

## WHO WE ARE

The Australian Writers' Guild (AWG) is the professional association for Australian screen and stage writers principally in film, television, theatre, radio and digital media. On behalf of its members, the AWG seeks to protect and promote the rights of writers, advance their creative rights and promote the Australian cultural voice in all its diversity. The AWG has fought for over 50 years to improve professional standards, conditions and remuneration within the industry. It has been instrumental in protecting and supporting Australian and children's content, including the introduction of quotas on commercial television in the 1960s and 1970s, and being pivotal to the introduction of the *New Eligible Drama Expenditure* for subscription television in the late 1990s.

## INTRODUCTION

The AWG appreciates the Environment and Communications References Committee's interest in the Australian film and television industry and welcomes the opportunity to contribute and offer assistance where possible to this inquiry. For the purpose of this submission, we will focus on the matters where we consider our contribution may be most valuable to the Committee. We will limit this submission to the specific areas of our expertise and avoid duplicating issues already addressed by other industry organisations.

Our submission will argue that the government should, through policy intervention, promote and defend Australian culture by supporting Australian screen content. We submit that the current regulatory framework is fit for purpose, but that it must be updated to be platform-neutral and to create parity between the commercial broadcasters and online content providers, both foreign and domestic. We support these claims through two key arguments.

First, there is a cultural imperative to tell Australian stories. The reality is that Australia will never be competing on a level playing field commercially with the international English language content market which is dominated by the United States. However, we can regulate and legislate to ensure that Australian stories continue to be a part of the conversation. We must continue to tell stories about who we are to each other. These stories allow us to define our culture and the country we live in. As put by Hector Crawford, having more Australian content on our screens would 'make a vital contribution to the development of a specifically Australian consciousness and sense of national identity'.<sup>1</sup> This is central to the purpose of public policy in our industry.

Second, we submit that broadcasters economically benefit from the current regulatory framework and that they, in return for the commercial benefits they enjoy, should commit to producing local scripted drama and children's content, thereby giving back to Australian audiences. The claim that advertising revenue is low as a result of restrictions imposed on this demographic and timeslot can be supported but, when taken as a whole, represents an economically insignificant loss of revenue because of the timeslots and the number of hours it affects. This is far outweighed by the advertising benefits gained by the significant number of hours and

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<sup>1</sup> Given, Jock, *Did the Networks Kill Homicide?*, Inside Story, 2 July 2014.

advertising revenue attached to the use of the public spectrum for other content, in particular sport content supported by anti-siphoning measures.

Further, we would like to go on the record as stating that while we support the proposition that Australia needs to be internationally competitive through the producer and location offsets, we are of the strong view that there needs to be a greater commercial gap between the producer offset and the location offset. Such a gap would incentivise the creation of Australian content and ensures that Australian stories can continue to be told by Australian writers for global audiences. In summary, during your inquiry into the economic and cultural value of Australian content on broadcast, radio and streaming services, we would urge you to commit to the following:

1. Preserving existing local content quotas for scripted television and sub-quotas on commercial broadcasters for new scripted drama and children's content;
2. Introducing regulation on subscription video on demand (SVOD), online and telecommunications companies to impose obligations on them to invest in the production and showcase of new Australian scripted drama and children's content;
3. Introducing a tax on streaming services tied to local content quotas;
4. Increasing the producer's offset for television from 20% to 40% and ensuring it is clearly and transparently directed toward its proper purpose of supporting Australian-originated screen stories;
5. Ensuring funding of the ABC and SBS is at a level that enables them to properly support and promote the creation and development of new Australian scripted drama and children's content in accordance with their respective charters; and
6. Incorporating quotas for the ABC and SBS to ensure clarity and transparency in expenditure on scripted content.

**Australian scripted screen content** is economically vulnerable due to the digitalisation and operation of the market for the Australian television industry. Government intervention in the screen industry should therefore be highly targeted to the areas where the market cannot provide the cultural objectives and public good that government is committed to. There is incontrovertible evidence, both domestically and internationally, that local scripted content cannot survive outside Hollywood and Bollywood without targeted government intervention.<sup>2</sup> The AWG sincerely hopes that there are inclinations for positive change within this current government, where selective, targeted policy intervention can strengthen and protect the economic and cultural value of the Australian television and film industry.

## CURRENT STATE AND OPERATION OF MARKET FOR AUSTRALIAN TELEVISION

We submit that the economic state of the commercial broadcasters is not as precarious as it is sometimes made out to be. The broadcasters can and do create content that is financially viable: reality television programs, news and light entertainment programs are lucrative and are not subject to the same economic

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<sup>2</sup> Grant, Peter, *Stories Under Stress: The Challenge for Indigenous Television Drama in English-Language Broadcast Markets*, December 2008: [http://www.mccarthy.ca/pubs/IAWG\\_DRAMA\\_REPORT\\_FINAL.pdf](http://www.mccarthy.ca/pubs/IAWG_DRAMA_REPORT_FINAL.pdf).

vulnerabilities as scripted drama and children's content. Additionally, there are ways of commercialising public spectrum access beyond increasing audience share. Shows like *The Block* and *MasterChef Australia* present broadcasters with the opportunity to benefit from advertising space, through in-show product placements and tie-ins. In general, these programs:

- are considerably cheaper to make than scripted shows;
- can be sold internationally for retransmission or to international networks who may wish to remake the format for their own market;
- achieve ample advertising revenue from extensive product placement and tie-ins; and
- are valuable marketing platforms which are used for brand marketing for the network and its other products.

Existing regulation also economically benefits the commercial broadcasters. The current anti-siphoning scheme was introduced to ensure Australian people have access to major sporting events, such as the Olympics and the AFL and NRL grand finals. It also means free-to-air broadcasters enjoy a government protection which gives them an advantage over Foxtel, SVOD, online or telecommunications competitors when it comes to major sporting events. In a time of declining advertising revenue, these events attract immense audience numbers and are therefore extremely attractive to advertisers who pay the commercial networks large sums of money for advertising during these broadcasts. The broadcasting of sporting events is not an area that needs government intervention because the market is self-sustaining.

We know, from local and international data, that if the policy requirement to make scripted drama and children's content is removed, leaving only commercial decision-making, evidence shows that local scripted content will rapidly disappear.<sup>3</sup> There is absolutely no doubt that commercial broadcasters will stop producing new scripted drama and children's programs. In the five years to 2016, commercial broadcasters' expenditure on drama and children's programming remained stagnant or decreased, while investment in news, sport and light entertainment programming increased.<sup>4</sup>

In 2003, the United Kingdom Government downgraded children's content from Tier 2 to Tier 3 in response to Public Service Broadcasters (PSB) complaints that it was no longer economically viable given the low advertising revenue it generated, after which PSB therefore no longer had to meet their quantitative targets for children's programming. From 2003 to 2013, this resulted in a 93% reduction in children's content on television.<sup>5</sup>

This is an example of the dramatic and rapid impact of the softening of TV content quota obligations for culturally valuable content in failed markets. It demonstrates that when broadcasters are not required to provide certain types of content, they won't, even when that content is seen as culturally significant and in

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<sup>3</sup> Grant, Peter, *Stories Under Stress: The Challenge for Indigenous Television Drama in English-Language Broadcast Markets*, December 2008: [http://www.mccarthy.ca/pubs/IAWG\\_DRAMA\\_REPORT\\_FINAL.pdf](http://www.mccarthy.ca/pubs/IAWG_DRAMA_REPORT_FINAL.pdf).

<sup>4</sup> ACMA, Broadcasting Financial Results 2009-2010 to 2014-2015: <https://www.acma.gov.au/theACMA/Library/Industry-library/Broadcasting/broadcasting-financial-results-report>.

<sup>5</sup> Pett, William, *Save Kids Content Announces Campaign Launch in Parliament*, 24 June 2016: [savekidscontent.org.uk/news/save-kids-content-announces-campaign-launch-in-parliament](http://savekidscontent.org.uk/news/save-kids-content-announces-campaign-launch-in-parliament).

the public interest, while also attracting excellent local ratings. After a long, noisy and hard-fought campaign by Save Kids' Content UK, change has occurred, and the United Kingdom is now utilising taxpayer money to seek to reinstate children's content to former levels. This strategy would be significantly riskier in Australia, given that the Australia–United States Free Trade Agreement prevents us from winding back any relaxation of regulation.

For over 40 years, Australian content quotas have ensured that culturally significant content, such as scripted drama and children's television, has been available for the benefit of all Australians. Apart from creating jobs and revenue, such iconic shows have promoted Australian identity and culture at home and on the international stage. We need to learn from the mistakes of the UK and not repeat them. Value cannot always be measured in dollars.

## THE VALUE AND IMPORTANCE OF LOCAL CONTENT REQUIREMENTS FOR TELEVISION

As outlined above, a deregulated media market will fail to deliver the screen content that is culturally valuable – scripted drama and children's content. These types of content should be protected by the Australian Government as part of the government mandate to act as custodians of Australian culture, for and on behalf of Australians of all ages, now and into the future.

### SCRIPTED DRAMA

Scripted drama forms part of the fabric of Australian culture and shared experience like no other form of television can. The ability to create characters, places, *mise-en-scène* and dialogue from an Australian perspective and sensibility is extremely powerful. Australian audiences welcome these characters into their lives night after night and they form part of a cultural canon that both reflects and shapes our cultural identity.

With average budgets of AUD\$1.1 million per hour, scripted drama is the most expensive audio-visual content to produce. It's also true that commercial broadcasters in Australia can acquire a high-quality drama series from the United States with a production budget of US\$6 million per episode, higher production values, marketing hype and critical acclaim for a small fraction of what it costs to make one episode of local Australian scripted drama. As stated earlier, Australian commercial broadcasters can also make an episode of a reality or light entertainment program for less than half the cost of making one episode of local Australian scripted drama. With no government obligation to make scripted drama, the commercial broadcasters will serve only their commercial interest and shareholders. It would be a justifiable commercial decision to focus on the types of low-risk, cheaper-to-make content that is most likely to return on investment at the expense of scripted drama.

### CHILDREN'S CONTENT

Under the *United Nations' Convention on the Rights of the Child*, children have a right to access information of social, cultural and linguistic benefit via mass media.<sup>6</sup> Australian children have a right to see

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<sup>6</sup> UN General Assembly, *Convention on the Rights of the Child*, Article 18.

themselves reflected on Australian screens and the Australian Government has a responsibility to ensure that we have stories and a culture of our own to pass on to future generations. Without government intervention, the screens of Australian children, as well as their hearts and minds, will instead be filled with foreign content and accents, and the valuable cultural, social and educational role that quality locally produced children's content plays in our society will be lost forever. Any dreams of a career in the television and film industry will be crushed as the opportunity to learn craft from the ground up on local productions will also be lost, along with new generations of writers, directors, actors, producers, cinematographers, sound and post designers.

It is evident that commercial broadcasters are already doing the bare minimum when it comes to children's content. Looking at the five-year average from 2012 to 2016, Channel 7 and Network 10 are only just meeting existing quotas for children's content, and Network Nine is actually failing to meet its obligations for first-release Australian children's programs. Australian commercial networks are making just one hour in excess of the 130 hours required for all Australian preschool programs.<sup>7</sup> This equates to each of the commercial broadcasters making approximately 2.5 hours of first-release Australian children's content per week. The commercial broadcasters made their intentions on children's content clear when they successfully lobbied the government to be allowed to use secondary channels to broadcast Australian children's content in order to create the self-fulfilling prophecy that Australian children were not watching it, so they shouldn't be forced to make it anymore.

## ASSESSMENT OF THE CURRENT SYSTEM OF SUPPORT FOR SCREEN CONTENT AND SUGGESTIONS FOR REFORM

### LOCAL CONTENT QUOTAS

The ability and opportunity to tell Australian stories, from our own perspective and in our own voice, was the result of a nationally significant public campaign: the 'TV: Make It Australian' campaign of the 1960s and 1970s when Australian shows represented just 1% of content shown on television. The battle was won and local content quotas were introduced.

The requirement for intervention and protection of content is a necessary reality for most countries, especially those in English language territories who have to compete with the behemoth that is the United States, a country where the huge size of the market can sustain content with high budgets and produce a superior quality product in the same language we speak. Local content providers are unable to compete when this content is exported to Australia for, effectively, a zero-marginal cost. Ordinarily this type of market distortion would be prevented by anti-dumping regulations, however, as audio-visual content is classified as a 'service' rather than a 'good' for the purposes of Customs Act 1901,<sup>8</sup> the regulation cannot apply, and market failure results. This is the economic reality underpinning the need for policy intervention for audiovisual content.

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<sup>7</sup> ACMA, *Australian Content Compliance Results 2012-2016*.

<sup>8</sup> *Customs Act 1901* (Cth), s 4.

Since the introduction of quotas, commercial television broadcasters have provided space on our screens for successful, high-quality, scripted Australian programs, such as *Number 96*, *Prisoner*, *A Country Practice*, *Neighbours*, *Home and Away*, *Acropolis Now*, *Blue Heelers*, *Round the Twist*, *The Secret Life of Us*, *SeaChange* and *Offspring*, that have connected with Australian and international audiences.

The *Broadcasting Services Act 1992* requires subscription television licensees who are registered under the *Corporations Act* and broadcast drama channels, and drama channel package providers, to invest at least 10% of their total program expenditure on new Australian drama.<sup>9</sup> Expenditure on new Australian drama programs has increased year on year since 2012/2013,<sup>10</sup> and the qualifying content that subscription television invested in over this period includes projects that were commercially successful in Australia and in international markets such as *Mad Max: Fury Road*, *Top of the Lake*, *The Kettering Incident*, *Wentworth*, *Mako Mermaids*, *Deadline Gallipoli*, *Red Dog* and *Bran Nue Dae*. Subscription television providers therefore have a clear commercial motivation to make this content at this time, but it is important to remember that this obligation was only introduced after successful lobbying by the AWG because they were not making it otherwise. Put simply, there is a commercial reality: when the content ceases to make money, they will stop making it if not required to do so.

Existing quotas on commercial broadcasters to produce new scripted drama and children's content and the expenditure requirement for subscription television licensees must be preserved. There is no doubt that the Australian public supports these existing policies as both policy options and in its viewing habits. Screen Australia's 2016 *Screen Currency Report* ('the Report') found that Australians expressed a preference for Australian content over foreign screen content. It was found that even among the most avid online viewers (who subscribe to streaming services like Netflix and Stan), Australian content was favoured. This has been a trend for many years now, notwithstanding the increased presence of providers with huge selections of American, British and other international content available. With audiences making this choice, it becomes clear that Australians place an extremely high value on Australian content. Australians have an appetite for seeing shows created in Australia which reflect their experience of living in Australia and what it means to be Australian. If we continue to feed this hunger, the industry will not only survive but it will thrive.

The AWG submits that content regulation in the form of enforceable local content quotas for scripted television is the cornerstone to preserving quality Australian audio-visual content on our screens. Without such regulation to achieve targeted outcomes, it is likely that Australian content would completely disappear from our screens and erode one of the important aspects of our culture.

The Report also stated that all screen content under Australian creative control generated AUD\$2.6 billion revenue and 20,158 full-time equivalent jobs. If local content quotas were to be reduced, the space these programs occupy in the market would inevitably be filled by cheaply purchased international content or offshore productions attracted by the location or PDV offset which may bring

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<sup>9</sup> *Broadcasting Services Act 1992* (Cth), Pt 7, Div 2A.

<sup>10</sup> ACMA, *New Eligible Drama Expenditure Scheme Results*, 2015-16: <https://www.acma.gov.au/Industry/Broadcast/Television/Australian-content/new-eligible-drama-expenditure-scheme-results-i-acma>.

employment for some actors, directors, extras, crew and post production personnel, but will not include mandatory requirements to employ Australian writers or other key creatives. While this may have short-term financial benefits for Australia's commercial television networks, long term, this would decimate the Australian film and television industry, and have a negative impact on employment and GDP. The productions purchased from overseas would be made by foreign actors, writers, producers, directors and distributors, taking employment away from their Australian counterparts and decreasing our nation's exposure to its own culture on screen.

#### PLATFORM-NEUTRAL REGULATION

In addition to preserving the protections of the current system, we need to make them fit for purpose in this new age of digital content. The current system of quotas was introduced long before the advent of streaming video on demand services, such as Stan, Netflix and Amazon Prime, or video-sharing platforms such as YouTube, and before telecommunications companies became content providers alongside the traditional networks in a convergent media landscape.

Australian commercial networks must comply with quotas, Foxtel must comply with a minimum expenditure on local content, government broadcasters must create local content under their respective charters, but the new digital market entrants have as yet no obligation to contribute to the local market.

To use just one example of Netflix, in June 2017, Roy Morgan reported that 7.091 million Australians aged 14 and over had access to Netflix in the three months to March 2017. This is a 29% increase on the previous quarter. An estimated 2,714,000 Australian homes are now Netflix subscribers.<sup>11</sup> With the minimum subscription in Australia priced at AUD\$9.99 per month, Netflix revenue from the Australian market could be well in excess of AUD\$325 million per annum from subscriptions alone. But, despite making these huge sums of money from exploiting the Australian market, Netflix has no staff in Australia, with even its technical support run remotely from the USA. Although Netflix has previously bought second-window, international distribution rights on Australian television series such as *The Legend of Monkey*, *Glitch* and *Beat Bugs*, it should not be forgotten that these rights are valuable for Netflix in the multiple international territories they cover and have the potential to make them even more money when the rights are exploited and cross-collateralised. Netflix have also recently announced a direct commission for one original Australian television series, *Tidelands*, and has been the major investor in another, *Pine Gap*, so while they are now spending money in the Australian market, it is a drop in the ocean in the context of how much they are making from subscriptions and stand to make from the international rights of Australian content. It was reported that in 2017 Netflix spent over USD\$8 billion on content alone,<sup>12</sup> so the Australian Government should be asking how much of that will be spent in Australia and how much could be spent if Netflix were obliged to commit to new Australian production in the same way its competitors are?

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<sup>11</sup> Roy Morgan Subscription Video On Demand Estimates, June 2017: <http://www.roymorgan.com/findings/7242-netflix-subscriptions-march-2017-201706080957>.

<sup>12</sup> Ibid.

The media regulation framework in Australia needs to be fair and equal. But the way to do this is by updating our regulation, rather than racing to the bottom with deregulation. All content providers should be regulated by the Australian Government to ensure that they have an obligation to produce new local Australian and children's content and give back to the Australian audiences they are exploiting for huge profits. New players like Netflix also benefit from oligopolistic market conditions so the Australian Government should ensure that there is a trade-off and benefit to the Australian people for that.

With their *Audiovisual Media Services Directive*, the European Parliament has recently set content quotas for video streaming services like Netflix and Amazon Prime. With a requirement that 30% of their catalogue must be European Commission.<sup>13</sup> Member states will also be permitted to impose a levy on the streamers, though Netflix is challenging this in the European General Court.

Australia should look closely at what Europe has been able to achieve and should introduce a new levy on subscription video on demand (SVOD), online and telecommunications companies to impose an obligation on them to produce new Australian scripted drama and children's content.

#### PRODUCER OFFSET FOR TELEVISION

To date, the producer offset has been extremely effective in driving high-quality scripted drama production. The qualifying requirement that key creatives such as writers must be Australian ensures professional opportunities for Australian writers and other creatives. It also guarantees Australian audiences ongoing access to seeing their culture represented on screen through television content.

Australian feature films attract a producer offset of 40%, which is double what is offered to qualifying television productions. We understand this disparity was originally put in place as the budgets for feature films were comparatively higher than television and their finance harder for producers to raise. Yet, with the current Australian television drama budgets sitting at around AUD\$1.1 million per hour, and with many series consisting of 6 to 12 episodes per season, the budgets are now comparable to and in most cases actually exceed the budgets for Australian feature films. It therefore makes sense for the producer offset for television to be brought to parity with the Australian feature film incentive.

Australia is also facing intense competition for television productions from regional neighbours such as New Zealand and Malaysia, who respectively have a 40% and 30% producer offset for television. Many large productions are now choosing to shoot in New Zealand instead of Australia to take advantage of the larger offset and this is costing Australians opportunities for employment, skill development and costing the Australian economy money in lost revenue.

Research by PricewaterhouseCoopers ('the PwC report') which was commissioned by the production and pay-TV industries estimates that over AUD\$100 million in economic activity would be created if

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<sup>13</sup> European Commission, *Audiovisual Media Services Directive*, May 2017: <http://www.roymorgan.com/findings/7242-netflix-subscriptions-march-2017-201706080957>.

the producer offset for television production was doubled and that the cost to the federal government would only be 'a maximum of \$15.5 million in foregone tax revenue'. The PwC report estimates that 360 new television production jobs would be created and said Australia's international competitiveness in the global screen production and finance industry would be 'significantly enhanced'.

The AWG agrees with the proposition that Australia needs to be internationally competitive through the producer and location offsets. However, we are of the view that there needs to be a greater commercial gap between the producer offset and the location offset. An increase in the producer offset over the location offset incentivises the creation of Australian content and ensures that Australian stories can continue to be told by Australian writers for global audiences. This is what differentiates industry protectionism from support for Australian culture and stories with all the attendant second-tier economic and social benefits.

In contrast, productions taking advantage of the location offset do not have to satisfy the 'significant Australian content' test. The beneficiaries of the location offset also tend to be large, wealthy transnational production companies who provide nothing more than sporadic investment in jobs and skills in return for large public subsidies, without any obligation to contribute more broadly, which is the case with the producer offset.

The AWG recommends an increase in the producer offset for television from 20% to 40%.

#### ABC AND SBS: QUOTAS AND FUNDING

SBS and ABC have continued to make a significant contribution to the Australian cultural conversation, ensuring Australian audiences have the opportunity to see themselves reflected on screen and have their stories told. However, to ensure parity, the AWG supports the introduction of the same content quotas that apply to commercial broadcasters. Additionally, we support an increase in funding to the ABC and SBS.

In complying with their obligation to provide programming which reflects Australia's multicultural society, SBS has given Australian audiences *Wilfred*, *East West 101*, *Housos* and *Deep Water*: all shows which could not have been made anywhere else but in Australia.

The ABC's charter requires it to broadcast programs that 'contribute to a sense of national identity and inform and entertain, and reflect the cultural diversity of, the Australian community' which has given both Australian and international audiences uniquely Australian shows such as *Mother and Son*, *Kath and Kim*, *Summer Heights High*, *Dance Academy*, *Redfern Now*, *The Slap*, *Please Like Me*, *Rake* and *Cleverman*. These shows have not only been successful in Australia but have also sold and been enjoyed all over the world. Both the ABC and SBS are reliant on direct funding from the Australian Government. Without any funding, none of these iconic Australian shows would have been possible. Yet in spite of this, funding to these organisations is being drastically reduced each year which has led to decreased investments in new

Australian content. Should these broadcasters become the only source of quality Australian and children's content, the demand for and value of such content will be drastically reduced.

Accordingly, the AWG recommends an increase in direct funding to ABC and SBS, specifically for new Australian scripted content, expenditure and reporting requirements on the investment in these areas, and the incorporation of content quotas in relation to their production of scripted content.

## CONCLUSION

We strongly urge the Australian Government to have the courage to stand up to those putting commerce before culture and to take the necessary steps to provide protection for the Australian film and television industry and ensure that those protections are fit for purpose and platform neutral.

We must always remember that government intervention in the screen industry is and should always be motivated by more than just economics, market and job protectionism. It is, and should always be, driven by a cultural imperative to tell Australian stories to Australian audiences.

Without smart, forward-thinking government intervention that is relevant to the age in which we live, we risk living under a legislative and policy framework that is constantly trailing behind technology and is a disincentive to create. In a deregulated environment, we will lose not only valuable revenue, jobs and opportunities for growth, but also an important part of our national identity and culture. Once it is gone, it will be lost forever.

For further information on this submission or to discuss the issues further, please do not hesitate to contact us.

Yours sincerely,

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