

## Green Paper, *Modernising television regulation in Australia* Tasmanian Government submission

The Tasmanian Government thanks the Australian Government for the ability to comment on the Green Paper, *Modernising television regulation in Australia* (the Green paper).

In making the comments below, the Tasmanian Government recognises that regulation of the broadcasting sector should be focused on:

- the cultural imperative of supporting Australian stories and increasing the amount of Australian content available to Australians;
- the industrial imperative of supporting and growing the Australian independent production sector; and
- the structural imperative of levelling 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 Tasmanian Government submission was prepared by Screen Tasmania and reflects the common view held by the various state and territory screen agencies, which have collaborated to align their submissions. In addition to its collaboration with other jurisdictions, Tasmania has focused its submission in particular on the impact of the Green Paper's proposals on regional areas.

This submission is structured to directly respond to the five key proposals outlined in the Green Paper. In this regard, it is acknowledged that the key proposals and recommendations are interconnected and collectively aim to achieve the above regulatory objectives.

In the context of the comments made in this submission, the Tasmanian Government urges the Australian Government to heed the perspectives and experiences of industry in relation to the impacts of the previous reform of broadcast restrictions. The Tasmanian Government has observed these effects first-hand, with the immediate and powerful impact on Tasmanian animation house, Blue Rocket Productions (**BRP**).

By way of a case study, BRP has historically been commissioned by commercial broadcasters to produce animated series for the network, including *Pixel Pinkie*, *Buzz Bumble*, *Fanshaw & Crudnutt*, and *Dumbotz*. Each of these series were also recipients of investment from the Tasmanian Government, employed many Tasmanians and assisted in the development of the industry in Tasmania. In a regional centre such as Hobart, the continued operation of a production house such as BRP provides a focal point for a developing industry, and is integral to its continued growth.

BRP had been developing a further animation series for a commercial broadcaster, which was financed but for the broadcaster's commission, although the broadcaster had issued letters of intent. When the quotas were suspended in 2020, the broadcaster dropped the project, threatening the ongoing viability of BRP. This is primarily because BRP's business model was geared, in part, to develop, produce and provide content specifically to fill commercial broadcasters' children's quota.

While the existence of one production company cannot, and should not, define any government's policy, we urge the Australian Government to take account of the fact that the existence of a landmark industry member like BRP in a smaller regional centre has a disproportionate importance to the local sectoral ecosystem.

### **Proposal 1: A new licence for commercial broadcasters**

The Tasmanian Government supports the proposal to remove the multichannel requirement on the condition that proposals 3 and 4 are implemented and successfully increase the amount of new Australian content available to Australians to offset the decrease in content that will result from removing the multichannel requirement.

Further, the Tasmanian Government notes that any consolidation of media operators as a result of the new licence must be partnered by requirements to continue local production across licence areas (notably of news). In this context the Tasmanian Government notes that content must continue to be produced *in* the market in question, not solely produced *for* the market. Local news, produced locally, is of intrinsic value to regional Australia and should be a responsibility of licensees as a condition of their licence.

The Green Paper specifies that requirements to provide 'content of local significance' would continue. Such requirements are contained in the *Broadcasting Services Local Programming Determination 2018*. However, we note that under that determination, content is considered 'of local significance' if it relates directly *to* the local or licence area (section 6). The Tasmanian Government notes that this includes no requirement to produce such content *in* that local or licence area. As a result, while it has great cultural and social benefit, there is no economic benefit to the requirement.

We encourage the Australian Government and ACMA to consider including requirements for local production of local benefit, noting that the Green Paper itself specifies that employing Australians and driving economic growth is a key benefit of the media sector (p.10).

### **Proposal 2: Reshape an industry and realise a digital dividend; and**

#### **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**

The Tasmanian Government supports, in principle, the Australian Government creating a second digital dividend where a substantial portion of the proceeds of the spectrum auction are used to support new Australian content and the Australian independent production sector.

### **CAST**

The Tasmanian Government further supports, in principle, the proposal to establish CAST. However, it is considered imperative that CAST both represent additional funding for Australian content production, rather than replace Screen Australia or other Australian Government funding, and cannot be reallocated. The real value of the CAST capital base and annual program funding must be maintained over time.

It is acknowledged that the commercial broadcasters may not accept the proposal as presented in the Green Paper, which may result in delaying the establishment of CAST under proposal 3, or CAST never being established.

Should either of these outcomes come to pass, the Australian Government must identify other means to support Australian content and the Australian independent production sector to mitigate the expected negative impact of regulatory reforms that have already been announced and to help the industry to grow.

Further, the Tasmanian Government notes and welcomes the 2021-22 Budget announcement that the Australian Government will introduce a refundable tax offset to support video game development. However, as this measure will be limited to applicants which expend in excess of \$500 000 on the development of a video game, it excludes much of the highly innovative, successful and flexible independent video game development industry, including almost all Tasmanian video game developers. As a result, the Tasmanian Government further recommends the proceeds from the spectrum auction are also used to re-establish the Australian Interactive Games Fund, which would provide much need stimulus to smaller game development studios.

### *CAST Governance*

It is unclear why there is a need to create a new Trust which would largely replicate the functions of Screen Australia, yet still be administered by Screen Australia. This would appear to suggest that Screen Australia is largely responsible for the mechanics of the fund and Screen Australia's Board would be the delegate for decision-making; however, the Board would be operating on the advice of the CAST trustees and not Screen Australia's executives.

This additional bureaucracy may appear to provide a 'second door' for producers to seek finance from more than one body, however, it is questionable whether this administrative duplication is justifiable.

As a result, the Tasmanian Government considers it important that the Australian Government explores other models so that any additional funds are being used to support industry and the production of content, rather than to develop potentially unnecessary administrative processes.

Should the Australian Government decide that a separate Trust with its own trustees is the appropriate model, it is imperative that the CAST trustees represent the interests of the Australian industry and include representatives from the state screen agencies. Further, the CAST trustees should have full independence from Screen Australia, and hold sole decision-making authority, rather than reporting to the Screen Australia Board.

### *CAST Structure*

The restrictions placed on expenditure, in terms of the genres of content eligible for support, and the distinction between 'cultural projects' and one for 'commercial investment', do not appear to be vastly different from Screen Australia's existing roles. While it is notable that Screen Australia does not make its decisions solely on the grounds of a commercial investment with a prospect of commercial return, we understand that this always forms part of Screen Australia's consideration of larger-scale projects. There is little doubt that the expertise to make these decisions exist within the agency.

As a result, the Tasmanian Government considers that CAST should have one funding pool to support Australian content, and that funding is provided on a grant (<\$500,000) or production investment basis (>\$500,000) provided that the financial returns outweigh the administrative cost of recoupment.

Noting the aims of reform outlined at the beginning of this paper, the Tasmanian Government also considers that the objectives for CAST should include supporting:

- new and emerging talent;
  - diverse talent;
  - content with a clearly articulated audience and identified pathway to market or market attachment;
- and

- equity of production location across the country, noting that production outside of major production centres is often more expensive to mount, yet provides strong economic, cultural and social benefits.

In terms of the financing of CAST, the Tasmanian Government notes that CAST would administer a sizeable amount of annual program funding. This is expected to require a significant capital base and income streams (e.g. a contribution from the VOD investment obligation under Proposal 4) to ensure the financial sustainability of the fund.

### *Other issues*

The Australian Government should conduct financial modelling to verify the capital base and income streams required for CAST to be financially sustainable. If an adequate income stream is not able to be guaranteed, the Australian Government should consider alternative approaches to using proceeds from the spectrum auction to support Australian content.

Given the relative importance of CAST to the future of the Australian production sector, the Australian Government:

- must consult further with state and territory agencies and with the industry to determine the particulars of how CAST will operate; and
- should conduct a review every two years to determine any operational adjustments required to ensure CAST is meeting its objectives.

### *PING*

The Tasmanian Government supports the creation of the PING Trust, particularly its focus on supporting regional and remote journalistic outlets. It would appear to address several threats facing regional newspapers and broadcasters.

### **Proposal 4: Impose an Australian content investment obligation on SVOD and AVOD services**

Given the undeniable success of Video on Demand (VOD) services, there is a clear cultural and economic imperative to require investment in new Australian content, particularly scripted content.

While it appears clear that Netflix, Amazon and Stan, in particular, are commissioning – or co-commissioning – Australian content, it is notable that services such as Disney Plus do not appear to include any Australian produced content. The potential entry of additional VODs such as HBO Max, Hulu, Paramount Plus entering the Australian market is cause for further concern, as such services would have little motivation to commission from Australian providers.

The Tasmanian Government therefore 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; and
- the proposed reporting requirements to ACMA.

The Tasmanian Government does not support the exemption for VOD services owned by the holder of a broadcast licence or subscription television licence.

### *Structure of the obligation*

Notwithstanding eligibility requirements outlined below, and as a matter of principle, investment obligations should apply to curated content platforms and/or those commissioning or acquiring content for financial outlay. Services supported by purely user-generated content, which is not curated (such as YouTube, Vimeo or similar) would be too difficult to monitor and regulate; and its 'obligation' impossible to calculate. The Tasmanian Government, therefore, considers that advertising-based VOD (AVOD) services would need to be selective of the content they carry, and likely be paying for said content, if they are to be captured under this proposal.

It is the Tasmanian Government's position that Broadcaster VOD (BVOD) services should equally be captured by the proposed plan as other VODs. BVOD services are essentially either catch up services, which are in essence AVODs - while potentially including additional product – or they are Subscription-based VOD (SVOD) services. The term 'BVOD' is therefore unhelpful in this context.

Of more interest is the question of whether genre should play any part in eligibility. As the basis of the intervention is market failure, it would appear unnecessary to require news, current affairs or sport services to commission Australian content. We would consider that anecdotally, such services typically are over-represented in Australian content.

The Tasmanian Government recommends that the new obligation:

- applies to all VOD services that provide professionally produced content delivered over the internet regardless of the genre of content they provide, but should require investment in new commissioned scripted drama, documentaries and children's content;
- is set at a minimum of 20% of the VOD's total Australian revenue from their local service/s; and
- is only tied to a revenue threshold, which should be set at A\$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.

It is notable that different SVODs operate using different business models, such as Amazon Prime subscriptions, which provide shipping benefits over and above access to audiovisual content. It is important, therefore, that the obligation includes appropriate anti-avoidance provisions. These would ensure that service providers do not avoid the obligation by adopting commercial models that would allow revenue to be considered as other than directly related to the commercialisation of viewing content.

In addition, the Australian Government should consider imposing a model minimum 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 fixed rate per subscriber approach should be designed to create an investment obligation commensurate to 20% of revenue for similar sized services.

### *Acquitting a VOD's Obligation*

In terms of the acquittal of an obligation, a VOD must be required to meet its investment obligation by commissioning the production of new Australian content. The test of whether content is defined as 'Australian' in this context could be the definition of an Australian program in the *Broadcasting Services*

(*Australian Content and Children's Television*) Standards 2020, or the 'significant Australian content' test for the Producer Offset (as outlined in Division 376 of the *Income Tax Assessment Act 1997*). The first test emphasises the importance of Australian creative control, while the latter can be described as a broader test with a more industrial outcome. Which test is selected would depend of the policy outcome the Australian Government wishes to drive, but the Tasmanian Government notes that consistency should be encouraged and a further test of 'Australian' should be avoided.

Generally, the Tasmanian Government considers that the projects which would acquit a VOD's obligation should match the genres of content available on the service (e.g. if an SVOD hosts children's content in its catalogue, it should commission Australian children's content) and the project which is commissioned must have its first release on the platform. The Australian 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.

At this point, the Tasmanian Government particularly stresses the importance of the production of Australian children's content and the limited availability of marketplace funding for it in the current climate. In reality, with the exception of NITV's *Little J & Big Cuz* and the commissions secured by Jonathan Schiff Productions, there is only one door for commissioning Australian children's content – that is the ABC (and it is noted that *Little J & Big Cuz* is an ABC-NITV co-commission).

While the additional funding provided to Screen Australia and the Australian Children's Television Foundation is welcome, it does not replace the desirability of having a broadcaster commission content for their platform, as only the broadcaster fully understands its platform and audience. The Tasmanian Government again stresses that the Australian Government should pay particular attention to the impact of its policies on the children's television production sector.

Investment in pre- and post-production (in addition to production expenses) for content that meets the requirements above is eligible to be acquitted against the revenue obligation. However, Licensees should be able to acquit their obligation by contributing the same required amount to CAST, rather than commissioning content themselves.

### **Other Issues**

The complexity of a system such as this, and its inherently uncertain impact on both the production industry and audience habits, means that there is a paucity of data available to determine likely outcomes. Therefore, regardless of the model implemented, the Tasmanian Government considers it important that the Australian Government:

- undertakes modelling to determine the volume and type of production activity likely to be generated by the new investment obligation on VOD services to ensure :
  - restoration of lost production activity due to the reduced content quotas on the commercial FTA broadcasters; and
  - an increase in the overall level of production activity to support the development and growth of the Australian independent production sector;
- conducts a review every two years to determine any necessary operational adjustments required to the content investment obligation to ensure it meets its objectives.

Finally, 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.

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

It is acknowledged that the public broadcasters play an integral role in supporting the production and consumption of Australian stories by the Australian independent production sector. This is particularly the case in regional Australia, as both national broadcasters display a genuine commitment to diversity of voices and diversity of production location.

### *The Tasmanian context*

Since 2015-16, the Tasmanian Government, through Screen Tasmania, has provided production support to a number of projects with the national broadcasters:

- five seasons of *Rosehaven* for ABC;
- children's documentary series *Project Planet* for ABCMe;
- ABC natural history documentary *Quoll Farm*;
- documentary *Looky Looky Here Comes Cooky* on NITV;
- drama series *The Tailings* for SBS on Demand;
- SBS Food series *A Girl's Guide to Hunting, Fishing and Wild Cooking*;
- two seasons of SBS Food series *Food Lab*;
- short factual *Sidelines*, *Small Town Drifter* and *Flavour Swap* for SBS on Demand; and
- three seasons of animated series *Little J & Big Cuz* which are carried by both NITV and ABC.

These 18 projects compare with a total of 14 projects for commercial or subscription broadcasters, SVODs or cinema release across the same timeframe.

There is no doubting the bona fides in commissioning Australian content on the part of the national broadcasters. However, a continued commitment like this is dependent on the management of the broadcasters.

Strategically, the Tasmanian Government has built an increasingly experienced, talented screen production industry and the loss of any commitment on the part of any broadcaster, or a change in policy, would have a powerful negative impact, particularly in regional Australia.

Such a situation occurred when the ABC closed its Hobart production unit in 2012 following the cessation of *The Collectors* and *The Auction Room*, explicitly because Tasmania's limited scale and size did not justify maintaining the cost of a production team (see <https://www.abc.net.au/news/2012-11-20/abc-tv-closes-tas-production-unit/4381976>).

This decision had a marked impact on industry skills, training and jobs, which is still being felt. The Tasmanian Government is concerned that changes to policy of this type can be made at any time and a commitment to Australian content – particularly drama – on the part of the national broadcasters should be bolstered by the existence of a quota.

### *Structure of an Obligation*

The Tasmanian Government stresses that 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 tied Australian Government funding to ensure quality Australian content is able to be commissioned and screened by the ABC and SBS.

The Australian Government should conduct 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.