



Create NSW
Arts, Screen & Culture

**Submission in response to
Media Reform Green Paper:
Modernising television regulation in
Australia**

Overview

Create NSW is an integrated government agency bringing together Arts NSW and Screen NSW to support the arts, screen and culture sectors. The agency formally came into existence on 1 April 2017 and currently sits within the NSW Department of Premier and Cabinet.

Create NSW welcomes the release of the Green Paper and the opportunity to respond. The submission builds on our previous submission to *Supporting Australian stories on our screens: Options paper*.

The Australian production sector is emerging strongly from the pandemic. However, having an effective Australian content regulation in place will be crucial to reviving and sustaining the industry and meeting the demand from Australian audiences, who have shown a strong appetite for Australian stories.

Screen NSW support for the screen industry

Screen NSW provides support to scripted narrative content including feature films, adult and children's drama and narrative comedy, factual and documentary television or online programs, and creative interactive screen projects. The agency's programs cover development, production, regional filming, market travel, industry and audience development and international production attraction.

In recognition of the screen industry's economic and cultural benefits, the NSW Government introduced the Made in NSW fund in 2016/17 to attract significant international production and high-end domestic TV drama and feature film production.

In 2019/20, the spend on drama production in NSW was \$475 million, representing 48 per cent of the national total.

In November 2020 the NSW Government announced an additional \$175 million over five years for the Made in NSW fund. In addition to providing incentives for footloose production, the fund supports high end local drama programs and local feature films with a view to growing audiences locally and internationally. The increase in demand for content from streaming services and the opportunity this presents for the NSW production sector was a major reason for this increased investment.

In October 2019, the NSW Government introduced a 10 per cent PDV Rebate for postproduction, digital and visual effects work, for work carried out in NSW above a \$500,000 threshold. Since its introduction the Rebate has supported over \$600 million in NSW PDV expenditure and over 5,000 jobs.

Create NSW response to the Green paper

Create NSW sees merit in the development of a new licence for commercial broadcasters and the use of the dividend to develop a new funding source, should the broadcasters take up the option. This has the potential to offset the negative impact of amendments to the Australian content standard introduced from 1 January 2021.

Create NSW strongly endorses the move to impose an expenditure requirement on streaming services. However, the obligation needs to be meaningful and not set a bar that is lower than current expenditure levels.

We encourage the Australian Government to undertake modelling on the impact of new measures and further consultation on any guidelines and legislation.

1. A new licence for commercial broadcasters

Create NSW supports the proposed development of a new licence for commercial broadcasters, provided it is part of a broader package that supports maintenance, and preferably growth, of Australian content levels. Necessary elements of the package are:

- retention of the sub-quota for drama, children's and documentaries
- legislated Australian content obligations for the streaming services
- a new initiative (such as the proposed Create Australian Screen Trust) that mitigates the likely negative impact of reduced requirements for commercial free to air broadcasters and subscription services that have already been introduced.

If the proposal to surrender spectrum and shift to a new form of licence is not sufficiently attractive to two or more commercial broadcasters, the Australian Government needs to identify another means to boost Australian content and the independent production sector.

2. Promoting public interest derived from the spectrum

Create NSW supports the use of revenue from sale of spectrum to support public policy initiatives for media. This includes in principle support for the proposal to establish the Create Australian Screen Trust (CAST), subject to it representing additional funding for content production, and not replacing existing Screen Australia or other government funding. However, we do have some reservations about the need for a separate trust.

While a second door might be attractive on one level, having the CAST board reporting to the Screen Australia board does seem to detract from the idea of a second independent door. Moreover, having a separate Trust is likely to give rise to unnecessary administrative and financial cost duplication and there may be better models that avoid this duplication.

The rationale for a separation between commercial and cultural/creative projects is not entirely clear. All projects should have a clearly articulated path to market. Screen Australia

has the internal expertise to make assessments on a commercial as well as cultural/creative basis.

Recoupment alone is unlikely to be sufficient to sustain the fund so for administrative simplicity it would also be preferable for funding to be provided on a grant basis for amounts under \$500,000 and recoupable equity investment for amounts above \$500,000, consistent with current practice.

The Australian Government is encouraged to conduct financial modelling to verify the capital base and income streams required for the CAST fund to be sustainable.

3. Harmonising Australian content obligations

The Green Paper made a convincing argument for creating a more equitable regulatory framework by imposing an Australian content investment obligation on SVODs and AVOD services.

Create NSW agrees that the requirement is best focused on services predominantly providing professionally produced scripted content, specifically on drama, documentary and children's drama. In order to maximise discoverability and audience exposure, we suggest that the services be required to spend on content that matches the genres available on their service (that is, if they have children's content in their catalogue, they should commission Australian children's content).

Entities within a parent company that generate revenue from a separate subscriber base should be covered by the investment obligation.

Level of spend

As the Green Paper notes, most Australian consumers value quality Australian content, and 58 per cent of those who have a subscription to an SVOD service don't believe these services have enough Australian content.

We note the Green Paper states that five per cent is intended to be indicative. It is not a level likely to generate significant new original content and is well below formulas applied or under discussion in other jurisdictions.

Under the European Directive, streaming services must offer a 30 per cent quota of European content to European subscribers starting in 2021. On top of that, EU countries can introduce nationally tailored legislation to directly require streaming services to reinvest a percentage of their revenues within each European territory where they operate.

France has now approved a firm legislative framework under which the government will require such services to invest up to 25 per cent of their local revenues in French-language content. In Italy the plan is for a similar investment quota, requiring 25 per cent of revenues to be spent on local content.¹

¹ <https://variety.com/2021/digital/news/europe-avms-streamers-1234915013/>

We therefore suggest that an investment obligation set at a minimum of 20 per cent of the VOD's total Australian revenue would be reasonable.

Again, we encourage the Australian Government to undertake modelling to determine the volume and type of production activity likely to be generated by the new investment obligation on VODs.

Thresholds

The Green Paper acknowledges that new SVOD services continue to enter the market and enjoy rapid growth. While we appreciate that new entrants with little revenue should not need to meet the obligation, the proposed thresholds of \$100 million revenue and 1 million subscribers are in our view too high. We support lower thresholds of \$50 million Australian sourced revenue and 500,000 subscribers or registered users. Services above \$50 million revenue or 500,000 subscribers are unlikely to be start-ups or niche services and should be caught by the obligation.

Original/first release programming

The Green paper notes that a large proportion of the Australian screen content that is available on SVODs tends to be older content, and the commissioning of new Australian content by SVODs is low by international standards. The requirement needs to focus as a priority on original programming that has its first release on the service concerned.

Definition of Australian content

The definition adopted for Australian content may require a hybrid approach of the definition of an Australian program in the Broadcasting Services (Australian Content and Children's Television) Standards 2020, which emphasises Australian creative control, and the significant Australian content test in the Income Tax Assessment Act 1997, which takes a broader view of "Australian". The UK points system offers one such model.

Terms of trade

The Australian Government should consider how the new investment obligation may be able to support better terms of trade for the local independent production sector in negotiations with VODs.

Alternative approaches

The Australian Government could consider applying a dollar rate per subscriber approach to calculate the investment obligation, rather than a percentage of revenue approach, particularly for VODs that have a more complex business model. The dollar rate per subscriber approach should create an investment obligation commensurate with 20 per cent of revenue for similar sized services.

4. Enhancing the role of the national broadcasters in providing content

Create NSW acknowledges that the national broadcasters are key significant commissioners of Australian content and that the level of commissioning is largely determined by the level of Australian Government funding.

Imposing an Australian content commitment and reporting requirements on the national broadcasters would provide greater certainty for the independent production sector and audiences. We suggest that it should relate to Australian drama, documentary and children's content. While we note the broadcasters' concerns with maintaining editorial independence, an Australian content requirement in itself would not in itself compromise independence.

These requirements would need to be accompanied by sufficient federal funding (preferably tied funding) to allow the broadcasters to meet the commitment.

While it does make sense to use the framework that applies to the commercial networks as a starting point, some analysis of the impact of basing it on points, hours or expenditure formula would be helpful in assessing the advantages and disadvantages.

Conclusion

Create NSW is pleased that the Government has progressed to the next stage of modernising television regulation and looks forward to the opportunity to engage on detailed design of CAST if it proceeds as well as on the legislation governing expectations on SVOD and AVOD businesses and national broadcasters.