



**Create NSW**  
Arts, Screen & Culture

**Submission in response to Screen  
Australia/ACMA Options Paper:  
Supporting Australian Stories**

**June 2020**

## Overview

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Create NSW is an integrated government agency bringing together Arts NSW and Screen NSW to support the arts, screen and culture sectors. The agency formally came into existence on 1 April 2017 and currently sits within the NSW Department of Premier and Cabinet.

Create NSW welcomes the release of the Options Paper. We commend Screen Australia and ACMA for their work on the paper which has a great deal of valuable data on audience trends and the financial situation of the broadcasters.

The paper's release has come at a time when the production of Australian content faces severe disruption due to Covid19. Nearly all live action drama productions have been forced to shut down. The suspension of commercial networks' Australian content obligations for the remainder of 2020, will in turn impact on demand and certainty.

The Australian production sector is well placed to achieve an early emergence from the pandemic. However, having an effective Australian content regulation in place will be critical to reviving and sustaining the industry and meeting the demand from Australian audiences, who have shown a strong appetite for Australian stories.

We are pleased to note that this reform has been identified by the Australian Government as a priority reform area<sup>1</sup>.

Create NSW agrees that the current regulatory system is no longer fit for purpose given the migration of audiences towards subscription streaming services which have no Australian content obligations

Neither option 1 (status quo) nor option 4 (deregulation) are viable options. Option 2 is viable in the short term but is unlikely to be viable long term and could lead to continuing instability.

Create NSW supports Option 3 because it will position us for the future and is likely to have the greatest longevity. It is also consistent with the Australian Government's broader approach to media reforms.

Support for this shift to an expenditure-based model would however be dependent on the development of a safeguard mechanism to ensure there is not a significant contraction in Australian production and programming.

## Screen NSW support for the screen industry

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Screen NSW provides support to scripted narrative content including feature films, adult and children's drama and narrative comedy, factual and documentary television or online programs, and creative interactive screen projects. The agency's programs cover development, production, regional filming, market travel, industry and audience development and international production attraction.

In the five years to 2018/19 expenditure on drama production (features and TV drama) in NSW averaged \$387 million a year, representing 39% of all drama production expenditure in Australia.

In recognition of the screen industry's economic and cultural benefits, the NSW Government introduced the Made in NSW fund in 2016/17 to attract significant international production and high-end domestic TV drama production. Since July 2018 Made in NSW has invested \$43 million in 26 projects.

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<sup>1</sup> Recommendation 6, Stage 1, in *Government Response and Implementation Roadmap for the Digital Platforms Inquiry*

This includes 16 TV dramas series. Of these, the ABC commissioned five series, Networks Seven, Nine, Ten, SBS and Stan each commissioned two, while one was commissioned by Foxtel.

The Made in NSW – TV Drama fund recognises the potential for major Australian TV drama series to:

- grow bigger audiences at home and internationally
- create opportunities for NSW production companies to finance their new shows with international partners
- develop returning series which leads to more work for our crews, and
- tell Australian stories that are both locally relevant and have international resonance.

Screen NSW funds Australian features, documentaries and children's programs through its Production Finance program. In 2018/19 Production Finance provided \$5.5 million to 43 projects.

## **2. Response to the Options**

Create NSW appreciates that the options are not intended to be fixed in stone and are intended to provoke discussion.

### **OPTION 1 – Status quo**

The current set of federal policy settings – quotas, subsidy and tax incentives – has underpinned Australia's world class screen industry and ensured Australian audiences have access to Australian content, particularly in the vulnerable genres of feature film, TV drama, documentary and children's drama.

Create NSW agrees that the current regulatory system is no longer fit for purpose given the migration of audiences towards subscription streaming services which have no Australian content obligations. It is not considered feasible to maintain the status quo given financial pressures faced by the commercial free to air broadcasters.

Reforms are needed to the suite of Offsets to deal with changes in viewing and distribution patterns and a more competitive international environment.

### **OPTION 2 – Minimal change**

The main advantage of retaining the current system with some necessary modifications is that it provides continuity and some short-term certainty. The commercial broadcasters remain significant contributors to NSW drama production through both licence fees and equity contributions, and the NSW production sector is dependent on this continuing.

Several of the fine-tuning changes proposed as part of this option are overdue, notably:

- Removing the requirement for a theatrical release for feature length projects is even more pressing in the post-COVID19 environment as the cinema environment faces great uncertainty.
- Changing the definition of first release to exclude NZ content, given that one network would not have met its drama quota without it in 2018.
- Providing an alternative means for the free to air commercial networks to meet their children's drama obligations, recognising their inability to attract sufficient audiences, coupled with a higher Offset rate for children's series.

Our main reservation with this option is the voluntary nature of the obligations on the streaming services. Having a voluntary requirement sitting alongside a compulsory requirement for the commercial broadcasters could lead to continuing instability.

Further, the proposed changes to the Offsets, while supported, will not provide sufficient incentive for high value series drama or the certainty needed to attract international productions.

### **OPTION 3 – Significant change**

Create NSW supports the introduction of compulsory obligations for streaming services and a shift to an expenditure-based system based on revenues. The option is future facing and is likely to have greater longevity than Option 2.

The cultural impact of the SVOD services is increasingly pervasive. At the same time, the SVOD services derive significant benefits from operating in the Australian market, including the use of the publicly-owned NBN.

Australia would not be alone in taking this step. As noted in the Report, other jurisdictions, including the EU and Canada, have moved or are poised to move, in a similar direction.

While the value of the free to air spectrum may be declining, it remains a public good and it is appropriate that obligations are attached and enforced.

Compulsory obligations across platforms would be consistent with the approach recommended by the ACCC in its Digital Platforms Inquiry Report (DPI) and also signalled in the Government response to that report – namely, that a new platform-neutral regulatory framework be developed and implemented to ensure effective and consistent regulatory oversight of all entities involved in content production or delivery in Australia, including media businesses, publishers, broadcasters and digital platforms.

Expenditure based obligations will incentivise projects with higher production values and the ability to find international investment and audiences, especially if coupled with a modernised Offset.

Determining the appropriate percentage would require economic modelling of different investment levels combined with expenditure threshold options and revenue projections. As a starting point, current levels of Australian content should be maintained and built on. And our support for this shift would be dependent on development of some kind of safeguard to ensure there isn't a significant contraction in Australian content on our screens and consequent loss of employment. This would most likely be an hours-based floor underpinning a new framework.

Particular care will be required in moving away from quotas on children's content given the experience in the UK and Canada. The national broadcasters will need to be provided with appropriate additional funding if their investment is expected to counterbalance a decline reduction in P and C programming by the commercial FTA broadcasters.

Create NSW is mindful of the ratchet provisions in the Australia-United States Free Trade Agreement and supports the retention of quotas until a clear alternative system is in place.

#### ***Implementation options***

Our preference is for service providers to be required to make the programming available on their service, coupled with new discoverability requirements, rather than contributing to a fund. We note that Canadian proposals recommend spend obligations for curators (being broadcasters and streaming services). The expenditure requirement should cover drama, documentary and children's programming, with flexibility for the service to determine the mix of genres.

A flat rate expenditure requirement across all services is likely to be problematic given the different business models but may be feasible for each class of delivery platform and would provide greater certainty than bespoke investment plans negotiated with ACMA. If the bespoke investment plan model is pursued, plans should be renegotiated every three years, and ACMA would need powers to oblige all services to negotiate in good faith and to impose investment obligations in the absence of an agreement.

Whether the investment rate is determined for groups of services or through bespoke investment plans, ACMA would need to take account of the range of business models and desired public policy outcomes in setting investment rates.

### **Reforming the Offset**

Create NSW supports a single rate of 30 per cent for scripted content with a 10 per cent cultural uplift for specified Australian content. Scripted content should be limited to drama, documentary and children's content, which continue to be the most vulnerable genres. We do not believe reality programs require public support and suggest they no longer be eligible for the PDV offset.

An increase in the rate for drama and documentary series to 30 per cent would acknowledge the growing cultural impact of broadcast and streamed content. It would make the commissioning of Australian content more affordable for the networks and regulation more palatable to the SVOD services.

There has long been a compelling case for increasing the Location Offset to 30 per cent. International production remains an important part of the overall ecology, especially in NSW, as local production alone cannot sustain a critical mass of infrastructure, facilities and crews. Australia faces strong competition from other jurisdictions offering generous incentives. The success of the 13.5 per cent top-up provided through the Location Incentive demonstrates the case for a permanent increase.

The thresholds will provide the main differentiation between Australian and international projects were these to remain at the current levels (\$500,000 and \$15 million respectively).

A 10 per cent uplift should be available to projects in vulnerable genres which have qualifying levels of Australian content. At a minimum, this would include one-off feature length content and children's content. If the Government wishes to encourage new TV drama production, for which there is a growing global demand, there is a case for also providing the 10 per cent uplift to pilots and the first season of a series.

While we have no objection to removal of the 65-hour cap, we do not think it is a priority.

### **Definitions**

*Australian content* – a single definition of Australian program across the board would be desirable. A points test may be preferred for its greater predictability. The UK cultural test for film, which uses a multi-factor points test and mandates a cultural connection through the "Golden Points" rule, offers one possible model.

*Genre definition* - harmonisation of genre definitions would also be desirable. The definition of documentary contained in the *Income Tax Assessment Act 1997* (376.25) and used for the Producer Offset has a requirement for an overall narrative arc which is missing in the older ACMA definition.

*Qualifying Australian Production Expenditure (QAPE)* – one reform which could be considered is whether payments reinvested in a production should continue to count as allowable expenditure.

## **OPTION 4 – Deregulation**

The deregulation option would almost certainly radically reduce the availability of Australian drama and children’s programming (and to some degree documentaries) and would decimate the production industry.

Even with the retention of the Producer Offset and Screen Australia funding, this is not a feasible option. Tax incentives and subsidy have never been sufficient to guarantee the commissioning of high-cost vulnerable genres. The Offset and/or the direct funding from federal and state agencies would have to rise beyond a fiscally feasible level to compensate. One significant benefit of content regulation is that it does not involve a direct cost to the taxpayer and is not subject to the vagaries of fiscal policy.

## **Conclusion**

Create NSW is pleased that the Australian Government has identified Australian content as a priority area for reform. Like the reform of the media landscape currently under consideration, it is a large and complex reform, and will detailed economic modelling and extensive stakeholder discussion of definitions and other issues. Create NSW looks forward to contributing to further evolution of the new framework.