# AUSTRALIAN AND CHILDREN'S SCREEN CONTENT REVIEW CONSULTATION PAPER

## FILM VICTORIA/VICTORIAN GOVERNMENT SUBMISSION – 28 SEPTEMBER, 2017

Thank you for the opportunity to respond to the consultation paper released in August 2017.

The Victorian Government provided a submission to the House of Representatives Standing Committee inquiry into the Australian Film and Television Industry in April 2017. We understand that submission should be taken as read in the context of this review. However, for convenience and to provide a background for our responses below we now set out the following key points highlighted in that submission.

/ The current Australian film and television industry largely owes its existence to Commonwealth and State government support that emerged in the late 1960s and early 1970s in response to market failure. Successive governments have recognised that the creation of diverse and engaging locally produced screen content played a critical role in the cultural identity of Australian citizens. Film and television content has a unique ability to reflect Australian society, history, values, diversity and humour through Australian stories that can be shared with each other and the world.

/ The market failure, whereby local broadcasters and exhibitors can acquire foreign content for a fraction of the cost compared to content created and financed wholly by independent Australian production businesses, has driven and been the main rationale for government intervention in the industry.

/ The Australian film and television industry, like most other film and television industries across the globe, including the United Kingdom (UK), Canada and New Zealand requires continuing government support for its ongoing sustainability.

/ The United States of America (USA) is the only English language market that does not require direct government support. The size of its population allows its domestic market to almost entirely fund all of its domestic film and television production. The domination of USA produced content in the global export market further increases its domestic industry profitability and removes any requirement for government intervention or subsidy.

/ A range of factors make it very difficult for Australian film and television producers to compete in both the domestic and global marketplace. Without direct and indirect Commonwealth and State government support for the production of Australian screen content, our cultural identity will be swamped and ultimately lost due to the dominance of USA and UK content, which can be acquired and imported by local broadcasters and distributors at a much lower cost. In other industries the selling of a product in a foreign market at a price lower than the costs of production of that product is known in trade terms as "dumping".

/ All Australian states and territories are actively seeking to increase the level of film and television production activity in their jurisdiction. This indicates a national consensus on the value and benefits the industry can provide and the need to ensure the future health of the industry to deliver rewards for and to all Australians.

/ Australia's film and television industry delivers significant cultural, social and economic value to Australians, the extent of which was measured in the recent Screen Currency report. The report determined that the production of feature films, drama television, and documentaries under

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Australian creative control generated $847 million and 7,650 full time equivalent jobs in 2014-15[1]. The economic contribution to the Australian economy made by the broader screen industry is substantially larger.

We provide the following responses to the questions posed in the consultation paper. For convenience in some instances we have grouped the questions together as they cover similar ground, and answered as relevant to the particular content or incentive streams.

1. ***Are the policy objectives and design principles articulated in the discussion paper appropriate? Why do you say that?***

The current policy objectives articulated in the discussion paper are largely appropriate. It is important they are retained and further improved in order to ensure the ongoing sustainability of the Australian Screen Industry into the future. However a number of aspects are in urgent need of updating to reflect the changed nature of the global screen production landscape. Immediate attention and prompt action is required if the government wishes to keep Australian screen production businesses competitive as the creators, suppliers and exporters of English language screen content in to the global marketplace.

2. ***What Australian content types or formats is the market likely to deliver and/or fail to deliver in the absence of Government support?***
3. ***What types of Australian screen content should be supported by Australian Government incentives and/or regulation?***
4. ***What types and level of Australian Government support or regulation are appropriate for the different types of content and why?***

## AUSTRALIAN FEATURE FILMS:

Features films, including dramas, comedies, animation, family and documentary productions have played an important cultural, social and economic role since their revival in the early seventies. Intervention by successive Australian Governments over the past 40 years through various direct and indirect financial support schemes has seen many iconic films produced, that reflect Australian culture at any point in time.

There are many fine examples of films across the 40 plus year period such as *Sunday Too Far Away*, *Gallipoli*, *The Castle*, *Strictly Ballroom*, *Mad Max*, *Crocodile Dundee*, *Animal Kingdom*, *Red Dog*, *Paper Planes*, *That Sugar Film*, *Lion* and *Ali's Wedding* that have resonated strongly with Australian audiences and also helped preserve Australia's cultural identity and history for current and future generations of Australian society to enjoy and reflect on who we are as a people and nation in a world that comprises 193 countries.

Feature films have also helped established highly successful local and international careers for countless actors, directors, producers and technical crew, enhancing Australia's reputation as a creative nation, often also promoting our country as a tourist, work and life destination – either directly or indirectly. The recent local international success of *Lion* helmed by the all Australian team including Producers Emil Sherman, Iain Canning and Angie Fielder, directed by Garth Davis, written by Luke Davies, and starring Nicole Kidman and David Wenham based on a true story set in Australia and India is one such an example. The careers of people such as Fred Schepisi, Phil Noyce, Geoffrey

[1] Screen Currency: Valuing our screen industry, Screen Australia, 2016.

Rush, Baz Lurhmann, Cate Blanchett, Russell Crowe, Mel Gibson, Jack Thompson, Toni Collette, Rachel Griffiths, Eric Bana, Teresa Palmer, Guy Pearce, Margo Robbie, Dion Beebe, Russell, Boyd, Don McAlpine, Mandy Walker and many more are testament to this. It is also worth noting many of these people, particularly the actors, got their start on domestic television productions.

The dominance of the Hollywood Studios (Fox, Sony, Warners, Disney, Paramount and Universal) as the major financiers, supplier and distributors of English language feature films means the subject matter of the films they finance will be primarily American centric and designed to please the US population which currently numbers in excess of 320 million people compared to Australia's 24 million. In addition, power of these studios and their affiliates to push the sales and marketing of their films into the international marketplace is massive. Beyond this the films produced in the United Kingdom, which is underpinned by a high level of government support to the British Film Institute, the BBC and other mechanisms similar to Australia, are also a major source of competition for Australian films in the international marketplace.

In Australia the small population size is a clear contributor to the limited capacity of the domestic marketplace to fully finance and market Australian features, particularly where the content is distinctively Australian and may not connect so strongly with international audiences. It is naive and unrealistic to think Australian features would continue to be made without continued intervention and direct and indirect support from the Australian Government.

The 40% Producer Offset available to producers of eligible Australian feature films has proved an effective support mechanism. We recommend that this level of Producers Offset is maintained. However the requirement for a theatrical release of the qualifying feature film is out of step with the numerous alternative distribution platforms that have become available in both the domestic and international marketplace since the original legislation was introduced. A better financial outcome can be achieved for certain genres of features by having a straight to SVOD or other form of VOD release. Under the current requirements these films are not eligible for the 40% Producer Offset although would be eligible for a 20% Producer Offset. This lower level of Producer Offset is clearly a disadvantage when it comes to raising finance required to meet the cost of production. This aspect of the legislation should be amended as an immediate priority, to better reflect the current distribution landscape and, where possible, provide flexibility to respond to future technological change.

We also recommend as a priority the restoration of Screen Australia funding to the level that it received prior to the ongoing cuts which started in 2014. Some of the restored amount could be tied to certain feature film production outcomes.

Should a restoration of funding be achieved consideration could also be given prioritising direct investment from Screen Australia, in addition to the 40% Producer Offset, to certain types of Australian features and/or with certain caps in place e.g. increased direct investment funds available for children's/family films, 'distinctive' Australian content could receive a higher amount of direct investment, whereas content driven by Australian creatives with a significant international non-Australian subject matter and largely foreign financed may be eligible for a lesser amount or some instances no additional direct investment.

In addition to the restoration of funding, new funding could be made available to Screen Australia for the purposes of establishing a recoupable marketing fund available specifically to producers (not commercial distributors). These new funds would be of enormous value in promoting an awareness of Australian films to domestic audiences and would also enable the producers to negotiate improved terms of trade with local exhibitors and distributors.

Another alternative for consideration would be to allow expenditure for additional social media marketing activities controlled directly by the producer to be made eligible as qualifying Australian production expenditure. This would be particularly useful and relevant for those projects being distributed directly via SVOD and over the top services. We do not suggest any extension of the marketing expenses be applied to the marketing expenses of commercial distributors.

## AUSTRALIAN TELEVISION CONTENT:

Australian television drama, comedy, children's and documentary content are all subject to the same competitive market threat as Australian feature films, being the dominance of the US studios and their affiliates as the financiers, suppliers and distributors of the majority of English language television content available to the world market. The US studios and networks are largely interconnected and therefore typically able to fully finance the cost of television production for distribution and syndication throughout the USA. This means the content they produce can be sold internationally and many times over, and depending on the quantum and period the rights are purchased, for a fraction of the actual production cost. This translates to shows such as '*Modern Family, CSI franchises, The Good Wife, The Handmaids Tale* and *House of Cards* being available for purchase by Australia's domestic broadcasters for as little as $15,000 to $100,000 per episode. Whilst comparatively one hour of Australian drama costs upward of $1,000,000 per hour to produce. Without government intervention in the form of quotas Australia would effectively become a dumping ground for US produced content which in 2017 is reported to exceed 500 drama productions or series.

The combination of quotas and the 20% offset available to support the production of Australian television content has been highly effective, delivering a wide range of high quality content for the enjoyment of Australian and international audiences over many years. However the increased production values now expected by audiences globally have seen production costs rise, whilst domestic transmission licence fees paid Australian broadcasters to local producers have remained static and effectively reduced in real terms and accounting for a diminishing proportion of a production budget.

Another anomaly of the current system is that it is often more effective for children's animations content to access the 30% PDV offset than the current 20% Producer Offset. This also applies to certain types of documentary and factual content.

This environment of market failure provides a strong rationale to increase the television offset to 40%, making it equivalent to the offset available for feature films. We support this proposal. If the Review recommends the increase to 40% consideration should be given as to whether the increased offset should be available to television networks for in-house production or whether only the independent production sector should be able to access it so as to help to ensure that independent drama, children's and documentary production survive.

Consideration should be given to removing the 65 episode limit for eligibility for the television Producer Offset. Television drama series typically have a limited life span. If a show is not finding a strong enough audience to warrant continued investment it will typically not be re-commissioned. However there have been several highly successful dramas that would have continued had it not been for the 65 episode limit, such as *Dance Academy* and *Underbelly*.

We also support restoration of funding to the ABC and SBS to pre-2014 levels. If this is achieved the funding should be specifically tied to the production of adult and children's drama and documentary content for digital and linear transmission, all of which should be commissioned from the independent production sector. Quotas could be considered for the ABC and SBS, however these would only be practical and workable if sufficient funding was made available to meet the quotas applied. Increased funding to NITV for the purpose of local indigenous drama and documentary content should also be considered.

As outlined above, the restoration of funding to Screen Australia is also recommended, some of which should be tied to the funding of local drama, documentary and children's online and linear television content (as per for Australian feature films as set out earlier).

If successful in receiving restored funding it is recommended that Screen Australia review and look to increase the current level of licence fees paid by the domestic broadcasters which is required to trigger direct investment funding from Screen Australia in addition to any offset.

The submissions by the commercial broadcasters for the removal of children's quotas is unacceptable. Such a removal will pose further threats to the sustainability of the Australian screen production industry, which is recognised internationally for the high standard and excellence of the children's content it produces. Further it would undoubtedly leave Australian children with limited alternatives to see stories from their own community on screen. There is plenty of existing data which speaks to the importance of local children's content so we take this as understood. Whilst the commercial broadcasters may argue children do not watch content on their channels, this is often because children's programs are scheduled to run early in the morning when they're not up or are preparing for school, or in the afternoons before they are home from school. The commercial broadcasters often fail to promote the children's programs they commission. Whilst they may argue the ABC is meeting the needs of Australian children - and indeed the ABC has built a strong reputation for delivering high quality Australian children's content - it is always preferable to have multiple outlets supplying content as this encourages diversity in style, tone and story content.

The commercial broadcasters have successfully managed to have the broadcast licence fees for spectrum they pay to the government substantially reduced over the past two years and for 2016-17 these fees have been waived entirely. They are a powerful and influential collective. Should they be successful in having the children's content quotas removed it is not unrealistic to expect they would then argue that the quotas for adult drama and documentary should also be removed. This outcome would effectively decimate the Australian screen production industry. We strongly recommend the current quota levels be maintained for children's content on Australian television.

We acknowledge the commercial broadcasters face commercial and market challenges, many of which are driven by the arrival and growth of alternative content delivery services such as Stan, Netflix and Amazon and with Foxtel providing more flexible viewing options for audiences.

Quotas should be applied platforms such as Netflix, Amazon Prime and Stan and social media services such as YouTube Red, Facebook and Google all of which are already benefiting from Australian advertising revenue. Australia could look to the example set in May 2017 by the European Parliament which implemented content quotas for OTT video services like Netflix, Amazon Prime and social media platforms. Quotas on these services will assist in creating a more level playing field. This will increase the level of local production and improve industry sustainability outcomes.

## INTERNATIONAL PRODUCTIONS - LOCATION & PDV OFFSET:

The Australian government's 16.5% Location Offset is currently the lowest production attraction incentive offered in the world and is not competitive. There have been a number of international productions that would have been preferred to shoot in Australia that have located elsewhere and the economic benefits to Australia have been lost, most notably Ridley Scott's *The Martian*.

The ad hoc "top-up" approach by Governments where selected productions are given an additional 13.5% top up on a case by case basis is poor public policy as it is neither transparent nor consistent. Further it creates uncertainty in the international marketplace and discourages many production companies from seriously considering Australia as a location destination. The procedures to secure the "top-up" are often slow and lack certainty.

In addition we understand the projects that have received top ups have been large budget feature film productions with significant sound stage requirements, the size of which are only available in Queensland or New South Wales. The top up approach as currently applied has put other states at a disadvantage in trying to secure mid-range film and television productions to boost their economies and build their skills pool. Further inconsistency exists where apparently some productions receiving a top up have been approved to have post production included as eligible. The uncertainty and inconsistency of this ad hoc approach acts as a disincentive to US productions, particularly the major studios who plan their productions slates 2 -3 years ahead.

A further problem is that projects receiving the 16.5% location offset choose not to do any of their post-production in Australia because they are excluded from accessing the 30% PDV offset. Conversely, projects selecting to do post in Australia accessing the 30% do not consider shooting here. Opportunities for additional production and post production work are being lost due to this inconsistency.

Another issue is that content produced for alternative distribution services in Australia - such as Netflix - is ineligible to qualify for the Location and PDV offsets, due to the wording in the of the Income Tax Assessment Act. Given the volume and quality of content being produced by these alternative services, which did not exist at the time the legislation, it is illogical and clearly an unexpected consequence resulting from the choice of words that has seen productions made for these platforms excluded. It is recommend that the wording in the relevant legislation is amended to be platform and service delivery neutral.

Television pilots do not currently qualify for the Location Offset as they typically do not reach the $15 million spend threshold. This discourages international footloose productions from considering Australia as the location for television drama series. We recommend amending the legislation to allow the qualifying Australian spend of the pilot to be included as eligible expenditure in the first series of a television series that meets the Location Offset requirements and chooses to locate its production in Australia.

Many of the major US studios have made direct representations to the Australian Government and Ministers about their frustrations with the current location offset and have also advocated through Ausfilm. They have repeatedly acknowledged the extraordinary depth and skill level of Australia's talent, crew and location availability and stated publicly their desire to continue to bring productions to Australia. Opportunities are being missed and will continue to be foregone unless the levels and operation of the various incentives are streamlined, set at an internationally competitive level and made certain.

The weaknesses outlined above clearly evidence the need to create a clear and consistent policy which increases the Location Offset to 30% as an immediate priority. We strongly recommend the uncoupling of the Location and PDV offsets and introducing a flat 30% for international footloose productions to locate production and/or post produce. This action would make Australia internationally competitive and supplement domestic production activity. In turn this will assist in building our practitioner skills base across the country and help ensure our highly mobile and sought after workforce remains based in Australia.

## DIGITAL GAMES:

In May 2014 the Commonwealth government ceased providing funding to Australian games developers. Up to that date Screen Australia had administered a program which supported games developers to create and export world class digital games. Despite the cessation of this program the games sector has continued to grow and expand in the domestic and international markets. There is significant growth potential remaining in the games sector and we recommend that consideration be given to extending the producer offsets to provide indirect support to the digital games sector and/or reinstating funding to Screen Australia to provide support to this sector.

5. ***The current system of support for screen content involves quotas, minimum expenditure requirements, tax incentives and funding (see Attachment B). What are the strengths and weaknesses of the current system? What reforms would you suggest?***

The major weakness in need of the most immediate reform are the varying levels of the different offset incentives, which are often referred to as being overly complex and confusing, particularly by international market partners wanting to work with Australian producers. A clearer and more consistent approach should be an immediate priority. A 40% Producer Offset across the board for Australian feature film, television and online production would be an ideal outcome.

A 30% across the board offset incentives for international footloose film, television and PDV production would bring increased activity and benefits to the local production sector and be welcomed by the international market. It would also see Australia become more competitive against the United Kingdom, Canada, New Zealand and South Africa which all provide higher offsets and are known to be securing footloose work which may otherwise have come to Australia.

Minimum expenditure requirements have provided a workable floor and should be maintained as should quotas.

6. ***What factors constrain or encourage access by Australians and international audiences to Australian content? What evidence supports your answer?***

Convenience and ease of access to screen content at a time, place and screen of their own choosing and at an affordable price has become a priority for audiences in Australia and around the world. As demonstrated by the massive and rapid user take up of subscription services such as Netflix, Amazon Prime and Stan in recent years. This trend is predicted to continue. Changes to legislation and other support mechanisms should take this into consideration, so that as much as possible the systems remain flexible and relatively easy to adapt in the future if necessary.

Piracy remains a significant threat to the producers of screen content as it robs them of valuable and much need revenue return.

The existence and sheer quantity of new content available for consumption needs to be visible to audiences, hence the need for increased marketing support to create greater awareness of Australian created theatrical and non-theatrical productions. Likewise there is an enormous quantity of pre-existing Australian content available online that would benefit from being re-marketed to audiences.

### 7. *What would the Government need to consider in transitioning to new policy settings?*

Clearly there are some recommendations which are relatively straight forward should the government choose to adopt these, such as updates to the terminology and levels within the offset legislation and restoration of funding to the ABC, SBS and Screen Australia. It is recommended that these are addressed and announced as a priority, ideally in the context of the 2017 mid-year or May 2018 budget, even if any changes do not become not effective until July 1 2018. Providing the domestic and international marketplace with knowledge of forthcoming changes will greatly assist with planning and financing of productions, as these business transaction can take 12 – 18 months or longer to lock down.

More complex recommendations that the government is inclined to adopt require further research in order to determine the most effective option, such as quotas on streaming services, should be dealt with as secondary priorities but nonetheless within a defined period of 12 months or less.

### 8. *Is there anything else that you would like the Government to consider that has not been addressed in your responses already?*

The recent changes to 457 Visas will significantly impact the booming VFX sector, which is currently having difficulty securing a sufficient and suitably skilled workforce locally. The new police check requirement is particularly arduous, as is the English language test. This is likely to leave the VFX houses unable to service international work, leading to a loss of income. The work completed by companies such as Iloura on *Game of Thrones* Season 6 & 7, would not have possible without supplementing their local workforce with international VFX practitioners.

Paid “on the job” training and upskilling opportunities for early career practitioners are important to the long term sustainability of the screen production industry. Consideration of the introduction of a paid apprenticeship or traineeship schemes for the industry would be strategic. In addition a low but mandatory requirement for international footloose production to spend some proportion of their Australian spend on training would be valuable. Likewise training requirements and outcomes for producer offset productions receiving direct funding support from Screen Australia, ABC, SBS and NITV should be encouraged.

The updating of current co-production treaties where relevant to include television and/or be platform neutral should be addressed. Equally stalled pending co-production treaties with new territories including India, Malaysia and Denmark should be advanced, with the aim of completing within the next 12 months.

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