Australian content on broadcast, radio and streaming services

February 2018

MEAA welcomes the opportunity to make a submission to this Inquiry.

We note the terms of reference:

> The economic and cultural value of Australian content on broadcast, radio and streaming services, with particular reference to:
>
> a. the current state and operation of the market for Australian television and music industry, including competition issues relating to the relative market power of producers and broadcasters for traditional, streaming and catch up viewing;
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> b. the contribution the Australian television and music industries make to the economy;
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> c. the value and importance of:
>
>   i. local content requirements for television, radio and streaming services in Australia, and
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>   ii. Australian children's television and children's content;
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> d. related inquiries including:
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>   i. recent international reviews and reports, in particular, from the United Kingdom and Canada, and
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>   ii. submissions made to:
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>   A. the House of Representatives Standing Committee on Communications and the Arts inquiry into factors contributing to the growth and sustainability of the Australian film and television industry, and
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>   B. the Australian and Children's Content Review, undertaken by the Department of Communications and the Arts, the Australian Communications and Media Authority and Screen Australia; and
>
> e. any other related matters.

With respect to term of reference d (ii) A and B, this submission is an updated and condensed version of MEAA's 2017 submissions to: the House of Representatives Standing Committee on Communications and the Arts inquiry into factors contributing to the growth and sustainability of the Australian film and television industry; and the Australian and Children's Content Review.

MEAA views Australian content as multi-dimensional. It is not simply quotas across a range of production formats. MEAA considers Australian content to also be the work performed by our members, whether it is performers or crew on domestic and international productions filmed in Australia. In this respect, we submit views not only on content regulations, but the means by which productions are also drawn to Australia.

With respect to MEAA's earlier content-related submissions, we draw this inquiry's attention to our key recommendations:

Key Comments and Recommendations in this Submission

Content Rules

- ❖ No deviation from current content rules should be countenanced until a suitable successor scheme for ensuring ongoing Australian content are developed with the film and television sectors.

- ❖ Existing Australian television content rules must be extended to new market SVOD entrants such as Netflix, Amazon and Stan.

- ❖ SVOD (streaming video on demand) providers should be required to invest a fixed proportion of Australian revenues – say 10% - into local content production due to the unsuitability of imposing fixed quotas.

- ❖ Children's Australian Live Action drama quota to be maintained for commercial broadcasters and similar quota hours enforced across linear and non-linear providers of scale.

- ❖ Consideration should be given to establishing separate caps for children's animation as a means of preserving live action children's drama as a total proportion of children's content obligations.

- ❖ Consider according Reality television less weight in terms of Australian content points and hours than other production formats.

- ❖ Consideration should be given to the Convergence Review's (2012) recommendation to establish a *Content Fund*, to be funded by a percentage of total revenues from 'eligible content service enterprises invested in Australian dramas, documentaries and children's programs'.

- ❖ An Australian *Content Fund* would be managed by a statutory body and have a primary objective of increasing Australian live action drama productions. Funding would be contestable.

Public Broadcasters

- ❖ Public television broadcasters must be properly funded and required to produce annual Australian content information across all programs and genre areas. MEAA supports clearer reporting on levels of Australian production at both public broadcasters.

Offsets / Rebates

- ❖ Permanently increase the Location Offset from 16.5% to 30%.

- ❖ Set the Producer Offset at a uniform 40% rate for film and television.

- ❖ Increase the PDV offset to 40% from 30% and permit those accessing other offsets to apply for the PDV offset.

Screen Australia

- ❖ Restore Screen Australia's funding to 2013-14 levels – at least $100 million per annum

Australia's $3 billion film and television industry is both mature and vulnerable. It is certainly not thriving. In the prevailing environment, new ideas are taken-up less often; productions look for more appealing forms of financial assistance in other destinations; and artists and crew leave (usually itinerant contract work) for more sustainable employment, often outside of the creative realm.

The following factors curb the Australian film and television sector's future capacity to deliver quality Australian content:

- Internationally uncompetitive location offset (at 16.5%) and uncertain 'top-ups'
- Uneven producer offsets (40% for film and 20% for television vs 30% for PDV)
- Inability to access post-production offsets if other rebates claimed, forcing work offshore
- Inefficiency and delay in producers receiving production rebates
- Hostility from broadcasters (and others) towards existing Australian content regulations
- Damaging government policy decisions with respect to arts and broadcaster funding
- A relatively strong Australian dollar
- Outdated media regulations that impose no content requirements on streaming services

To use a modern metaphor, Australia's regulation of film and TV content and related rules need to take account of the Ubers (Netflix, Stan and Amazon) rather than focus on the diminishing returns of the taxi industry (commercial broadcasters). Roy Morgan Research recently reported that an estimated 7.558 million Australians aged 14 and over (37.7%) had Netflix in the three months to June 2017 – up from 4.453 million in the 2016 March quarter.[1] From 2016, more Australians had SVOD than linear pay TV: 5.6 million to 5.3 million.[2]

Viewership across commercial and public broadcasters fell between 2% and 4% over the eighteen months to mid-2017.[3]

MEAA acknowledges that efforts of the House of Representatives Standing Committee on Communications and the Arts inquiry into factors contributing to the growth and sustainability of the Australian film and television industry with respect to its views on content, children's content and, to an extent, better alignment of production incentives. We note the Committee's recommendations to:

- *Increase the location offset to an internationally competitive level of 30 per cent.*
- *Decouple the location and PDV offsets so that both can potentially be claimed for the same production.*
- *Provide in legislation that productions commissioned for any content platform will be eligible for the location and PDV offsets if qualifying Australian production expenditure (QAPE) requirements are met.*

[1] Netflix Hits New High in Australia, Roy Morgan Research, 28 September 2017. 2.9 million Australian homes were Netflix subscribers, up from 1.713 million homes at March 2016.
[2] Ibid
[3] Ibid.

- *Reduce the minimum QAPE threshold for the location offset to $5 million specifically for pilot features.*
- *Any future reforms to Australia's content quota system ensure that commercial and subscription television companies continue to invest in and broadcast Australian programs for general audiences <u>at current levels</u>.*
- *A new quota system should provide that subscription video on demand services invest a percentage of the revenues they earn in Australia, for example 10 per cent, in new Australian content.*

Australian Content

Commercial television broadcasters are obliged to observe Australian content rules. These rules have underpinned television production and the development of new drama for decades. Without enforceable content quotas, the media marketplace would jettison plans to produce quality drama, especially children's drama, in a heartbeat. This would see an even greater influx of non-Australian content, with damaging loss of Australian stories and the employment opportunities that are attached to current content rules.

Content rules are now portrayed by the TV industry as anachronistic and a financial burden uniquely borne by commercial broadcasters. Both propositions are partly true, but the solution does not lie in the abolition of regulation, but in modernising regulations for the digital age.

Content regulation must not be seen as a simple business input. It is instead a quid pro quo for doing business in the Australian marketplace. Moreover, it delivers Australian audiences with quality productions that in turn feed our capacity to tell distinctly Australian stories.

In this regard, the survey conducted as part of Screen Australia's 2016 *Screen Currency* report saw 64% of respondents state that local content accounted for up to half their media diet, with 22% reporting that 'most' of their viewing was Australian. The survey respondents also recognised something special or distinctive in Australian content that made it attractive.

PwC also reported that in 2016, 48 of the 50 most-watched programs were local Australian productions with sports and reality TV representing 30 per cent and 50 per cent of this number respectively.[4]

Content standards are commonplace in economies of scale. Canada, France, Spain, Sweden and a range of Asian nations enforce content rules. The policy rationale is that content requirements are a return from broadcasters enjoying the right to transmit their content to consumers.

It is also the case that marketplaces the size of Australia require firm and clear rules to ensure we keep producing Australian content, rather than become an easy dumping ground for questionable overseas product. To give a sense of scope, in 2015, the United State represented 33% of worldwide expenditure on television programming, with $43 billion invested across free-to-air, payTV and

[4] Australian Entertainment and Media Outlook 2017-2021, Popularity of Australian Content

online. Japan was second with $9.8 billion. Australian expenditure (using the same parameters) was $2.4 billion - $1 billion less than Canada and less than South Korea.

Current Content Adherence
The ACMA statistics for content compliance reveal the following in the period 2006 to 2015:

- Commercial broadcasters easily satisfy the 55% Australian content quota, with Seven at 69.77%, Nine at 71.63% and Ten at 63.28% for 2015 (rarely do the figures fall below 60% over the nine year period)
- First-release Australian drama – with a minimum score of 250 points required – has been met each year, with Seven leading the way in 2015 with a score of 311.10 (165.88 hours)
- First release Australian documentary requirements appear to have been satisfied, but with the Nine Network recording bare compliance with the 20 hour requirement for the 2012 to 2015 period.[5]

Australian commercial broadcasters have for some time also been entitled to count New Zealand content towards Australian content requirements. In 2015, Seven aired 313 hours of NZ content; Nine aired 67 hours, while Ten aired 27 hours, much of it on non-primary channels. Although these figures are not necessarily alarming, further analysis reveals a trend towards more New Zealand productions counting towards the networks' drama scores.[6] In 2014, NZ content accounted for 16.02% of Australian drama required under the content rules. In 2015, the figure grew to 18.16% and in 2016, to a remarkable 21.54%.[7]

The ABC's Australian content production is difficult to quantify. The corporation's 2015 *Australian Content Plan*, which aimed to increase first-run local content to 1300 hours per year appears to have been compromised by a mix of funding cuts and organisational restructuring. Notwithstanding the quality of ABC productions, MEAA believe that more detailed reporting of the ABC's efforts to produce and screen Australian content should occur through its annual reports.

SBS's Australian content output is similarly difficult to quantify, although we note the differences between the SBS and ABC charters.

Commercial Television Content Quotas
Currently all Australian drama programming must be broadcast in prime time to accumulate points. As this period is represents high value to advertisers, the quality of programming must be high enough to compete for an audience.

The commercial broadcasters want to walk away from the obligation make children's content entirely. In their written submissions they are clear: abolish all quota requirements to produce 'P' (preschool) or 'C' (school-aged) programs. They say that 'removing such waste' would enable them

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[5] All statistics in *Comparison of Compliance Results – Metropolitan Commercial Television Networks, 2006-2015*, ACMA
[6] In 2016, NZ content on primary channels was 0.21%. On non-primary channels, it was 4.29%.
[7] The Nine Network is the most reliant on productions from New Zealand.

to make more programs popular with a broad family audience (the examples they give are *Master Chef, Ninja Warrior and My Kitchen Rules*).

Also on the table are radical proposals to dilute the adult drama content rules. Currently the networks must satisfy a point system (860 points per 3 years). Each scripted drama program is weighted at between 1 point (for serials like *Neighbours*) to 4 points (for mini-series) per hour. The broadcasters want to recalibrate the weighting from 1.5 to 10 points per hour. On this new count, an average costing mini-series would immediately earn double the points, meaning potentially half the number of drama programs made each year.

Add to this, the broadcasters' proposal to change the definition of 'first release'. Programs already aired on pay TV or streaming platforms could be acquired by a commercial broadcaster for a second window (or 'free-to-air first release') and used to acquit quota points as though new. The same program could be claimed each by Foxtel and Nine, for example, in satisfaction of their content requirements, thus reducing the overall number of programs made. The acquisition is unlikely to be residuable because the broadcast licence fee would be built into the budget. The end result is less production and no financial benefit to the cast for this double window.

In order to compete with digital streaming platforms, the commercial broadcasters want to acquit their content points with online-only programs. This would see a rise in low budget productions, a trend already evident with the ABC commissioning *iView*-only programs that offer barely union minimums. Under the networks' proposal, the lowest of the 'low budget' category for online-only productions would earn 4 points – the same weighting currently given to a quality prime-time mini-series like *Wake In Fright.*

The commercial networks also have plenty to say about public broadcasters. The ABC and SBS should be 'confined' to delivering content that is not 'financially viable for commercial broadcasters, such as children's and multicultural programming'. The ABC and SBS charters should be amended to prohibit them from 'mainstream content areas'.

The commercial networks also want access to Screen Australia money and for tax incentives to apply not just to traditional scripted drama but also to reality television.

Currently, because of the quota system, networks are commissioning high quality drama that is accessible to Australians for free. While live viewing has dipped due to the availability of online 'catch-up', drama content continues to be popular with Australians as well as reaching international audiences. There is no case for change to the drama sub-quota points system.

When considering the 'hardship' encountered by Australia's commercial television broadcasters, we should not lose sight of the relatively privileged operating environment enjoyed by commercial TV broadcasters over decades:

- They have enjoyed a decades-long oligopoly
- Anti-siphoning rules have preserved rights to mass sports events

- Advertising revenues are resilient and falling nowhere near print media levels[8]
- Commercial broadcasters have been exempted from about $1 billion in licence fee payments since 2010 (based on preservation of pre-2010 regulations)
- They have terminated hundreds of employees and outsourced production to suit their profit performances and challenges

In addition, PwC observed that 'the TV set is still the most popular screen for watching TV/video content, with 84 per cent reach and live FTA still represents the majority of TV/video content consumed weekly.[9]

Content Rules Must be Reformed
MEAA nonetheless support modernisation of content laws that lock in content obligations and which apply evenly to all content providers. We are agnostic about the regulatory tools used to ensure these standards are maintained.

Unless urgent changes are adopted, commercial television's practice of cherry-picking unattractive regulatory obligations will, as with television licence fees, continue.

Platform Neutrality
MEAA strongly believes that we need to move towards regulatory equality between long-standing television broadcasters and companies like Netflix, Stan and Amazon. Unless we take these steps, the working lives of thousands of actors and crew professionals will be reduced.

The total subscription TV market is estimated to grow from $3.69 billion in 2016 to $4.6 billion in 2020, with advertising share estimated to grow from $688m in 2016 to $902 m in 2020. The SVOD sector is forecast to grow from $267m in 2016 to $785m in 2020.[10]

We note that applying conventional Australian content quotas would not work as SVOD providers, unlike commercial TV broadcasters, do not determine what is broadcast. They have libraries from which subscribers select programs. Instead, we believe that companies like Netflix and Stan should contribute a percentage of their total Australian revenues into a statutory content fund. This, in turn will build their Australian libraries that consumers are now turning to in greater numbers.

Converged Content Fund
The Convergence Review envisaged a converged content fund where hour quotas would be replaced by a percentage of total revenues being paid by 'eligible content service enterprises invested in Australian dramas, documentaries and children's programs'. This fund would invest in productions on a competitive basis.

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[8] PwC's Australian Entertainment and Media Outlook 2017-2021 estimated that overall FTA advertising revenues would decline from $3.7 billion in 2016 to $2.9 billion in 2021.
[9] FreeTV's submission to this inquiry stated: 'Free-to-air TV reached a cumulative total of 19.9 million people – or 83.7% of the population – each week in early 2017'. FreeTV also asserted that viewers of commercial TV watched 2 hours and 39 minutes of TV each week in 2017 - 33 minutes fewer than in 2011. Submission 6 to Inquiry, page 20.
[10] *PwC Outlook Media and Entertainment 2016-2020*

It is notable that Netflix, now with and over 100 million subscribers worldwide, was reported to have spent $US4.91 billion on new programming in 2015-16, more than double the entire amount spent on Australian TV productions.[11] The New York Times reported in October, 2017 that Netflix spent $6 billion on content in 2017 and plans to spend up to $8 billion in 2018.[12] Amazon, which is entering the Australian market, was reported to have increased its international production spending from $US1.22 to $US2.67 billion in 2015-16. Amazon Prime was recently reported as spending $4.5 billion on content in 2017.[13]

However, Netflix and Google's stance on regulatory obligations can best be summarised as – *we want the benefit without the obligation*. Google says the creative opportunity it offers should continue without any regulatory compulsion or intervention. However, it calls on the government to make taxpayer funded production incentives (such as offsets) available for YouTube productions.

Netflix opposes content rules on the grounds it will '*disrupt the virtuous cycle by distorting consumer-driven content buying decisions*'. In short, leave it to the market. In the next breath, Netflix argues that the government funding models and tax incentives 'discriminate' against them and should be 'updated' to apply to the programs they distribute.

There is no sound reason why Australia's film and television industry should not share more of these production budgets. Without new content rules, however, the Australian industry will be subject to these juggernauts' grace and favour.

Screen funding

The task of ensuring ongoing development and production of screen content has also been made harder by the removal of $50 million in funding from Screen Australia since 2014. This organisation now has roughly half the number of employees it had in 2008, at less than one hundred.

Although Screen Australia's annual report stated that a valuable $71.5 million in project funding was provided across features, TV, online and documentary productions in 2015-16, the fact that the funding envelope has been reduced means that the total volume of Australian stories able to be assisted by the organisation is reduced. Budgets are now smaller and with it, the kinds of productions made are curbed. Fewer offerings and shorter timeframes negatively impacts the range of opportunities available to Australian film professionals, and reduces the number and quality of the Australian stories we tell.

MEAA therefore strongly supports the restoration of Screen Australia's funding to 2013-14 levels in real terms.

[11] '*Netflix programming spend twice as high as entire Australian production market, claims report*', Alex Hayes, *Mumbrella*, 18 October 2016.
[12] *Netflix Says It Will Spend Up To $8 Billion On Content Next Year*, John Koblin, New York Times, 16 October 2017
[13] *Netflix Is Increasing Its Spend On Original Content. How Will Competitors Like HBO Respond?*, A.J. Katz, Adweek, 17 October 2017.

Attracting Film and Television Productions to Australia

Location Offset

While we acknowledge that the inquiry focuses on Australian content, we would be missing an important part of the picture if we ignored the unique role of internationally-produced content in this country. When the industry's biggest players such as Disney ($11.84 billion expenditure in 2017), Warner Bros, or Universal, mount large scale productions in Australia, the benefits flow to local producers, creatives, technicians, performers, and ultimately Australian audiences.

Because of large scale production, businesses in the industry have the incentive and means to invest in cutting-edge equipment, our technicians and designers are pushed to their creative limits, building our skill base, and thousands of specialised industry workers earn enough income to sustain their ongoing participation in the industry. This equipment, skill base and workforce then becomes available to local producers, generally at a lower cost, resulting in higher quality Australian content that can compete for audiences in the global market. The offshore sector plays a vital role in sustaining our industry and keeping Australian content at the cutting edge.

However, our current location offset is not competitive at 16.5%. There has been no large scale production in Australia since the beginning of 2017. While one-off top-ups to 30% have been granted by Federal governments since 2013 to bring productions here, these have been a short-term stop-gap. With a permanent 30% location offset – as proposed by the House of Representatives Standing Committee – the returns would be substantial, with more sustainable production levels over the near and longer terms, including the use and creation of more sound stages. We have seen this happen in competing territories where there is greater certainty on incentives, such as the UK and Auckland.

Producer offset

The Producer offset is perhaps the single largest mechanism for funding Australian content. This offset is a 40% rebate of eligible Australian expenditure (QAPE) for production of Australian feature films. The rebate is 20% for television productions. This offset is subject to Australian content and Australian expenditure thresholds being satisfied.[14]

For any eligible project, the offset is paid by the government to the production company through the company's tax return after the project is completed. It is often the case that funds are paid long after costs have accrued, which can be very frustrating for producers. MEAA would support any measures aimed at improving the timeliness of these payments.

To maintain the current rebate differential would ignore the new reality in terms of the renewed role of television in producing quality content. Our members strongly support a standardised 40% rebate across screen productions regardless of platform. A uniform 40% rebate would undoubtedly boost production, leading to benefits for actors, crew, artists and Australian audiences.

[14] Determining 'significant Australian content' turns on the film's subject matter, where it was made, nationalities of key creative personnel and other matters as determined by Screen Australia.

Conclusion
Australia has the undoubted capacity to create a dynamic pathway for greater screen investment through building on – rather than diminishing – the current rules that have been part of the industry's landscape.

We cannot continue to embrace piece-meal 'reform' where allegedly bothersome regulatory rules are neutered or dispensed with. Each concession costs jobs and deflates a talented industry yearning to tell more stories, especially Australian stories – for kids and adults.

MEAA believe the current Australian content regime risks being broken by further deregulation.

Uneven Australian content rules should be equalised either through hour quotas or revenue based levies.

Screen offsets must be made internationally attractive and sustained over a long period so that the Australian screen sector enjoys an opportunity to flourish instead of endure the peaks and (many) troughs it has endured over the past twenty to thirty years.

Australian stories matter and it is time to ensure they are properly supported to ensure they make it to our screens.