

**CHANGES TO THE AUSTRALIAN CONTENT AND  
CHILDREN'S TELEVISION STANDARDS CONSULTATION**

Australian Communications and Media Authority

Australian Writers' Guild Submission

7 December 2020



The Australian Writers' Guild (**AWG**) is the professional association for Australian screen and stage writers in film, television, theatre, audio and digital media. We represent over 2500 writers for stage and screen, including the writers of the vast majority of the Australian screen drama that Australians have been welcoming into their living room screens for decades. For almost 60 years – since television started to take over the world of radio plays – the AWG has been working with writers and the industry to preserve, promote and develop Australian stories on our stages and screens as the technology and marketplace continues to develop apace. Our vision is to see scriptwriters thrive as a dynamic and integral part of Australian storytelling: shaping, reflecting and enhancing the Australian cultural voice in all its diversity. We therefore greatly appreciate the opportunity to comment on the 'Broadcasting Services (Australian Content and Children's Television) Standards 2020' (the **Draft Content Standards**).

The AWG has been part of significant domestic and global initiatives to examine the barriers to successful local production. No local screen industry can compete with multi-million dollar American products that a local broadcaster or streaming service could acquire the distribution rights to for a small fraction of the cost to make a competing product in Australia.<sup>1</sup> It is scripted content which is uniquely disadvantaged by this market failure and the incentives and regulation it implements must be responsive to the differing economics of the various streams of screen content.

The Draft Content Standards seek to address these market failures to a degree and to incentivise the production of high-quality, marketable, and internationally competitive drama. There is a tendency to assume high budgets lead to international success, and there is a tendency to assume that settings and stories must not be too linked to "place" if they are to appeal to an international market. These assumptions are not borne out by fact and we must make provision for this in the types of projects which are supported and rewarded. The billion-dollar franchise of *NCIS LA* is to this day one of the most watched and financially successful television programmes in the world. It made its money, and continues to do so, not through the highest budgets or the most globally renowned stars, but by telling stories

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<sup>1</sup> Peter Grant, [\*Stories Under Stress: The Challenge for Indigenous Television Drama in English-Language Broadcast Markets\*](#), December 2008, 11-12.

that audiences wanted to tune into week after week after week. It was an Australian writer who was responsible for the revitalisation of this franchise. There is no shortage of Australian storytellers who can give audiences what they want to see and who know how to make money out of those stories – however getting the business model right through informed local content guidelines is crucial.

The Draft Content Standards must recognise the pivotal role of Australian key creatives in developing screen content if they are to achieve its stated purpose.

In this submission, we recommend that:

- (i) the term “commissioned” must be defined in a **clear and measurable** way which is fit for purpose and we support a threshold contribution of at least 30% of the production budget;
- (ii) the “financial contribution” made by licensees towards the production of a “commissioned” program must **include a meaningful financial contribution towards the script development of that program, including where the ‘commission’ comes after significant development has already been done.** In the absence of investment in development, the draft regulation risks incentivising late commissions, where development had been done, at best, on a shoestring budget and, at worst, ‘on-spec’. By investing in development, licensees can produce high-quality series, which attract the highest level of talent and investment, and allow Australian creators to sell their best work to the world. Financial investment in script development can take the form of reimbursement of writer’s fees for work already undertaken to develop a project of sufficient quality and evolution to take to the marketplace.
- (iii) the definition of “Australian program” must include reference to **script development and writing by Australian writers.** It is locally scripted programs that need market support. Failure to carefully and purposefully address this in the definitions will see public funds increasing profits of foreign owned

companies with no meaningful gain for the Australian industry and Australian audiences.

- (iv) the requirement that a children's program is "**fully scripted**" is retained; and
- (v) the genre allocation of points should incentivise long-running drama series, those being the ones which can see significant return on investment internationally, reach the greatest audiences internationally and sustain an industry with sufficient experience to compete internationally.

We note and comply with the Consultation Paper statement that ACMA does not seek comment on the merits of policy changes encompassed in the Direction. However, there are recommendations crucial to this submission that must necessarily touch upon recent policy decisions and one cannot comment on a proposed course of action by ACMA without addressing its likelihood of achieving its purpose and the intentions of the policy-makers.

#### **SECTION 8 – DEFINITION OF THE TERM “COMMISSIONED” MUST INCLUDE REFERENCE TO DEVELOPMENT INVESTMENT; DEFINITION OF “COMMISSIONED” MUST BE MEASURABLE AND SPECIFIC**

The Draft Content Standards define a program as a “commissioned” program if the licensee, or its program supplier, has made a “material and meaningful financial contribution” to the production of the program, prior to the completion of production of the program. We submit that this definition requires further detail as described below.

##### **(i) Introduce requirement for licensees to contribute to development investment**

The term “commissioned” in the Draft Content Standards should include reference to the licensee's financial contribution to the **script development** of a program. This investment can occur either before or after commissioning the program provided that – should the commissioner's investment come *after* commissioning on the basis of script work already completed – the Australian key creatives responsible for the development work are properly compensated (if they have not already been) and reimbursement for such development work

should form a meaningful percentage of commissioned investment. Without this, the development is regularly either done without meaningful time and investment in script development, and the rush to secure a Commission and production fees comes at the expense of developing high quality scripts on which to build the project and attract key talent. Those key creatives whose work is responsible for attracting the talent and investment should form a meaningful part of the investment package. It is one of our greatest failings as an industry relative to much of our international competition.

The government has stated that it wants screen products with “higher production values and programs with a better prospect of being sold into the global content market”<sup>2</sup> and script development is essential to that aim. The key contributing factor to the new golden age of television in the United States, which is marked by quality scripted drama received well by critics and audiences alike, is placing creative control in the hands of the writer. *Sopranos*, *Mad Men*, and *Breaking Bad* are all examples of this. The so-called “HBO Model” of creator-driven content is commercially successful and had reached and impressed audiences around the world.

**(ii) Measurable and specific definition of “commissioned”**

We propose that the definition of “commissioned” and “commissioned program” is restricted and that the amount contributed by a licensee in order to satisfy is **measurable**. The language of a “material and meaningful contribution” is too broad and introduces the risk that licensees will be able to qualify as having “commissioned” a program too easily. We support a financial contribution of at least 30% of the production budget.

In addition to the threshold of investment, investment allocation and the resulting content must only be attributable to one platform. Multiple platforms within one corporate group should not be able to claim the same investment or product more than once. This is crucial

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<sup>2</sup> Hon Paul Fletcher, Minister for Communications, CyberSafety and the Arts, [‘Media Release: New Funding Budget to Deliver Australian Screen Content’](#) (30 September 2020).

if the new relaxed approach to meeting content quotas across platforms is to bring public benefit and achieve the stated policy objectives.

## **SECTION 8 – DEFINITION OF “AUSTRALIAN DRAMA PROGRAM” MUST RETAIN REQUIREMENT OF “FULLY SCRIPTED SCREENPLAY OR TELEPLAY” FOR CHILDREN’S TELEVISION**

The Consultation Paper states that children’s drama programs will be captured by the definition of Australian drama program and, as such, children’s drama programs “will no longer be prevented from having a partially scripted screen play or having actors deliver improvised dialogue that is based on a script outline or outlines.”<sup>3</sup> This is a departure from the *Children’s Television Standard 2009* which defines children’s television as having a “fully scripted screenplay or teleplay in which the dramatic elements of character, theme and plot are introduced and developed so as to form a narrative structure “.

If the government wishes to incentivise higher-quality, high-budget drama then this proposal is incongruous with that aim. Australian children’s television such as *Bluey* is marketable and internationally competitive precisely because it is fully scripted by gifted talented creators who know how to reach their audience.

The screen industry has been united in arguing that the recent changes to local content will result in a huge loss of Australian children’s content and we are concerned that the removal of the scripted requirement will not only reduce the amount of children’s content overall, but that the children’s content that is produced will be of a lower quality, specifically for the purpose of meeting quota obligations cheaply rather than reaching local and international audiences. The decision to effectively remove the commercial broadcaster’s children’s content obligation is a result of consistent lobbying by the commercial broadcasters and their arguments that Australian children no longer watched it. While it is outside the scope of this submission to respond to those arguments, we wish to note that Australian content which was crushed and hidden by local programmers was able to achieve primetime success in other

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<sup>3</sup> Consultation Paper, 12.

English language territories. That is to say, producing children’s television can be commercially and creatively successful if developed, programmed and marketed for success.

## **SECTION 10 (2) – DEFINITION OF “AUSTRALIAN PROGRAM” MUST INCLUDE REFERENCE TO SCRIPT DEVELOPMENT BY AUSTRALIAN WRITERS**

We propose that requirements set out in section 10 for a program to qualify as an Australian program are expanded, so as to specifically refer to the writers involved in the “script development” of the program being Australian.<sup>4</sup> Significant investment has already been committed to foreign programmes being produced and post-produced in Australia. The purpose of this content framework is to protect and promote Australian originated content.

This proposed requirement could be included in sub-section 10(2)(e) so that an Australian program must be “**developed**, produced and post-produced in Australia”. In this way, the revised quota system will incentivise and support Australian originated ideas, concepts and intellectual property as distinct from, and in addition to, the requirement that individual episodes of the program are written by Australian writers or directed by Australian directors (10(2)(b)(ii)).

This change would have the effect of expressly precluding projects that are developed offshore and produced in Australia from satisfying the definition of “Australian program”. There are already generous incentives – such as the PDV and location offsets – for overseas

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<sup>4</sup> Section 10(2) relevantly provides that an Australian program:

is produced under the creative control of Australians if:

- (a) the producer of the program is, or the producers of the program are, Australian (whether or not the program is produced in conjunction with a co-producer, or an executive producer, who is not an Australian); and
- (b) either:
  - (i) the director of the program is, or the directors of the program are, Australian; or
  - (ii) the writer of the program is, or the writers of the program are, Australian
- ...
- (e) the program is produced and post-produced in Australia (whether or not it is filmed in Australia); and

companies to come to Australia to produce these projects but clearly the “Australian program” requirement is drafted to satisfy a clear and tangible cultural outcome: i.e., to ensure that Australian stories are on our screens. The definition provided in section 10 is intended to be comprehensive. It is critical that it is extended to ensure that an Australian program must be generated and developed by Australians. Failure to do so creates a confusion of overlapping options for public funds to subsidise foreign companies, including some of the richest in the world, for a short term benefit for a small number of crew. This will not build the screen industry, it will not return local content to Australian audiences, and it will not put Australia in the best position to export its screen content to the world.

### **GENRE POINT ALLOCATION – ALLOCATION OF DRAMA POINTS MUST INCENTIVISE LONG-RUNNING DRAMA PROGRAMS IN ADDITION TO HIGH BUDGET DRAMA PROGRAMS**

The Consultation Paper states that the “applicable points for commissioned drama programs are scaled to incentivise higher budget commissioned programming.”<sup>5</sup>

The ideal quota system is a combination of expenditure and hours. Monetary expenditure alone should not allow a licensee to discharge its obligations resulting, for example, in situations where huge amounts of money are concentrated into a single high-budget production. As stated at the outset of this submission, production budgets can be large without improving the quality of the program. Hollywood actors can eat up a large part of a drama budget and it should not be permissible for licensees to discharge their cultural obligations solely in this way. There are already adequate provisions for foreign companies to produce their programmes in Australia but the purpose of these Standards is specifically to incentivise and preserve Australian content and market correction is needed to do so.

The emphasis on the amount of money spent per episode incentive is counter to what actually sells internationally: long-running series like *McLeod's Daughters* and *Wentworth*. Not only are these programs financially successful – being re-run and sold into hundreds of different territories around the world over decades – but they place Australians and our stories in living

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<sup>5</sup> Consultation Paper, 9.

rooms around the world. Such soft diplomacy has never been more important. In addition, it is these long run programmes that sustain the industry keeping many people employed, providing training and experience, and giving lasting opportunity to a diverse range of Australian voices. Therefore, long-running returning series should be incentivised as an equally vital part of the points system.