

THE GREAT SOUTH LAND FILM COMPANY PTY LTD

2 Bridge Street
Lithgow
NSW 2790
Australia

23 May, 2021

Response to the Media Reform Green Paper

Modernising television regulation in Australia

Thank you for the opportunity to respond to the Government's proposed reforms to media regulation in Australia. The media landscape both here and overseas is changing rapidly and it is imperative that regulation of the sector, and the people who work in it, change in response.

As a writer and director of film and television with thirty years' experience, I would like to respond specifically to Chapters Five, Six and Seven of the Green Paper regarding support for Australian production, harmonising Australian content regulations and Australian content regulation of our public broadcasters.

Preamble

SVOD services already earn massive revenues from Australia, with an average 2.4 subscriptions per household (Green Paper p.33) yet currently they pay little tax and are under no requirement to produce any Australian content whatever. As an example, according to the *Australian Financial Review* (3 May, 2021) last year Netflix made between \$700 million and \$1.4 billion from Australian subscribers. According to the Green Paper (p.34) we are Netflix' seventh most lucrative foreign territory behind Brazil, the UK, Germany, Mexico, France and Canada. We are more lucrative than Japan, the next on the list, yet Netflix last year make 66 production in Japan, while in Australia they invested in only 15.

Mandatory or voluntary?

On p.30 the Green Paper proposes that SVOD and AVOD content regulation be voluntary, but may be made mandatory if broadcasters fail to meet the requirements of the code by 2024 (p.35).

A voluntary code is kicking the can down the road: if broadcasters are not complying now, it's because they do not see investment in Australian content as in their interests, so why would they comply with a voluntary code? If the only reason is the threat of future regulation, why not impose that regulation now so that all stakeholders can operate with certainty? SVOD and AVOD services are likely to minimise their compliance, getting away with less than the code allows while doing enough to stop the Minister imposing regulation. It creates a perverse incentive for obfuscation and deceit on the part of streaming services while creating uncertainty and confusion for producers, who will not be able to rely on streamers' official policies or pronouncements. Firm clear regulation now will avoid policy failure down the track.

Furthermore, after a decade of neglect and almost two years of suspended or cancelled production during the pandemic, our industry cannot wait three years for the Minister to provide clarity. I am a case in point – after thirty years' experience as a screenwriter and director, I don't have a single project in production. Like many, I have used the lock-down to develop a TV series and a feature film, and am currently developing another film, but in the current environment securing a deal with a streaming service, network or distributor is extremely challenging. If I have to wait another three years for regulation to kick in, it's hard to see how I could remain in the industry.

If the streamers fail to comply with the voluntary code (and they may well decide that regulation is inevitable and therefore decide to maximise profits during the trial period), by 2024 there may not be an indigenous Australian production sector to save. It is likely that foreign productions will continue to shoot here while production costs are low, but that is not the same as having an indigenous Australian film and TV industry. And even the foreign productions will dry up eventually if the pool of skilled technicians is not renewed by a vital and growing local industry.

Even if the streamers opt to meet the voluntary code until 2024, as soon as the political climate has changed and media regulation is no longer a priority, they may choose to progressively reduce their production slate to zero. Voluntary regulation relies on constant vigilance by the Minister for the Arts – an expectation that is simply not realistic, and places an unreasonable burden on the Minister.

Furthermore, while the Green Paper proposes a *voluntary* code for Australian content for streaming services, it simultaneously proposes *mandatory* content regulation for the ABC and SBS. P.38 of the Green Paper reads in part, ‘An obligation to provide Australian content would ... provide greater certainty to the Australian production sector over time. It would also provide support for additional domestic and international co-productions, particularly when aligned with the proposed investment obligation for SVOD and AVOD services operating in Australia’. If the Government feels it is prudent to regulate the level of Australian content on the ABC and SBS, which already meet their content obligations, why does it *not* feel it is prudent to mandate Australian content on streaming services who currently do *not* meet reasonable Australian content expectations?

What level of revenue reinvestment is reasonable?

The Green Paper proposes a target investment of 5% of streamer revenue (p.32). It is widely recognised in the industry that 5% will not replace the revenue lost from FTA broadcasters in the last few years. For instance, in the 2021 Financial Year, Stan’s revenue was \$149.1 million. 5% of revenue would be just under \$7.5 million, or enough with Government co-investment for two high-end TV series. Yet 7.2% of Stan’s catalogue is already Australian (Green Paper p.33), so it would not be materially affected by a 5% quota and there would be no benefit to the industry. On the contrary, with settled regulation in place, Stan could choose to reduce their investment.

5% of Netflix revenue, on the other hand, might be around \$50M, or, at \$1.65 million per hour (Screen Australia), enough with Government co-investment to make between six and ten TV drama series. Netflix current production slate is already 15 programs, so a 5% revenue investment could do little or nothing to raise Netflix’ current output, and would certainly leave it far short (Green Paper p.34) of its production slates in Japan (66), Canada (58), France (42), Mexico (53), Germany (25), the UK (106) and Brazil (35).

Nor does a 5% investment align with local content regulations in the EU or UK. (France requires 16% of locally-derived revenues to go into local production; the EU regulates streaming hours rather than dollars invested, and they determine that streamers should ensure that a full 30% of streamers’ catalogues are locally produced.

The Australian industry favours a proportion of Australian-derived revenue for production investment as this is easier to regulate and does not bias streamers against more expensive genres. However realistically we need 20% of revenue reinvestment to compensate for loss of production brought about by the easing of regulation on FTA broadcasters, and to give the industry the scope to grow rather than merely survive.

Furthermore, a 20% rate of reinvestment will not impact the balance sheets of international streaming services. They make product in territories all over the world. If they are forced to make more in Australia but do not wish to increase their production slate overall, they will simply shift some of their production from another territory such as the U.S. or U.K. and move it to Australia. The Australian productions they create will then be available not just in Australia, but in territories all over the world, just as foreign-produced content is currently available here. This will have the added benefit for local producers of exposing them to international audiences they would not otherwise be able to reach.

Australian content requirements on public broadcasters

Imposing content requirements on the ABC and SBS is welcome. Drama is one of the most expensive forms of programming, so when the public broadcasters' funding is reduced, drama is often the first item to be cut. However, if they are to be regulated they need to be compensated with increased funding. Through strategic investment strategies ABC has maintained its level of Australian drama content and in fact broadcasts more Australian drama than any other network (Green Paper p.38), but to achieve this it is commissioning less and offering ever decreasing acquisition investments. Producers making product for the ABC increasingly have to rely on overseas territory sales to make up their budgets. This makes it harder for producers, has an effect of the nature of production and reduces the ABC's opportunity to capitalise on investment in a successful show.

The CAST production fund

A production fund (CAST) created from money raised by spectrum sale is welcome, but the Green Paper provides no estimate of how much CAST would raise. Furthermore, the Government is only planning to use a *portion* (p.7) of that money for production. If the spectrum sale raises only \$40M and

CAST is allocated only part of that, the fund may not be large enough to make a material difference. Before the industry can express a view on this, we need a solid estimate of the benefits to the industry. As proposed, those benefits could be nil.

Furthermore, the production of Australian television content is driven less by production incentives and more by demand supported by strong content regulation. Subsidising production will never make Australian programming as cheap as foreign product, which can be purchased by a network for one tenth the cost of creating Australian product. If FTA networks do not have a strong content quota to meet, they have no reason to take up the production incentives offered by the fund – even though Australian content itself is popular with audiences.

Consultation Questions on p.35 of the Green Paper

6.1 Should the investment obligation apply to all types of SVODs, BVODs and AVODs including those that specialise in content such as sport?

Yes, a voluntary code is likely to be of limited benefit to the Australian production industry, and simply provides the various on-demand services with an opportunity to avoid their local obligations.

6.2 Would a rate of investment of five per cent of Australian revenue be reasonable? Is there an alternative rate that is more appropriate?

A rate of 5% will have little material effect on the Australian industry. The Australian industry is united in its belief that a 20% rate is appropriate. This will provide a secure investment environment for producers, streamers and networks, will have little effect on the balance sheets of international streamers and, most importantly, will provides scope not just for survival of our industry but for growth.

6.3 Should alternative models, such as a percentage of overall programming expenditure, be considered?

My view is this would be difficult to regulate, whereas a revenue model is simpler and harder to avoid.

6.4 Is the proposed revenue threshold of \$100 million reasonable?

In my view it is reasonable, however a tapered start to an investment obligation would be most desirable. That is, services with revenue streams below \$100 million should still be required to invest in Australian production, but at a lower rate. For instance, this rate might taper to zero when revenue falls below \$50 million.

6.5 Should the investment obligation be able to be fulfilled with any genre of Australian content, or genres such as drama, children's programming or documentaries?

Because some genres are more popular or more lucrative than others (adult crime drama versus children's programming, for instance) genre requirements should be in place, but the percentage should set a baseline rather than a mandated ratio. So for instance 10% of production might be mandated as children's programming, 15% as documentary and 20% as drama. But the remaining 65% could be any genre, so long as overall investment remains at 20% of Australian revenue.

Specialist services such as a 'kids' channel' or 'sports channel' would be exempt from genre requirements, or if these services are owned by a single network, the genre requirements might be spread over the services.

6.6 Should the investment obligation be geared to commissioned content, or broadened to permit the acquisition of Australian content that would satisfy the first release requirement?

The hardest dollars to find in any production are the first dollar, and the last dollar. For this reason it is desirable that a proportion of the mandated Australian investment for streamers and for FTA networks should be set aside for commissioning. Nevertheless, streamers and networks should also be open to acquisitions, provided there is a dollar equivalence. A streaming service or network should not be able to fulfil their Australian content requirement by investing less in acquisitions than they would have in commissioned content.

6.7 Should the investment obligation capture broader categories of content investment, such as pre and post-production?

Yes, as long as the dollar equivalence is maintained. For instance, if a streaming service picked up the post-production costs of an independent production based on a fine-cut, that investment should count towards their Australian content provided they actually make the program available on their service.

We are faced with a once-in-a-generation opportunity to remake the environment for film and television production in Australia. Australia is envied around the world for its creative talent in film and television, both in front of the camera and behind it. Too often however that talent is lost to industries overseas, in the U.S. and the UK, returning to Australia only for the occasional foreign production, or sometimes drawn back by family ties. With the right reforms we can have a vital, growth-oriented industry that provides ample opportunity for local talent while creating product that is seen and admired around the world.

Our industry provides a significant economic benefit to Australia, but is also one of its most powerful foreign-policy tools. A healthy film and television sector is vital to the health of the nation.

Many thanks,

A handwritten signature in black ink, reading "Nick Parsons". The signature is written in a cursive, flowing style. The first name "Nick" is written with a large, sweeping initial "N". The last name "Parsons" is written with a large, sweeping initial "P".

Nick Parsons.