Broadcasting Legislation Amendment (2021 Measures No. 1) Bill 2021

Submission by the Media Entertainment and Arts Alliance

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MEAA acknowledge the *Broadcasting Legislation Amendment (2021 Measures No. 1) Bill 2021* (the Bill).

The explanatory memorandum (memorandum) to the Bill outlines five areas of amendment to the *Broadcasting Services Act 1992* (the Act):

a. reduce regulatory burden on subscription television broadcasting licensees by halving the annual expenditure requirement for Australian drama programming from 10 per cent to 5 per cent and amend on an ongoing basis;
b. move the subscription television captioning rules from the BSA into a disallowable Ministerial instrument;
c. repeal a redundant provision from the digital radio framework in the RA to reflect that there is now only one spectrum band for digital radio;
d. extend grandfathering arrangements for new population determinations made by the Australian Communications and Media Authority (ACMA); and
e. extend the timeframe for ACMA to implement grants under the Regional and Small Publishers Innovation (RASPI) Fund beyond 30 June 2021.[1]

MEAA's comments are confined to parts a. and e., which concern drama program funding by subscription television broadcasters and the delayed roll-out of the Regional and Small Publishers Innovation (RASPI) Fund respectively.

Halving subscription television broadcasters' drama expenditure requirement
MEAA strongly oppose the move to legislate a reduction in the amounts of investment required of subscription television broadcasters for drama production under the New Eligible Drama Expenditure (NEDE) scheme. It is a retrograde and unwarranted step.

Possible changes to the NEDE scheme were canvassed in the *Screen Options* paper, released by the Government in April 2020. This paper canvassed three options:

- *Maintain the status quo – i.e. 10% level of investment*
- *Halve the amount to 5%*
- *Abolish the requirement entirely*

The memorandum, based on the positions canvassed in the *Screen Options* paper process, states that removing the NEDE requirement would benefit broadcasters, 'although this would be to [the] detriment of consumer outcomes'.[2] The Government, as in the Screen Options process, has now come out in support of the (imagined) middle ground position of halving NEDE to 5% of drama channel program spending.

MEAA's June 2020 response to the *Screen Options* paper favoured retention of the status quo. MEAA's submission said:

[1] Explanatory note, page 2
[2] Explanatory note, page 24

> *In all of the circumstances, MEAA support retention of the NEDE as it stands. The NEDE requirement is already flexible in so far as Australian content drama spending is linked to overall company performance. We are not aware of any compelling arguments to sustain the increased flexibility options set out in models 2 and 3 in the Options Paper.*

MEAA's view is unchanged.

The Regulatory Impact Statement (RIS) prepared for screen content reforms in September 2020 stated that:

> *The regulation faced by commercial and subscription broadcasters can be complex, overly prescriptive and burdensome. This is jeopardising the ability of these businesses to continue to operate and produce quality Australian content.*

The RIS did not spell out what the inflexibility or complexity was or how the well-understood Australian content rules jeopardised the production of new programs.

The RIS also asserted that:

> *The current regulatory environment is impacting the long-term sustainability of Australia's production sector as it is preventing innovative or lower cost approaches to meet the intended outcomes of the regulations.*[3]

The RIS did not bother to provide examples of what kind of 'innovative or lower cost approaches' broadcasters were precluded from advancing due to Australia's content rules.

The RIS, the effective abolition of genre, sub-genre and format rules for commercial free-to-air broadcasters from 1 January 2021 and this Bill reflect that the Government is determined to gut the Australian content regime. It wants to transfer funding from the production of Australian drama to the owners and operators of commercial and broadcast subscription television.

The Government should be honest about what its reforms are meant to achieve. They are plainly not about sustaining the production of quality drama on Australian screens.

The memorandum says that companies like Foxtel are experiencing a decrease in subscriber numbers and that their share of viewers is being lost to streaming services. The memorandum also refers to subscription broadcasters' 'declines in profitability'[4] and points to Foxtel's revenue 'decreas[ing] at an annual compound rate of 3.5 per cent over the period 2014-2019', as declining ad revenue has exacerbated the loss of subscribers and falling revenue per subscriber'.[5]

Foxtel is undoubtedly the dominant subscription television broadcaster. MEAA note that it has endured reductions in the number of subscribers (and high levels of churn) over time; however, the company does appear to have mounted something of a recovery in terms of its overall performance.

[3] Screen Content Reforms Regulation Impact Statement, September 2020, page 15
[4] Explanatory note, page 21
[5] Explanatory note, page 21

The most recent information available to MEAA, which post-dates the production of the *Screen Options* paper and the RIS that followed it, indicates that Foxtel maintains more than 2 million Australian subscribers for its subscription television service. In November 2020, it was reported that Foxtel saw its 'total paying subscribers increase by 7% to 3.287 million as of September 30'.[6]

Roy Morgan reported in January 2021 that:

> *"Foxtel's growth in viewers has been even more impressive, up by 2.36 million to a viewership of 7.75 million across its four services of Foxtel, Foxtel Now, Kayo Sports and new streaming service Binge. All four have increased their viewership strongly during 2020 as locked down Australians sought out new content to pass the time.*[7]

Foxtel itself announced in March 2021 that 'Foxtel's strategy is working, and our subscriber numbers have hit 3.3M, more than ever before'.[8]

If it is Foxtel's particular circumstances that the Government is seeking to address, then the business's overall current health should be taken into account.

As to the financial impact on levels of drama program production in Australia, the memorandum states that, if the NEDE rate of investment was 5 per cent instead of 10 per cent, the expenditure obligation for 2018-19 would have been $12.3 million' (compared to $24.6 million).[9]

NEDE data is available on the ACMA website. ACMA's compliance snapshots reveal a marked decline from 2015-2018 and 2018-19.

Total spending on new Australian drama in financial year	**2015–16 ($ m)**	**2016–17 ($ m)**	**2017–18 ($ m)**	**2018–19 ($ m)**
	$51.23	$51.95	$56.72	$24.67

Screen Australia's annual Drama Report for 2019-20 points to a similar decline in spending by subscription television broadcasters. The Drama Report's table of TV/Online drama by first-release platform reveals subscription TV broadcasters drama investment performance over time

Year	**Titles**	**Investment $m***	**Hours**	**Budgets $m**
2015/16	6	30	46	67
2016/17	7	50	58	75
2017/18	5	31	33	50
2018/19	3	12	22	33
2019/20	2	17	11	24
5-yr av	*5*	*28*	*34*	*50*

[6] News Corp Records 10% Revenue Decline, Foxtel Subscribers See Healthy Boost, April Glover, Channel News, 6/11/2020

[7] See: Subscription TV viewers soared to 17.3 million Australians during 2020: Netflix, Foxtel, Stan, Disney+ & Amazon Prime all increased viewership by at least 1.5 million, Roy Morgan, Finding No. 8606, January 12 2021

[8] See: https://www.foxtelmedia.com.au/news/foxtel-2021-showcase-wrap-up

[9] Explanatory note, page 23

It can be seen from this table[10] that the number of titles, levels of funding, hours of production and overall budgets are trending downwards. The last few years' performance is well-down on established five-year averages.

The Government now seek to halve what are already historically anaemic funding levels. To put this into its proper context, the Government is, through this Bill, confirming that an important drama funding mechanism should in the future attract about 20 per cent of the funding ($12 million) it did just three years ago ($56.7 million).

The current NEDE scheme investment – together with the 250-points content system covering free-to-air television - is one of the anchors of Australian drama production. It gives the screen industry confidence of long-term, ongoing demand for local drama production year-on-year, which is an important source of sustained employment.

Although funds available under the NEDE can shift according to overall company revenues and spending, it is a more reliable pool of funding than the location incentive fund, which is currently bringing work into the Australian industry, but which is both temporary and capped, and therefore not reliable in the long term.

Overall, MEAA's position on the NEDE scheme is that the 10 per cent expenditure requirement is inherently flexible and that no case has been made to amend it.

Firstly, the NEDE requirement relates only to expenditure on drama channels. Secondly, it is set as 10 per cent of a program budget, so the funding required is 10 per cent of what is being spent on acquiring dramatic programs in a given year. Thirdly, there is no minimum dramatic budget imposed on subscription television providers, who it should be remembered, have never been subject to a quota regime requiring the airing of a certain amount of Australian programming each year.

Finally, the 10 per cent NEDE rate is influenced (if not dictated by) the overall financial health of a subscription television provider. Therefore, a company that suffers sustained reductions in subscriber numbers will reduce its overall program expenditure. It will be 10 per cent of this reduced amount that would be required to be spent on new eligible drama.

MEAA is especially concerned that the Government is moving to eliminate or water-down a host of content obligations – from undermining the NEDE scheme, to gutting the content requirements that applied to commercial free-to-air broadcasters - before committing to content rules for SVOD providers. With respect, this is the antithesis of credible policy-making.

Extending timeframe to roll-out the Regional and Small Publishers Innovation (RASPI) Fund
The Act presently allows ACMA, on behalf of the Commonwealth, to make a grant of financial assistance to constitutional corporations that publish a newspaper, magazine or other periodical, or a content service provider in respect of the financial years commencing 1 July 2018, 1 July 2019 and 1 July 2020. It is now proposed that 1 July 2021 be added.

The memorandum states that this change would "provide ACMA with an extension of the legislative authority, by one financial year, to enable ACMA to continue its administration of the RASPI Fund, including making outstanding financial payments to grantees."[11]

[10] Screen Australia: Drama Report 2019/20, page 27

MEAA supports the Bill's provisions concerning the RASPI Fund, but is concerned that a modestly funded program established in 2018 still has funds to disburse.

The ACMA website states the RASPI fund began in 2018 and is part of the Australian Government's $60.4 million Regional and Small Publishers Jobs and Innovation Package. The Fund was scheduled to provide up to $16 million in grants over 3 years.

The ACMA website also advises that:

> *The first round closed in August 2018 and saw around $3.6 million to 25 grant applicants for 29 projects.*
>
> *The second round closed in June 2019, with around $9 million awarded to 62 grant applicants.*

The third round, apparently completed in November 2020, awarded funding to 43 regional and metropolitan applicants across Australia. It is presumed that this round allocated the balance of the original $16 million earmarked for the program.[12]

As ACMA and the government are aware, the rural and regional news media sector has suffered greatly over the past five to ten years. It sustained further damage (and job losses) as the COVID-19 pandemic took hold.

MEAA pointed to the scope of the damage wrought on the Australian news media sector in its submission to the parliamentary inquiry into the state of media diversity in Australia in December 2020. That submission reflected on the loss 'of between 4000 and 5000 editorial positions in the past decade -1000 of these in 2020 alone' and stated:

> *The loss of these journalists, sub-editors, photographers and other positions - and in many cases the mastheads that once employed them - means fewer outlets are covering matters of public interest and significance. In our view this has led to a dangerous fall in media diversity.*
>
> *The impact has been particularly felt in rural, regional and suburban communities.*
>
> *Data collected by the Australian Competition and Consumer Commission (ACCC) show that between 2008 and 2018, 106 local and regional newspaper titles closed across Australia - a net 15% decrease. These closures meant 21 local government areas were without coverage from a single local newspaper, including 16 local government areas in regional Australia.*
>
> *The situation has worsened since that time, with The Australian Newsroom Mapping Project, reporting 137 newsroom (spanning newspapers and broadcast media) 'contractions' between January 2019 and November 2020.*[13]

MEAA look froward to the most expeditious roll-out of any remaining monies from the RASPI Fund.

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[11] Explanatory Note, page 57

[12] See: https://www.acma.gov.au/regional-and-small-publishers-innovation-fund (at 24 May 2021)

[13] See: https://piji.com.au/research/the-australian-newsroom-mapping-project/