

27 September 2017

## **Screen Producers Australia's submission to the Australian and Children's Screen Content Review**

Screen Producers Australia was formed by the screen industry to represent large and small enterprises across a diverse production slate of feature film, television and interactive content.

As the peak industry and trade body, we consult with a membership of more than 450 production businesses in the preparation of our submissions. This consultation is augmented by ongoing discussions with our elected Council and appointed Policy Working Group representatives. Our members employ hundreds of producers, thousands of related practitioners and drive more than \$1.7 billion worth of annual production activity from the independent sector.

On behalf of these businesses we are focused on delivering a healthy commercial environment through ongoing engagement with elements of the labour force, including directors, writers, actors and crew, as well as with broadcasters, distributors and government in all its various forms. This coordinated dialogue ensures that our industry is successful, employment levels are strong and the community's expectations of access to high quality Australian content have been met.

Screen Producers Australia welcomes the opportunity to provide a submission to the Australian and Children's Screen Content Review.

**Screen Producers Australia has made 12 recommendations in response to the consultation paper.**

For further information about this submission please contact James Cheatley, Director, Policy and Government Relations  
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## Executive Summary

Screen Producers Australia has identified market failure for Australian producers of film and television content. In the market for television content, this market failure is an inherent feature of the market, which is set up by government itself through legislation. This market failure expresses itself through buyers seeking “more for less” from producers. It is incumbent, therefore, on government to address this market failure by ensuring fair contracting in the market. Without government action to address market failure, there will be an accelerating decline in the number of sustainable production businesses, which in turn will have an impact on jobs, skills development, the diversity of Australian content and hasten the brain drain to larger markets.

SPA has made 12 recommendations that will ensure the viability, sustainability and strength of the independent production sector. These recommendations relate to both demand and supply side issues. Demand-side interventions in the market and have been demonstrated to be successful in achieving their public policy objectives of ensuring Australian audiences have access to quality Australian content. Yet these demand-side interventions are not without problems. Among other issues, the ABC and SBS are not subject to specific obligations to local content and commercial broadcasters are allowed to substitute New Zealand content for Australian content in acquitting their local content obligations. SPA has made recommendations to evolve local content obligations to include new market entrants, who extract significant revenues from the Australian market.

With regard to supply-side issues, the producer offset has been a hugely successful source of secure funding for Australian productions. However, offset legislation has not been significantly updated since it was introduced and some modernisation is required to make its scope platform-agnostic. SPA recommends harmonising the producer offset at 40 per cent and returning the producer offset to its original policy intention – that it is for producers, not broadcasters.

SPA also makes recommendations relating to increased trade through more and better co-production arrangements, greater coordination of trade strategy between state, territory and federal governments potentially through the Cultural Ministers’ Council, and reforms to the Foreign Actor Certification Scheme.

SPA notes that the consultation paper has not identified any specific problems that warrant government attention or proposed any reform options. SPA is concerned, given the stated timeframe for a decision on any new policy framework, that industry will not have an opportunity to be consulted properly on any new policy framework. SPA suggests that the timeframe for decision making include an adequate consultation period with those affected by any proposed new policy framework.

# Introduction

Screen Producers Australia (SPA) was formed by the screen industry to represent large and small enterprises across a diverse production slate of feature film, television and interactive content. Our members make Australian stories and sell them to the world. Our members employ hundreds of producers, thousands of related practitioners and drive more than \$1.7 billion worth of annual production activity from the independent sector.

SPA welcomes the opportunity to provide a submission to the Australian and Children's Content Review. SPA notes that the consultation paper has not identified any specific problems or proposed any reform options. SPA is concerned, given the stated timeframe for a decision on any new policy framework, that industry will not have an opportunity to be consulted properly on any proposed new policy framework. SPA suggests that the timeframe for decision making include an adequate consultation period with those affected by any proposed new policy framework.

## **Recommendation 1**

**Screen Producers Australia recommends the Government commit to further consultation on options for any proposed new policy framework.**

## Part One – *Plus ça change*

In 1953, the Menzies Government established a royal commission to inquire into whether Australia should adopt television, the then new mass market communications technology. Returning to the Paton Commission's report provides valuable insight into the issues faced by the industry today.

Back then, radio dominated communications and radio licensees and newspaper proprietors sought access to any new television licences. A key concern of the Paton Royal Commission, as with this review process, was ensuring Australian audiences were delivered quality Australian content. However, at that time there was not domestic industry capable to deliver this desired outcome. There was a small existing film industry, but that was deemed insufficient to achieve quality television programming. A clear demarcation emerged early on between those who sought television licences and the local production industry.

On regulation, the Commission noted:

We were urged by a number of witnesses, mainly representing commercial broadcasting or allied interests, to recommend that licensees of commercial television stations should be left free to operate their services within the framework of the general law, free from censorship or arbitrary control, on the grounds that the development of the art of television broadcasting would thus be best promoted, and that interference with freedom of expression, which is a violation of democratic principles, would be avoided.<sup>1</sup>

Those that argued for regulation of new television broadcasters did so on the basis that cultural outcomes would not be achieved from a *laissez faire* approach:

On the other hand ... the best, in the view of these witnesses, that could be expected from self-regulation was that programmes would not perhaps offend against good taste, but that the very nature of commercial operation, depending as it does upon the financial support of advertisers who must of necessity satisfy the greatest number of viewers, would make it impracticable for commercial stations to produce programmes at any higher than minimum levels. The danger, therefore, was that in producing for the majority, the responsibility of operators to raise the levels of public taste and the public standards would be forgotten, and the medium would be reduced to mediocrity, or worse. Other factors that would tend to lower standards would be the quantity of Australian talent available (especially if long hours of entertainment were to be provided), and the pressure that the high cost of television would exert to allow the introduction of cheap and inferior quality programmes from overseas sources.<sup>2</sup>

To achieve these cultural outcomes, some witnesses argued for a limit on the quantity of foreign content,<sup>3</sup> while the Radio and Television Writers' Guild

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<sup>1</sup> At 376, The same arguments echo through the ages and now find a home in Silicon Valley.

<sup>2</sup> at 383

<sup>3</sup> at 400

recommended “the importation of filmed or kinescoped television shows from Britain and America should be rigidly controlled. The Guild maintained that local television stations would be eager to reduce production costs by importing cheap programmes while overseas programme agencies and television film producers would be anxious to offset their production costs by making Australia a dumping ground for obsolete films.”<sup>4</sup>

The idea of local content quotas on commercial television broadcasters was hotly debated, as it is seven decades later:

Some witnesses claimed that the objective of encouraging local talent could be achieved by placing an obligation on television operators to broadcast a fixed proportion of programmes of Australian origin whilst other witnesses expressed the opinion that any fixed quota would deny to the commercial operator the degree of flexibility essential for the success of his venture.<sup>5</sup>

Mr C. Moses of the ABC argued that the “only appropriate means of guarding against an excessive use of imported material is to stipulate that there shall be a minimum percentage of Australian material in all programmes.”<sup>6</sup>

In its conclusion, the Commission made a clear link between industry capability and audience.

It is clear that it will be some considerable time before the programme production resources in this country can be built up to the point of making an effectively sustained contribution to the almost insatiable demand which an expanding television service will create for originality and variety in programmes, although we agree that Australian producers, writers and artists should be given every encouragement and opportunity to develop and use their talents in this new field.<sup>7</sup>

While the Commission agreed that the argument for an imposition of a local content quota was valid, the lack of industry capability to meet a volumetric quota was the reason provided for not proceeding with that recommendation.<sup>8</sup>

An unregulated, free market led to a situation in 1961 where just one per cent of all drama on Australian television was Australian produced. The other 99 per cent was imported.<sup>9</sup>

In providing this historical context, some clear propositions may be offered:

- There is strong audience demand for quality Australian content.
- Industry capability is a key consideration to meeting the demand for Australian content.

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<sup>4</sup> At 401

<sup>5</sup> at 405

<sup>6</sup> at 407. This may be contrasted with the ABC’s current position on quotas. See response to Question No 146 of Budget Estimates May 2017.

<sup>7</sup> At 302

<sup>8</sup> at 410.

<sup>9</sup> *Report from the Senate Select Committee on the Encouragement of Australian Productions for Television*, 1963.

- Industry capability is informed by demand side interventions.
- Quantity of production will provide the circumstances for quality production.
- In the absence of demand side interventions, the market will not deliver local content of a cultural nature adequate to satisfy audience demand.
- Those who are regulated will seek deregulation, those who are not regulated will actively resist regulation.

## Part two – Market outline and report

At SCREEN FOREVER in 2016, in a speech titled *The Good, the Bad and the Possible*,<sup>10</sup> Graeme Mason identified some market realities as they relate to Australian producers:

- “Television has many specific challenges, at least in scripted and documentary/factual, the areas Screen Australia is involved in. *For a start, buyers want more for less money.*”
- “But judging the deals coming to us, some producers seem to have been coerced into putting aside business realities.”
- “Some producers are also being railroaded into asking Screen Australia to sweep aside long-held terms.”
- “Many film and TV producers – experienced and not – expect and want us to police deals.”

The market for television content in Australia is an oligopsony. An oligopsony – like its inverse, an oligopoly (few sellers, many buyers) – is a form of imperfect competition. Sellers can be at a major disadvantage in an oligopsony. A large number of producers<sup>11</sup> compete with one another for access to spectrum, a public good, which is controlled by a small number of broadcasters.

The disadvantages of an oligopsony include:

- Buyers can set sellers off against each other, thereby lowering the purchase price paid to all sellers.
- Buyers can dictate costs of sellers through imposing exact specifications relating to quantity, quality, suppliers, wages, innovation and rights.
- Buyers are able to pass on risk inherent in the product.

The market has come under significant pressure to compete with Google and Facebook for advertising revenue.<sup>12</sup> For audience, Netflix, Stan and other new market entrants continue to grow significant subscription bases. For example, since entering the market in 2015, Netflix has nearly 3 million Australian subscribers.<sup>13</sup> By way of comparison, Netflix launched in France a year earlier than in Australia and has two thirds that number of subscribers in that territory.<sup>14</sup> These new market

<sup>10</sup> <https://www.screenaustralia.gov.au/getmedia/aa9d4041-f0fd-45d2-8764-633d44d930d4/SPA-2016-speech.pdf>

<sup>11</sup> 2819 film and production businesses in 2015-16, see Australian Bureau of Statistics, 8679.0 - Film, Television and Digital Games, Australia, 2015-16.

<sup>12</sup> Google and Facebook account for 85 per cent of new online advertising spend and 2017 is the year that globally, online advertising spend has overtaken television advertising spend: [Kleiner Perkins Internet Trends 2017](#). The Government has recently announced an ACCC inquiry into the dominance of Google and Facebook in the advertising market.

<sup>13</sup> <http://www.roymorgan.com/findings/7242-netflix-subscriptions-march-2017-201706080957>

<sup>14</sup> <https://www.broadbandtvnews.com/2017/01/09/france-televisions-top-launch-netflix-rival-producers/>

entrants bring with them a wealth of content to Australian audiences, the vast majority of which is foreign.

These two factors, declining advertising revenues and audience fragmentation have conspired against Australian producers, as Graeme Mason outlines above. The Australian Bureau of Statistics report *Film, Television and Digital Games, Australia, 2015-16* shows between 2011-12 and 2015-16, there has been negligible growth of five per cent in total income for production businesses from \$2.2 billion to \$2.3 billion, while production income is down six per cent over the same period to \$1.6 billion. We have seen this year KEO Films, a UK owned but locally run production company, close its Australian operations, citing difficult market conditions in Australia.<sup>15</sup>

Without government intervention, the market structure and current market conditions will continue to disadvantage Australian producers to the benefit of either international competitors who operate in more favourable market conditions or broadcasters who commission content from producers. This will in turn, disadvantage Australian audiences through a lack of diversity in quality Australian programming. A cohort of strong Australian producers in the market is key to a diversity of quality Australian programming. The key to a strong Australian production sector that supplies the market is producers' capacity to retain the intellectual property in their productions and leverage this through international trade.

## Demand side issues

In the Australian market, there exist three categories of regulated buyer:

- public (ABC and SBS)
- commercial (Channel 7, Channel 9 and Network 10), and
- subscription (Foxtel).

The new market entrants (Stan, Netflix etc.) but these services are not creatures of regulation, indeed barely regulated at all. Their effects on the market are discussed below. This section will distinguish between “regulated buyers” and “unregulated buyers”.

### ***Regulated buyers***

The regulated buyers in the market exist because of government intervention: the ABC and SBS by virtue of their enabling legislation; the commercials and Foxtel owe their existence to licences afforded under the *Broadcasting Services Act 1992* with government thus far supporting commercial broadcasters by restricting the number of commercial broadcast licences to three.<sup>16</sup> With regard to levels of Australian programming, the government has a different approach to regulation depending on the nature of the broadcaster. These regulations are demand-side interventions in

<sup>15</sup> <http://www.screenhub.com.au/news-article/news/television/david-tiley/keo-kod-as-war-on-waste-company-goes-into-the-bin-253947>

<sup>16</sup> Section 37A, *Broadcasting Services Act 1992*.



the market and have been demonstrated to be largely successful, yet not without problems, in achieving their public policy objectives.

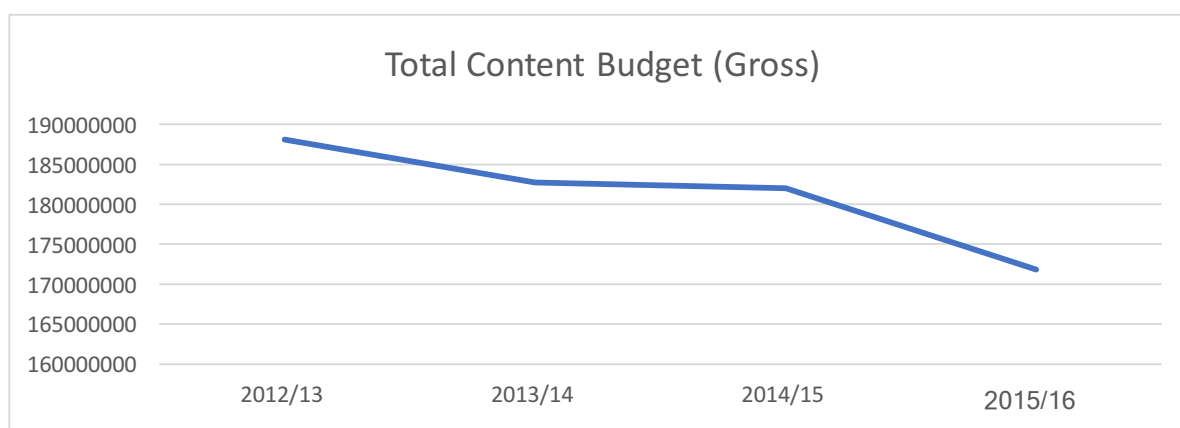
The ABC and SBS are independent of government and the levels of Australian programming is informed by their interpretations of their interdependent charters. Absent any specific obligations to Australian content, the public broadcasters can align their commissions and acquisitions to other priorities.

### ***The ABC***

As the ABC budget has been cut, so has its spend on Australian content. The following tables are reproduced from answers provided to questions on notice from Senator Hanson-Young at the May 2017 Budget Estimates of the Senate Standing Committee on Environment and Communications.<sup>17</sup> Each question referred to budgets for each of the financial years 2012/13 through to 2015/16. Questions and their answers are at **Attachment A**.

*What was the total content budget for ABC Television?*

<b>Total Content Budget excluding: News and Current Affairs, Marketing and Promotions</b>				
	2012/13	2013/14	2014/15	2015/16
Total Content Budget (Gross)	\$188,141,069	\$182,697,801	\$182,027,439	\$171,856,642

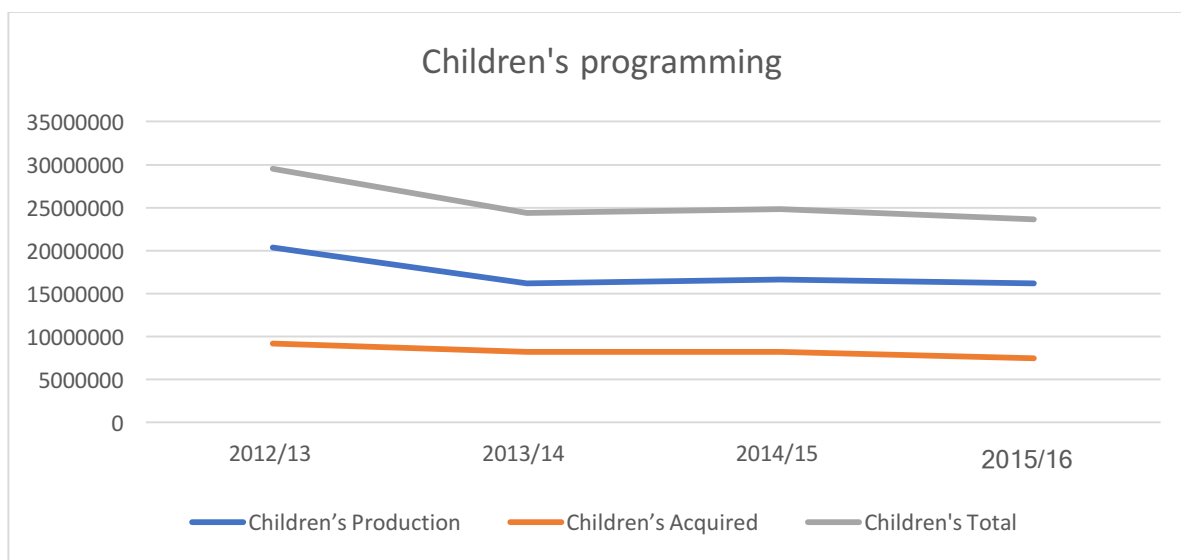


Source: Senate Standing Committee on Environment and Communications

<sup>17</sup> Questions 144 and 145.

### What was the budget for children's programs?

<b>Children's (excluding labour)</b>				
Content Unit	2012/13	2013/14	2014/15	2015/16
Children's Production	\$20,326,000	\$16,191,000	\$16,642,000	\$16,164,036
Children's Acquired	\$9,200,000	\$8,200,000	\$8,200,000	\$7,477,964
<b>Total</b>	<b>\$29,526,000</b>	<b>\$24,391,000</b>	<b>\$24,842,000</b>	<b>\$23,642,000</b>

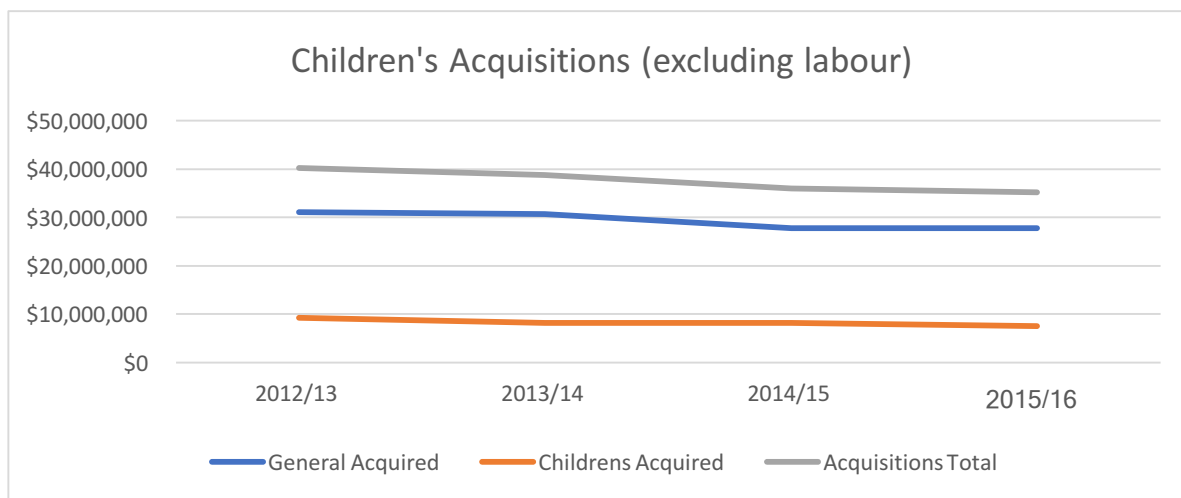


Source: Senate Standing Committee on Environment and Communications

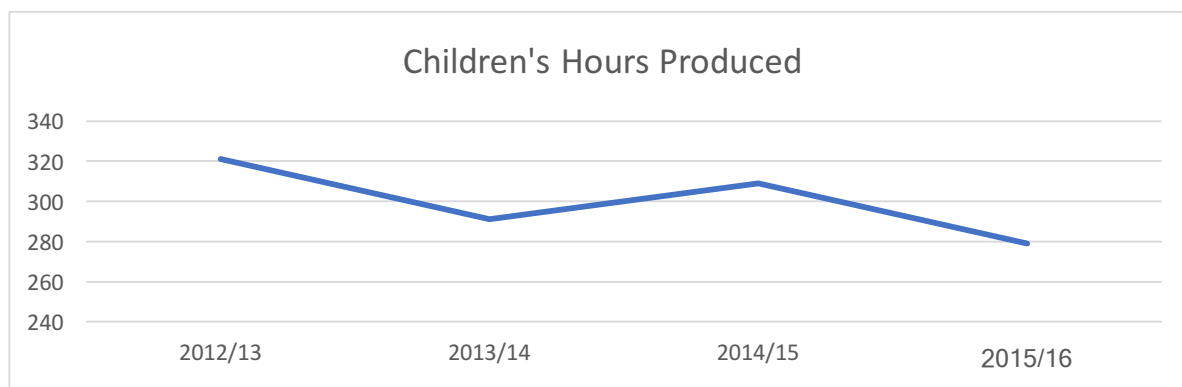
### What was the acquisition budget for children's programs?

With the exception of children's television content, ABC TV does not budget for acquired content by genre.

<b>Acquisitions (excluding labour)</b>				
Content Unit	2012/13	2013/14	2014/15	2015/16
General Acquired	\$31,033,000	\$30,633,000	\$27,740,000	\$27,740,000
Children's Acquired	\$9,200,000	\$8,200,000	\$8,200,000	\$7,477,964
<b>Total</b>	<b>\$40,233,000</b>	<b>\$38,833,000</b>	<b>\$35,940,000</b>	<b>\$35,217,964</b>



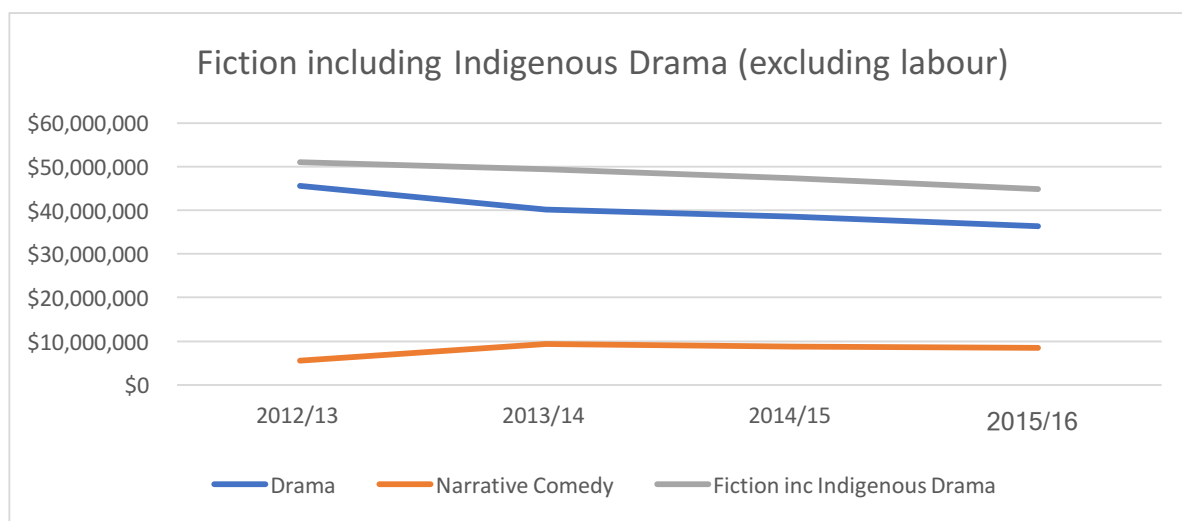
Source: Senate Standing Committee on Environment and Communications



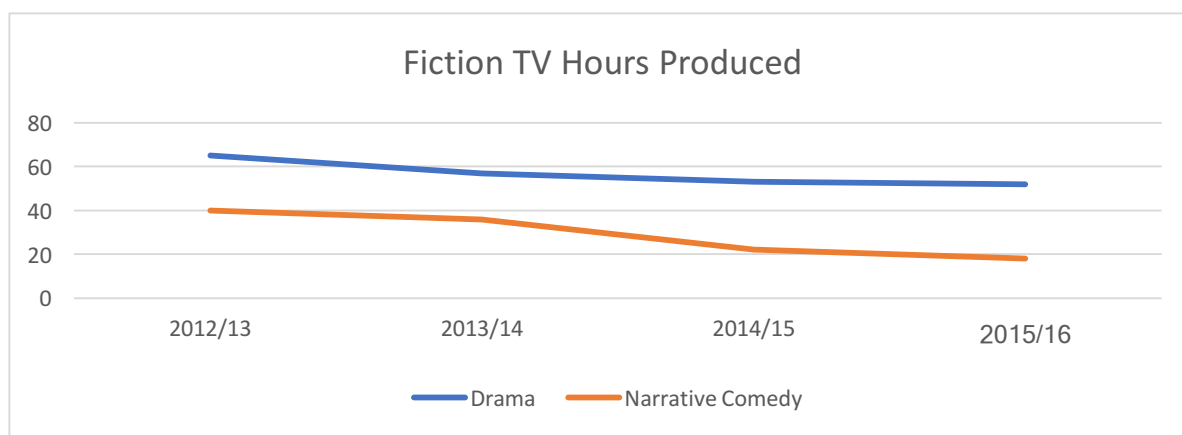
Source: Senate Standing Committee on Environment and Communications

*What was the commissioning budget for fiction?*

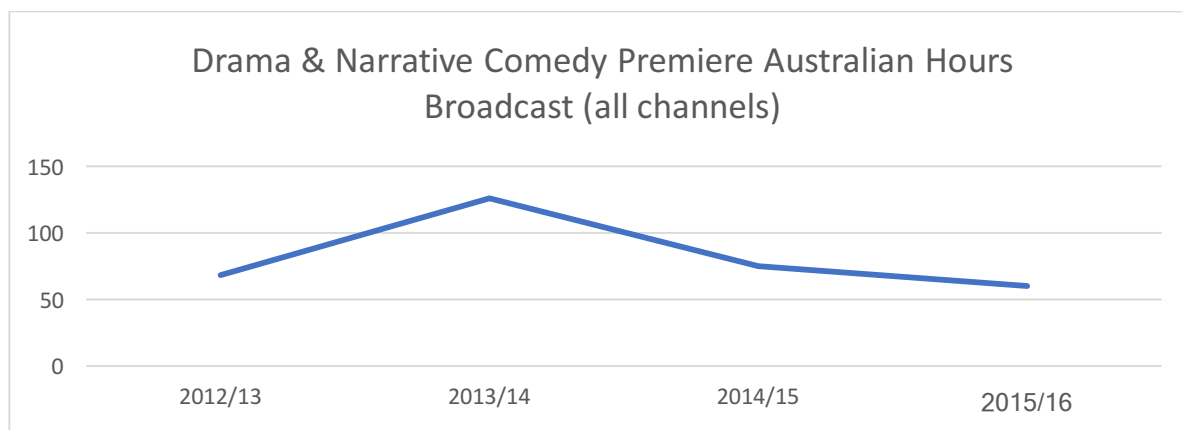
Fiction including Indigenous Drama (excluding labour)				
Content Unit	2012/13	2013/14	2014/15	2015/16
Drama	\$45,592,000	\$40,149,000	\$38,574,000	\$36,324,000
Narrative Comedy	\$5,477,000	\$9,300,000	\$8,800,000	\$8,500,000
Fiction inc Indigenous Drama	\$51,069,000	\$49,449,000	\$47,374,000	\$44,824,000



Source: Senate Standing Committee on Environment and Communications



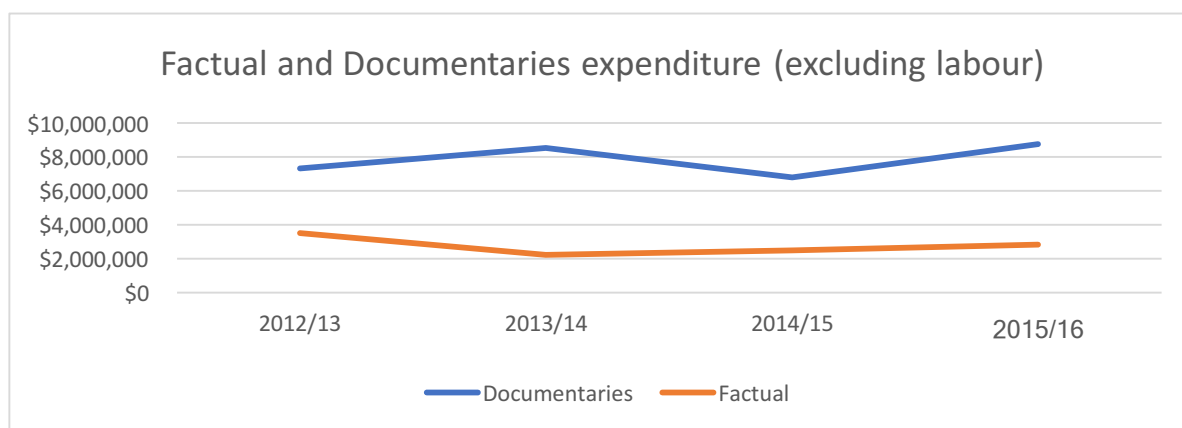
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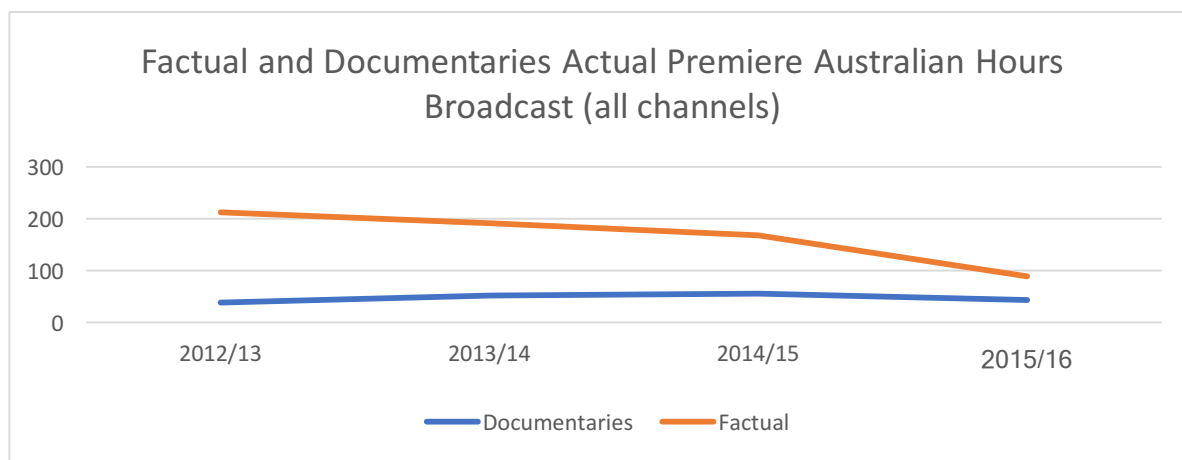
Source: Senate Standing Committee on Environment and Communications

*What was the commissioning budget for factual and documentaries?*

Factual & Documentaries (excluding labour)				
Content Unit	2012/13	2013/14	2014/15	2015/16
Documentaries	\$7,323,000	\$7,622,000	\$6,842,728	\$6,842,728
Factual	\$3,023,866	\$2,533,900	\$2,433,900	\$2,016,900
Total	\$10,346,866	\$10,155,900	\$9,276,628	\$8,859,628



Source: Senate Standing Committee on Environment and Communications



Source: Senate Standing Committee on Environment and Communications

## **Commercial broadcasters**

The commercial broadcasters have local content obligations in the form of quotas (transmission, sub-genre). These quotas exist for a variety of strong public policy reasons: the importance of Australian stories, narrative and expressions on Australian screens, a quid pro quo for privileged access to a public asset, the importance of a local independent production industry of sufficient size and scope that has capability and capacity to supply the quotas.

The Government has made a series of decisions to make commercial broadcasters more competitive. These decisions, which are outlined in the *Screen Production Industry Policy Ledger* at **Attachment B**, include abolishing broadcast licence fees and no action on New Zealand content. An unintended consequence of these decisions is that in making the commercial broadcasters more competitive, it has made the value proposition for in-house production more appealing, to the detriment of the independent sector. In-house production has increased from 44 per cent of all production costs in 2011/12 to 55 per cent in 2015/16.<sup>18</sup>

As pointed out on page 7 of the consultation paper, the commercial broadcasters have mostly met their obligations. The quotas are minimum requirements. The commercial broadcasters comfortably met their overall transmission quotas, but the results for sub-genre quotas for first run drama, documentary and children's programming are less comfortable reading. That the commercial broadcasters' results either barely met the minimum requirements or fell below the minimum requirements indicates their level of commitment to those genres is dictated by those obligations.

As PwC modelling suggested in 2011,<sup>19</sup> if the quotas were removed the level of programming would fall significantly. PwC used three hypothetical scenario that modelled the likely effect of changes to the Australian minimum content requirements.

With regard to the first hypothetical scenario "The minimum content requirements are removed and all other levels of government support remain the same", PwC's modelling provides a cautionary tale. Where Australian content requirements are removed, PwC estimated the volume of Australian content broadcast would fall to approximately 43 per cent. The level of investment in Australian television content would fall approximately 28 per cent and in the short run employment in the television production and broadcasting sector would fall by approximately 2,000 full time equivalent jobs. Documentary production was expected to halve. Subscription broadcast spend on Australian drama was expected to fall to 6 per cent. No children's content was expected to be produced. This is consistent with the effect of removing children's quotas in the UK, where expenditure fell 93 per cent after quotas were removed.<sup>20</sup>

It is an open question whether if the current obligations are removed or reduced they are able to be re-introduced or restated because of Australia's free trade agreement

<sup>18</sup> Australian Bureau of Statistics, 8679.0 - *Film, Television and Digital Games, Australia, 2015-16*.

<sup>19</sup> PwC, *Minimum content requirements research report*, 2011

<sup>20</sup> <http://www.telegraph.co.uk/news/2017/04/17/broadcasters-forced-invest-british-made-childrens-tv-programmes/>

with the United States. Moreover, the Legislation (Exemptions and Other Matters) Regulation 2015, which was introduced without industry consultation,<sup>21</sup> removes parliamentary oversight of any executive decision to remove or reduce the quotas.

The paper notes:

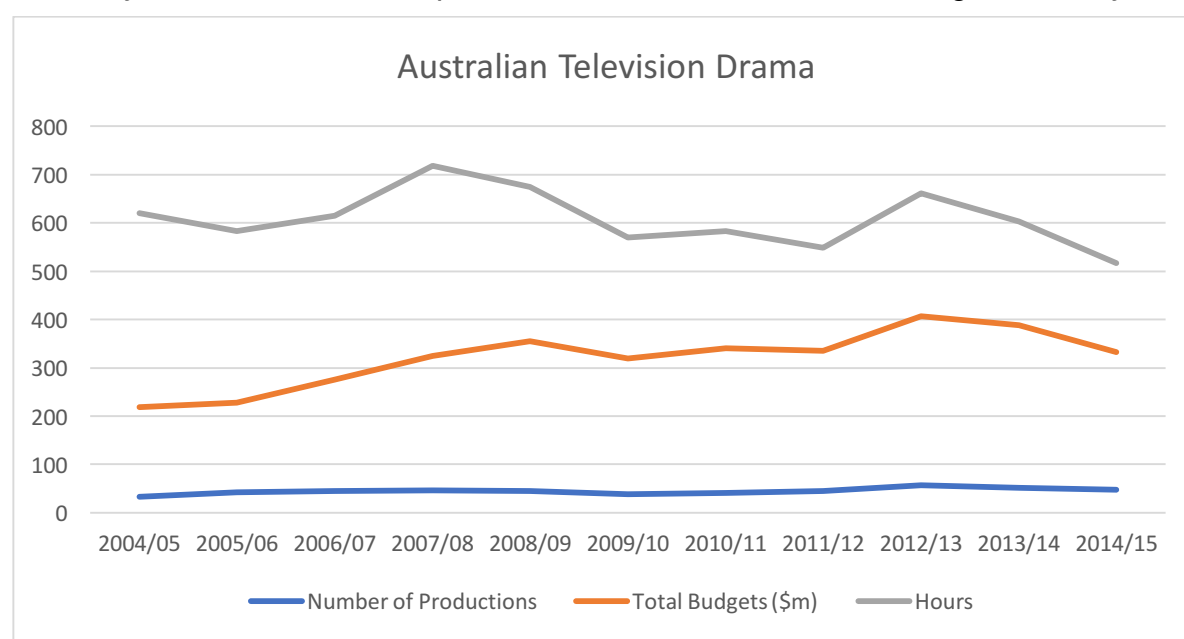
Over the same period [the five years to 2016], while commercial broadcasters' expenditure on Australian programs increased for formats such as news, sport and light entertainment, it remained stagnant or decreased for drama, documentaries and children's programs.

It is not a coincidence that of all the genres, commercial broadcasters' expenditure fell only in those genres that are the subject of quotas. It is indicative of the approach adopted to these "at risk" genres by commercial broadcasters. Should the quotas be removed, an unregulated market will not deliver anywhere near the same level of drama, documentary and children's program that is currently provided.

### ***The past ten years***

As noted in SPA's submission to the Standing Committee on Communications and the Arts Inquiry into factors contributing to the growth and sustainability of the Australian film and television industry, production levels have been static or declining for many genres.

Data sourced from Screen Australia and the Australian Communications and Media Authority shows that levels of production have been inert or slowing for some years.



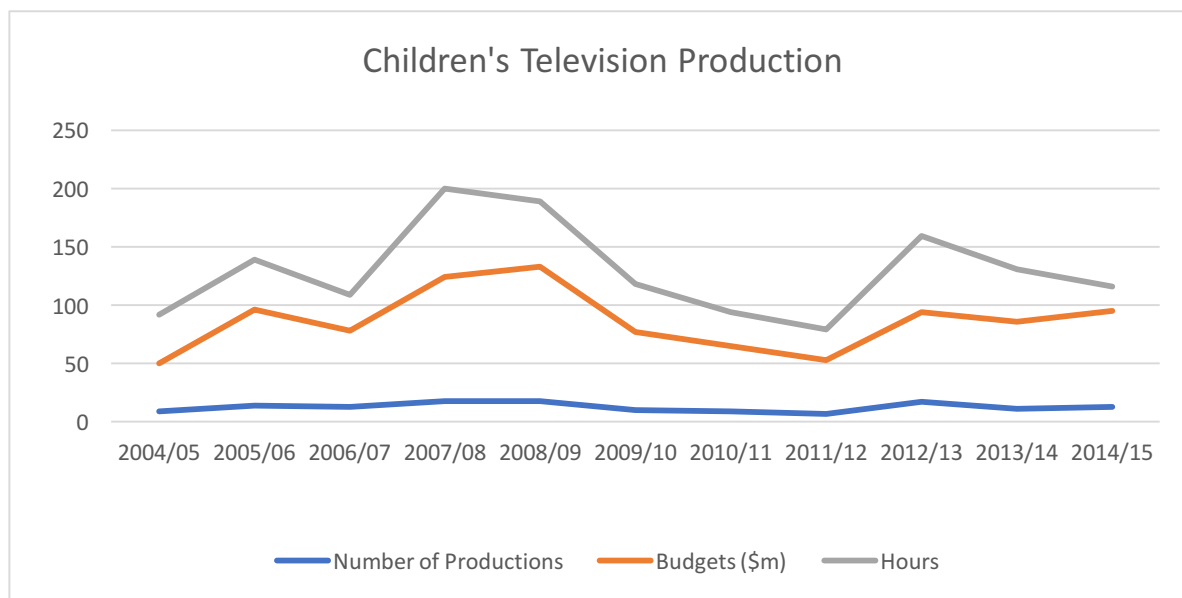
Source: Screen Australia

The above graph shows the number of productions has remained static over the term. Budgets have risen from over the term, but have been on downward trend since 2012-13. The spike in hours in 2007-08 corresponds with the introduction of the offsets and the second spike in 2012-13 follows reforms to the offsets introduced

<sup>21</sup> Question 169 asked by Senator Hanson-Young of the Australian Communications and Media Authority, Questions on Notice, Budget Estimates May 2017.

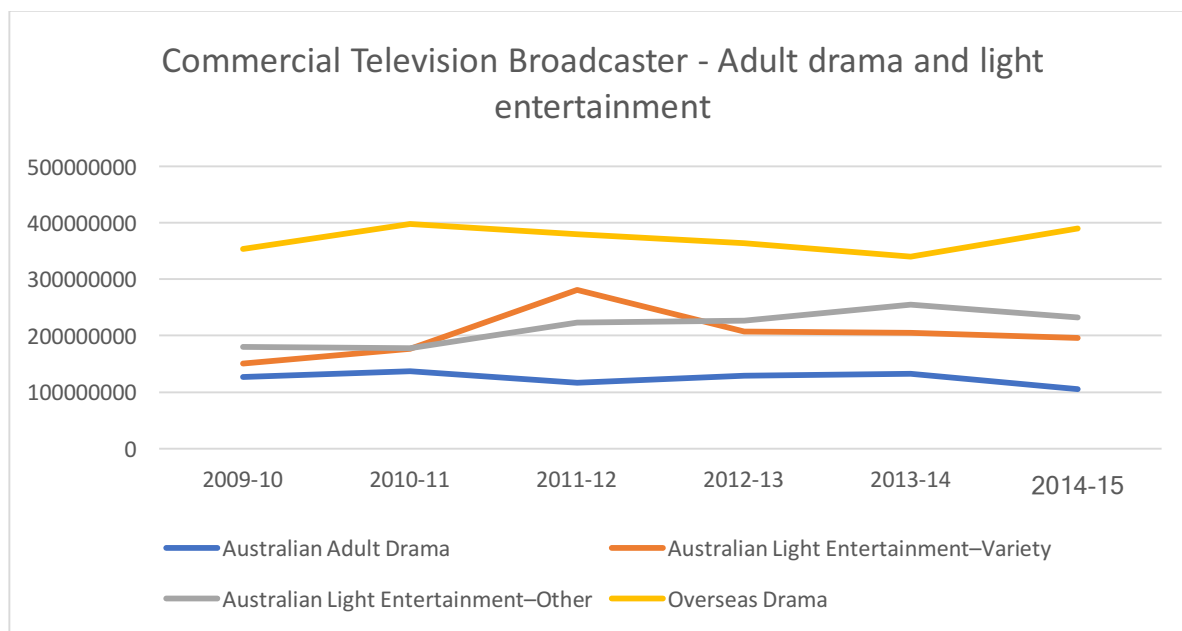
in 2011-12 and corresponds with multi-channeling. However, hours have been on a downward trend over the decade.

The number of television drama productions has not increased in ten years. This is an effect of the quotas and the commercial broadcasters' programming decisions. If it is assumed that the commercial broadcasters will not do more Australian drama than they are obliged, then the number of productions will not increase beyond the obliged level.



Source: Screen Australia

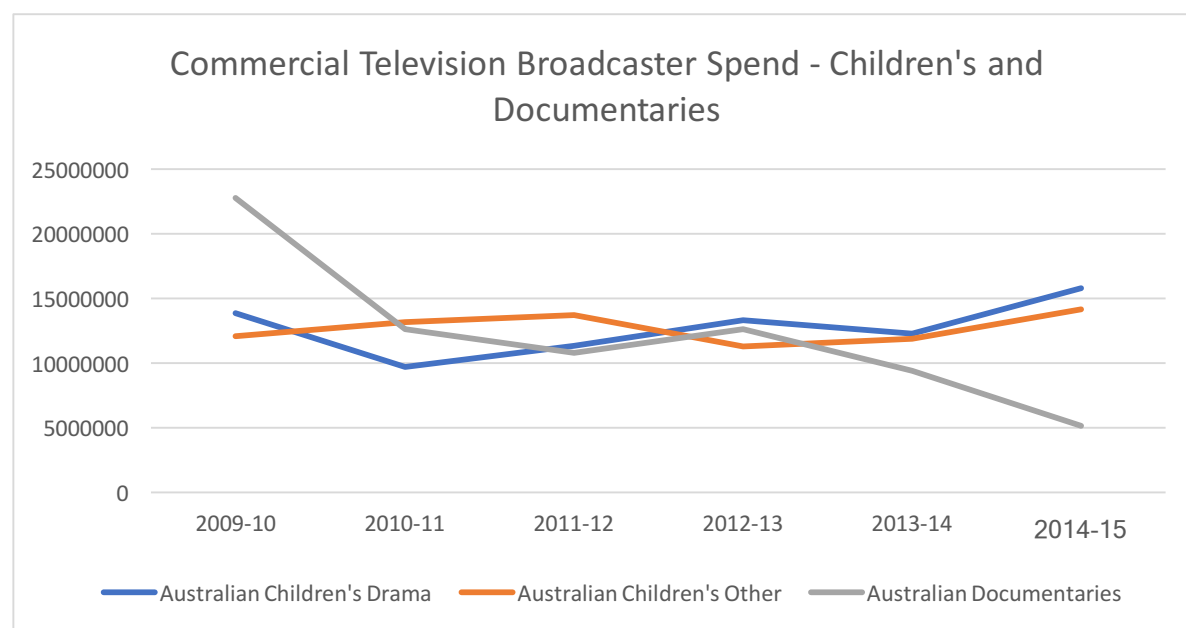
Again, the above graph shows a spike in hours in 2007-08 and in 2012-13, but the number of productions has remained constant across the decade.



Source: ACMA

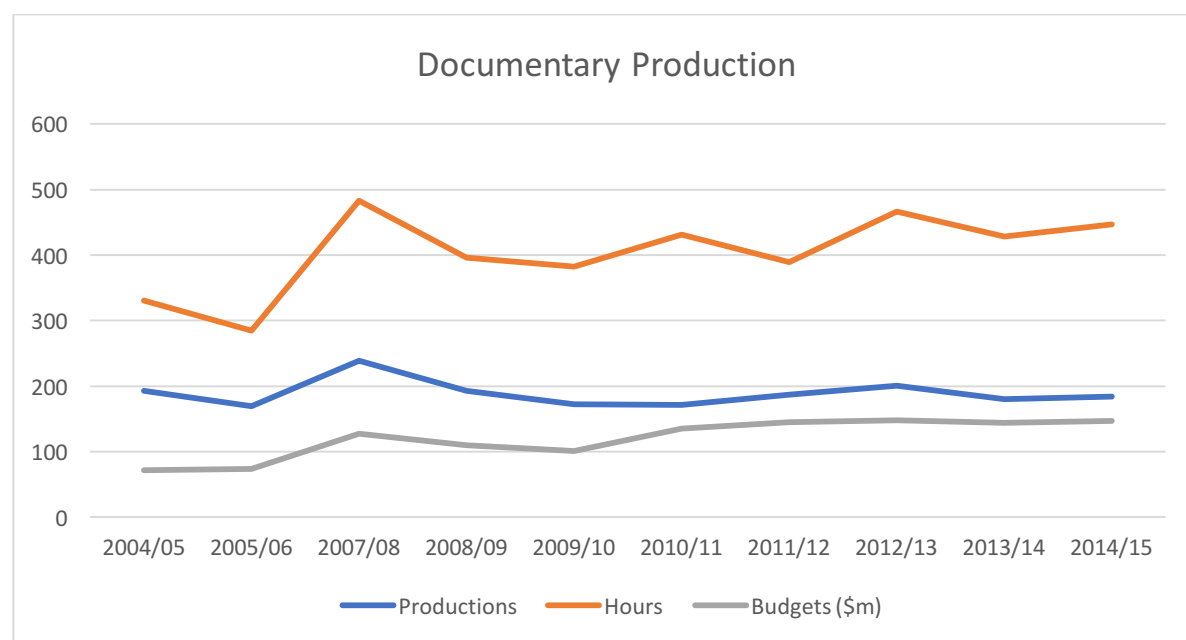
The above graph shows the reported spend by commercial television broadcasters on drama and light entertainment since 2009-10. We see a growth in spend on light

entertainment and since 2012-13 a marked increase in spend on foreign drama and a correlative decreasing spend on adult drama.



Source: ACMA

This graph shows a significant drop in reported spend on documentaries and an increase in reported spend on children's drama by the commercial television broadcasters, which may reflect the spending cycle that is informed by the three-year quota obligations. Children's content is under significant pressure, with all the commercial broadcasters commenting that they would like to see their obligations to commission and broadcast children's content reassessed or removed.<sup>22</sup>



Source: Screen Australia

<sup>22</sup> Mitchell Bingemann, "Kids TV content under federal government review", *The Australian*, 27 February 2017.



Again, the above graph shows the spike in production and hours for documentaries in 2007/08 has levelled out in the subsequent years, while budgets rising.

### ***How can quotas be met while expenditure falls?***

There are two main reasons why quota obligations can be met while expenditure can remain “stagnant or decrease” for drama, documentaries and children’s programs: the increasing use of New Zealand content to acquit Australian content obligations and competition issues determined by the structure of the market.

#### ***New Zealand content***

The increasing use of New Zealand content to acquit Australian content obligations is not included in the table. The availability of cheap second-run NZ content to acquit first-run Australian content obligations means Australian producers are competing with NZ producers at a price point that is uncompetitive. This is on the basis that the content is either purchased in its second window after airing in New Zealand or because the cost of production in New Zealand is often cheaper (labour costs are lower) or more heavily subsidised (some New Zealand television content attracts a 40 per cent tax offset. This, together with oligopsonic market conditions, means Australian producers are hamstrung from competing at a level playing field, with deleterious effects over the long term for sustainability of the independent production sector.

This loophole means that instead of commissioning new Australian-produced content, commercial television broadcasters can buy second-run, cheap New Zealand programs and have them qualify as Australian programs to acquit their obligations under the Australian Content Standard.

In 2014, the commercial television broadcasters averaged 180 hours of New Zealand content that qualified as Australian. In 2015, the commercial television broadcasters averaged 135 hours.<sup>23</sup> Hypothetically, assuming the entirety of the 135 hours was substituted for first run miniseries drama and the cost of first-run Australian drama miniseries averages nearly \$1.368 an hour,<sup>24</sup> the loss to the Australian production industry is estimated to be \$184.68m in 2015.<sup>25</sup>

### **Recommendation 2**

**Screen Producers Australia recommends the Government close the New Zealand content loophole.**

#### ***Competition issues***

As noted above, the market for television programs in Australia is an oligopsony, a form of imperfect competition which hands buyers great control over the market. The broadcasters can use this market power to play producers off against one another to demand more, for less, while bringing more production in-house. Another concerning trend emerging in the market is increasing vertically-integrated broadcasters that

<sup>23</sup> In 2016, the average was 110 hours.

<sup>24</sup> Screen Australia, *Drama Report 2015-2016*.

<sup>25</sup> <http://www.abs.gov.au/ausstats/abs@.nsf/mf/8679.0>

produce more content in-house. According to ABS data, this trend is increasing. In 2015-16, 55 per cent of production costs were in-house, compared to 44 per cent in 2011-12. The worst-case long-term scenario if this trend continues is a handful of vertically-integrated broadcasters, all that have their headquarters within a handful of kilometres from the Sydney CBD, controlling the output of Australian programming for Australian audiences.

### ***How does the Government regulate the market power of the broadcasters?***

Outside general competition law, there exists two *de facto* arrangements to address the market power of broadcasters: a minimum licence fee in the Australian Content Standard and Screen Australia's terms of trade.

#### *Australian content standard*

Section 11 of the ACS sets out a formula for calculating the drama score for an Australian drama program: 'drama score = format factor x duration (in hours)'. Drama series and serials acquired by broadcasters from independent producers for certain a determined minimum licence fee receive a higher format factor than other series and serials. There is also a tiered treatment of feature films in recognition of the disparity in licence fees paid by licensees. This minimum licence fee increases annually.

This market intervention is a tacit admission of market failure and provides an incentive to a broadcaster to contract with an independent producer at a price determined by the government.

#### *Screen Australia's terms of trade*

Screen Australia's terms of trade broadly outline the core terms on which it transacts its business. Including Screen Australia investment in a production is an incentive for both the producer and broadcaster: producers can obtain the benefit of having Screen Australia at the table with its terms of trade, broadcasters have the benefit of a reduction in the overall cost of content.

Among other things, Screen Australia's terms of trade:

- denies broadcasters access to Screen Australia funding
- guarantees at least award (or above award if agreed) rates for employees, and
- seeks to ensure the producer retains some margin on the offset (10 per cent for feature films and television, 15 per cent for documentaries).

As outlined by Graeme Mason at SCREEN FOREVER, these terms of trade seek to ensure producers may contract on a long-term sustainable basis by retaining a margin on their productions. The margin is there to be drawn upon if production costs balloon, but also to ensure production businesses can retain some equity in productions. Critically, they also exclude broadcasters from program funding, which assists independent producers to build sustainable businesses and contribute to a diverse slate of programming.<sup>26</sup> These terms of trade only apply where Screen

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<sup>26</sup> SPA is concerned by reports that broadcasters are seeking to access Screen Australia program funding.

Australia is involved in some way. However, Screen Australia is not involved in most contracts in the market. For example, Screen Australia does not invest in light entertainment or reality television. Moreover, licence fees paid by commercial broadcasters have significantly dropped to the point where some producers have felt they had to work outside of Screen Australia minimums in order to get a project produced.

### ***The solution to market failure***

There is one solution to address market failure created by the oligopsonic market structure: legislated terms of trade that sets a standard for contracting between big and small business.

David Fernández-Quejada has written on the nature of quota obligations and their effect on the market:

“The simple implementation of quota policies leads to a scenario of low-cost entry and plentiful suppliers; in other words, an oligopsonic market in which broadcasters control the bottleneck of access to the television spectrum. In this context, producers have no chance to build assets, meaning that growth can only occur at the expense of other competitors or from a quota increase. However, this hypothetical increase cannot be a long-term solution because the tendency is to reproduce the same scenario. *The only solution is the one that the UK implemented in 2003: a regulatory intervention on the terms of trade governing agreements between broadcasters and producers that allows producers to retain control over rights and to build their own portfolio of products that can be marketed elsewhere.*”<sup>27</sup>

This simple intervention has created in the United Kingdom, arguably, the most successful independent production industry in the world. As Chalaby writes, with this intervention, “the British government operated a strategic shift in favour of content producers and created a new intellectual property regime. This regime has enabled producers to keep hold of their rights and become asset-owning businesses, eventually giving rise to a new breed of production companies: the super-indies [which] have acquired the scale to compete in an international TV market and drive ... British TV exports.”<sup>28</sup>

Other Australian markets have similar interventions. Relationships between buyers and suppliers in the food and grocery market, dominated by just two buyers – Coles and Woolworths – is mediated by The Food and Grocery Code of Conduct, a voluntary code prescribed under the Competition and Consumer Act 2010 and administered by the Australian Competition and Consumer Commission. The

<sup>27</sup> David Fernández-Quijada (2012) Quoting television: a cross-national analysis of regulatory intervention in the independent television production industry in the UK and Spain, *International Journal of Cultural Policy*, 18:4, 378-397 – emphasis added.

<sup>28</sup> Chalaby, J. (2010). The rise of Britain's super-indies: Policy-making in the age of the global media market. *International Communication Gazette*, 72(8), pp. 675-693.

horticulture market has a mandatory code of conduct that sets contractual conditions in relationships between growers and buyers.<sup>29</sup>

### Recommendation 3

**Screen Producers Australia recommends the Government ensure fair contracting in the market, potentially through UK-style legislated terms of trade.**

### *Unregulated buyers*

Subscription video on demand services deliver television programs and films over the internet, rather than through traditional broadcasting means. As such, they are not regulated like broadcasting organisations and operate in a regulatory “grey area”.

In September 2000, the then Minister for Communications, Information, Technology and the Arts, Senator the Hon Richard Alston, made a ministerial declaration specifying that the following class of service does not fall within the definition of “broadcasting service”:

...a service that makes available television programs or radio programs using the internet, other than a service that delivers television programs or radio programs using the broadcasting services bands.

The minister explained that the purpose of the definition is to ensure that a service that “provides television or radio programs through the internet—other than a service that delivers television programs and radio programs using the broadcasting services bands—does not fall within the definition of a broadcasting service”. What was perhaps a minor regulatory intervention to address a lower order issue in 2000, has had a host of unintended consequences that persist decades later.

Because SVOD services make television programs and films available through the internet and not the spectrum, these services are not regulated like television broadcasters. These unregulated do not have requirements to show Australian, regional and children’s content, restrictions on advertising and classification requirements, or minimum expenditure on Australian drama.

To show how lacking these SVOD services are in regulation, Netflix recently agreed to a self-regulatory model for classification of content. The outcry over the availability of *13 Reasons Why*,<sup>30</sup> a US drama dealing with the suicide of a teenage girl, to Australian children on Netflix, highlights the limits of self-regulation and the need for government intervention.

The media landscape has changed dramatically since Senator Alston made his declaration in 2000, with new market entrants taking a greater audience share. At 30 June 2017, Foxtel had 2.8 million subscribers and obligations to Australian content.<sup>31</sup>

<sup>29</sup> <https://www.accc.gov.au/business/industry-codes/food-and-grocery-code-of-conduct>

<sup>30</sup> <http://www.dailytelegraph.com.au/news/nsw/13-reasons-why-netflix-show-most-dangerous-program-on-tv/news-story/2055b0d7cea12766392ca47a986691d3>

<sup>31</sup> <http://www.mediaweek.com.au/news-corp-2017-results/>

Stan has 800,000 subscribers. Netflix has 2.71 million Australian subscriptions.<sup>32</sup> Amazon Prime has entered the market, Facebook is commissioning long-form content,<sup>33</sup> YouTube Red has just announced its first commission,<sup>34</sup> and niche streaming services continue to emerge. While these services bring added competition to legacy businesses, they also do not compete on a level playing field - none of these services have obligations to Australian content.

### *The European Union model*

By way of comparison, Netflix has two million subscribers in France<sup>35</sup> and the EU is bringing SVOD services into its regulatory environment. The proposed revision to the EU Audiovisual Media Services Directive<sup>36</sup> will include modifications to the existing Directive with aim of enhancing the promotion of European film and television content by:

- allowing media services to impose financial contributions to providers of on-demand services established in other media services (but only on the turnover generated in the imposing country),
- putting on-demand players under the obligation to promote European content to a limited level by imposing minimum quota obligations (20% share of the audiovisual offer of their catalogues) and an obligation to give prominence to European works in their catalogues,
- low turnover companies, thematic services and small and micro enterprises are exempted from these requirements.

The 20 per cent library quota has since been revised upwards to 30 per cent.<sup>37</sup>

### **Feature films**

The market for feature films does not have any demand side interventions and is structured differently to the market for television content. The size and scope of the Australian film market is partially determined by Screen Australia's funding levels, together with distribution agreements between distributors and exhibitors that afford theatrical windows to Australian films.

Unlike other markets (e.g. France, South Korea) there are no quotas on exhibitors in Australia to provide windows for local films. In the absence of demand side interventions, Australian films compete for screen against films from larger markets. As such, the presence of Australian films in the Australian market is tiny. According to data obtained from the MPAA, in 2016, just 4.7% of films screened in Australia were Australian.

Comparing the markets for television and film, the clear difference between them is the absence of demand side interventions in guaranteeing supply of Australian films to Australian audiences. However, as streaming services increasingly commission

<sup>32</sup> <http://www.roymorgan.com/findings/7242-netflix-subscriptions-march-2017-201706080957>

<sup>33</sup> <https://www.ft.com/content/2047563c-4bd6-11e7-a3f4-c742b9791d43>

<sup>34</sup> <https://www.rts.org.uk/article/youtube-red-commissions-first-uk-drama-crown-creators>

<sup>35</sup> <https://www.broadbandtvnews.com/2017/01/09/france-televisions-top-launch-netflix-rival-producers/>

<sup>36</sup> <https://ec.europa.eu/digital-single-market/en/revision-audiovisual-media-services-directive-avmsd>

<sup>37</sup> [https://www.theregister.co.uk/2017/05/25/eu\\_pegs\\_homegrown\\_netflix\\_quota\\_at\\_30pc/](https://www.theregister.co.uk/2017/05/25/eu_pegs_homegrown_netflix_quota_at_30pc/)

feature length films (Amazon even allows a theatrical window), the importance of demand side interventions on new and emerging content platforms becomes critical.

### ***Supply side issues***

The introduction of the offsets in 2007 was a game changer for the production industry. The offsets are working well and the policy settings are right. However, some reform is required.

The “television” offset is set at 20 per cent of QAPE while the feature film offset is capped at 40 per cent. The policy case for the differential offsets was made that as feature films are more difficult to finance, they should attract a greater level of support from the government. This case remains relevant, as does the continuing need for Screen Australia investment in film.

SPA has submitted previously that this variable rate of offset should be addressed and harmonised to generate greater production levels in the film and television industry. Adopting a 40 per cent rate for Australian productions would greatly contribute to the growth and sustainability of the industry. It would also remove the antiquated requirement for a theatrical release for films, which is a barrier to growth in the new streaming market. SPA maintains this position, however with some qualifications.

When the producer offset was introduced, the then Minister for the Arts, the Hon Senator Brandis QC made it clear that the benefits of the Government’s new policy were to accrue to the independent production sector, not broadcasters.

In his Second Reading Speech introducing the producer offset legislation, Senator Brandis said:

“I take this opportunity to affirm on the part of the government its intention that the independent sector should be beneficiaries of the producer rebate ... Were it to be the case that in the early months of the operation of the scheme independent producers were missing out, it would be the intention of the government to re-look at the matter. In that regard, might I adopt the language of paragraph 11.47 of the report of the Senate Standing Committee on Economics, which says:

It would be the committee’s expectation that were the availability of the scheme for in-house production to have a detrimental effect on the independent sector then the Government on the basis of that evidence should legislate to restrict the producer offset scheme to independent producers.”

Unfortunately, broadcasters have access to the offset for in-house production and SPA has seen contracts where broadcasters have demanded the producer pay the offset to the broadcaster.

### **Recommendation 4**

**Screen Producers Australia recommends the Government ensure the producer offset is only for producers, not broadcasters, consistent with the original policy intention.**



## Interpretations

The offsets were introduced when television broadcasting and theatrical release through cinemas were the dominant distribution channels for film and television productions. In the recent past, new market entrants have disrupted this distribution model. Streaming services have established a significant position in the market. Increasingly, these services are commissioning content. Netflix has announced it has a \$6 billion war chest for content acquisitions and commissions and has nearly a 30 per cent market share in Australia. Netflix announced its first Australian original commission – *Tidelands* – in May.<sup>38</sup> Amazon is reportedly establishing a presence in Australia with a large acquisitions and commissioning budget.

The PDV offset is limited to productions for a television commission or a cinema release. This technology-specific, outdated restriction limits the growth of the PDV sector by closing off streaming content from qualification. The PDV offset is restricted to projects that are produced for exhibition in a cinema or by television broadcasting.<sup>39</sup> The Department of Communications and the Arts interprets the legislation narrowly to exclude content produced for streaming services.

### Recommendation 5

**Screen Producers Australia recommends reform of the scope of the PDV offset be made platform agnostic.**

The 40 per cent feature film offset also requires that the film be produced for exhibition to the public in cinemas or by way of television broadcasting. To guide its interpretation and to assist applicants, Screen Australia has prepared guidelines – the *Producer Offset Guidelines*.

Relevantly, at paragraph 2.5.4, the guidelines set out relevant factors in determining whether a project is a feature film and is produced for exhibition to the public in cinemas. The factors are reproduced below.

- A draft or executed bona fide deal memo, letter of offer, or long form agreement for an Australian theatrical release with a theatrical distributor (acting on an arm's length basis) with a genuine and credible plan for the release of the project in cinemas
- Financial contribution to the project's budget from the distributor, such as a distribution advance or guarantee, commensurate with the total budget
- A financial commitment towards prints & advertising made by the distributor
- A marketing plan that includes theatrical release and demonstrates a realistic pathway to a cinema audience
- Financial contribution from an arm's length investor made on the basis of the project being a feature film

<sup>38</sup> <https://media.netflix.com/en/press-releases/netflix-announces-tidelands>

<sup>39</sup> *Income Tax Assessment Act 1997*, Section 376.45(2)

- Evidence that all cast are engaged under the relevant performers' contracts, with appropriate buy-outs of residual rights, consistent with a feature film
- A finance plan and budget, including theatrical delivery items, consistent with that of a feature film
- The track record of the distributor in the theatrical distribution of feature films in Australia, particularly the distribution of Australian feature films
- The track record of the producer, director, writer and other principals in producing feature films that have received a successful theatrical release in Australia, and
- The attachment of an international sales agent and any international theatrical pre-sales.

This long list of factors includes some that are not relevant to whether a project is made for exhibition in cinemas (e.g. sales agency deal and track record of the director) have little to do with a film being made for Australian release. Other relevant factors, such as budget and whether screens have been pre-booked, are not listed as factors. A concern with the breadth of factors is that it may facilitate non-uniform application of the guidelines and create uncertainty for applicants. Moreover, in interpreting an exhaustive list, a principle of statutory interpretation means factors are weighted equally. The factors should be clarified to give applicants a clearer understanding of the weighting of the various factors and how they might be applied in practice.

### **Recommendation 6**

**Screen Producers Australia recommends the reform of the scope of the feature film offset to be made platform agnostic.**



## Part Three – Responses to Questions

### 1) Are the policy objectives and design principles articulated in the discussion paper appropriate? Why do you say that?

#### *Policy objectives*

SPA submits that the policy objectives are in the most part appropriate. Suggested changes include to emphasise the importance of generation and exploitation of intellectual property, introduce the concept of diversity of programming into the text of the first and second objectives and the idea that quantity of production ensures quality.

As a rule, the production industry cannot create quality without creating quantity. The quotas on commercial television broadcasters ensure a quantity and volume of production out of which careers can be built, production businesses can grow and develop, from which quality content can emerge. However, the capacity for businesses to grow is dependent on their ability to retain the intellectual property in their productions. If producers can retain their intellectual property, they can use it to generate income in other markets and in other jurisdictions and build sustainable, successful businesses that can then reinvest in labour, skills development and new productions. Small business is more likely to extract maximum value from any particular asset over a bigger business because of the comparative value of that asset to the business.

A diversity of content relies on a diversity of supply. Diversity in this sense means both diversity in content (stories, narratives, genres, form – live action and animation), but also diversity in those that work on the production. To this end, SPA is a founding member of the Screen Diversity and Inclusion Network. A competitive and sustainable market featuring numerous small production businesses that can contract fairly with buyers will ensure that the market is supplied with a diversity of content. A competitive and sustainable small business sector is the most efficient way to allocate resources in the market.

SPA's suggested amendments to the policy objectives:

- **securing quality [and diverse] content that promotes Australian identity and culture**—implement measures that encourage the creation, delivery and export of diverse and high quality Australian content [while acknowledging the relationship between quantity and quality]
- **securing quality [and diverse] Australian content for children**—ensure content is developed for Australian children to help them understand the world around them and Australian values and culture
- **driving more sustainable Australian content industries**—develop the right policy settings to enable Australia's creative sector and talent to [retain intellectual property in their creations, allowing them to] thrive, locally and internationally.

## ***Design principles***

SPA supports the design principles, subject to two proposed amendments.

These principles are largely consistent with the principles for regulatory reform proposed by SPA to the Parliamentary Inquiry. The Australian Government guide to regulation defines regulation as “any rule endorsed by government where there is an expectation of compliance”. There is a high degree of regulatory intervention in the Australian film and television industry. Some of this regulation may be justified to achieve public policy objectives (e.g. demand and supply side interventions), yet some of the government’s intervention into the market, particularly on producers, cannot be justified and creates uncertainty for investment. For example, the recent decision by Screen Australia to change its guidelines for program funding to restrict eligible creative talent without consultation.

SPA suggests that any reform of the government regulation in the industry should be guided by the following principles.

### ***Certainty***

Like any other industry, investors in the Australian film and television industry want certainty. Sourcing finance, pre-production, production and post-production can take years. Changes to government and screen agency policies and guidelines, funding models and priorities, industrial uncertainty as well as regulatory uncertainty can create an unattractive environment for long-term investment decisions, international finance and partners.

### ***Simplicity***

Regulation is best if it is simple and able to be understood. The offsets and their administration is needlessly complicated. Content regulation is archaic and the Broadcasting Services Act byzantine. In any reform, regard should be had to the Convergence Review’s recommendations in simplifying media regulation.

### ***Transparency***

Decision making and reporting is best if it is transparent. Recent Government decisions to relax reporting requirements for subscription television broadcasters about their expenditure requirements removes transparency and oversight. Further, public broadcasters do not have any specific obligations to commission Australian content (they are subject to their charters) and concomitantly, no public reporting obligations.

### ***Balance***

Within the Australian film and television industry there are competing yet complementary interests. These interests must be balanced, including government incentives for domestic and foreign productions, between market players who have unequal bargaining positions, and that the copyright balance is not skewed too far in favour of Silicon Valley to the detriment of Australian stories.

### ***Currency***

The currency of regulation needs to not only reflect current market realities but look forward to the future. The current regulatory model for content is inadequate and not fit for purpose. Unregulated new market entrants compete with regulated legacy

businesses. The regulatory model must be evolved and expanded to include the entire market. The offset legislation also reflects a point in time. The market has moved on from a theatrical release model for feature films and the restrictions on projects with an initial streaming distribution for the PDV offset.

### ***SPA's suggested amendments to the design principles***

One suggested change is to the fourth principle to introduce the concept of comparative costs and benefits of regulation. Regulated entities bear both benefits and costs of regulation. For example, as part of a quid pro quo for privileged access to spectrum and sports rights, as well as a reflection of their comparative influence, commercial broadcasters are required to deliver minimum levels of Australian content. Taken in isolation, any funding and regulatory imposts to deliver Australian content might appear onerous on these regulated entities. But a broader consideration of these regulated entities, their relative commitments to Australian and foreign content and the proportionate levels of expenditure on “at risk genres” reveals the costs of these imposts are proportionate to their benefits to the public and to the benefits granted to these regulated entities. According to the ACMA's Broadcasting Financial Results 2014-15,<sup>40</sup> the three commercial broadcasters spent 1.6 per cent of total programming budgets on Australian children's content in 2014/15 and 5.4 per cent on Australian adult drama. In comparison, the three broadcasters spent nearly 20 per cent of their total programming budget on overseas drama.

SPA notes too, the abolishment of licence fees for broadcasters, which will now only need to pay a much smaller spectrum fee, estimated at \$43.5 million, saving the commercial broadcasters some \$84 million a year. Spectrum usage fees likely to be charged to the networks will be extremely low. For example, 30 MHz of spectrum to Vodafone and TPG for \$1.5 billion in April 2017. SPA notes ASTRA's comments relating to Proposal 9 and the comparative competitive advantages enjoyed by the commercial broadcasters in ASTRA's submission to the Broadcasting Spectrum consultation paper.<sup>41</sup>

Moreover, consideration must be given to the increasing regulatory burden on producers – see the section “Uncertainty dealing with screen agencies and government” below.

Another suggested amendment to the design principles is to include the concept of market power and audience influence as a guiding consideration for reform.

SPA's suggested amendments to the design principles:

- service clearly identified public policy goals—Government intervention should serve transparent objectives
- be clear, simple and transparent—regulations and support measures should be easy, efficient and practical for industry to access and comply with

<sup>40</sup>

<http://acma.gov.au/~media/Finance%20Budgets%20and%20Revenue%20Assurance/Report/pdf/2014-15%20Broadcasting%20Financial%20Results%20pdf.pdf>

<sup>41</sup> <https://www.communications.gov.au/sites/g/files/net301/f/submissions/2017-07-28-brimble-holly-final-astra-response-to-spectrum-reform-package-and-bill-28072017.pdf>

- be platform agnostic—Content regulation should be driven by policy objectives rather than platform type
- produce benefits that outweigh the costs—funding and regulatory imposts come at a cost to both government and regulated entities—the [comparative] public benefits generated should exceed those costs
- be flexible enough to cope with changing environments—a future system should be forward-looking and nimble enough to adapt to future changes in technology and audience trends.
- [be reflective of market and audience influence – a future system should acknowledge the relative market power of buyers and suppliers as well as an entity’s influence on Australian audiences.]

### **Recommendation 7**

**Screen Producers Australia recommends amendments to the policy objectives and design principles.**

#### **2) What Australian content types or formats is the market likely to deliver and/or fail to deliver in the absence of Government support?**

Without government intervention, the market is likely to deliver sport, news and current affairs, reality television and infomercials. As noted above, PwC estimated if the quotas were removed, but current supply-side interventions remained, the volume of Australian content broadcast would fall to approximately 43 per cent. The level of investment in Australian television content would fall approximately 28 per cent and in the short run employment in the television production and broadcasting sector would fall by approximately 2,000 full time equivalent jobs. Documentary production was expected to halve. Subscription broadcast spend on Australian drama was expected to fall to 6 per cent. No children’s content was expected to be produced.

If supply-side interventions were also non-existent, the fall in output would be significantly more. In the absence of any Government support, the market might produce a handful of big-budget television dramas, a handful of films, no children’s content, less than half the current level of documentary production would be produced. Low budget, short form and amateur content would continue to be produced. The production industry would be devastated, putting at risk 17,000 jobs, sustainable production businesses, career opportunities and skill training. This then would accelerate the brain drain of skilled workers to bigger English-speaking markets. The capacity of the industry to produce high-quality films and television would be severely constrained as a sustainable high-skilled workforce is needed, which would then need to be sourced from other jurisdictions.

SPA submits that there exists market failure for Australian content and in the current market, there is market failure for producers. It has been demonstrated that the market cannot be left alone to supply Australian audiences with a diversity of quality Australian content. Furthermore, as an English-speaking market, without government intervention, Australia will become a dumping ground for content from other, bigger,

English-speaking markets. The economics simply don't stack up: a first-run Australian drama miniseries averages nearly \$1.368 an hour in 2016 and telemovies \$1.534m an hour,<sup>42</sup> while a second run international drama can be bought for a fraction of the cost, often \$5,000 an hour.

Moreover, as film and television products are classed as services, rather than goods, there are no anti-dumping remedies available under international trade law. Anti-dumping remedies are available where an exporter sells goods into Australia at a price significantly below the "normal value" of the goods. The normal value of the goods is usually determined by the domestic price of the goods in the country of export. The margin of dumping is the amount by which that normal value exceeds the export price of the goods. While dumping itself is not prohibited, where the goods have been subsidised in some way by the exporter's government and the dumping causes material injury to domestic industry, remedies are available. Many jurisdictions, like Australia, support their local film and television industries, but to greater extents – for example while Australia provides a 20 per cent tax offset for television productions, New Zealand provides 40 per cent tax offset and New Zealand productions are Australian for the purposes of Australian content obligations.<sup>43</sup>

### **3) What types of Australian screen content should be supported by Australian Government incentives and/or regulation?**

SPA notes that the proposed design principles are not necessarily "market orientated" and the market as it is currently structured is failing producers.

At this point the concept of demand needs careful attention. The demand for certain content and formats may appear weak compared with other content and formats. Any number of factors can influence audience numbers: the strength of the production, programming decisions, time of year, time of day, the weather. For example, the AFL Grand Final attracts a far larger audience than *Neighbours*. Does that mean the Government should encourage more AFL Grand Finals? The case for supporting these "at risk" genres is essentially a cultural one. This case is set out in the policy objectives. The types of content that are currently supported should continue to be supported, Australian drama, documentary and children's content as well as feature films, with the dominant objective being policies that facilitate the generation, retention and exploitation of intellectual property in Australian content here and abroad.

With regard to different levels of support for different content or formats, the current system already accommodates different levels of support. Feature films can access a 40 per cent offset because the financing of feature films is a more difficult proposition to the financing of a television program. Commercial broadcasters are required to broadcast more drama than documentaries. As a policy proposition – the content and formats that are most at risk should attract the greatest support.

<sup>42</sup> Screen Australia, *Drama Report 2015-2016*.

<sup>43</sup> See KPMG's *Film Financing and TV Programming: A Taxation Guide*, which provides a comparative summary of jurisdictions:  
<https://home.kpmg.com/us/en/home/insights/2016/02/film-financing-tv-programming-taxation-guide.html>

With regard to the national broadcasters, there are two points to be made:

- 1) The government should reject any attempt to relax obligations on commercial broadcasters on the assumption that the national broadcasters can provide Australian audiences with adequate levels of Australian content. National broadcasters have no specific obligations to deliver Australian content and as their budgets have been cut, accordingly so has their expenditure on Australian content.<sup>44</sup> Market failure for producers will be amplified as buyers are removed from the market.
- 2) The national broadcasters should have specific obligations to deliver Australian content and transparency requirements. The BBC has local content quotas, so should the ABC and SBS. SPA understands SBS has proposed a fully-funded Australian content quota.

### **Recommendation 8**

**Screen Producers Australia recommends local content quotas:**

- a) remain on commercial broadcasters, and
- b) apply to the ABC and SBS.

- 4) **The current system of support for screen content involves quotas, minimum expenditure requirements, tax incentives and funding (see Attachment B). What are the strengths and weaknesses of the current system? What reforms would you suggest?**

The current system contains both demand and supply side interventions. Of the two interventions, demand side interventions are most effective at ensuring delivery of a diversity of Australian content to Australian audiences and an industry capable of supplying the market. Without demand side interventions, the market (and increasingly vertically-integrated broadcasters) will deliver the types of content outlined in the answer to Question 2 – sport, news and current affairs, reality television, infomercials a handful of big budget dramas and films and low-budget short form and amateur content. The current set of demand side interventions must be improved and evolved to bring new market entrants into the regulatory environment.

Supply side interventions assist in financing Australian productions and are effective in achieving this objective. However, as noted above there are some improvements that may be made in harmonising and modernising the offsets.

The Government should commit to evolving and expanding the current regulatory environment for content. The current regulatory regime for content in Australia is woefully out of date and recent proposals for reform have been piecemeal and incoherent. It is time for a regulatory regime that evolves and expands current requirements to allow legacy businesses (public, commercial, subscription broadcasters) to compete on a fair playing field with new market entrants (Netflix, Stan, ISPs, Telcos) by imposing demand side interventions equally and platform

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<sup>44</sup> See above.



agnostically and where appropriate, distinctions drawn to reflect different levels of influence and any relevant market protections. To ensure the interventions are effective in delivering Australian content to Australian audiences, they should be placed where Australian audiences are consuming their content.

Generally speaking, there two models for demand side interventions are either quotas (e.g. commercial broadcasters) or expenditure requirements (e.g. subscription broadcasters).

For online services, a demand side intervention in the form of an expenditure requirement on commissions from independent producers for “at risk” genres is appropriate and provides flexibility to changing market dynamics. A quota obligation (e.g. the EU model which provides for a 30 per cent library quota) may not be appropriate as the volume of Australian content might not be available to those services to meet the quota because of legacy licensing arrangements.

An expenditure obligation could be set on a differential basis determined by the level of influence in the market. That is, services with smaller market share might attract a smaller expenditure obligation. Larger services with larger market share might attract a larger expenditure obligation. This may be achieved through a percentage of contribution calculated against revenue generated in Australia. This concept of greater regulation based on greater influence is consistent with the policy principles that inform the current media regulatory environment. An expenditure model must also come with a transmission and promotion obligation. In the absence of a transmission obligation to deliver and promote the content to Australian audiences, a service could potentially invest in Australian productions that might not be seen by Australians. This is particularly so for algorithmic services that offer content based on past viewing habits or preference their own content over others’. This expenditure obligation is a feature of the proposed revision of the EU Audiovisual Media Services Directive.

For broadcasters, where the majority of audience remains in prime-time, quotas should remain and an expenditure obligation considered.

Incremental change could involve:

- maintaining obligations on commercial broadcasters to commission local film and television content from independent producers and on a fair contracting basis
- lifting the minimum expenditure requirement on subscription broadcaster’s predominantly drama channels to 20 per cent and extending the obligation from broadcast channels to associated video on demand services, as well as specific obligations to documentary, children’s and arts content.
- ensuring Australians have greater access to Australian-produced drama, documentary and children’s content through an expenditure and promotion requirement on new market entrants calculated on the basis of revenue generated in Australia.

## Recommendation 9

**Screen Producers Australia recommends local content demand-side interventions, to be applied platform agonistically, including on new market entrants such as video on demand services.**

The offsets have provided a welcome stimulation to the film and television's industry levels of productivity. However, there are two main areas where the offsets can be realigned to further stimulate production - harmonisation and modernisation.

### *Harmonise the producer offsets at 40%*

According to PwC modelling, harmonising the producer offsets to 40 per cent for all eligible projects (film and television), combined with interventions to manage the available beneficiaries (i.e. only producers) and target additional investment to deliver the most efficient resource allocation, will stimulate greater levels of production. Increased production would flow through to increased commissioning from ABC, SBS and subscription television. However, without conditions on who can benefit from the producer offset, or any other demand side interventions such as independent production quotas or an expenditure requirement, an increase to the 40 per cent television offset is likely to accelerate the trend towards vertically-integrated commercial broadcasters or broadcaster would simply substitute government support for commercial support (i.e. commercial broadcasters would reduce their investment in a production corresponding to any increase in government support for that production), to the detriment of the producer. PwC estimates this intervention would have a net benefit to the economy of \$103.9 million annually.

Harmonising the offsets at 40 per cent would also remove outdated, technologically specific barriers (e.g. theatrical release requirements) and make the offsets fit for purpose. It would also provide greater investor confidence by reducing any uncertainty in dealing with screen agency funding rounds, while noting the benefits of having Screen Australia's terms of trade for some productions.

### *Modernise the producer and PDV offsets*

The producer offsets were introduced in 2007/08 before the emergence and consolidation of streaming services into the market. For example, projects that have a primary distribution agreement through a streaming service are unable to access the PDV offset, or the 40 per cent producer offset. Access to the PDV offset is linked to a broadcaster commission or theatrical release and access to the 40 per cent producer offset is linked to a theatrical release. The 20 per cent offset is capped at 65 episodes. Making the producer offsets fit for purpose in the current market would further stimulate growth in the industry through trade and by providing access to online distribution channels. Lifting the 65-episode cap would also provide certainty for long-term investment decisions in long-running programs which provide significant benefits to the industry through long-term employment and skill development.



## Recommendation 10

**Screen Producers Australia recommends the producer offset be harmonised at 40 per cent and applied platform agnostically**

### **5) What types and level of Australian Government support or regulation are appropriate for the different types of content and why?**

Consistent with the Government's policy for the past six decades, demand side interventions should continue to be targeted at ensuring production of Australian drama, documentary and children's content. Demand side interventions in the form of quotas on commercial broadcasters are demonstrated to be effective in ensuring Australian audiences are supplied with Australian content.

With regard to the supply side, the producer offset should continue to be available to productions of Australian content subject to a Significant Australian Content test that provides some flexibilities and transparent decision making.

Acknowledging the difficult market conditions for Australian film, dedicated support should continue to be made available for Australian films.

Regulation should be targeted at ensuring Australian production companies have the capacity to retain the intellectual property in their productions.

### **6. What factors constrain or encourage access by Australians and international audiences to Australian content? What evidence supports your answer?**

Simply put, the key regulatory factor that encourages access by Australian audiences to Australian content are demand side interventions. Factors that encourage access by international audiences to Australian content are trade-related. Ensuring Australian producers can control their intellectual property is crucial to enabling trade and access to international audiences. SPA's suggested reforms to increase the level of trade in Australian content, including through more and better co-production treaties and targeted support to ensure the agreements are better able to be capitalised upon, will ensure that international audiences have greater access to Australian content. This, together with the availability of Australian content on new market players such as international streaming services, which would be bolstered through local content obligations, will ensure Australian content finds international audiences.

SPA is concerned that the consultation paper focusses heavily on content, platform and audience while giving little regard to significant structural issues facing the production industry. Without a production industry, there is no audience. Without an audience, there is no production industry. Audience and production are interconnected. Factors that constrain the production industry, constrain the production of Australian content, which in turn constrains access to Australian content by Australian and international audiences. Australian content begins with an Australian production industry.

There are some significant factors that constrain access by Australians and international audiences to Australian content. These factors and barriers were outlined in SPA's submission to the Parliamentary Inquiry and are selectively reproduced and updated below.

### ***Cuts to screen agencies and public broadcasters***

Successive government decisions to cut screen agencies has had a significant effect on the eligible pool of funding available to the Australian film and television industry. Nearly 90% of respondents to the 2017 Screen Industry Business Survey agreed that limitations in federal and state government incentives are a barrier to growth. These cuts are outlined in the *Screen Production Industry Policy Ledger*, at **Attachment B**.

### ***Uncertainty in dealing with Screen Agencies and government***

Businesses seek greater certainty and transparency in their dealings with government, funding agencies. Over 80% of respondents to the 2017 Screen Industry Business survey agreed that uncertainty in dealing with screen agencies is a barrier to growth. The current level of uncertainty does not create an attractive investment proposition for future growth of the industry. While some screen agencies provide certainty for the industry in policy and funding decision making, other agencies create uncertainty for the industry. Australia's federal model underscores this uncertainty.

Issues with government and funding agencies include changing funding and policy guidelines with little or no consultation with industry, together with retrospective application, that cumulatively have the effect of jeopardising existing and future investment decisions. Also, inconsistent approaches to assessing QAPE create uncertainty for producers in determining budgets.

Moreover, slow delivery of government services comes at a cost to the industry. For example, the interest a producer pays on lender finance while the government or a screen agency delays delivery of final certification of an offset. Screen Australia has noted its average processing time for 2015/16 from application to final certificate was 5.4 weeks.<sup>45</sup> In 2015/16, Screen Australia processed 147 Final certificates at an offset value of \$242.62 million. Assuming 100% of the offset is borrowed at an average 7 per cent interest rate,<sup>46</sup> the daily cost to industry is \$43,000. The average cost for Screen Australia's application of the producer offset at 38 days<sup>47</sup> is \$1,635,900 total for the industry. In 2017, SPA conducted a survey of its membership relating to the administration of the offsets. Some respondents surveyed claimed that delays in processing their applications cost their business up to \$40,000 in interest payments.

While screen agencies are statutory authorities set up to be arm's length from government to provide a level of dynamism in their business practices, nevertheless they are public agencies spending public money, intervening in markets with

<sup>45</sup>

<sup>46</sup> <https://investmentmagazine.com.au/2016/12/media-super-100m-film-investments-returns-6-8-per-cent/>

<sup>47</sup> Anecdotally, ATO delays are up to 50 days.

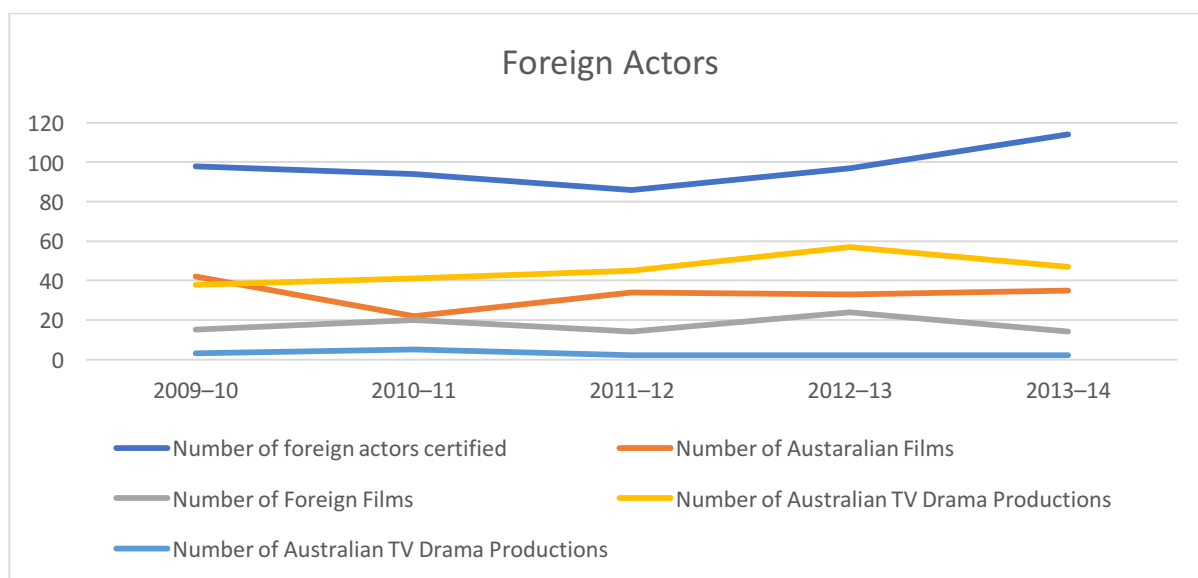
potential effects on business sustainability. SPA remains concerned by a series of unilateral policy decisions that are significant interventions into the market, increasing regulatory burdens on producers, announced without warning or consultation.

### ***The “brain drain” and immigration rigidity***

Australia develops world-class cast and crew through AFTRS, NIDA and other educational institutions, as well as on-the-job training on productions. Unfortunately, the domestic industry does not currently develop the volume and quality of productions to keep our world-class actors, directors, writers, technicians and crew in Australia. Often, as much as they are motivated to tell Australian stories, as budgets tighten and schedules shorten, they leave to pursue commercially lucrative and career advancing opportunities overseas. Australia’s loss is Hollywood’s gain. Australia will continue to lose many great directors, writers and actors unless there is a viable, growing and sustainable domestic production industry.

For producers, talent must be sought from overseas or the production will “fall over” or relocate overseas. Producers must be able to act with confidence when financing their projects in the global marketplace. Moreover, high-profile internationally-recognised actors and directors are usually important for financing a project, particularly in foreign markets. Access to foreign investment and sales increases the volume of productions as well as production budgets. In a highly competitive international market, this is increasingly important in a climate of static domestic tax incentives. The offsets alone cannot fund current levels of highly creative and culturally relevant Australian content that can compete in a global market. There is often a “gap” in a finance plan for a production after the offsets, direct funding, broadcaster or distributor contributions are being negotiated. A bankable actor or director can help secure further investment to fill that “gap”.

The Temporary Employment (Entertainment) Visa (Subclass 408) allows foreign citizens to work in television or live productions as either a performer or in a behind-the-scenes capacity, such as directing, producing and other technician roles. To obtain this visa there are criteria set out by the Department of Immigration and Border Protection and the Ministry for the Arts. The criteria assess the experience, skills, finances, health and character of the visa applicant and set out the obligations of the employer to consult with the relevant union and meet any relevant thresholds of the Foreign Actors Certification Scheme.



Source Attorney-General's Department and Screen Australia

Around 100 foreign actors are certified each year. The 408 visa requirements have not been substantially updated since the 1990s and are out of touch with the current commercial and regulatory environment. Delays in decision-making due to lengthy and uncertain assessment and consultation processes are seeing projects collapse or move to friendlier regulatory environments, such as New Zealand. This is reducing inward investment, hurting job creation and damaging career development opportunities.

The Significant Australian Content test seeks to ensure that Australian productions have the necessary Australian-ness to attract Australian taxpayer's money through the offsets.

The test looks at:

- the subject matter of the film
- the place where the film was made
- the nationalities and places of residence of the persons who took part in the making of the film
- the details of the production expenditure incurred in respect of the film, and
- any other matters that we consider to be relevant.

While the test, its application and interpretation could be improved, the test generally ensures Australian productions have an adequate level of Australian cultural components.

If the Australian Government decides to create more flexibility in immigration processes, the Significant Australian Content test and screen agency guidelines that ensure the "Australian-ness" of a production will provide protection for local cast. Bringing in a foreign actor is not a decision a producer will consider lightly. Over and above the uncertainty in process, there is a significant financial impost in bringing in a foreign actor to work on a film production. The *Actors Feature Film Agreement*

2012 provides that if a foreign actor is engaged for a film production, a producer must pay additional loadings to the Australian cast.

In 2015 SPA conducted a survey of its membership regarding the then 420 visa. Approximately 95% of respondents said they used that visa in financing and every respondent said they use it when the creative elements of a project requires it. Approximately 75% of respondents said that they were dissatisfied with the uncertainty of the consultation process and outcome. Just over 75% of respondents to the 2017 Screen Industry Business Survey said that greater flexibility in immigration processes would benefit their business to develop and produce more projects.

Greater flexibility and speed in decision-making (including by removing the requirement for union consultation and ministerial certification) in bringing in high-profile, internationally recognised actors will increase the number of Australian productions, budgets and employment opportunities for actors and crew.

### ***Issues with co-productions***

Australia has co-production treaties in force with the United Kingdom, Canada, Italy, Ireland, Israel, Germany, Korea, South Africa, Singapore and China, and Memoranda of Understanding with France and New Zealand. The Department of Communications and the Arts negotiates treaties on behalf of the Australian Government and the treaties are administered by Screen Australia, as the “competent authority”.

A longstanding stated purpose for co-production agreements is:

- to foster cultural and technical development and exchange by facilitating international co-productions
- open up new markets for Australian film and television productions
- enable a creative and technical interchange between film personnel, and
- increase the output of high quality production through the sharing of equity investment.<sup>48</sup>

These treaties allow Australian producers to partner with producers from treaty-countries to access the benefits of each country’s regulatory and taxation environments. For example, a film co-produced in Australia and the United Kingdom could get access to the producer offset in Australia, the United Kingdom’s taxation incentives and the film would qualify as an Australian film as well as a UK/European film (until Brexit occurs) for the purposes of content regulation. The real effect of combining resources is to make film and television content that can more readily compete in a global distribution environment, for example, the television series *Cleverman*.

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<sup>48</sup> National Interest Analyses: *Films Co-production Agreement Between the Government of Australia and the Government of Italy, done at Rome on 28 June 1993*, tabled in both Houses of Parliament on 23 November 1993 and *Films Co-Production Agreement between the Government of Australia and the Government of the State of Israel, done at Canberra on 25 June 1997*, tabled in both Houses of Parliament on 21 October 1997.

As at 31 December 2016, since Australia's first co-production in 1986-86 with the United Kingdom (a telemovie - *The First Kangaroos*), 171 official co-production titles with total budgets of \$1.6 billion have either been completed or have commenced production.<sup>49</sup>

Co-production treaties are a tried and tested mechanism to deliver Australian content to Australian and international audiences.

However, a significant issue is the low number of co-production treaties. Australia has twelve co-production treaties. Canada has close to 60. Earlier this year, SPA made enquiries with over 20 embassies to gauge the level support for a co-production treaty between Australia and that country. There is interest among these countries, however the Australian Government's policy towards co-production treaties does not generate confidence in our trading partners. For example, negotiations for the Danish agreement have concluded, but the agreement has not been ratified. SPA's understanding is that the issue is at the Australian end, rather than the Danish.

### *The treaties narrow the pool of eligible co-production partners*

The policy objective of co-production treaties is to stimulate production activity in treaty countries. However, the Australian Government has negotiated several agreements that limit the pool of eligible co-production partners. Annexes to the agreements with the United Kingdom,<sup>50</sup> Canada,<sup>51</sup> China,<sup>52</sup> Ireland,<sup>53</sup> Israel,<sup>54</sup> Italy,<sup>55</sup> limit common management, ownership or control between co-production partners. This restriction is in the treaty text of the agreements between Korea,<sup>56</sup> Singapore,<sup>57</sup> South Africa<sup>58</sup> and the Memorandum of Understanding with New Zealand<sup>59</sup>. There are no such restrictions in Australia's agreements with Germany and France. Similarly, under the United Kingdom's agreements with India, Jamaica and South Africa, the competent authorities may jointly agree to allow common management or control between co-producers.<sup>60</sup>

<sup>49</sup> Source: Screen Australia.

<sup>50</sup> Clause 4(d), *Annex to the Films Co-Production Agreement Between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland*.

<sup>51</sup> Clause 4(d), *Annex to the Films Co-Production Agreement Between the Government of Australia and the Government of Canada*.

<sup>52</sup> Clause 3, *Annex to the Films Co-Production Agreement Between the Government of Australia and the Government of the People's Republic of China*.

<sup>53</sup> Clause 9, *Annex to the Films Co-Production Agreement Between the Government of Australia and the Government of Ireland*.

<sup>54</sup> Clause 9, *Annex to the Films Co-Production Agreement Between the Government of Australia and the Government of the State of Israel*.

<sup>55</sup> Clause 3(d) *Annex to the Films Co-Production Agreement Between the Government of Australia and the Government of Italy*.

<sup>56</sup> Article 3(d), *Annex 7-B, Australia-Korea Free Trade Agreement*

<sup>57</sup> Article 3(2)(a), *Agreement between the Government of Australia and the Government of the Republic of Singapore Concerning the Co-Production of Films*.

<sup>58</sup> Article 4(c), *Agreement between the Government of Australia and the Government of the Republic of South Africa Concerning the Co-Production of Films*

<sup>59</sup> Paragraph 1(6), *Memorandum of Understanding Regarding the Co-Production of Films*.

<sup>60</sup> *British Film Certification Co-Production Guidance Notes* p 17.



Screen Australia emphasises that the purpose of the co-production program is facilitating new partnerships over established or continuing partnerships. By way of comparison, the guidelines published by Telefilm – the Canadian Government’s competent authority for the administration of co-production treaties – does not restrict the eligible partners in the same manner as Screen Australia.

The result of this narrowing of eligible partners is to punish companies that have attracted foreign direct investment and exclude them from the benefits enjoyed by other companies. Further, it is contrary to Australian Government policy, which welcomes foreign investment.<sup>61</sup> As the market consolidates and restructures, this situation will become exacerbated; IBISWorld predicts that over the next five years, more and more local companies will seek strategic alliances with larger international companies.<sup>62</sup>

The Australian Government should explore renegotiating the annexes (which are less than treaty status) to provide Screen Australia with the power to approve co-productions with partners with common management.

#### *Other constraints in the co-production treaties and their administration*

Many of the co-production treaties were concluded before the internet, the rise of Asia as an economic power, and the emergence of Google, Facebook, Netflix and Amazon. As such, there are many anachronisms within the treaty texts that require updating to make them fit for purpose.

There are restrictions in the co-production treaties and their administration on:

- non-party involvement
- limits on the location of the provision of services, and
- multi-party co-productions.

Another constraint is the high barrier to entry relating to the minimum Australian contribution in some co-production agreements. Most co-production treaties that Australia has entered into set a minimum Australian contribution of 20 per cent (for example, China, Ireland, Israel, Korea, Singapore and South Africa). However other treaties, such as the ones with Canada, Germany, Italy and the United Kingdom contain a 30 per cent minimum Australian contribution. It is difficult to discern a policy rationale for the differential in minima, however the higher minimum Australian contributions are inevitably harder to meet and are an obstacle to greater levels of production.

Together, these barriers limit a producer’s ability to source labour and other services efficiently and cost effectively, make co-productions less attractive and limit trade opportunities for the industry.

#### *Brexit must be considered*

With the United Kingdom triggering article 50 and formally beginning the process for withdrawal from the European Union, the Australian Government must consider the effect of this on its co-production treaty with the United Kingdom.

<sup>61</sup> *Australia’s Foreign Investment Policy*, p 1.

<sup>62</sup> IBISWorld Industry Report J5511: Motion Picture and Video Production in Australia, June 2016, p 8.

Two key effects of Brexit for the Australian film and television industry are:

- 1) co-produced films and television programs made under the United Kingdom agreement will no longer qualify as European content, limiting access to European markets
- 2) Australia-United Kingdom co-productions will no longer be able to access European cast and crew as qualifying nationals.

To this end, the Australian Government should seek to negotiate a co-production agreement with the European Union, potentially as part of the Australia-EU Free Trade Agreement.

#### *Loading discourages television co-productions*

SPA and MEAA have negotiated the *Actors Television Repeats and Residuals Agreement* (ATRRA). The ATRRA sets out the agreed industry terms under which a producer can commercially exploit a television program. The ATRRA was first agreed by Actors Equity (now MEAA) and SPA in 1982. It was renegotiated in 1997, 2000, 2004 and 2016.

A legacy from the original ATRRA is a loading for performers that discourages co-productions. The “co-pro” loading is triggered by the clause governing the sharing of “key creative decisions” with overseas companies. The loading is 90% of the Basic Negotiated Fee (e.g. the weekly rate).

This loading first appeared in the ATRRA in the 1980s in response to the proliferation of US network lead TV production in Australia. At that time, US networks were setting up temporary Australian companies to access the Division 10BA tax scheme. SPA and MEAA agreed that, given the deep pockets of the US networks and loss of opportunity to Australian performers on these taxpayer-supported programs, a loading should be paid to the Australian performers.

Over time the original reasoning for the loading has been lost and because of the broad scope of “sharing key creative decisions” MEAA and the agents have successfully insisted on co-productions being covered. This runs contrary to the original intent of the loading because co-productions are in part designed to encourage greater levels of production and international cooperation by pooling the limited production resources of two or more countries together. It is antithetical to policy objectives of coproduction treaties to punish a co-production by paying the Australian performers a loading of 90% of the Basic Negotiated Fee.



## Recommendation 11

Screen Producers Australia recommends the Government commit to a suite of trade reforms:

- a) submit a proposal to the Cultural Ministers Council to develop a national trade strategy for the film and television industry
- b) conclude negotiations for current co-production agreements with India, Denmark, Malaysia and the United Kingdom.
- c) enter into new coproduction agreements with key markets, potentially on the margins of bilateral negotiations such as with Indonesia and plurilateral negotiations such as the Regional Comprehensive Economic Partnerships
- d) in any future co-production negotiations, the Government refrains from including the restrictions on co-production partners' common management
- e) seek to renegotiate existing agreements to remove the restrictions on common management
- f) remove red tape and provide flexibility in immigration processes for the Temporary Employment (Entertainment) Visa (Subclass 408), and
- g) develop a trade support scheme for the Australian film and television industry administered by Austrade.

## 7. What would the Government need to consider in transitioning to new policy settings?

Out of this consultation process, if the Government were to identify problems in the industry and develop options to address those problems, the Government must afford the industry an opportunity to comment on those options before any transition to a new policy. A regulation impact statement should be prepared, in accordance with the *Australian Government Guide to Regulation*.

Once industry has had an opportunity to be consulted on the new policy options, the Government could then consult further on transition and implementation.

## 8. Is there anything else that you would like the Government to consider that has not been addressed in your responses already?

### ***A flat 30 offset***

Noting current budgetary circumstances and that the offsets as they exist are effective, a strong case would need to be made by the Government to change the rates. A flat 30 offset (producer, location, PDV) has been raised in discussions with the review taskforce.

There are several issues related to a flat 30 offset.

### *Feature films*

Reducing feature films from 40 per cent to 30 per cent would increase the difficulty in financing feature films in Australia, including the films listed in the consultation paper, with the result that without other interventions, fewer Australian films get made.

The following projection is based on data from the 2015/2016 financial year.<sup>63</sup>

In the 2015/16 financial year 22 films were financed by the federal government agency Screen Australia and state government agencies. The total contribution of state and federal government agencies to the budgets of these 22 films was 16 per cent. The total contribution to the budgets of these 22 films from the utilisation of the Producer Offset tax rebate was 31 per cent. In the 2015/16 financial year Screen Australia invested \$18 million in 16 films. While the Producer Offset tax rebate is 40 per cent, the eventual figure for the 2015/16 financial year was 9 per cent lower than the maximum allowed due to a range of factors such as ineligibility of certain expenses and production undertaken in other countries. This is a recurring pattern each year.

Based on these percentages, the total budgets of these 22 films was approximately \$207 million. Total government finance in these 22 films accounted for \$33.1 million. Total utilisation of the Producer Offset tax rebate in these 22 films accounted for \$64.1 million.

It is impossible to be definitive about the precise impact of reducing the feature film offset from 40 to 30 per cent, given that budgets vary for every individual film depending on the particular costs that each script demands. To take a summary approach, the 22 films produced in the 2015/16 financial year had an average budget of \$9.4 million each.

If all other sources of finance remain constant, and the eligibility rules for the Producer Offset tax rebate remain constant, lowering the Producer Offset from 40 to 30 per cent would result in a total contribution to budgets from the Producer Offset of 21 per cent or \$43.4 million. Again, assuming all other elements remaining constant, the total budget for feature films would fall to \$186.3 million.

As production budgets are unlikely to go down, at the average cost of \$9.4 million each, a lowering of the Producer Offset to 30 per cent would mean a reduction of 3 films, down from 22 to 19 films a year. At current figures, 22 films a year is barely able to sustain the creative workforce on an ongoing basis. Dropping the output below 20 films would likely reduce the sector to a less professional footing, making it harder to compete with foreign films for audiences. There is also the cultural impact to consider of a declining presence in the cinema of Australian films relative to foreign films. In 1984, 25 Australian films comprised 11% of the total released films of 223. In 2015/16, the 22 films financed by government comprised 3% of the 609 films released.<sup>64</sup>

<sup>63</sup> All data taken from the Drama Report 2015/16, Screen Australia - <https://www.screenaustralia.gov.au/getmedia/595410ac-1ee0-4aeb-a0bb-48716f0c8d7a/Drama-Report-2015-16.pdf>

<sup>64</sup> <https://www.screenaustralia.gov.au/fact-finders/cinema/industry-trends/films-screened>

If the Producer Offset were to be lowered to 30%, the Government would need to increase equity funding to Screen Australia to ensure its cultural objectives are met.

### *Television*

Lifting the television offset from 20 to 30 per cent would not necessarily bring about a commensurate increase in production activity for Australian television drama, documentaries and children's content for commercial broadcasters, as the volume of output for those genres is determined by broadcasters by quotas. However, for public and subscription broadcasters as well as streaming services, Australian production levels are likely to rise.

However, without any conditions placed on broadcasters accessing the producer offset, a lift from 20 to 30 per cent will increase the incentive for in-house production. Without any other intervention to ensure a diversity of supply (e.g. an independent production quota as in the UK), further vertical integration is to the detriment of the independent production sector, diversity of programming and ultimately Australian audiences.

### *Foreign productions*

Lifting the location offset from 16.5 per cent to 30 would provide certainty for international productions and the local services industry in attracting footloose productions to Australia. Certainty is preferable to the *ad hoc* and opaque process for top ups that currently exists.

However, in light of this, the Government must maintain, and indeed enhance, the critical ballast provided by Australian productions in developing our country's narratives, which are generated by local businesses. To weight our industry too heavily towards an offshore fee for service sector, driven in significant parts by currency rates and changeable comparable international incentives, would be an incredibly risky strategy, destabilising and ultimately damaging to the sector.

Australian industry that produces Australian content make up the vast majority of production activity in Australia. According to Screen Australia's most recent *Drama Report*, of the \$843 million of total production expenditure in Australia 2015/16, 68 per cent was Australian film and television production. The primary investment from Government should always be made available for Australian productions and the relative balance of investment between local and foreign production must remain focused on local industry and bear in mind the benefits provided by international productions clearly focused on building local capacity and global brand appeal for local productions.

Enhanced support for Australian productions through policy measures such as the producer offset is an important signal of the value they provide to Australian stories, Australian audiences and local Australian businesses.

## Recommendation 12

### Screen Producers Australia:

- a) opposes reforms to film offset that would have an effect of decreasing the number of Australian films made each year**
- b) supports an increase of the offset for television production, provided it is only available to producers and not broadcasters**
- c) supports an increase in location offset, together with:**
  - a. no changes to the feature film offset that would have an effect of decreasing the number of Australian films produced each year, and**
  - b. an increase to the offset for television production, provided it is only available to producers and not broadcasters.**

### *Children's content*

Children's programming is the most vulnerable genre of production made for the most impressionable audience members. A reason the Government introduced a requirement to produce and broadcast Australian children's television programs is that these programs capture, portray, and reflect Australian culture, stories and people to Australian children. This is particularly important in the face of increasing global influences that threaten the capacity for the film and television industry to show Australian stories on screen.

At the time the Broadcasting Services Act was passed in 1992, the Parliament noted it intended commercial television broadcasters to broadcast children's content. Commercial broadcasters also have advertising restrictions on children's content. Across all the content providers, some of this content should be age appropriate and provided specifically for children to help their development, learning and entertainment.

ABC and SBS do not have content quotas and their budgets have been cut by the government. The ABC has been reducing its expenditure on children's content<sup>65</sup> and there is no guarantee that the ABC will maintain their commitment to children's content in the future as priorities change. Recently, the United Kingdom government, through its regulator (Ofcom) imposed a minimum children's content quota on the BBC. From 3 April 2017, CBBC is to show at least 400 hours – and CBeebies at least 100 hours – of brand new UK commissioned programming each year.<sup>66</sup>

Subscription television broadcasters do not have children's content requirements but do have dedicated children's channels (such as Nickelodeon and Disney). These channels broadcast a substantial level of foreign content.

<sup>65</sup> See above.

<sup>66</sup> "Ofcom outlines plans for regulating the BBC's performance", 29 March 2017.

The children's content obligations on commercial broadcasters worked reasonably well when there was a single linear channel. However, when commercial broadcasters were provided access to more spectrum and allowed to acquit their content obligations across their multi-channels in 2013, without delay, the broadcasters shifted their children's content to their multi-channels. As children's content became sequestered on a multi-channel, and with little, if any, promotion and marketing invested by the broadcasters, audience and advertising declined. Commercial broadcasters have now asked for these obligations to be abolished.<sup>67</sup>

However, while first run numbers may be in decline, children's content has a lengthy currency with strong second and third run audiences and international appeal. If there is limited involvement in children's content by commercial platforms, it will rob children of the opportunity to be educated and entertained and see children like themselves on these key services. It will diminish the diversity of content available for children and devastate the local production industry for children's content.

As argued throughout this submission, to ensure there a diverse range of children's content available in the market there must be demand side interventions. Fixing the problem of declining audiences could be as easy as keeping the current quotas, but requiring greater expenditure, promotion and marketing. As noted above, obligations should also be extended to SVOD services or other digital platforms, as well as the ABC and SBS to invest in local children's content. Tradeable children's quotas might be supported by SPA, subject to the discussion below.

The current regulatory environment needs to be evolved to better fit the current media landscape. Current regulations should be extended to new market entrants so that our children have access to a diversity of Australian-made children's content and a vibrant local production industry.

It is important that both live action drama and animation have their place in the market. The consultation paper notes that:

"More animated titles are created because the format can be cheaper to produce than live action drama and can be re-voiced for global markets. While the content of these programs may not necessarily contain culturally specific context they qualify as Australian content if they are produced under the creative control of Australians or made as official co-productions."

At the time of writing, SPA is close to concluding the Animation Voice-Over Agreement with MEAA, which would provide greater incentives for voice-over work to be done in Australia and increase the level of Australian content of animation productions in the Australian market.

### ***Tradeable quotas***

The review taskforce has raised the idea of tradeable quotas. SPA does not oppose the concept of tradeable quotas as it would ensure a minimum volume of production, but more detail and consultation is required. Tradeable quotas could provide some

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<sup>67</sup> <http://www.theaustralian.com.au/business/media/networks-see-an-end-to-mandated-childrens-tv-quotas/news-story/8fd44d9a2f877faf7d41bbe78bb0c236>

flexibility for broadcasters, but there are inherent risks that would need to be mitigated. These risks relate to market power and diversity of programming.

Allowing broadcasters to trade quotas could give rise to a situation where one broadcaster dominates the market for one particular genre, handing a broadcaster a monopsonic position – the single buyer in the market. Absent any measures to mitigate the competition issues outlined throughout this submission, this would give rise to lessening competitiveness for producers and any increase in the producer offset that is available to broadcasters would make vertical integration a more appealing proposition for a broadcaster. Where one broadcaster dominates the market for a particular genre, diversity of programming suffers. If tradeable quotas were implemented, measures to ensure diversity of programming must be implemented. Conditions such as a requirement to commission from independent producers and fair trading terms must apply, if tradeable quotas were to be considered further.

### ***CBS and Network Ten***

At the time of writing, CBS is in the box seat to purchase Network Ten and launch its streaming service “CBS All Access” in Australia. The deal demonstrates that despite significant pressures, the television market remains robust and competitive and is a meaningful display of confidence in the Australian production industry. A strong third commercial free to air network is important for competition, important for Australian audiences that benefit from Australian and children’s content obligations and important for Australian production companies that supply the market. The deal also highlights the importance of local content obligations in safeguarding our market from dumping of content from other English-speaking jurisdictions. That CBS intends to bring with it a new streaming service shows that these content obligations need to be evolved to reflect new market realities.

### ***YouTube***

YouTube is an effective platform that provides incentives to a certain type of content, made by a certain type of producer, or “YouTube Creator” and distributing their content worldwide. YouTube Creators generate a lot of interest and advertising revenue for YouTube, a company owned by Alphabet and based in Silicon Valley. In contrast to domestic broadcasters, whose advertising revenue is generated and remains, for the most part, in Australia, YouTube’s advertising revenue is generated in Australia and taken offshore. YouTube is an excellent forum for talent development and delivery of a certain type of content. YouTube it is not a substitute for a professional industry. Moreover, YouTube can change its algorithm at will, without consultation and without transparency. For example, YouTube recently announced that it won’t allow creators to monetize their content until they hit 10,000 lifetime views on their channel.<sup>68</sup>

The consultation paper proudly notes on the first page that 65 Australian YouTube channels have over a million subscribers and provides the source as

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<sup>68</sup> <https://www.theverge.com/2017/4/6/15209220/youtube-partner-program-rule-change-monetize-ads-10000-views>; <https://www.theguardian.com/technology/2017/mar/21/youtube-google-advertising-policies-controversial-content>



www.socialblade.com. It must be noted that many of these 65 channels are music channels (such as Iggy Azalea or Troye Sivan), instructional videos (HowToBasic, How To Cook That, Primitive Technology) or gaming videos, and a handful of scripted projects. Of the 65 channels that Screen Australia has invested in, RackaRacka has the most subscribers.<sup>69</sup> The creative team behind RackaRacka, want to make cinema<sup>70</sup> and have recently partnered with Every Cloud to produce DEADLOCK for ABC iview.<sup>71</sup>

In his cover letter to the Minister presenting Screen Australia's annual report for 2015/16, Graeme Mason wrote:

“an increase in the success of our online and multiplatform funded talent, with more than 2 billion YouTube views generated by around 100 of Australia's top video content creators”

Of the specific projects Screen Australia invested in, rather than the channels, the numbers are more sobering. Screen Australia estimates the combined global audience from the Skip Ahead program have reached a combined global audience of more than 27 million views on YouTube, far less than two billion.<sup>72</sup>

### **Copyright**

The Government should not seek to offload its cultural policy to an American company that is also seeking to bring changes to safe harbour protection in copyright law. If implemented, an expanded safe harbour scheme would increase the difficulty for Australian creators to licence and control their copyright online.<sup>73</sup> The recommendations made by the Productivity Commission relating to safe harbours and fair use, which are supported by Silicon Valley and rejected by the Australian creative industries, must be considered in this review. Noting that the Government has committed to further consultation on safe harbour and fair use, if those two policies were implemented in favour of services like YouTube, it would essentially be a green light to a wealth transfer from Australian production companies to Silicon Valley.

<sup>69</sup> <https://socialblade.com/youtube/top/country/au/mostsubscribed>

<sup>70</sup> <https://www.maxim.com/entertainment/rackarakka-bloody-viral-videos-2015-8>

<sup>71</sup> <https://tv.press.abc.net.au/deadlock-prepares-to-shoot-in-northern-rivers-with-youtube-sensation-rackarakka-brothers-in-leading-roles>

<sup>72</sup> <https://www.screenaustralia.gov.au/sa/media-centre/news/2017/09-09-skip-ahead-turns-four>

<sup>73</sup> <http://www.spaa.org.au/assets/Policy-Docs/Productivity-Commission-Final-Report-SPA-Submission.pdf>

## Senate Standing Committee on Environment and Communications

## Answers to Senate Estimates Questions on Notice

## Budget Estimates May 2017

## Communications Portfolio

## Australian Broadcasting Corporation

Question No: 144

## Australian Broadcasting Corporation

Hansard Ref: Written, 6/6/2017

## Topic: Content Budget

## Senator Hanson-Young, Sarah asked:

For each of the financial years from 2012-13 to 2015-16:

1. What was the total content budget for ABC Television?
2. What was the budget for:
  - (a) fiction
    - i. Drama
    - ii. Narrative comedy
  - (b) children's programs, and
  - (c) factual and documentaries.
3. What was the acquisition budget for:
  - (a) fiction
    - i. 1. Drama
    - ii. 2. Narrative comedy
  - (b) children's programs, and
  - (c) factual and documentaries.
4. What was the commissioning budget for:
  - (a) fiction
    - i. 1. Drama
    - ii. 2. Narrative comedy
  - (b) children's programs, and
  - (c) factual and documentaries.

## Answer:

1.

Total Content Budget excluding: News and Current Affairs, Marketing and Promotions				
	2012/13	2013/14	2014/15	2015/16
Total Content Budget (Gross)	\$188,141,069	\$182,697,801	\$182,027,439	\$171,856,642



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2.

(a) Budgets specifically for Drama and Narrative Comedy are only established for commissioned production and not budgeted for by genre for acquired content. Budgets for commissioned production are outlined in the answer to question 4 (a).

(b)

<b>Children's (excluding labour)</b>				
<b>Content Unit</b>	<b>2012/13</b>	<b>2013/14</b>	<b>2014/15</b>	<b>2015/16</b>
<b>Children's Production</b>	\$20,326,000	\$16,191,000	\$16,642,000	\$16,164,036
<b>Children's Acquired</b>	\$9,200,000	\$8,200,000	\$8,200,000	\$7,477,964
<b>Children's Total</b>	<b>\$29,526,000</b>	<b>\$24,391,000</b>	<b>\$24,842,000</b>	<b>\$23,642,000</b>

(c) Budgets specifically for Factual and Documentaries are only established for commissioned production and not budgeted for by genre for acquired content. Budgets for commissioned production are outlined in the answer to question 4 (c).

3. With the exception of children's television content, ABC TV does not budget for acquired content by genre.

<b>Acquisitions (excluding labour)</b>				
<b>Content Unit</b>	<b>2012/13</b>	<b>2013/14</b>	<b>2014/15</b>	<b>2015/16</b>
General Acquired	\$31,033,000	\$30,633,000	\$27,740,000	\$27,740,000
Childrens Acquired	\$9,200,000	\$8,200,000	\$8,200,000	\$7,477,964
<b>Acquisitions Total</b>	<b>\$40,233,000</b>	<b>\$38,833,000</b>	<b>\$35,940,000</b>	<b>\$35,217,964</b>

4.

(a)

<b>Fiction including Indigenous Drama (excluding labour)</b>				
<b>Content Unit</b>	<b>2012/13</b>	<b>2013/14</b>	<b>2014/15</b>	<b>2015/16</b>
Drama	\$45,592,000	\$40,149,000	\$38,574,000	\$36,324,000
Narrative Comedy	\$5,477,000	\$9,300,000	\$8,800,000	\$8,500,000
<b>Fiction inc Indigenous Drama</b>	<b>\$51,069,000</b>	<b>\$49,449,000</b>	<b>\$47,374,000</b>	<b>\$44,824,000</b>

(b)

<b>Children's (excluding labour)</b>				
<b>Content Unit</b>	<b>2012/13</b>	<b>2013/14</b>	<b>2014/15</b>	<b>2015/16</b>
<b>Childrens Production Total</b>	<b>\$20,326,000</b>	<b>\$16,191,000</b>	<b>\$16,642,000</b>	<b>\$16,164,036</b>

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(c)

<b>Factual &amp; Documentaries (excluding labour)</b>				
<b>Content Unit</b>	<b>2012/13</b>	<b>2013/14</b>	<b>2014/15</b>	<b>2015/16</b>
Documentaries	\$7,323,000	\$7,622,000	\$6,842,728	\$6,842,728
Factual	\$3,023,866	\$2,533,900	\$2,433,900	\$2,016,900
<b>Factual &amp; Documentaries Total</b>	<b>\$10,346,866</b>	<b>\$10,155,900</b>	<b>\$9,276,628</b>	<b>\$8,859,628</b>

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**Australian Broadcasting Corporation**

**Question No: 145**

**Australian Broadcasting Corporation**

**Hansard Ref: Written, 6/6/2017**

**Topic: Expenditure and hours**

**Senator Hanson-Young, Sarah asked:**

For each of the financial years from 2012-13 to 2015-16:

1. Can a breakdown be provided of expenditure incurred and hours produced for each of the following categories:
  - (a) fiction
    - i. 1. Drama
    - ii. 2. Narrative comedy
  - (b) children's programs, and
  - (c) factual and documentaries.
2. Can a breakdown be provided of expenditure incurred and hours produced for Australian programs in each of the following categories:
  - (a) fiction
    - i. Drama
    - ii. Narrative comedy
  - (b) children's programs, and
  - (c) factual and documentaries.

**Answer:**

1.

(a)(i) & (ii)

**Fiction expenditure (excluding labour)**

<b>Sub Unit</b>	<b>2012/13</b>	<b>2013/14</b>	<b>2014/15</b>	<b>2015/16</b>
Drama	\$44,383,304	\$36,230,386	\$35,732,704	\$36,247,667
Narrative Comedy	\$10,748,834	\$12,156,283	\$8,023,257	\$8,965,436
<b>Grand Total</b>	<b>\$55,132,138</b>	<b>\$48,386,668</b>	<b>\$43,755,961</b>	<b>\$45,213,102</b>

**Fiction TV Hours Produced**

<b>Sub Unit</b>	<b>2012/13</b>	<b>2013/14</b>	<b>2014/15</b>	<b>2015/16</b>
Drama	65	57	53	52
Narrative Comedy	40	36	22	18
<b>Grand Total</b>	<b>105</b>	<b>93</b>	<b>75</b>	<b>70</b>

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(b)

<b>Children's expenditure (excluding labour)</b>				
<b>Content Unit</b>	<b>2012/13</b>	<b>2013/14</b>	<b>2014/15</b>	<b>2015/16</b>
Childrens	\$20,201,470	\$19,240,197	\$16,672,739	\$16,991,480
<b>Grand Total</b>	<b>\$20,201,470</b>	<b>\$19,240,197</b>	<b>\$16,672,739</b>	<b>\$16,991,480</b>

<b>Children's Hours Produced</b>				
<b>Content Unit</b>	<b>2012/13</b>	<b>2013/14</b>	<b>2014/15</b>	<b>2015/16</b>
Childrens	321	291	309	279
<b>Grand Total</b>	<b>321</b>	<b>291</b>	<b>309</b>	<b>279</b>

(c)

<b>Factual and Documentaries expenditure (excluding labour)</b>				
<b>Content Unit</b>	<b>2012/13</b>	<b>2013/14</b>	<b>2014/15</b>	<b>2015/16</b>
Documentaries	\$7,311,269	\$8,525,646	\$6,811,584	\$8,766,546
Factual	\$3,514,140	\$2,233,511	\$2,516,237	\$2,838,850
<b>Grand Total</b>	<b>\$10,825,409</b>	<b>\$10,759,157</b>	<b>\$9,327,822</b>	<b>\$11,605,396</b>

<b>Factual and Documentaries Hours Produced</b>				
<b>Content Unit</b>	<b>2012/13</b>	<b>2013/14</b>	<b>2014/15</b>	<b>2015/16</b>
Documentaries	77	49	37	51
Factual	547	553	303	87
<b>Grand Total</b>	<b>624</b>	<b>601</b>	<b>340</b>	<b>137</b>

2.

(a)(i) & (ii)

<b>Fiction Actual Premiere Australian Hours Broadcast (all channels)</b>				
<b>Content Unit</b>	<b>2012/13</b>	<b>2013/14</b>	<b>2014/15</b>	<b>2015/16</b>
Drama & Narrative Comedy	68	126	75	60

(b)

<b>ABC TV Children's Actual Premiere Australian Hours Broadcast (all channels)</b>				
<b>Content Unit</b>	<b>2012/13</b>	<b>2013/14</b>	<b>2014/15</b>	<b>2015/16</b>
Childrens	450	422	374	316

(c)

<b>Factual and Documentaries Actual Premiere Australian Hours Broadcast (all channels)</b>				
<b>Content Unit</b>	<b>2012/13</b>	<b>2013/14</b>	<b>2014/15</b>	<b>2015/16</b>
Documentaries	39	52	56	43
Factual	212	192	168	89
<b>Grand Total</b>	<b>251</b>	<b>245</b>	<b>224</b>	<b>132</b>

# SCREEN PRODUCTION INDUSTRY POLICY LEDGER

2014-17 Policy Decisions and their impact on the Australian Screen Production Industry.

MAY 2014	BENEFICIARY	EFFECT ON THE AUSTRALIAN SCREEN PRODUCTION INDUSTRY	
<ul style="list-style-type: none"> <li>✗ First cut to Screen Australia Loss – \$38m over four years</li> <li>✗ First cut to ABC Loss of \$35.5m over four years</li> <li>✗ First cut to SBS Loss of \$8m over four years</li> </ul>	No one	Reduces eligible funding pool for independent local productions	Loss of \$81.5m over four years
NOVEMBER 2014			Loss of \$308m over five years
<ul style="list-style-type: none"> <li>✗ Second cut to ABC Loss of \$254m over five years</li> <li>✗ Second cut to SBS Loss of \$25.2m over five years</li> </ul>			
FEBRUARY 2015	Subscription television services	Reduces ability for industry to examine compliance with the new eligible drama expenditure scheme (10% on local content)	Loss yet able to quantify
<ul style="list-style-type: none"> <li>✗ Removal of independent audit requirement for New Eligible Drama Expenditure Scheme Loss – yet unable to quantify</li> </ul>			
MAY 2015	No one	Reduces eligible funding pool for independent local productions	Loss of \$3.6m over four years
<ul style="list-style-type: none"> <li>✗ Second Cut to Screen Australia Loss – \$3.6m over four years</li> </ul>			
JUNE 2015	Media Platforms and Content Creators	Reduces piracy, providing greater control of licenced film and television online	Gain too early to tell
<ul style="list-style-type: none"> <li>✓ Site Blocking Gain – yet unable to quantify</li> </ul>			
OCTOBER 2015	US studios, local service businesses and crew	Gain for US studios and local service businesses as well as crew skill development.	Gain of \$47.25m <sup>1</sup> for the screen service industry
<ul style="list-style-type: none"> <li>• Subsidising <i>Thor</i> and <i>Alien</i> for \$47.25m</li> </ul>			
NOVEMBER 2016	Commercial Television Broadcast Licence Holders, professional sport	Reductions in licence fees that could have been channelled into supporting commercial television screen production will likely go to operational costs and inflated sports rights.	Gain of \$168m <sup>2</sup> over four years
<ul style="list-style-type: none"> <li>• Broadcast Licence Fee Reduction \$168m over four years</li> </ul>			
DECEMBER 2015	No one	Reduces eligible funding pool for independent local productions	Loss of \$10.3m over four years
<ul style="list-style-type: none"> <li>✗ Third cut to Screen Australia Loss – \$10.3m over four years</li> </ul>			
DECEMBER 2016	US studios, local service businesses and crew	Gain for US studios and some local service businesses as well as crew skill development.	Gain of \$22m <sup>1</sup> for the screen service industry
<ul style="list-style-type: none"> <li>• Subsidising <i>Aquaman</i> for \$22m</li> </ul>			
MAY 2017	SBS	Additional funds for SBS, however with no specific obligations to the Australian screen production industry.	Gain of \$8.8m for SBS
<ul style="list-style-type: none"> <li>• One-off Payment to SBS of \$8.8m</li> </ul>			
MAY 2017	Commercial Television Broadcast Licence Holders, professional sport	Reductions in licence fees that could have been channelled into supporting commercial television screen production will likely go to operational costs and inflated sports rights.	Gain of \$127m <sup>2</sup>
<ul style="list-style-type: none"> <li>• Broadcast Licence Fee refund \$127m</li> </ul>			

<sup>1</sup> This figure represents total payment to the two studios, which is funding that could have been allotted to invest in Australian-produced content.

<sup>2</sup> Includes radio broadcasters

# STATUS QUO COSTS THE SCREEN INDUSTRY

Screen Producers Australia has made submissions to the government on issues relating to New Zealand content, the Danish Co-Production Agreement, Foreign Actors, lifting production offsets, and investment by subscription video on demand in local content. No action on these issues costs the industry.

NO ACTION	BENEFICIARY	EFFECT ON THE AUSTRALIAN SCREEN PRODUCTION INDUSTRY	
✗ No action on New Zealand content At the very minimum, a loss of \$2.5m in 2015 <sup>3</sup>	New Zealand Producers, Commercial Television Broadcasters	Reduces the incentive for commercial television broadcasters to invest in the production of Australian content	Loss of \$2.5m at very minimum <sup>3</sup>
✗ No action on Producer Offset competitiveness Loss to economy of \$103m <sup>6</sup>	Foreign producers in other countries	Producers decide against making films and television locally, moving to more friendly employment environments (e.g. New Zealand).	Loss to economy of \$103m
✗ No action on Danish, Brazilian, China TV and Indian Co-Production Agreements Loss – yet unable to quantify	No one	No access to international co-partners and international tax subsidies, reducing scope for greater access to international markets	Loss yet unable to quantify
✗ No action on removing red tape for allowing involvement of Foreign Actors Loss – yet unable to quantify	No one	Producers decide against making films and television locally, moving to more friendly employment environments (e.g. New Zealand).	
✗ No action on modernising the PDV Offset and making the Location Offset competitive Loss – yet unable to quantify	Foreign producers in other countries	Producers decide against making films and television locally, moving to more friendly taxation environments (e.g. New Zealand).	
✗ No action on extending content obligations to SVOD services Loss – yet unable to quantify	Netflix, etc	No requirements to contribute to local content	
✗ No action on Terms of Trade Loss – yet unable to quantify	Television broadcasters or other purchasers of Australian content	Buyers of Australian content often have disproportionate market power when dealing with the businesses who create it, the result of which can limit audiences access to the content and reduce the potential for economic returns.	

## KEY

✓ Gain for the Australian Screen Production Industry

✗ Loss to the Australian Screen Production Industry

• Gain for specific businesses not broader local production industry

<sup>3</sup> Drama – at the very minimum, a loss of at least \$1.9m in 2015 (calculated by applying the per-hour minimum licence fee for Australian drama to the hours claimed by commercial television broadcasters for New Zealand drama to meet the Australian drama quota). Documentary – at the very minimum, a loss of at least \$630,000 in 2015 (calculated by applying Screen Australia's minimum licence fee for Australian documentaries for Commissioned Programs to the hours claimed by commercial television broadcasters for New Zealand drama to meet the Australian drama quota). This figure of \$2.5m is the very minimum and does not take into account substantial equity investments in Australian drama and documentary programs. These equity investments are commercial-in-confidence.

<sup>4</sup> For example, Netflix does not disclose its investments and audience ratings.

<sup>5</sup> New Zealand content qualifies as Australian content for the purposes of the Australian Content Standard.

<sup>6</sup> PWC modelling <https://www.screenproducers.org.au/news/new-tv-tax-offset-boost>