

Media Reform Green Paper: Modernising television regulation in Australia

Film Victoria submission

May 2021

Introduction

Film Victoria welcomes the opportunity to respond to the *Media Reform Green Paper: Modernising television regulation in Australia*. This submission builds on our previous response to the *Supporting Australian stories on our screens: Options paper*.

Film Victoria believes the regulatory reforms should:

- Support Australian stories and increase the amount of Australian content available to Australian audiences.
- Support and grow the Australian independent production sector for screen content.
- Level the playing field with all commercial platforms that have cultural impact and derive benefit from operating in the Australian market contributing to Australian storytelling and the development and growth of the Australian independent production sector.

This submission is structured in response to the five key proposals in the Green Paper. The key proposals and recommendations are interconnected and collectively aim to achieve the above regulatory objectives. They also reflect a common view held by all the state screen agencies.

Proposal 1: A new licence for commercial broadcasters

Film Victoria supports the removal of the multichannel requirement under this proposal on the condition that proposal 3 and proposal 4 are implemented as recommended.

If proposals 3 and 4 are successfully implemented, they will increase the amount of new Australian content available to Australians and offset the decrease in content that will result from removing the multichannel requirement.

Proposal 2: Reshape an industry and realise a digital dividend

Film Victoria supports in principle the Federal Government creating a second digital dividend in order to implement proposal 3.

It is noted that the spectrum released by community television broadcasters switching to digital only transmission is required to enable the future restack. However, this spectrum does not appear to be required for another use until the restack occurs. It is therefore recommended

that the Federal Government considers granting a further licence extension to the remaining community television broadcasters to alleviate their transition to digital.

Proposal 3: Set aside a portion of the proceeds from the auction of digital dividend spectrum to support a stronger media sector and public policy outcomes

Film Victoria supports a portion of the proceeds from the spectrum auction being used to establish the Create Australia Screen Trust (CAST) to support Australian drama, children's and documentary content.

Film Victoria recommends that additional proceeds from the spectrum auction are used to restore Screen Australia funding for digital games as digital games are an integral part of the Australian independent production sector for screen content.

Film Victoria recognises that it is unknown whether the commercial broadcasters will agree to proposal 1 as presented in the Green Paper, which may result in delaying the establishment of CAST or CAST never being established. Should either of these outcomes come to pass, the Federal Government must identify other means to support Australian content and the Australian independent production sector to mitigate the expected negative impact of the regulatory reforms that have already been announced.

Proposal 3 presents a one-off opportunity to establish a longer term, independent source of Federal Government support for Australian content and the Australian independent production sector. However, in addition to concerns relating to when and if CAST will be established, Film Victoria also has concerns regarding how CAST will be established and recommends the following:

- CAST must represent additional funding for Australian content production, rather than replace Screen Australia or other Federal Government funding, which is secure from reallocation. Further, the real value of the CAST annual program funding and capital base must be maintained over time and not eroded by inflation or any other factor.
- CAST would administer a sizeable amount of annual program funding (e.g. \$40 million). This is expected to require a significant capital base and income streams (e.g. a contribution from the video on demand (VOD) investment obligation under proposal 4) to ensure the financial sustainability of the fund.
 - The Federal Government must conduct quantitative analysis of this proposal including financial modelling to verify the capital base and income streams required for CAST to be financially sustainable.
 - If an adequate capital base or income stream is not able to be guaranteed, the Federal Government must consider alternative approaches to using proceeds from the spectrum auction to support Australian content and the Australian independent production sector.
- CAST has one funding pool to support Australian content as there is not always a clear distinction between a cultural or a commercial project. Funding is provided on a grant (<\$500,000) or production investment basis (>\$500,000) in line with existing approaches to government funding, provided the financial returns outweigh the administrative cost of recoupment.

- Objectives for CAST include supporting new and emerging talent, diverse talent and content with a clearly articulated audience and identified pathway to market or market attachment.
- The Federal Government explores other models to ensure there is minimal administrative duplication with existing support provided through Screen Australia. If the trustee approach remains the preferred model, the CAST trustees must represent the interests of the Australian industry and include representatives from the state screen agencies. The CAST trustees should also have full independence and make the final decision on which projects should be funded.
- The Federal Government consults with industry again to determine the particulars of how CAST will operate.
- Once established, the Federal Government conducts a review every two years to determine any adjustments required to how CAST operates to ensure it meets its objectives.

Proposal 4: Impose an Australian content investment obligation on VOD services

Film Victoria supports:

- ***A new content investment obligation being imposed on VOD services that provide professional content to Australian audiences.***
- ***Making Australian content discoverable to Australian audiences.***
- ***The proposed reporting requirements to ACMA.***

Film Victoria does not support the exemption for VOD services owned by the holder of a broadcast licence or subscription television licence.

Film Victoria also recommends that the new content investment obligation:

- Applies to all VOD services that provide professionally produced content delivered over the internet regardless of the genre of content.
- Is set at 20% of the VOD's total Australian gross revenue from their local service/s.
 - The definition of revenue must be carefully considered to ensure it reflects that revenue generated by Australians in return for accessing the content available on the VOD service.
 - The Federal Government considers applying a \$ 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 \$ rate per subscriber approach should create an investment obligation commensurate to 20% of revenue for similar sized services.
- Is only tied to a revenue threshold, which should be set at \$50 million per annum of Australian revenue generated directly or indirectly from Australian audiences viewing content on their service/s. A revenue threshold will target service providers that are actively commercialising their content, as opposed to those that are accumulating subscribers without a profit motive.

- Includes appropriate anti-avoidance provisions to ensure that service providers do not avoid the obligation by adopting commercial models that allow them to argue the revenue is not directly related to the commercialisation of viewing content (e.g. buy Amazon delivery services and get Amazon Prime Video for free).

Film Victoria further recommends the following in relation to the new content investment obligation:

- VODs are required to acquit their investment obligation by commissioning new Australian content that matches the genres available on their service (e.g. if they have children's content in their catalogue, they should commission or co-commission Australian children's content) with first release on its platform. The Federal Government must consider how best to structure the obligation to ensure a reasonable volume of production activity is generated for drama, documentary and children's content.
- The definition adopted for Australian content helps achieve the regulatory objectives to support Australian stories and the Australian independent production sector. This 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".
- Investment in pre- and post-production for content that meets the requirements above is eligible to be acquitted against the revenue obligation.
- The Federal Government considers how the new investment obligation may be able to support better terms of trade for the local independent production sector in negotiations with VODs.
- VODs can opt to contribute to CAST instead.
- The Federal Government includes quantitative analysis of the impact of the investment obligation in the Regulatory Impact Statement. The analysis should include modelling to determine the volume and type of production activity likely to be generated by the new investment obligation on VODs to ensure it:
 - Restores lost production activity due to the reduced content quotas on the commercial FTA broadcasters.
 - Increases the overall level of production activity to support the development and continued growth of the Australian independent production sector.
- The Federal Government conducts a review every two years to determine any adjustments required to how the content investment obligation operates to ensure it meets its objectives.

Proposal 5: Impose an Australian content commitment and reporting requirements for national broadcasters

Film Victoria supports in principle imposing mandatory minimum Australian programming requirements on the public broadcasters.

Film Victoria acknowledges the vital role public broadcasters play in supporting the production and consumption of Australian stories made by the Australian independent production sector.

Any concerns regarding the amount of Australian content commissioned by the ABC and SBS relates to funding not intent, with the latter clearly mandated in their respective charters. Therefore, should a new Australian programming requirement be imposed on the public broadcasters, it must be accompanied by adequate, tied funding from the Federal Government to ensure quality Australian content is able to be commissioned and screened by the ABC and SBS.

Film Victoria recommends that the Federal Government conducts further consultation and quantitative analysis to better understand the advantages and disadvantages of an Australian programming requirement based on a points, hours or expenditure basis and compare this with the status quo. The chosen approach should balance the desire to provide certainty to Australian audiences and the Australian independent production sector with the ability for the ABC and SBS to exercise independence over its commissioning and programming decisions.