



5 Thomas Holt Drive
North Ryde, NSW 2113
Australia

T +61 2 9813 6000

GPO Box 151
North Ryde
NSW 1670

Foxtel.com.au

**FOXTEL RESPONSE TO THE 'SUPPORTING AUSTRALIAN STORIES ON OUR
SCREENS' OPTIONS PAPER**

July 2020

INTRODUCTION

Foxtel welcomes the opportunity to contribute to the Federal Government's review of how best to support Australian stories on our screens. Our submission is structured as follows:

1. Executive Summary
2. Background
3. Foxtel's Support for Australian Content
4. Existing Regulation and Government Funding Arrangements
5. Options Paper Model 4: Deregulation
6. Conclusion

1. Executive Summary

- Foxtel welcomes the opportunity to contribute to the Federal Government's review of how best to support Australian stories on our screens.
- Foxtel is Australia's premier subscription television broadcaster offering high-quality Australian and international programming as well as the widest choice in Australian sport, lifestyle, movies and a plethora of complete television series.
- Foxtel has a history of commissioning award winning Australian drama for Australian screens and understands the economic and cultural importance of Australian content.
- Foxtel has helped put Australian talent on the world stage with highly acclaimed international exports and proudly invests in the people who help tell those stories by supporting a significant number of Australians directly and indirectly across Australia's creative industry.
- The current Australian media landscape sees the emergence of a number of significant international competitors (mainly in the subscription VOD space) including Netflix, Disney+, Amazon Prime and YouTube Premium.
- These international platforms have large local subscriber numbers however their global model allows for limited local jobs, limited local content and limited local taxation. To date these competitors face none of the significant regulation imposed on Foxtel. Foxtel remains the most heavily regulated media business in Australia. Examples of this regulation include the anti-siphoning regime, the Australian content expenditure obligation and significant captioning obligations relative to those imposed on the free to air broadcasters. These regulations severely inhibit Foxtel's ability to compete with both local and global subscription and free services.

- The challenging environment faced by Australian broadcasters has been further accelerated by the COVID-19 pandemic. The impacts on the Foxtel Group have been significant with the loss of advertising revenue; the cessation of live sports coupled with closure of licenced venues which have severely impacted subscriber income and the almost instant onset of unemployment also impacting subscriptions. These have all had immediate financial impacts on Foxtel.
- Foxtel is of the view that government support is needed not only for the Australian production industry but other heavily regulated Australian businesses such as Foxtel to ensure an equal opportunity to compete with our major competitors.
- Of the four models proposed in the Options Paper: Supporting Australian stories on our screens, Foxtel supports Model 4: Deregulation. Creating an even playing field involves removal of regulation that currently applies to Australian subscription television licensees and instead increasing Government support.
- Existing incentives should be revised rather than removed. This includes increasing the Producer Offset for television production from 20 per cent to 40 per cent to align with the rebate available for film and expand the range of eligible formats that can qualify for the rebate to other genres such as lifestyle and infotainment.
- There are also opportunities in relation to Screen Australia funding. One obvious area is to review the minimum licence fees of \$440,000 per hour for drama which caters to the mass audience commercial model rather than reflecting differing business models across various platforms.

2. Background

About Foxtel

Foxtel is Australia's premier subscription broadcaster offering premium Australian and international programming as well as the widest choice in Australian sport, lifestyle, movies and a plethora of complete television series.

Foxtel, owned 65 per cent by News Corp and 35 per cent by Telstra Corporation Ltd, is quintessentially Australian reaching over 3 million Australian homes overall — in both regional and metropolitan areas via cable, satellite and broadband distribution. Over 25 years, Foxtel has demonstrated that it is one of Australia's most innovative and dynamic media companies and is a significant investor in the Australian content economy spending hundreds of millions of dollars each year on local news, sports rights and production as well as production of Australian dramas, lifestyle and documentary programs.

Foxtel strongly believes in the importance of Australian stories narrated by Australian voices and we continue to showcase the best of Australian programming across all areas. Combining forces with Fox Sports has only

widened Foxtel's smorgasbord, as we provide Australians with a breadth of sport coverage on twelve dedicated sport channels, and a home-grown team of expert commentators covering Australia's major sports.

The Current Environment

As the media environment evolves at a rapid pace, Foxtel continues to commission and broadcast quality Australian content. Australian content proves continually successful with our audiences. It also drives significant economic benefits through the activity and employment it generates.

Despite Foxtel continuing to provide high-quality Australian content and premier programming, the current landscape in which we operate has become increasingly challenging. Developments in digital technology now sees Foxtel in direct competition with subscription services whose business models and lack of regulation in the Australian market create particular advantages for such businesses in what should be a level playing field.

International streaming services such as Netflix, Disney+, Amazon Prime and YouTube Premium offer low-priced subscriptions available worldwide which invariably increases their overall market share. The ability to create and maintain their own content library of international brands on an exclusive basis as well as utilise Australia's existing internet infrastructure has enabled such services to keep their subscriber base high and their costs low.

The fast uptake of these services by Australian audiences is having a direct effect on traditional broadcaster revenues and causing major structural change in the landscape. The sheer scale of large global companies such as Amazon and Netflix means these companies are able to invest in and make premium content at rates that Australian platforms cannot match.

While Foxtel recognises the importance of providing viewers with content from a range of sources, it must be noted that there exists a perpetual imbalance in the landscape. In the current environment local broadcasters remain encumbered with regulation and requirements carried over from a time many years ago when Foxtel was among the few choices in subscription television and no longer reflects where we are now. As noted in the Options Paper, new streaming services are drawing in Australian audiences at a rapid rate, yet they have no reason to broadcast Australian voices, tell Australian stories or showcase an Australian point-of-view. Such businesses benefit from reaching Australian audiences however they have no obligation to support the Australian industry. As also highlighted in the Options Paper, Australian content continues to make up only a small percentage of the catalogues provided in such services.

Foxtel recognises that fragmented audiences has become a cultural reality. What makes things difficult for broadcasters, however, is that in order to help generate revenue, it is beneficial to have content that can reach large audiences. Fragmented viewing habits means that although we are seeing success with local productions our options are becoming increasingly limited as producers struggle to find funding to be able to make large budget productions which can reach wide audiences. In order to address this change in viewing habits, Foxtel has continued to work intensively in

recent years to create a wide range of consumer options, ensuring the best mix of local and international content is available on a range of devices and at differing price points.

A look to the future indicates that the trend will only continue as more and more international services join the Australian market. As major global broadcasters enter the market, they continue to take back their distribution rights. How this will ultimately manifest is yet to be seen however it will continue to make it difficult for local broadcasters to rely on sought after international content.

The most recent event to have a significant effect on Australia's current environment is the COVID-19 pandemic. The economic impact of the pandemic is far reaching, the full extent of the effects is yet to be seen and it has already hit the Australian media sector hard. Foxtel was impacted from the onset, losing a significant amount of advertising revenue almost immediately (this dramatically accelerated the impact of global platforms which, in recent years, have been siphoning off advertising which traditionally had its home on television). Not long after was the drastic impact of the cessation of live sport and the closure of licensed venues (pubs and clubs) and resulting unemployment which have severely impacted subscription revenue. As the world continues to deal with the ongoing economic and social effects of the pandemic, Foxtel continues to feel the financial impacts of such an unprecedented event.

3. Foxtel's Support for Australian Content

Foxtel's history is steeped in supporting and broadcasting a rich variety of high-quality Australian content. Our Australian programming has garnered numerous industry awards for our Foxtel Original productions. While audience tastes are changing, our audiences respond positively to the stories and resonate with the strength of Australian story telling. Additionally, Foxtel has a deep understanding for the important role Australian content plays in achieving cultural objectives and contributing to the overall economy.

Foxtel has assisted in helping Australian talent shine on the world stage with highly acclaimed international exports including *Wentworth*, *Secret City* and *Picnic at Hanging Rock*, that have sold to global players including Netflix (*Wentworth* and *Secret City*) and Amazon (*Picnic at Hanging Rock*) and are available in dozens of countries throughout North America, Europe and Asia.

Foxtel has a history of commissioning award winning Australian dramas, lifestyle and factual programming. Foxtel's most successful Australian drama commission, *Wentworth*, has won 7 Logie Awards including 3 Logies for Most Outstanding Drama Series (2015, 2018 and 2019) and a Logie for most Popular Drama Series (2018). This is in addition to winning 4 AACTA awards including the award for Best Television Drama Series (2015).

Wentworth is among several highly acclaimed Foxtel Original dramas including: *Secret City* which has won 2 Logie awards for Outstanding Actress and Outstanding Supporting Actor in 2017, plus an additional 3 Logie nominations across 2017 and

2019; The Kettering Incident which won the Logie for Outstanding miniseries or telemovie (2017); and A Place to Call Home which won the Logie for Outstanding Drama Series (2017).

In addition, Picnic at Hanging rock won 3 AACTA Awards in 2018 and was nominated for a further 5 AACTA awards in the same year.

Foxtel produces Australian content across multiple genres including: drama, lifestyle, general entertainment and factual. In the lifestyle and general entertainment genres we have enjoyed stand out success with Selling Houses Australia and Gogglebox Australia. The host of Selling Houses Australia, Andrew Winter, was nominated for the Gold Logie in 2018. The program has been nominated for the Logie for Best Lifestyle Program 7 times and has twice won the AACTA Award for Best Lifestyle TV Program (2017 and 2018).

Gogglebox has won 4 Logie awards, twice for Most Popular Entertainment Program (2018 and 2019).

Foxtel has a proud history of producing some of Australia's best factual programming and in recent years has been a strong contender against the ABC and SBS for the Logie for Most Outstanding Factual Series. Foxtel has had at least one program nominated in this category, every year for the past 5 years and in 2019 our true crime series, Ron Iddles: The Good Cop, won the Logie for Most Outstanding Factual Series (2019) and in the same year The Pacific: In the Wake of Captain Cook with Sam Neill was also nominated in the same category.

Foxtel also works with a wide range of independent production companies to produce its Australian content, and in so doing supports creative experts who also work across the Australian free to air television and film sectors.

4. Existing Regulation and Government Funding Arrangements

There is a suite of government funding and regulatory measures in place to provide the necessary assistance for Australia's production sector. However, these measures were put in place at a time where only traditional broadcasters with more simplified structures existed. As the market continues to shift and change it is becoming apparent that such measures are no longer effective at providing the support for which they were originally intended. As the Options Paper highlights, major changes in this area are necessary in order to continue to provide the industry and its storytellers with the backing needed.

The main Federal funding initiatives for Australian content are through the Producer, Location and PDV offsets and the Location Incentive and direct funding through Screen Australia. In the regulation space, free to air broadcasters remain subject to the 55 per cent annual minimum transmission quota as well as sub-quotas for adult drama, documentary and children's programs.

In the subscription broadcasting space Australian drama on Foxtel is subject to the new eligible drama expenditure (NEDE) scheme. Under the NEDE scheme Foxtel is required to spend at least 10 per cent of total program expenditure on new Australian drama programs. If Foxtel is unable to meet its obligations for one

reporting period, such obligations must be carried forward to the subsequent reporting period.

Screen Australia also offers funding for drama programming for broadcasters (commercial and subscription) who meet the relevant requirements. In order to qualify for such funding broadcasters must pay the producer a licence fee of \$440,000 per hour of drama programming. There is a 'one size fits all' approach to the licence fee as all Australian broadcasters must meet the \$440,00 minimum regardless of size.

5. Options Paper Model 4: Deregulation

The Australian media sector is continuing to make various changes and adapt to the challenges that have arisen in our industry. With a consistent focus on ensuring that Australians receive quality content at an affordable and convenient rate, broadcasters have continued to invest in Australian content.

The current regulatory system under which we operate is clearly out of touch with the current situation facing Australian subscription television providers, out of date given the disruption that has occurred, and in desperate need of overhaul. As Australia's premier subscription broadcaster, Foxtel is seeking effective change in order to ensure we are not restrained from effectively competing in a market fast becoming occupied by low-cost international subscription services.

Foxtel agrees with the policy objective of Model 4 proposed in the Options Paper which is to 'remove all regulation and remove or revise incentives to make Australian programs, in order to support platform neutral deregulation'. Removing regulation provides an equal playing field, offering traditional broadcasters the opportunity to further innovate and modernise in order to compete with international content providers. Foxtel believes the most effective way to provide the requisite assistance is to 'revise' rather than 'remove' incentives for Australian programming.

Remove Existing Obligations on Broadcasters

As stated in the Options Paper, under the deregulation model 'all content providers would have the ability to make programming decisions based on their business models, audience preferences and objectives, without government intervention'. Foxtel is of the view that this is critical to the future success of the Australian media industry.

New Eligible Drama Expenditure

As Foxtel has commented on previous occasions, we are the most heavily regulated media business in Australia – regulation established for a past era when Foxtel was among the few subscription television services available. Today, the effect of such regulation hinders Foxtel's ability to effectively compete with local and international competitors in both the free and subscription space on a level playing field.

One of the main examples of the restrictive regulation on subscription television broadcasting is the NEDE scheme. We support the removal of the scheme under

the deregulation model. Removal of the NEDE scheme will also allow for flexibility of investment on Australian content across a variety of genres. As highlighted above, Foxtel has proven success with Australian drama and the removal of the NEDE scheme does not mean that audiences will no longer see themselves represented on our screens, it simply provides Foxtel the freedom to compete unhindered in the way and manner we see fit.

Minimum licence fees

Foxtel is of the view that as part of the deregulation model, the minimum licence fees for Screen Australia funding also need to be revised. The 18/19 Screen Australia Report reported that while the expenditure on Australian drama productions increased by a third, the total number of hours only increased by 4 per cent. This is a strong indication that the drama funding system is in desperate need of revision. The \$440,000 per hour licence fee requirement for drama makes sense for a traditional media structure that caters to mass audiences. Subscription television by nature does not adhere to this format, therefore the 'one size fits all' approach by Screen Australia results in subscription television services, such as Foxtel, being unable to take advantage of this option. And it is not just subscription broadcasters who do not fit this singular approach to the licence fees. The model itself means that low cost production models and platforms who do not subscribe to the advertiser-funded mass audience approach are excluded. It is clear that greater flexibility is needed in this area to incentivise ongoing investment in new productions and to encourage innovation and the development of lower cost, more agile production models.

The \$440,000 licence fee should also be expanded to allow broadcasters to utilise the rights on multiple platforms without having to pay additional licence fees. Particularly, in the current environment, where audiences no longer delineate between 'traditional' and 'digital' across the various media, the Screen Australia funding should be actively incentivising the exploitation of Australian content across multiple platforms. In the current landscape the ability to reach audiences on a variety of platforms is an essential aspect of the content delivery business. Foxtel, for example, cannot just place all of our focus on our linear platform we must also provide customers the Foxtel experience through our digital platforms, yet we are required to pay extra in order to obtain those rights.

Revise Current Incentive Arrangements

Foxtel recognises the importance of continued incentives for Australian production. As such, we encourage maintaining these mechanisms in order to foster the best possible environment for Australian productions. Further revision, however, is necessary in order to ensure the industry moves towards a platform neutral environment.

Producer Offset and Location Incentive

The Producer Offset remains an important driver of funding for Australian programming. The current Producer Offset administered by Screen Australia provides a rebate of 20 per cent for 'qualifying Australian production expenditure' for television programming and 40 per cent for feature films. Foxtel submits that

the 20 per cent television rebate should be increased to match the 40 per cent rebate for feature films. A policy objective for the offset was the recognition of the cultural significance of Australian content. This is important now more than ever as platforms with a global presence continue to solidify their place in Australia's media landscape. Increasing the television offset percentages would continue to preserve the cultural significance of Australian content while at the same time administering possible economic benefits for the production sector.

A PwC economic analysis commissioned by ASTRA and SPA for ASTRA's 2017 Submission to the Standing Committee on Communications and the Arts Inquiry into the Australian film and television industry clearly demonstrated that there would be significant beneficial impacts for Australian jobs and economy from increasing the television offset to 40 per cent. The analysis found that the increase would generate approximately 360 new television jobs and \$103.9 million in economic activity. The research also found that the increase would cost the Federal Government \$15.5 million yet would generate an additional \$119.4 million in economic activity leading to over \$100 million in benefit. It is acknowledged that there are many scenarios and various factors to be considered however the analysis strongly suggests that increasing the offset percentage would be advantageous.

Increasing the television offset percentage makes more sense now more than ever as television (and digital platforms) is the clearly preferred medium of modern audiences. As audiences increase, it therefore should follow that greater investment should be encouraged for productions that will be viewed on platforms where content is more likely to be seen by Australian audiences. Australian stories are no less important or culturally significant when they are viewed on a television screen as opposed to a film screen. Furthermore, as the various successful Australian television productions have proven to date, Australian television provides a considerable amount of job opportunities, expertise and value as the film sector and should therefore be supported as such.

Foxtel submits that the range of eligible formats for the Producer Offset should also be expanded. Australian productions have shown that we as an industry are creative and innovative across all genres. The Producer Offset should effectively recognise and foster this. Foxtel has found great success with Australian productions within the lifestyle, infotainment and magazine genres such as *Selling Houses*, *Love It or List It* and *Gogglebox*. Such productions have even been picked up for distribution on free to air platforms. However, the Producer Offset excludes such genres of programming from eligibility. Foxtel has long considered that such genres should be eligible under the factual programming group which will allow for greater innovation, flexibility and evolution in these areas. We see no reason, in the current environment, why content creators in these genres, which have proven to be successful with Australian audiences, should be specifically restricted from the benefits of the Producer Offset.

As explored above, not only have audiences become more fragmented but modern audiences tastes continue to change and respond to new and innovative programming. The Producer Offset should therefore incentivise all forms of content innovation and differing formulas that can combine to create what is

‘factual programming’. The subscription television environment by nature allows such programming to flourish and Foxtel should not be penalised for supporting content that is engaging and entertaining. Audiences expect factual programming to continue to evolve. As a result, producers and broadcasters are constantly exploring new and innovative ways of delivering factual programming in formats and styles that are relevant and accessible to changing audience demands.

It would be advantageous for the Australian production sector if the Location Offset was increased from 16.5 per cent to 30 per cent. Not only is it important to continue to encourage Australian programming, we want to ensure Australia continues to draw large international productions to our shores. This is critical in building expertise, skills development and exposure for the local Australian production sector and ensures we continue to be an important player on the global stage. International production has played a crucial role in the development and enhancement of skills, infrastructure and technology within the local television industry and Foxtel is of the opinion it is critical that this continues. It is evident that there are other international markets that exist which are also attractive to international productions. The entire Australian production industry benefits as a whole if we remain competitive in this market and increasing the location offset would only encourage this.

6. Conclusion

Foxtel believes in the importance of Australian content in the Australian media sector. It preserves our cultural identity and provides valuable contribution to the economy. We have found that Australian productions always prove popular with our audiences, who are constantly searching for new and creative ways to see themselves reflected on screen.

The Australian production industry is vibrant and creative. Australian content creators continue to produce first-rate material and local broadcasters rely on these in order to sustain their place in the current landscape. It is important that this continues to be encouraged across all genres.

Foxtel has highlighted above that the current environment for Australian broadcasters is growing and changing at a rapid pace. Although local broadcasters continue to do everything in their power to keep up with these changes, it is no secret that we find ourselves on an uneven playing field and, as a result, facing severe financial challenges.

The emergence of new global streaming services in Australia has created particularly significant challenges. Local broadcasters continue to innovate in order to meet such challenges however these new entrants are supported by large global corporations and have no obligation to contribute to the Australian content industry. On the other hand, local broadcasters remain encumbered by the regulatory structure, created in the pre-disruption era, that is continuing to cause a number of significant disadvantages.

As outlined above, consumers have, now more than ever, more choice and flexibility. Foxtel welcomes competition as it fuels innovation and creative thinking however we submit that the current climate is creating an unstable environment. Not only do new entrants arrive with a comparable advantage to local broadcasters but they are not incentivised to tell Australian stories.

As consumers become self-aggregators and their viewing habits change and become more fragmented, it is important that existing media encourages diversity of choice, while at the same time maintaining rich, high-value content. The current framework does not encourage this and it is becoming apparent that it hinders rather than encourages healthy competition.

The arrival of the new entrants as well as changing consumer behaviour demonstrates that the Government's review of the current arrangements is timely and necessary. The existing regulation was implemented when the environment looked very different to now. It is important now more than ever to consider whether such regulatory measures remain fit for purpose.

Foxtel supports removal of the current restrictive regulatory measures to allow Australian broadcasters to thrive in the current climate. It is important for the Government to continue to support local content production however the current incentive arrangements and eligibility requirements should be further revised to ensure that the fundamental policy objectives are met. These changes would see existing interventions evolve to become more suited to the modern Australian media environment and encourage free and open competition.

Notwithstanding the factors listed above Foxtel remains positive about the future of Australian media. It is important that Government intervention incentivises and encourages innovative thinking and creative approaches to Australian production in order to ensure the future viability of our media industry. The existing regulation is clearly outdated and intrusive, and it is time to do away with such legacy regulatory interventions which no longer meet their purported objectives and have a dampening effect on competition.