casting and the acting style, the production design, the makeup and costumes, the lighting, the music and soundtrack, the editing and the grading of the content. The director also generally determines where the camera will be placed, what sort of shot will be shot, whether the actors will be fully visible or obscured and plans how the shots will be cut together. In short, the talents and skills of a director bring the story a distinctive visual style and the unique ability to convey "their message" to the audience. Directors compete to provide these services across a range of Screen Productions.

Service Geography:

The ADG submits that for the purposes of this Application, the geographical market is Australia. Directors regularly travel throughout Australia to provide their directing services for Screen Productions. They generally travel to the location where the production is being shot, as determined by the production company from time to time. Therefore, the model agreement(s) would apply across all Australian states and territories.

7. Overview of relevant industries

Like directors, Australian independent producers and independent screen production companies routinely work across multiple genres and formats all with varying distribution characteristics. As stated above, genres are becoming more converged and ubiquitous with respect to release platform. For example, whereas cinemas always had an exclusive 'window' to show feature films, it is now common-place for feature films (or feature length scripted content) to have a first release on TV/SVOD platforms and not in cinema or have only a very limited cinema release close to or simultaneous with the film's SVOD release.

Television content in Australia is usually produced (manufactured) by independent producers and then acquired by three main groups: free-to-air broadcasters (including national broadcasters ABC and SBS, and commercial broadcasters Seven, Nine and 10), subscription television broadcasters (such as Foxtel), and subscription video on demand (SVOD) services (such as Netflix, Stan, Disney+, Amazon Prime, and Binge). All these platforms are also acquirers (licensees) of feature film content, generally (but not always) after its initial theatrical (cinema) release.

Free-to-air broadcasters are themselves producers of television content in Australia and produce content in-house for broadcast and distribution. Australian broadcasters are also content acquirers, and commission or acquire content from other producers including SPA members.

Commercial broadcasters (and to a lesser extent subscription television broadcasters) are subject to content quotas that require a minimum amount of Australian content to be broadcast annually, subject to certain requirements. Currently, national public broadcasters and SVOD services are not subject to content quotas. The content quota system is maintained by the Australian Communications and Media Authority (ACMA). In September 2020 the Government partially deregulated the quota system for commercial broadcasters (7,9 & 10) and plans to halve the Australian drama quota for subscription television. This will lead to reduced market influence from these platforms given the lower numbers of new commissions they are required to make annually. Conversely streaming platforms such as Netflix, Amazon Prime and Stan are increasing their commissions of new Australian content and becoming more substantial acquirers or series and feature content locally.

Currently, national broadcasters and SVOD services (growing rapidly in terms of subscription base and market influence) are not subject to content quotas. This is however, currently under review following a Media Reform Green Paper issued by government late in 2020.

Producers pull together finance for each unique feature film production from a diverse range of sources, including government agencies, private investors, bank loans, industry sources such as distributors, sales agents and broadcasters, plus, for eligible titles, the Producer Offset (administered by Screen Australia). Distributors and international sales agents play an important role in building a film's budget in advance of the production being completed, by guaranteeing the producer a minimum amount of revenue to the producer (a 'guarantee') or paying the producer a certain amount of future revenue up front (a distribution or sales 'advance').

For most feature films, a primary cinema release continues to be appropriate and important to its overall success. Film distribution traditionally begins with a domestic theatrical release – an exclusive run in cinemas. Individual Australian exhibitors (cinemas such as Event Cinemas, Hoyts, Village, Reading, Palace, Wallis Theatres and Dendy and Grand and other smaller independent cinemas) hire films from distributors to show on their screens. Each Cinema negotiates with the film's distributor to set the number of screens and sessions for a film and decide when to reduce sessions and to take the film off screens.

The film will then move to the home entertainment market –download-to-own and online rental and to a lesser extent, DVD, Blu-ray, followed by SVOD & subscription television and, finally, a screening on free-to-air television. A film might skip a theatrical release if the distributor feels the potential cinema audience is not large enough to sustain the expense, or if the film is better suited to the home entertainment market.

8. Product Overlap and Market Share

Screen production is a multi-faceted marketplace across multiple platforms and genres with little concentration, With the make-up of individual productions so disparate, there are no publicly available statistics relevant to gauge producer or director market share.

9. Competitive Characteristics

The proposed conduct's impact on competition (limitation) is substantially reduced given not all directors are members of the ADG and not all Producers are members of SPA and as mentioned elsewhere in this submission, the terms of any model agreement are not binding on ADG and SPA

members who can, and often do, negotiate and adopt different terms when negotiating contracts to engage ADG members.

Competitive influence is further minimized as directors and producers operate in a highly competitive environment with each director competing with other directors for engagements (jobs). It is an open market of ideas and content which thrives on innovation with each individual producer (and production company) competing with other producers to obtain engaging and innovative content from writers and directors.

Producers then compete with other producers for funding from financiers and then for distribution/broadcast output deals from broadcast platforms and distributors. Cinemas, Streaming Platforms and Broadcasters then compete intensively for Audience.

With no significant financial or educational barriers to entry, competitors to producers and directors appear constantly – again not all new entrants are members of SPA or the ADG.

The clients of producers and directors are broadcasters, distributors, SVOD companies and cinemas, all have significant power and resources to negotiate terms with a producer and directors and setting minimum terms will have little impact.

10. PUBLIC BENEFIT

10. Public Benefits that are likely to result from the proposed conduct.

The ADG submits that for the purposes of this Application, the benefits that will accrue to the public as a result of the proposed model agreement(s) relevantly include the following:

- Increased bargaining power for directors in negotiations and improvements in the level of input that directors have in contractual negotiations.
- Reduced transaction costs for ADG and SPA members.
- Overcoming information asymmetry through augmented access to resources for directors.
- Assist Screen Australia in public funding applications.

Increased bargaining power for directors in negotiations and improvements in the level of input that directors have in contractual negotiations:

Production companies engage those working in Screen Production, including directors, on either an employment or contractor basis. Screen Directors are generally independent contractors commissioned on a freelance basis by production companies and broadcast networks. These production companies range in size from the Australian representatives of multi-national corporations such as NBC Universal, Netflix and Studio Canal to local independent production companies and local broadcast networks, like Madman, Channel 7 and the ABC.

ADG Members do not have the financial and other resources to strongly negotiate their own agreements in Australia. The majority of Australian directors have limited access to resources and information on market conditions. They live in cities and towns around Australia and may be geographically disparate from other directors. Furthermore, in contrast to Screen Producers, they generally do not have lawyers and other professionals that are able to provide them with advice on negotiations and contractual matters. Consequently, there is a significant power imbalance in favour of the producers, networks and studios given their size and the number of productions they are likely to commission in a year.

There is very little industry information on what constitutes recommended minimum standards of remuneration, rights and working conditions for directors. The position of directors can be contrasted to others working in the screen production industry. Cast and crew for a screen production are generally employed by the production company, network or studio rather than being independent contractors. They are therefore legally entitled to rates of pay under the *Broadcasting and Recorded Entertainment Award 2010* which was made through the Industrial Relations Commission (now Fair Work Australia).

The model agreement(s) will provide recommended minimum standards of remuneration, rights and working conditions for directors in the screen industry that are recognised at an industry level. The engagement process for the model agreement(s) put in place by the ADG will enable directors to work collectively through the ADG to provide greater input into the terms and conditions of the model agreement(s).

Increased input of the ADG's Members into contractual terms in the model agreement(s) may better reflect their collective circumstances, as opposed to those agreements that are negotiated individually or offered by producers, potentially on a take-it or leave-it basis. Improving the opportunity for ADG Members to input into the model agreement(s) may also benefit SPA's members by providing a forum through which more innovative contractual solutions and options can be discussed and explored. These outcomes are less likely in individual negotiations conducted for Screen Productions.

[Reduced transaction costs for ADG and SPA members:](#)

Every time directors and producers negotiate for Screen Productions (usually on a specific project-by-project basis) there are substantial transaction costs which may be time specific. The model agreement(s) has the potential to reduce these significantly, which is particularly beneficial for directors who are generally sole contractors with limited time and resources. Individual contract negotiation is time consuming and costly, requiring the drafting and redrafting of contracts and often the need to obtain legal and other professional advice, particularly if there are disputes.

In many cases, the ADG supports its members in disputes with producers during or following contract negotiations. Therefore the model agreement(s) has the capacity to reduce the need for such costly support services provided by the ADG and its external legal providers. As each director's contract with a producer is currently specific to the particular production, this can involve the engagement of lawyers on both sides which is of considerable cost in particular to the individual directors.

Up to 10 percent of the director's fee (income derived from the production) can be expended on legal negotiations on the contract even for the most simple and straight forward directing engagements.

[Overcoming information asymmetry through augmented access to resources for directors:](#)

Competitive and efficient markets operate on the basis that both buyers and sellers are well informed about market conditions. At present, given the disparity in access to resources, producers generally have better access to resources and market information than individual directors.

The proposed model agreement(s) will provide Screen Directors in Australia with better resources on what constitutes appropriate recommended minimum standards of remuneration, rights and working conditions and will be developed with the input of legal and industry experts. It will improve the quality of information available to directors in contractual negotiations. This will particularly improve the information flow between directors residing and working in different geographical locations.

[Assist Screen Australia in public funding applications:](#)

Screen Australia is the Federal Government's primary agency for supporting Australian screen production. In partnership with filmmakers, Screen Australia aims to create an Australian industry that is innovative, culturally important and commercially sustainable. Screen Australia was established under the *Screen Australia Act 2008* and from 1 July 2008 it took over the functions and appropriations of its predecessor agencies, the Australian Film Commission, the Film Finance Corporation Australia and Film Australia Limited. Screen Australia's Terms of Trade apply to all producers who obtain funding through Screen Australia. They relevantly provide in clause 1.2 that: Screen Australia 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:

(a) paying at least award minimum rates or, where applicable, any recommended minimum agreed between the relevant guilds, for all work performed by third parties on their project, including key creatives, cast and crew;

(b) 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.

Screen Australia also administers a range of financial incentive schemes to screen producers in Australia, funded by the Australian government. These relevantly include the producer tax offset scheme. This scheme was introduced in 2007 and (as at July 1, 2021) will provide a 30 percent rebate for domestic television productions and 40% for domestic feature film productions. The purpose of the scheme is to stimulate Australian production of film and television.

The proposed model agreement(s) may also assist Screen Australia in considering its public funding applications as it will provide an objective basis to determine clause 1.2 of Screen Australia's Terms of Trade. Given the model agreement(s) will be negotiated between ADG Members and SPA members, it has the potential to provide guidance to Screen Australia on what is "fair and reasonable" conduct.

11. PUBLIC DETRIMENT

11. Likely Public Detriments

The ADG submits that the proposed model agreement(s) will not result in any public detriment:

The model agreement(s) will not be binding on ADG Members or SPA members and do not preclude negotiations between individual ADG Members and producers for variations on the model terms of engagement or their own agreements. The proposed model agreement(s) simply provide a benchmark for recommended minimum terms of engagement.

The model agreement(s) also does not preclude negotiations on other terms that are not included within the scope of the model agreement(s) or may be varied on a case-by-case basis, for example, wage rates that may be dependent on the experience and standing of the director or the budget of the Screen Production.

The proposed model agreement(s) does not provide for collective boycott activity.

Most producers who negotiate with ADG Members are members of SPA, although membership of SPA and the ADG is voluntary.

Given the degree of competition between directors which is based on their reputation and history of work, it is likely that they will continue to vigorously compete for engagement for all types of Screen Production, based on factors separate to the potential implementation of model agreement(s) with SPA.

In the ACCC's Determination on the SPA 2020 Application, the ACCC noted in respect of the proposed arrangement that it considers the proposed conduct will be likely to result in reduced transaction costs and improved input into model terms of engagement by producers which facilitates model terms of engagement which are likely to be mutually beneficial to producers, directors, writers, actors and technical crew. The Proposed Conduct is unlikely to result in significant public detriment from the reduction in competition between producers to engage the services of directors, writers, actors and technical crew. This is because the model terms of engagement act as recommended minimum terms and do not prevent Screen Producers Australia members from negotiating individual agreements with directors, writers, actors and technical crew.

In the ACCC's Determination A91573 on the Australian Writers' Guild 2017 Application, the ACCC noted in respect of the proposed arrangement that it was satisfied that the conduct is likely to result in a public benefit that would outweigh the likely public detriment, including the detriment constituted by any lessening of competition likely to result. In its determination the ACCC noted that in this case it considered that collective bargaining was likely to result in limited public detriment because:

- the model terms do not prevent writers from negotiating their own agreements with the same organisations, but merely serve as a benchmark for minimum standards. It also noted:
- writers compete with each other to be commissioned by a producer, and their selection by the producer is largely based on the quality of their work and reputation, factors which are separate to the implementation of model agreement(s).
- producers are not compelled to negotiate with AWG and its members as a group.

The ADG submits that similar public benefits and the lack of public detriment will apply if the Application is authorised by the ACCC in this case.

12. RELEVANT MARKET PARTICIPANTS

The ADG identifies the following, likely interested parties:

Industry Associations:

Australian Independent Distributors Association Inc
www.aida.film

Motion Pictures Distributors Association of Australia
Fox Studios Australia, 38 Driver Avenue, Moore Park, NSW, 2021
mpdaainfo@mpdaa.org.au

Regulators:

Screen Australia
Level 7, 45 Jones Street, Ultimo NSW 2007
info@screenaustralia.gov.au

Key Customers:

Amazon Prime
www.amazon.com.au

Australian Broadcasting Corporation

Ultimo Centre, 700 Harris Street, Ultimo NSW 2007

Ph: 139 994

Channel 7

Seven West Media, Newspaper House, 50 Hasler Road, Osborne Park, WA 6017

Ph: 08 9482 3111

Channel 9

24 Artarmon Road, Willoughby, NSW 2068

Ph: 02 9906 9999

Channel 10

1 Saunders Street, Pyrmont, NSW 2009

Ph: 02 9650 1010

Dendy/Icon

34 Lennox St, Newtown, NSW 2042, Australia

Ph: 8594 9099

Foxtel

5 Thomas Holt Drive, North Ryde, NSW 2113

Ph: 013 19 99

Madman Entertainment

Level 2, 289 Wellington Parade South, East Melbourne, Victoria 3002

Ph: 03 9261 9200

Netflix

www.netflix.com

Roadshow Films

PO Box 2275, Prahran VIC 3181

www.roadshow.com.au

SBS

14 Herbert Street, Artarmon NSW 2064.

Ph: 1800 500 727

Stan

www.stan.com.au

Studio Canal

Level 2, 47-49 Murray Street, Pyrmont NSW 2009

<http://www.studiocanal.com.au>

Transmission Films

2 Paddington Street, Paddington NSW 2021

Ph: (02) 8333 9000

Universal Pictures Australia

Level 32/580 George St, Sydney NSW 2000

<https://www.universalpictures.com.au>

13.ADDITIONAL INFORMATION

13. Other Relevant Information

In 2015, the ADG was previously granted an authorisation in ACCC determination A91499 for current and future members of ADG to collectively negotiate a model agreement with Screen Producers Australia (“SPA”) for use by its members.

In 2017 the ACCC granted an authorization in determination A91573 to the Australian Writers’ Guild (“AWG”) to collectively bargain on behalf of its members, current and future, in relation to model terms of engagement with the Screen Producers Association of Australia for use by its members when contracting with producers of film or television.

The ACCC recently granted authorisation in its determination AA1000535 to the current and future members of SPA to enable them to collectively negotiate new model terms of engagement with the Australian Directors’ Guild.

APPLICATION FOR INTERIM AUTHORISATION

The ADG, including all current and future members of the ADG, seeks an interim authorisation to continue collectively negotiating its model agreement for Television Series and Serials, on behalf of its current and future members, with Screen Producers Australia (SPA). This application for interim authorisation is intended to give effect to a continuance of conduct agreed under ACCC Authorisation A91499.

Negotiations for a new Directors TV Series and Serials Agreement (Scripted) commenced several years ago. There were numerous interactions between the two organisations with significant, detailed and highly relevant information exchanged throughout the course of negotiations. This enabled the ADG (and SPA) members to gain a much more informed and relevant view on appropriate standards with a number of critical deal points agreed to early in 2020. Discussions were unfortunately suspended during the pandemic.

The ADG and SPA are now in a position to recommence negotiations and finalise the first model terms agreement for directors and on conclusion commence negotiations for a similar model agreement for directors of feature film content. It would be unfortunate and detrimental to negotiations and to the industry as a whole for an agreement, which is well-advanced, to be delayed further and lose considerable momentum and goodwill.

Explanation for late lodgement

The Pandemic caused very substantial screen industry disruption and the ADG and SPA were both significantly impacted. The impact to staffing and priorities resulted in a reduced capacity to engage with agreement negotiations. A number of SPA staff were replaced, and its numbers of staff were reduced. Similarly, the ADG executive director resigned late in 2020 and her replacement was brought on in November, after the expiry of its previous ACCC Authorisation.

Consequences of no interim authorisation

Without an interim authorisation the ADG is concerned that overdue negotiations for recommended basic terms and conditions that were delayed by Coronavirus cannot resume, notwithstanding that the ADG is not seeking interim authorisation to give effect to new arrangements before ACCC’s final determination. If no interim authorisation is granted this will disadvantage ADG members and SPA members who would benefit from this authorisation.

APPLICANT DECLARATION BY

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertake(s) to advise the ACCC immediately of any material change in circumstances relating to the application.

The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the *Criminal Code* (Cth).

Signature of authorised person

EXECUTIVE DIRECTOR

A rectangular grey box used to redact the signature of the authorised person.

Alaric McAusland
This 25th day of May, 2021



Contact officer: Tom Whitby
Contact phone: (02) 6243 1012

23 Marcus Clarke Street
Canberra ACT 2601
GPO Box 3131
Canberra ACT 2601
tel: (02) 6243 1111

26/02/2021

exemptions@acc.gov.au
www.acc.gov.au

Alaric McAusland
Executive Director, Australian Directors' Guild
Level 2, Suite 28, 330-370 Wattle Street
Ultimo NSW 2007

By Email: alaric@adg.org.au

Dear Mr McAusland

Fee waiver request

I refer to your letter of 8 February 2021 to the Australian Competition and Consumer Commission (**ACCC**) in respect of a proposed application for authorisation. In your letter you have requested that the ACCC grant a fee waiver in respect of the proposed arrangements.

In particular, you have requested that the fee to be paid in relation to an application for authorisation to be lodged by Australian Directors' Guild (**ADG**) be waived in whole.

In support of your request, among other things, you submitted that:

- (a) ADG is a not-for-profit organisation, and
- (b) The COVID-19 pandemic has had a significant impact on ADG's main income streams.
You also provided information regarding ADG's accumulated cash and asset reserves.

Having regard to the above, as a person authorised to assess fee waiver requests for and on behalf of the ACCC, I wish to advise that the application fee to be paid by ADG has been waived in whole. No application fee will apply with respect to the application for authorisation to be lodged by ADG.

This decision will remain in force for a period of three months. The three month period will expire on 26 May 2021.

A copy of this letter should accompany the application for authorisation to be lodged by ADG. The cover letter to the application should mention that a letter from the ACCC regarding a fee waiver is enclosed with the application. The application together with this letter will be placed on the public register at that time.

If the application for authorisation is lodged by SPA after 26 May 2021, a full application fee of \$7500 will apply unless you make, and the ACCC approves, another fee waiver.

Should you have any queries in relation to this matter, please do not hesitate to contact Tom Whitby on (02) 6243 1012.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'D Jones', with a stylized flourish at the end.

David Jones
General Manager
Competition Exemptions

'Restriction of Publication of Part Claimed'

The Australian Directors' Guild Limited

Board Meeting Minutes for Thursday 20th May 2021

Meeting opened at 5:30pm.

Director Attendees via Zoom Video Conference:

Anna Broinowski	(Vice President, Documentary),
Jonathan Brough	(Vice President, Television Drama)
Pearl Tan	(Vice President, Digital/New Media)
Nadia Tass	(Vice President, Feature Film)
Stephen Wallace	(Treasurer)
Rowan Woods	(Director)

Staff Attendees:

Alaric McAusland	Executive Director
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Apologies:

Samantha Lang	(President),
Daina Reid	(Secretary)

MINUTES:

The Board agreed for Rowan Woods to act as Chair for the meeting with Samantha Lang an apology.

FOR APPROVAL:

1.1 Previous Minutes from 24th February 2020

Previous minutes from 24th were circulate and amended to reflect that Jonathan Brough was an apology.

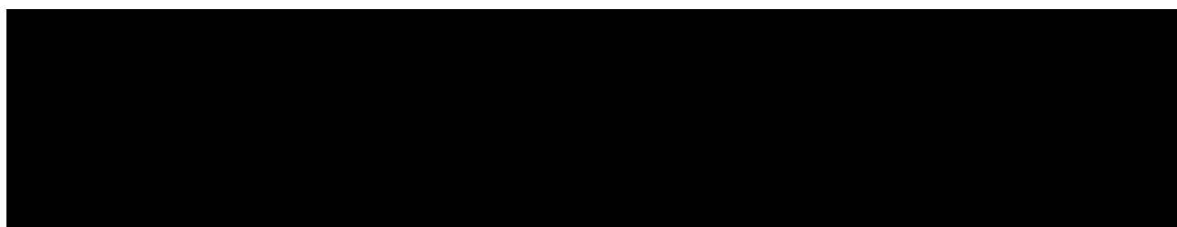
Previous Minutes Moved by: Rowan Woods

Previous Minutes Seconded by: Stephen Wallace

FOR DISCUSSION:

2.1 Membership

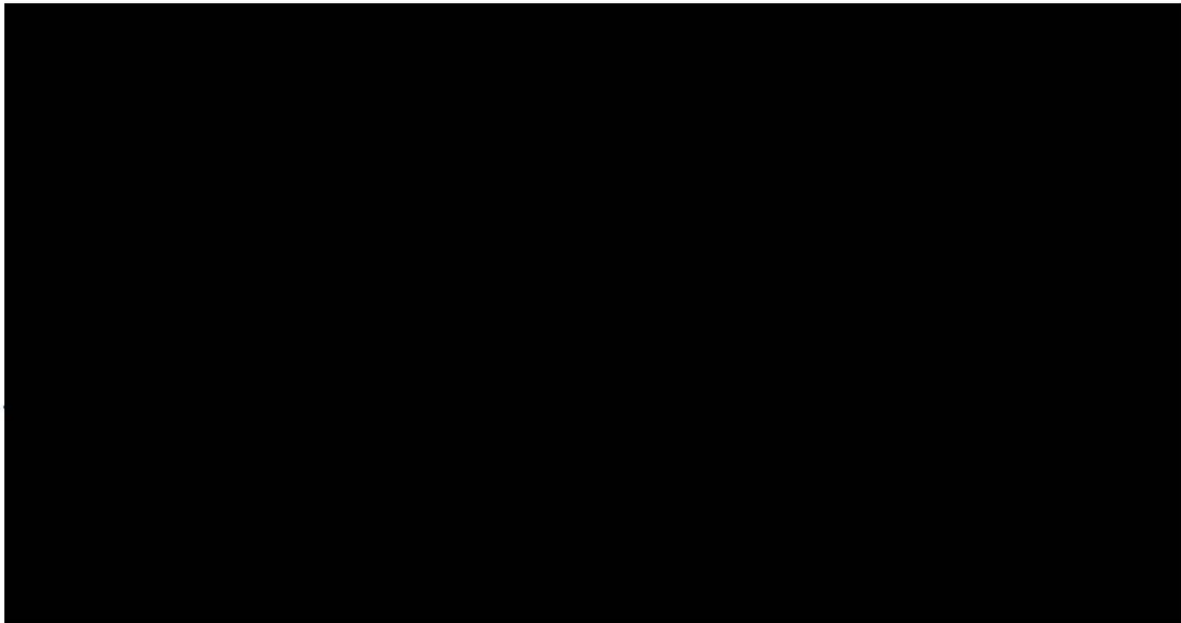
2.1.1. Member Renewal Update



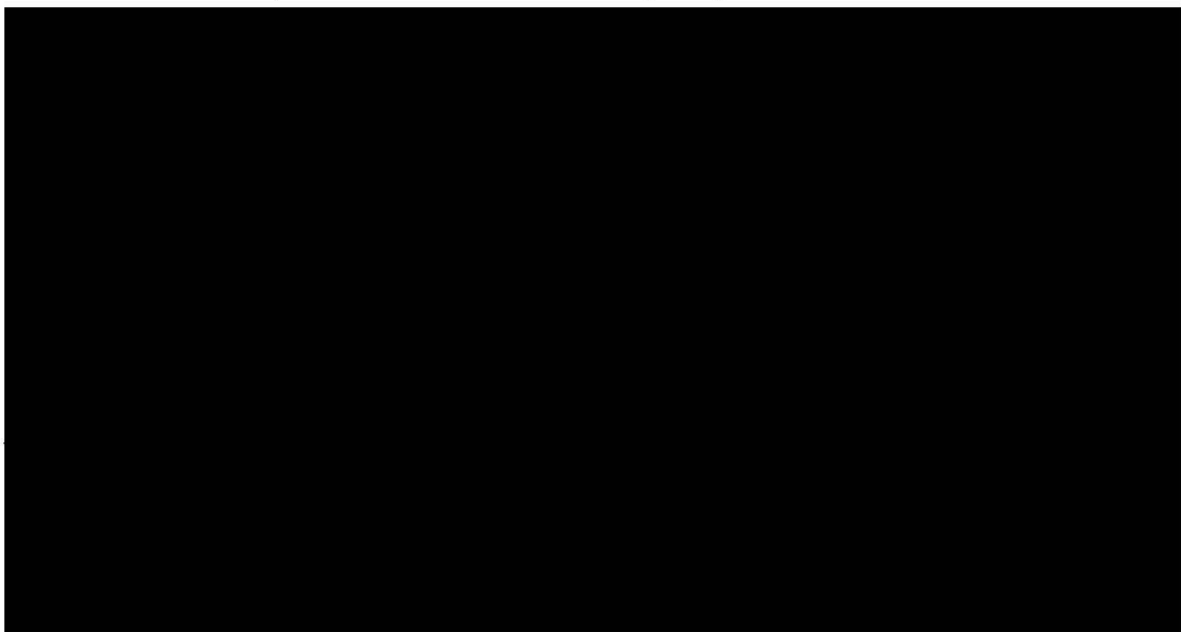


2.2 Member Development & Partnerships

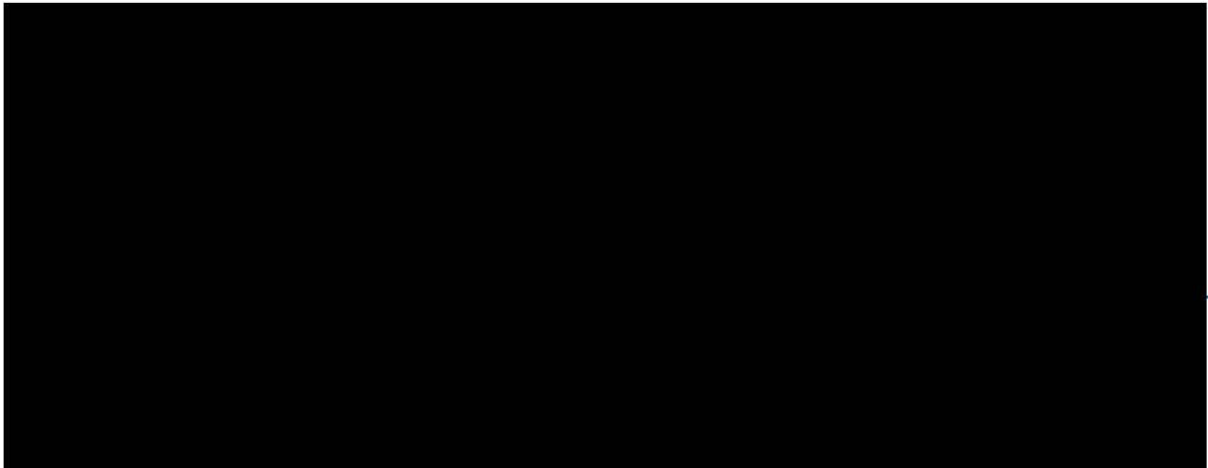
2.2.1 Enterprise Jobs – Locations Offset Focus



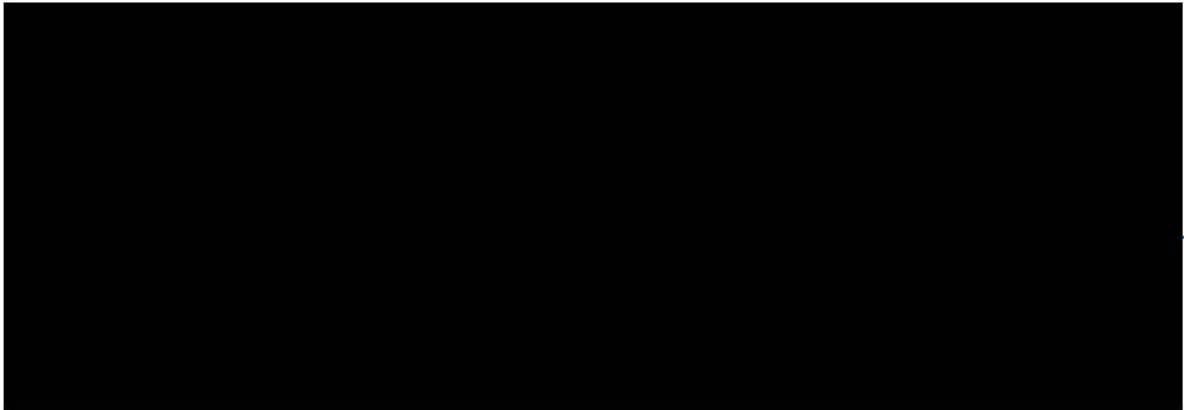
2.2.2 3-Year Pathways Screen Australia Funding Proposal



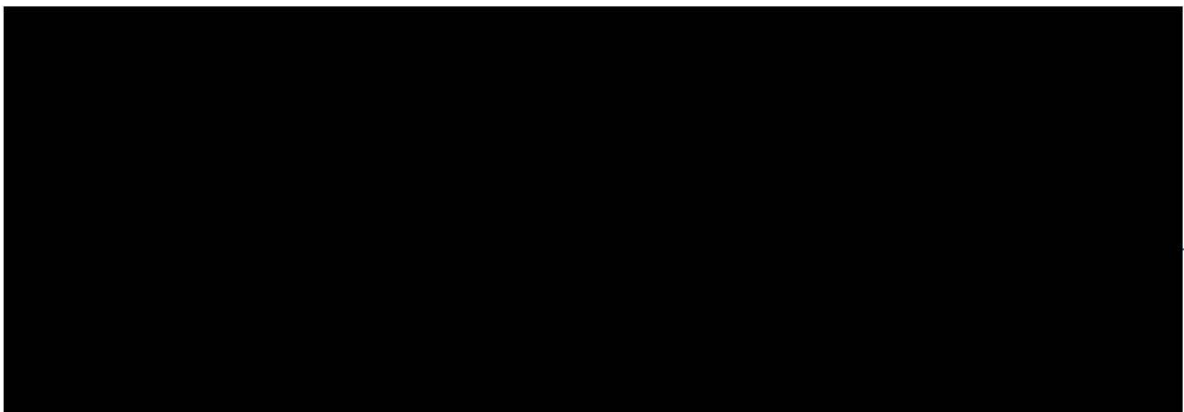
2.2.3 Equity Foundation – Diversity Showcase



2.2.4 Screenworks – Directors Intensive



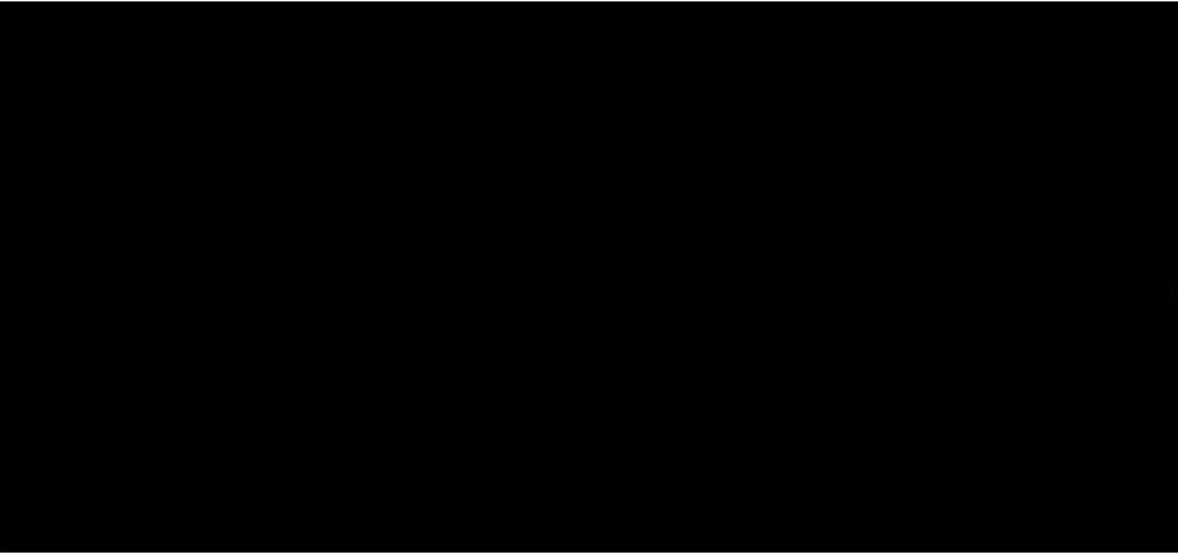
2.2.5 Australians in Film – Industry Partnership



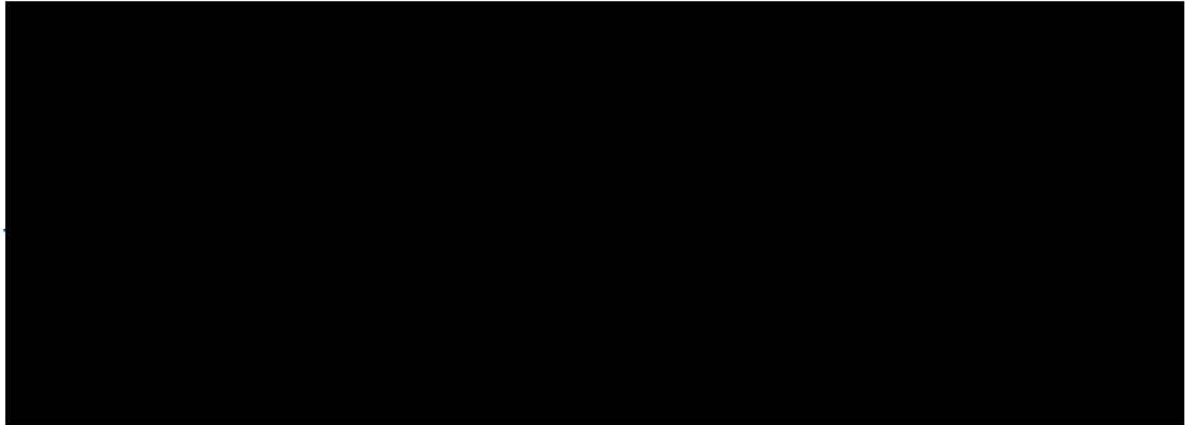
2.3 Events Program

2.3.1 Awards Date & Venue Partner

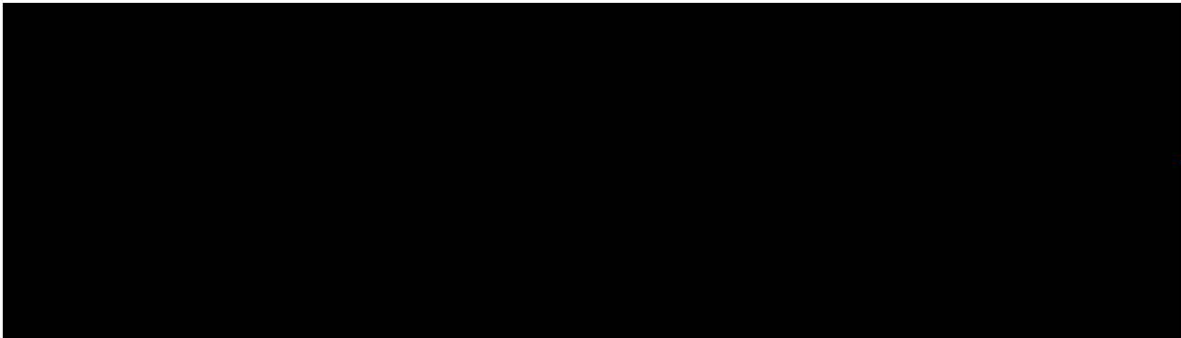




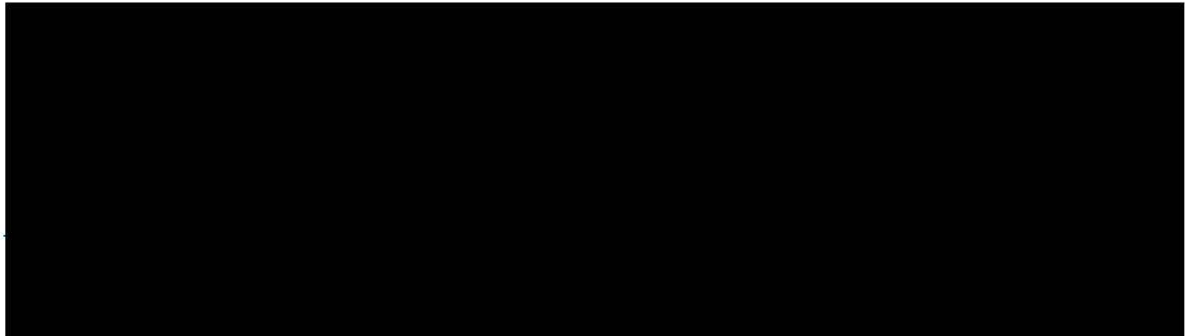
2.3.2 ADG-40 'First-Hand' Webinars



2.3.3 ADG-40 Fund Raiser



2.3.4 State Based Mini-Conference Schedule





2.4 Digital & Communications

2.4.1 Website/Member Portal Launch Timetable



2.5 IR & Industry/Government Advocacy

2.5.1 Media Reform Green Paper ADG & Joint Guild Submissions [\(Sent separately\)](#)



2.5.2 Production Levy Campaign





2.5.3 SPA TV Agreement - ACCC Authorisation

Alaric noted that it was discussed at the previous board meeting that the previous collective negotiations on behalf of ADG members for model agreements with SPA were permitted by the ACCC under authorizations for SPA/ADG which expired last September. Alaric noted that it was resolved to progress ADG's new application for authorization on similar grounds at that time. Alaric advised that an ACCC determination had subsequently been published for SPA and a fee waiver had been received for ADG's proposed new application. Alaric advised that application drafting continued with Greg Duffy and included changed scope reflecting the converged marketplace for feature length content where TV/feature film directing was interchangeable. This was included with a view to finalizing the draft TV agreement before progressing to re-engaging on a similar feature film model agreement. Alaric also noted the application requested a 10-year validity given the time it takes to negotiate the complex agreements and to avoid additional costs and administration for subsequent applications.

Resolution: The Board noted the Executive Director's report and resolved that the current draft application should be finalized as discussed and submitted prior to the fee waiver deadline to allow formal negotiations with SPA to recommence

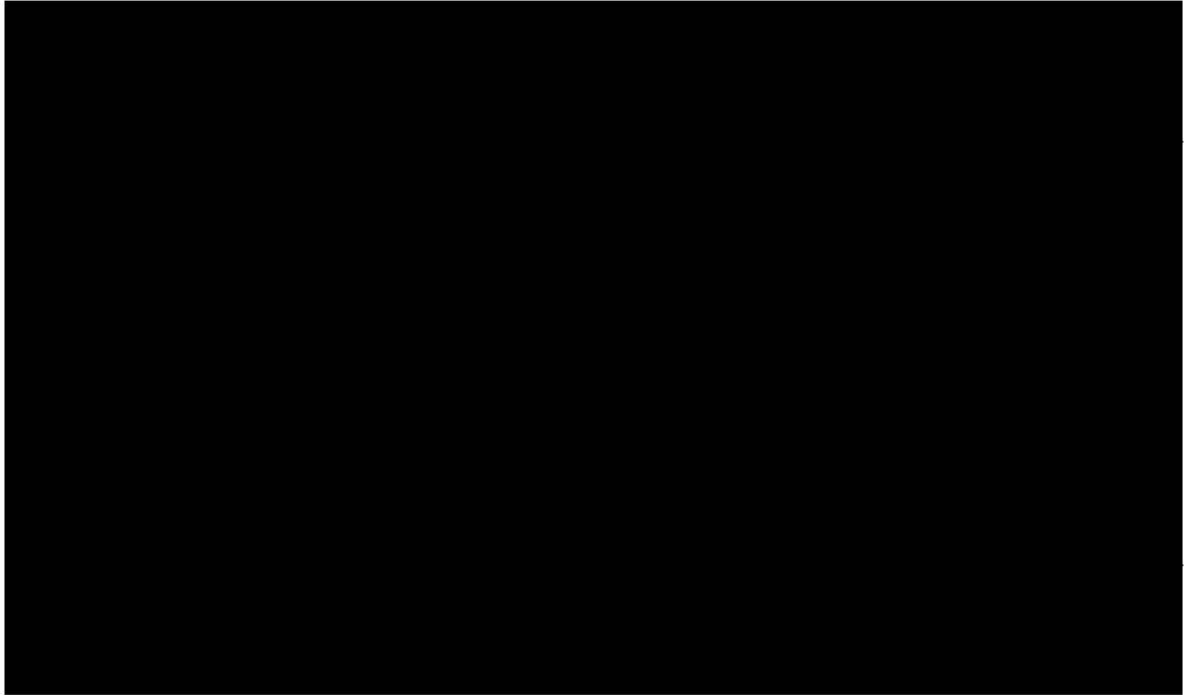
Action: Executive Director to finalize submission with Greg Duffy and submit

2.5.4 Film & TV Rates Cards

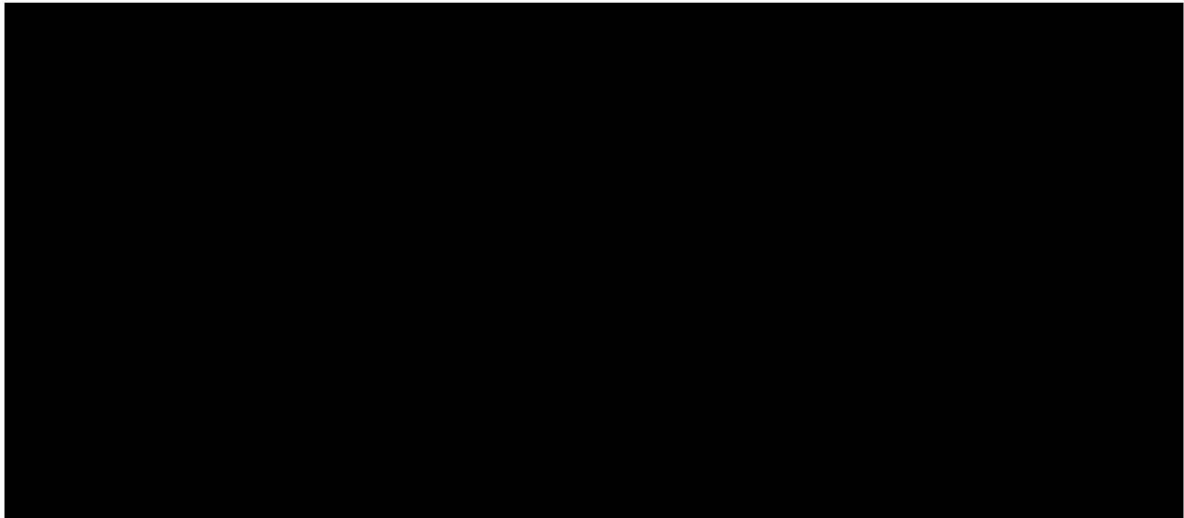


2.6 Finance & Admin

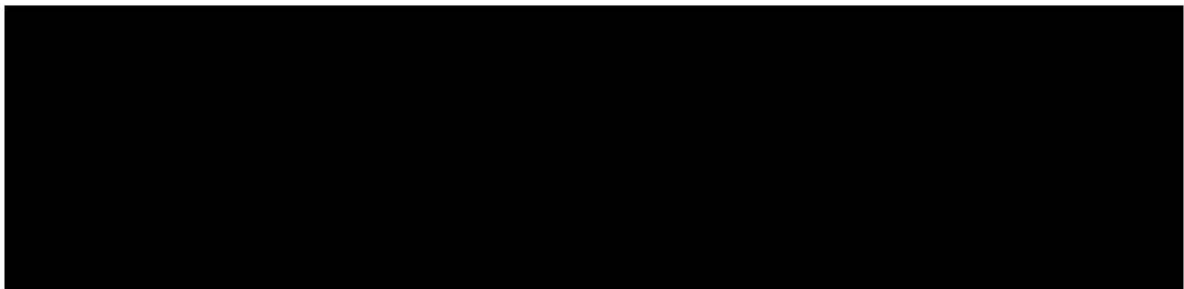
2.6.1 2020 Delayed Election Update



2.6.4 Sponsorship – Corporate Engagement / Sponsorship Tiers



2.6.3 Cashflow Forecast & YTD Budget Report





2.6.5 ASDACS Cultural Funding Requirements/timing



2.7 Any other business

Next Board Meeting Thursday 29th July, 5.30pm

2.7 Any other business

Signed,



Rowan Woods

Interim Chair/Director

25th May 2020