"The Federal Government's decision on how to fund and regulate the industry going forward is critical, not just to our future, but to our very survival. A decision that does not regulate new digital platforms, that does not maintain a fair and equitable quota system for scripted drama, documentaries and children's programming will result in the long-term failure of our industry with no hope of recovery. With this decision, the Federal Government has the opportunity to secure jobs, grow an industry and make a powerful statement of commitment to our Australian culture." – Shane Brennan, Australian Writers' Guild President

The Australian Writers' Guild (**AWG**) is the professional association for Australian screen and stage writers principally in film, television, theatre, audio and digital media. We represent over 2,000 members who create 90% of the content on our screens. The AWG has fought for over 58 years to protect and promote the rights of writers. We appreciate the opportunity to respond to the 'Supporting Australian stories on our screens—options paper' (**the Options Paper**) and we broadly support the significant regulation represented by **Model 3.**

There are two essential justifications for government intervention in the screen content marketplace:

- **The cultural imperative:** Government has a mandate to be a custodian of Australian culture and scripted screen content is one of the most significant vessels of that culture. Government is obligated to protect, promote and encourage investment in Australian-originated scripted drama, documentary and children's content. **We argue that government intervention must prioritise and offer clear incentives for investment in Australian-originated stories over and above attracting offshore production and protecting jobs.** Failure to do so means that the cultural imperatives are not addressed.

- **Market failure:** Government must address the market failures which make the production of Australian drama financially unviable. **The economics of international trade in screen content would equate to economic dumping were intellectual**

property considered a good instead of a service and would be prohibited under international trade law. Without anti-dumping measures to rely on, no local screen industry can compete with multi-million dollar American products that a local broadcaster or streaming service could acquire the distribution rights to for a small fraction of the cost to make a competing product in Australia.[1] The government must recognise that it is scripted content which is uniquely disadvantaged by this market failure and the incentives and regulation it implements must be responsive to the differing economics of the various streams of screen content. **For example, the economics of reality television relative to drama are vastly different and market interventions must be differentiated and targeted appropriately.**

Accordingly, we ask you to consider the following:

1. Introduce clear and accurate legislative definitions of the terms 'new', 'first-release', 'commissioned', 'scripted', and 'Australian content'. In particular, the term 'scripted' must be carefully defined to avoid a domination of reality television and light entertainment. Existing definitions for 'drama', 'documentary' and 'children's content' are fit for purpose and should be preserved.

2. Regulate all service providers by requiring them to negotiate tailored content investment plans with the Australian Communications and Media Authority (**ACMA**). These investment plans must include a local quota requirement measured in expenditure and hours.

[1] Peter Grant, *Stories Under Stress: The Challenge for Indigenous Television Drama in English-Language Broadcast Markets*, December 2008, 11-12.

3. Preserve local content quotas on free-to-air broadcasters and extend the application of those quotas to all qualifying service providers, including SVOD platforms and the national broadcasters.

4. Require qualifying SVOD platforms who fail to meet their local content obligations to reinvest their revenue into a local content development fund.

5. Protect children's content by requiring SVOD platforms to screen first release Australian children's content if they screen international children's content.

6. Introduce a 10% cultural uplift on the Producer Offset for any production whose creator(s), showrunner, writers and directors are Australian citizens or permanent residents.

1. LEGISLATIVE DEFINITIONS

The Options Paper proposes to define terms such as 'new', 'first-release', 'commissioned', 'scripted', and 'Australian content'[2] and the AWG supports further consultation with industry stakeholders to define those terms. It is crucial that the term 'scripted' is accurately defined to ensure that reality television or light entertainment that is partially scripted cannot qualify. The AWG also recommends the preservation of definitions currently used for

[2] Options Paper, 37

Australian drama, documentary and children's content as defined in the Australian Content Standard 2016[3] and *Children's Television Standard 2009*[4] which are fit for purpose.

The AWG has long fought to preserve local content quotas for Australian scripted drama, children's television and documentary. We are concerned that any change or expansion to those definitions might end up being used to obliquely undermine local content quota obligations by enabling reality or light entertainment programs to be included broadly under 'scripted content'.

Scripted drama is, of necessity, the most expensive audio-visual content to produce. In contrast, Australian commercial broadcasters can make an episode of a reality or light entertainment program for less than half the cost of making one episode of local Australian scripted drama. These types of programs are cheaper to make and they can also be sold internationally for retransmission or to international networks who may wish to remake the format for their own market. They are also underpinned by advertising strategies that would undermine the authenticity of scripted drama (such as extensive product placement and tie-ins). In the absence of government intervention and targeted investment in vulnerable genres, the commercial networks will continue to produce reality, news and light entertainment programs. If the cultural

[3] Drama "has a fully scripted screenplay in which the dramatic elements of character, theme and plot are introduced and developed to form a narrative structure; or has a partially scripted screenplay in which the dramatic elements of character, theme and plot are introduced and developed to form a narrative structure and has actors delivering improvised dialogue that is based on a script outline or outlines developed by a writer or writers; or has actors delivering improvised dialogue that is *based on a script outline or outlines, developed by a writer or writer*s, in which the dramatic elements of character, theme and plot are introduced and developed to form a narrative structure" (emphasis ours).

Documentary is defined as "a program that is a creative treatment of actuality *other than a news, current affairs, sports coverage, magazine, infotainment or light entertainment program*" (emphasis ours).

[4] Children's drama is defined as having a "fully scripted screenplay or teleplay in which the dramatic elements of character, theme and plot are introduced and developed so as to form a narrative structure ".

imperative to make scripted drama, children's content and documentaries is removed, leaving only commercial decision-making, the commercial broadcasters will focus on creating low-risk, cheaper-to-make content. The screen industry would be jeopardised if the definitions used for 'scripted content' are too wide.

In 2003, the United Kingdom government downgraded children's content from Tier 2 to Tier 3 in response to Public Service Broadcasters (PSB) complaints that it was no longer economically viable to make in an age where the advertising revenue it generated was significantly lower than other areas of programming. PSB no longer had to meet their quantitative targets for children's programming and this resulted in a 95% reduction in spend on children's content on television between 2003 and 2015.[5]. In 2017 – and after a long and hard-fought campaign by Save Kids' TV UK – the UK government reintroduced the power to set quotas. They are now spending taxpayer money to seek to reinstate children's content to former levels.

Due to the operation of the Australian-US Free Trade Agreement, it will be extremely challenging to unwind any relaxation of these regulations. The government's failure to protect vulnerable genres now could lead to the loss of those genres forever.

The AWG recommends:

- **A stage-2 consultation to define the terms 'new', 'first-release', 'commissioned', 'scripted', and 'Australian content'; and**
- **That any definitions determined during this consultation are consistent with current definitions used for Australian drama, documentary and children's content as defined in the *Australian Content Standard 2016* and *Children's Television Standard 2009*.**

[5] Robert Kenny and Tim Suter, *Children's television – a crisis of choice The case for greater commercial PSB investment in Children's TV*, 26 February 2015.

2. SIGNIFICANT REGULATION

The AWG supports local quota requirements on **all** platforms, enforced by the ACMA, a model largely represented by **Implementation Option B** of the Options Paper. Under this model, service providers would be required to negotiate bespoke investment agreements with ACMA that are tailored to the individual providers' business and operating models. They would be required to put a percentage of revenue back into new Australian scripted drama on their platform annually and a minimum requirement would be set for each service provider in a ratio that is proportionate to their total business revenue. This implementation model offers flexibility and allows content providers to customise their obligations, to an extent, based on their economic success.

However, the content investment plans must be backed by overall framework in legislation, with key minimum requirements (e.g. number of hours) and protection of the vulnerable genres mentioned in the preceding section.

The AWG joins the Australian Screen Industry Group in supporting a stage-2 consultation where government undertakes this modelling as part of ongoing open consultation in the formulation of the final shape of the framework.

2.1 ACMA'S ROLE AND AUTHORITY TO NEGOTIATE INVESTMENT PLANS

ACMA will need extra government support if it is to be responsible for the regulation of a constantly evolving marketplace where tech giants and national broadcasters are altering their business models regularly through acquisitions and the introduction of new channels. We recommend that ACMA is given more powers to set obligations should agreement not occur as well as enforce and monitor compliance. ACMA must be reactive in a fluid and fast-moving industry but the need to continually renegotiate investment plans would introduce enormous bureaucratic complications. Rather than recurring (e.g. annual) renegotiations, the revision of content investment plans could be triggered by a growth or decline in the revenue of each service provider (as determined by their tax submission). We recommend that a representative from the AWG is appointed to work with ACMA on the overall plan to increase content output.

Transparency is key to this system working effectively. ACMA must follow clear, public guidelines and parameters as to types and levels of production to be generated. All platforms and content providers must be required to deliver new reporting and transparency requirements to ACMA including their annual revenue as well as promotion and discoverability of new Australian scripted drama and hours provided. All broadcasters should be required to report annually to Parliament on expenditure of new Australian scripted drama and the hours provided.

2.2 LOCAL CONTENT QUOTA OBLIGATIONS BASED ON EXPENDITURE AND HOURS

The ability to tell Australian stories, from our own perspective and in our own voice was the result of a nationally significant public campaign: the *TV: Make It Australian* campaign in the 1960s and 1970s when Australian shows represented just 1% of content shown on television. The battle was won, and local content quotas were introduced. According to Hector Crawford, having more Australian content on our screens would "make a vital contribution to the development of a specifically Australian consciousness and sense of National Identity."[6]

The overall global growth in demand for scripted content with the emergence of streaming has not been reflected in the output of Australian scripted content. The hours of scripted Australian content declined by 33% from 2000/01 to 2018/19, from 848 hours to 572 hours.[7] Meanwhile in just the last 10 years in the US, the number of original scripted TV

[6] Jock Given, *"Did the Networks Kill Homicide?,* Inside Story, 2 July 2014
[7] Screen Australia, Drama production statistics

series (2009 to 2018) has grown from 210 to 495, an increase of 136%. Hours of scripted content production in Australia should be increasing, not decreasing to make Australia a competitive generator of intellectual property.

The AWG supports a combination of expenditure and hours to measure local content obligations for each service provider taking into account relevant factors such as the type of programming for each platform, revenue, the time of day the program will best reach its audience (for terrestrial broadcasters), or the number of views or downloads (for digital platforms). We support a sub-quota of minimum hours in order to avoid situations where monetary expenditure alone allows a service provider to discharge its obligations resulting, for example, in situations where huge amounts of money are concentrated into a single high-budget production (calculated to entice new subscribers to the service, and not necessarily to retain them). In contrast, multiple productions or long-run series (such, as *Wentworth,* which are re-run and sold into different territories) create a robust, competitive, and sustainable industry that gives lasting opportunity to a diverse range of Australian voices.

The content quota obligations must be coupled with promotion and discoverability requirements. Both the European and Canadian models include requirements to ensure that region-specific products are promoted and given prominence across the platforms for local audiences.

However, as it has been argued often in the past, the biggest weakness in the current system is that it is not fit for purpose in this age of digital content. The quota system was introduced in an analogue era and has not kept pace with new modes of delivery and accessibility. Streaming video on demand services, such as Stan, Netflix, Amazon Prime and Disney+, or video-sharing platforms such as YouTube and telecommunications companies, have become content providers in a convergent media landscape. Australian commercial networks must comply with quotas, Foxtel must invest 10% of its expenditure on local content, government broadcasters must create local content under their respective charters, but the new digital market entrants have absolutely no obligation at **all** to contribute to the local market and are able to fly under the radar in terms of delivering content to the audiences that they are serving. Netflix is accessed by more than 11 million Australians, bringing in at least $700 million annual revenue from Australian subscriptions and yet the Australian content in its catalogue fell to 1.6% in 2018 from 2.5% in 2017. Government intervention is required to ensure that the commercial broadcasters can compete with the international SVODs.

Finally, in order to ensure that any regulation to achieve the purpose for which it was intended, we also recommend the removal of the regulatory loophole that allows New Zealand content to be counted as Australian for the purposes of the local content quotas and we ask for an undertaking from the government that the current suspension on free-to-air sub-quotas will not be extended into 2021.

The AWG recommends:

- **Platform-agnostic local quota requirements and content investment plans negotiated with and enforced by ACMA;**
- **That local content quota obligations are to be measured using a combination of revenue and hours, with further requirements as to the promotion and discoverability of local content to ensure that it reaches Australian audiences; and**
- **Confirmation from the government that the suspensions on free-to-air sub-quotas will not continue into 2021; and**
- **Closing the regulatory loophole allowing New Zealand content to be counted as Australian for the purposes of the local content quotas.**

3. SVOD PLATFORMS TO REINVEST REVENUE

It is clear that government must step in soon to ensure that foreign SVODs are making a contribution to the market that they are currently exploiting. 5.6 million Australians currently subscribe to Netflix (and new entrants like Disney+ have grown to 1.2 million Australian subscribers since launching in late 2019) yet, in 2018, Netflix's effective tax rate was 0.5%[8]. The AWG would support a regulatory framework similar to the proposed French model which would require SVOD platforms operating in France to reinvest 25% of their revenue into local productions. This is in addition to existing EU requirements that require all SVODs operating in their region to secure "at least a 30% share of European work in their catalogues and ensure prominence of those works."[9] Again, more modelling work would be required to determine the obligations on SVODs that would be supported by the Australian industry but a requirement of around 12.5% is likely to yield the minimum output to make Australia globally competitive.

We propose that SVOD platforms who do not wish to create their own Australian drama, or who otherwise fail to meet the quotas set by the regulator, must be required to contribute a percentage of their revenue into an Australian scripted content development fund (distinct from the 'Australian Production Fund' proposed in Implementation Option A) with the regulator determining what percentage of revenue each platform owed and in what genres. We also support a levy on 'tech giants' such as Facebook, Google/YouTube and Amazon (calculated as a percentage of their combined advertising revenue generated in Australia) that would go to this development fund.

The AWG recommends that a portion of the total amount reinvested by the SVOD platforms is used specifically for **script development**. This fund would be administered by Screen Australia and it could be incorporated into the Story Development Fund or it could be a separate fund. This would have the benefit of avoiding duplicating bureaucracy and it would

[8] Max Mason, 'Revealed: How much tax Netflix pays', *Australian Financial Review*, 28 October 2019.
[9] Article 13, EU **Audiovisual Media Services Directive** (2018).

take advantage of the infrastructure that Screen Australia has to assess and manage funding applications. To encourage accountability and transparency, we recommend that the key decision-makers managing this fund (and, indeed, all other Screen Australia development funds) are rotated on a regular basis. Furthermore, representatives from the AWG and Australian Directors Guild should form part of this decision-making panel, so creators have a voice in its allocation.

This model will ensure that creatives have control over their projects from an early stage, and increasing investment in those projects, will result in high-quality, commercially viable and internationally competitive Australian projects. The key contributing factor to the new golden age of television in the United States, which is marked by quality scripted drama received well by critics and audiences alike, is placing creative control in the hands of the writer.

These scripts must be developed by writers and they must be funded. Improving the creative and commercial working conditions of Australian creatives and increasing the investment in their projects will be critical to a robust and competitive screen industry and we must begin by supporting and incentivising local talent.

The AWG recommends:

- **That qualifying SVOD platforms should be obliged to reinvest revenue into local scripted content development should they fail to meet the quota obligations described in 2.2; and**
- **'Tech giants' to contribute a percentage of their Australian advertising revenue to this development fund; and**
- **Part of this funding should be specifically used for script development, under a fund administered by Screen Australia.**

4. CHILDREN'S CONTENT

There has been a long history of critically acclaimed and commercially successful children's television in Australia and hit shows like *Bluey* demonstrate that this success can continue into the future. To ensure that, we need to level the playing field and maintain the local content quotas on free-to-air broadcasters.

We recommend that SVOD platforms which screen international children's content such as Disney+ must be required to screen first release Australian children's content as part of that platform's agreed framework with the ACMA. Any qualifying SVOD platform who chooses not to generate its own local children's content can elect to invest in a children's content development and production fund managed by Screen Australia.

We recommend that free-to-air broadcaster's quotas for children's content remain in place. Covid-19 has undoubtedly put the FTA broadcasters under considerable financial pressure but the use of the public spectrum entails obligations to the Australian public. We would support introducing flexibility in how the FTA broadcasters acquit their obligations. If an FTA broadcaster produces children's content, they should, with agreement from the regulator, be able to elect which platforms they show that content on (e.g. BVOD) to better target their intended audiences.

The AWG recommends:

- **That SVOD platforms that screen international children's content to be required to screen first release Australian children's content.**
- **That FTA broadcasters should remain subject to local content quotas for children's content.**
- **Increased flexibility – subject to agreement with the regulator – in how the FTAs can deliver their minimum content requirements.**

5. CREATIVE OFFSET

The producer offset has been extremely effective in driving high-quality, scripted drama. The qualifying requirement that key creatives such as writers are Australian ensures professional opportunities for Australian writers and other key creatives.

We recommend a consistent offset to 30% across all platforms and across one-off and series content. We support this increase in the offset for scripted drama and comedy, documentary, features and children's television only. We do not support any expansion of the offset to capture light entertainment for the reasons stated earlier.

We also recommend that a 10% cultural uplift to apply only where the creator(s), showrunner, writers and directors are Australian citizens or permanent residents. With the ADG we recommend that the 'Producer Offset' be renamed a 'Creative Offset' in order to emphasise that these projects are creator-led rather than producer-led.

If the government wants to see a robust and competitive industry and if it wants Australian drama, children's content and documentary to be commercially viable and competitive at an international level, then it must commit to putting creative control in the hands of creators.

We want to see a shift in culture that lets experienced creatives oversee their projects from development to production. We have writers in Australia who have demonstrated, against all odds, that they can compete with their US counterparts creating quality drama and finding audiences here and overseas for the shows that they have created. Shows like *Mystery Road*, *The Heights, Bluey* and *Stateless* demonstrate that Australian stories matter and are capable of competing with foreign projects for audiences and investment.

We must take this further and empower our creatives to be bold, take risks and make interesting and authentic television shows. This necessarily means continuing investment in the project and more creative control for its creators. It means more access to funding to stop talented Australian writers from being forced to work in the US and UK. It means supporting new writers to gain experience in their home industry. It means ensuring that experienced writers are paid what they deserve.

The AWG recommends:

- **A consistent 30% offset across all platforms; and**
- **A 10% cultural uplift to apply only where the creator(s), showrunner, writers and directors are Australian citizens or permanent residents.**