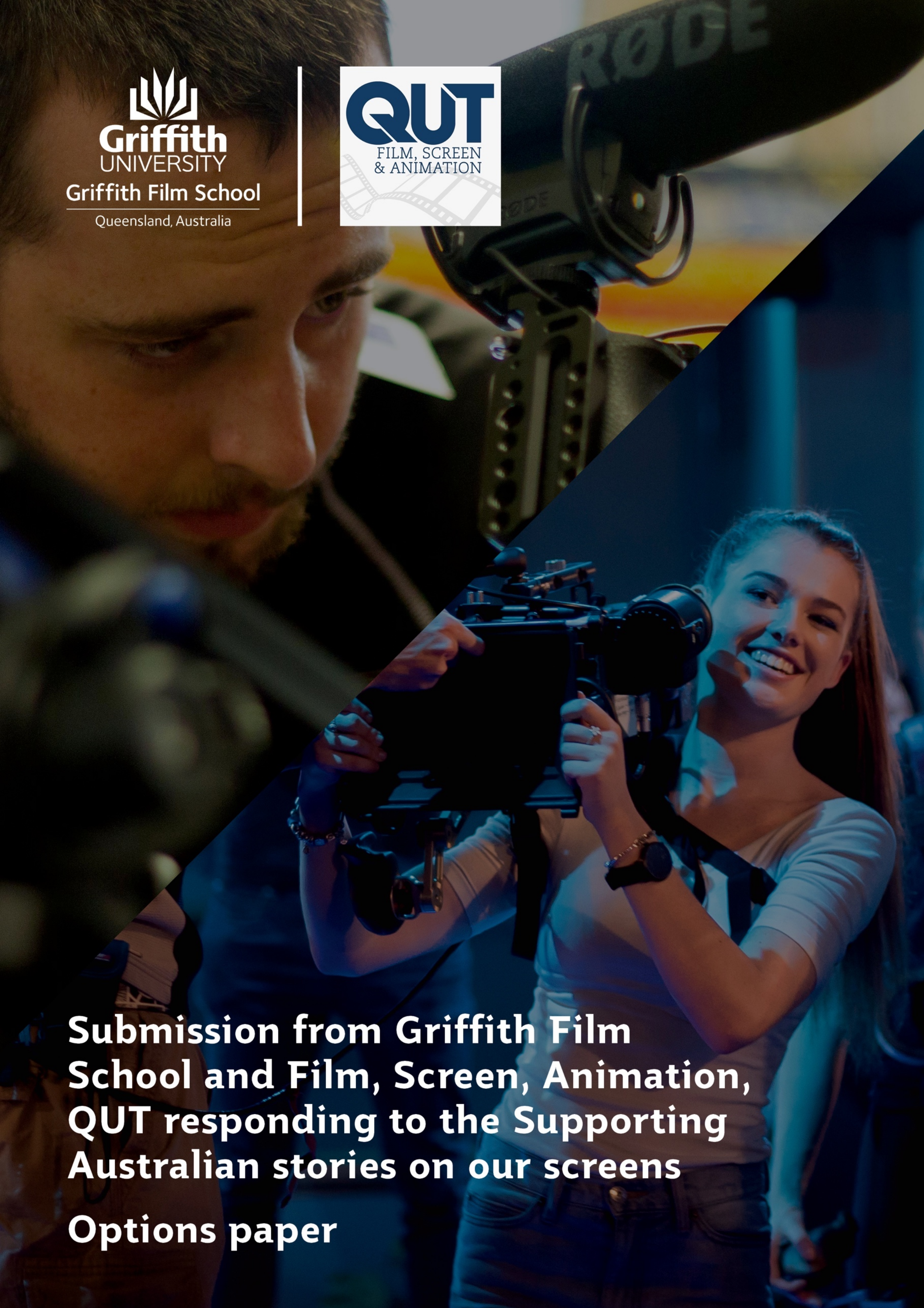


Griffith University
Griffith Film School
Queensland, Australia

QUT
Film, Screen & Animation

Submission from Griffith Film School and Film, Screen, Animation, QUT responding to the Supporting Australian stories on our screens

Options paper

CONTENTS PAGE

1. EXECUTIVE SUMMARY

This submission from a team of screen academics at Griffith Film School and QUT's Film, Screen, Animation discipline responds to the Consultation Questions in the Options Paper and makes several recommendations. The submission is made in the interest of supporting Australian stories on screen, growing the volume of Australian content available across all commercial platforms providing screen content, and ultimately maintaining an innovative, vibrant and robust local screen industry. Our assessment is that a 100% platform neutrality, while desirable, is not entirely workable, and thus we recommend a system that adopts elements from both Model 2 and Model 3A. presented in the Options Paper. We also propose some entirely new approaches to content regulation that we outline in this submission.

The key recommendations are:

- That the hours-based **55%** Australian content quota between 6am and midnight be **replaced with an expenditure-based system** where commercial broadcasters are required to spend **77%** of the overall program expenditure for their FTA channels and BVOD services on Australian content.

- The current sub-quota and points system to be replaced with an expenditure-based subcategory system, which includes a new mechanism of 'weighted' expenditure credits as a financial incentive for broadcasters to meet and ideally exceed their minimum required subcategory expenditure.

- The subcategories would include First Release Adult Drama, Documentary, Children's Drama, Children's Other and a new subcategory called Other Culturally Significant.

The rationale for these changes and a detailed explanation of how the elements of the proposed new expenditure-based system would work can be found in **sections 6 and 6.1** of this submission.

- Foxtel would be required to meet minimum subcategory expenditure spread across its Australian channels, see **section 6.3.**

- Subscription Video On Demand (SVOD) providers would be required to meet similar subcategory requirements for investment in Australian content, **but based on a percentage of their annual revenue from Australian subscribers rather than on expenditure**, see **section 6.2**.

The arguments in favour of these new approaches and a range of other recommendations to better support the local screen industry and maximise the volume of Australian stories we see on screen are presented in the body of the submission below.

2. THE AUTHORS OF THIS SUBMISSION

As two of Australia's leading screen media educators who share a commitment to excellence in training Australia's future screen storytellers, **Griffith Film School**, Griffith University and **Film, Screen and Animation**, **Creative Industries Faculty, Queensland University of Technology (QUT),** are committed to maintaining a productive and dynamic screen production industry in Australia, and in Queensland.

A strong local production industry is critical to Australian culture and identity, how we are perceived internationally and to the future prosperity of our economy. We also have a strong vested interest in seeing that the creative talents, skills and ideas of our students have a healthy and innovative screen industry to work in and contribute to when they graduate.

A team of academics from both Universities representing diverse backgrounds and expertise within the screen industry, collaborated to contribute to this submission. Please find below introductions to the two schools and information about each academic.

Griffith Film School - Griffith University

The Griffith Film School is the largest film school in Australia offering programs in Film, Animation and Games Design. The school's success is predicated on strong partnerships within screen industries and acclaimed screen practitioners – locally, nationally and globally. The Griffith Film School prides itself in the practical, hands-on teaching, Artists in Residence program, and research capabilities, that have students operating state of the art equipment, studios as well as participate in international field work throughout the entire 3 years of the programs.

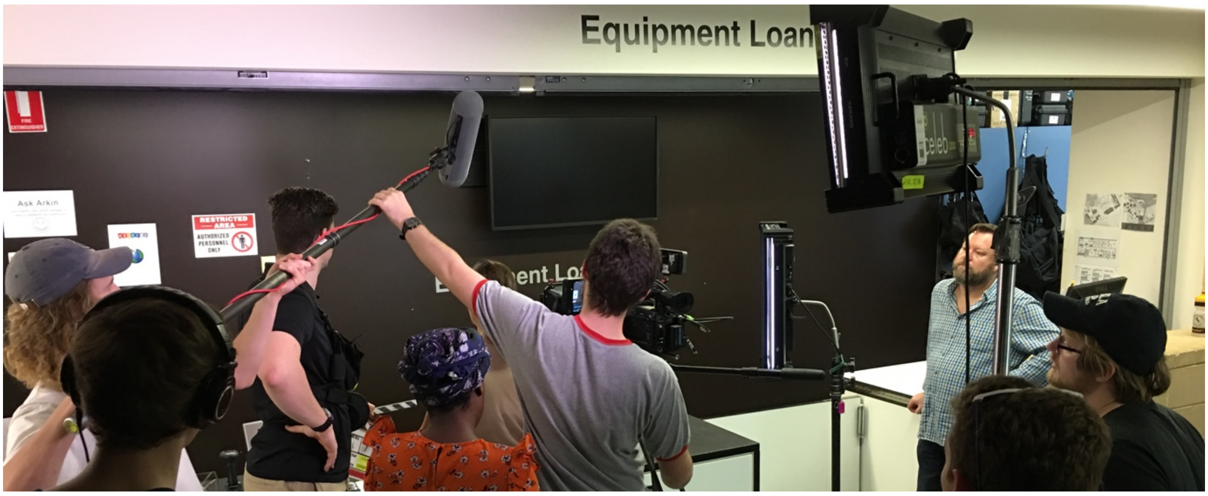
The Griffith Film School staff are award winning screen practitioners and leading academics who are proud to see the school's graduates work in creative and exciting careers globally within international business of film, television, animation, games and digital screen media production. GFS alumni have received a large number of prestigious accolades including Academy Awards, International Emmy Awards, British Academy Film Awards (BAFTA), Cannes Film Festival, Apple Game of the Year and Berlinale. The school operates in an 'ever-changing marketplace', and provides students, researchers and staff opportunities to develop skills in evolving technologies, including, but not limited to, 360, VR, XR, and Motion Capture.

Andy Nehl is a Senior Lecturer in Television and Online at Griffith Film School, and a former Head of Television at AFTRS. He has three decades of experience as a documentary director and television producer with over a dozen production companies making programs for ABC, SBS, 7, 10 and The Comedy Channel on Foxtel.

Professor Trish FitzSimons, is a documentary filmmaker with research outputs too in documentary history and theory. She was one of three authors of *Australian Documentary: History, Practices, Genres,* (Cambridge University Press 2011). Regulation to support local content, and other forms of government support to the screen industries, is one of her long term interests. She is a Professor and the Program Director of Honours at the Griffith Film School.

Dr. Peter Hegedus, Deputy Director - Research & Engagement, Griffith Film School. Peter's filmmaking career spans 20 years. His critically acclaimed feature documentaries have won numerous awards around the world and been broadcast in many countries. Peter is the recipient of Griffith University Alumni Award and his documentary work has been short-listed for an Academy Award.

Dr. Wendy Keys is a Senior Lecturer in Screen Studies, Media and Communication, Griffith Centre for Social & Cultural Research (Griffith University). She is an expert in audience research and policy specialising in children and young people.



Film, Screen, Animation - Creative Industries Faculty, QUT

QUT's Film, Screen, Animation discipline in the School of Creative Practice, Creative Industries Faculty (CIF), is a leading provider of practical film, television, animation and immersive media training in Queensland. The discipline has a strong research profile with strengths in screen industries, practice-led and applied research into the deployment of creative technologies. In 2018, the Commonwealth Government's Excellence in Research for Australia (ERA) rated the Film and Screen discipline's research as 'above world standard' for the field of '1902: Film, Television and Digital Media'. The discipline has cutting-edge virtual reality production and photogrammetry studios, and industry standard television studios. The discipline has produced a long list of internationally renowned industry professionals and our graduates have won Oscars, Emmys and British Academy Film Awards Film Awards. The Bachelor of Fine Arts and Bachelor of Creative Industries offers majors that develop skills in producing, writing, sound, cinematography or directing across documentary, television and digital platforms.

Associate Professor Mark Ryan is a Chief Investigator for the Digital Media Research Centre (DMRC), and an academic for Film, Screen, Animation, Creative Industries Faculty, QUT. He is an internationally recognised expert in screen industries, Australian cinema, and genre film research.

Dr. Phoebe Hart is a senior lecturer in film, television and digital media at QUT, and principal of Hartflicker, a video and film production company. She is also a writer, director and producer of documentaries, factual content and children's television.

Joe Carter is Lecturer and Study Area for Film and Screen, CIF, QUT. He is a film and television director specialising in extreme sports documentaries.

3. WHY AUSTRALIAN CONTENT IS IMPORTANT

The Australian screen industry has long been sustained by government regulation and investment incentives for production, and without this support, an Australian screen industry would not exist at its current level of production. Without government support, investment in Australian content would decline dramatically and an Australian voice on domestic screens would diminish. The industry has long been supported on the basis of market failure. Put simply, it is far cheaper to import content produced overseas than it is to produce original drama series, and often other formats, in Australia. The size of the Australian population at 25 million is too small to support viable production of screen content when US producers, for example, can recoup most of their costs in their large domestic market (a population of almost 330 million) and they can earn profits from sales overseas.

Australian cinemas and television screens have long been dominated by content produced by overseas producers. By the late 1960s, without direct investment in film and television production, an Australian feature film industry was almost non-existent, and before the introduction of the local television content quotas, drama content available on Australian screens was completely dominated by US and UK content.

Digital disruption and changing audience viewing patterns are challenging the business models of commercial broadcasters and the settings of the current regulatory system. In short, the long-term future of this system is in peril. However, while the current regulatory system has become outdated, the need for a regulatory system and the requirements for investment in Australian content is as important as ever. Consequently, while there remains a need for a regulatory system that encourages investment in and a minimum level of Australian content on Australian screens, a new regulatory system is needed that better reflects the current shape, fluidity and needs of the convergent screenscape.

4. THE CHALLENGE

Australia's commercial free-to-air television broadcasters have always had an imperative of maximising their return to shareholders and this has always taken precedence over producing both expensive high quality programs, and high volumes of Australian Content. This said, they have made a very significant contribution to Australian culture with locally produced programs that have proved popular with Australian audiences, but as the history of Australian content regulation indicates they have only done so under the imposition of local content quotas. In the '70s, '80s, '90s and '00s when an Australian commercial TV license was still "*a license to print money*"[1], it was not financially onerous for our commercial broadcasters to comply with Australian content regulations.

The information presented in the Options Paper has clearly demonstrated that in the current media environment our commercial TV networks face genuine difficulty in maintaining the same volume of quality Drama, Documentary and Children's programs due to:

- Competition from international Subscription Video On Demand (SVOD);
- Changing audience viewing preferences; and
- A seismic shift in advertising to online, particularly Google and Facebook, reducing the available pool of advertising revenue.

It has also demonstrated that Australian audiences now see video on-demand services as the natural home of drama and documentary content, and that the SVOD services are not screening or funding an adequate or desirable amount of Australian content, albeit that Stan offers a far greater proportion of local content than other providers.

The challenge is to find a regulatory model that eases financial burden on commercial FTA broadcasters, and imposes content requirements on SVOD providers that will not only maintain but ideally increases overall production of Australian screen content. In light of convergent digital technologies enabling the Australian market to be flooded with huge volumes of overseas programs, there is a strong need to increase support for local production, particularly in Drama, Documentary and Children's content, to maintain a robust presence for Australian stories on domestic screens.

5. RESPONSE TO PROPOSED MODELS

Platform Neutrality

A platform neutral model is highly desirable and would obviously provide the most efficiency and simplicity in regulation. However, considering the inherently different nature of the economics, mode of delivery and volume of content between FTA broadcasting and on-demand streaming, a 100% platform neutral regulation is not feasible for achieving maximum support for Australian production and a level playing field between broadcasters and SVOD services. We are therefore proposing an approach which we believe will be as platform neutral as possible in achieving a fair balance between broadcasters, streamers and the independent production sector.

To minimise the impact on Australian screen producers we also propose a transition period from an adjusted version of the current system to a close to platform neutral system with elements of both Model 2 and Model 3. The details of the transition to be worked out in further consultation with the screen industry.

Given that the revenues of FTA commercial broadcasters are declining and SVOD services contain hundreds of thousands of hours of viewable content, in moving towards a platform neutral model it is potentially far more appropriate for Australian Content requirements to be based on expenditure rather than on quotas for a specified volume of hours.

Consequently, we'd argue that 'expenditure' rather than 'revenue' is an important term in determining investment in Australian content. For commercial FTA broadcasters, a proportion of expenditure on Australian content as a percentage of FTA's overall expenditure on program content is potentially a more appropriate consideration than calculating local content obligations based on a proportion of revenue. FTA broadcasters produce a much broader range of program content than SVOD services (including news, entertainment and sports). Moreover, the commercial FTA's have a much larger range of costs than SVODs that impact their gross revenue: production staff, production faculties, equipment, terrestrial transmission costs, and so on.

Conversely, SVOD services screen a narrower range of genres and formats and exclusively invest in and acquire largely pre-produced content supplied by external companies. Consequently, they have far lower fixed costs.

Overseas SVODs, in particular, have comparatively minimal on the ground costs in Australia than FTA broadcasters, and therefore calculating content obligations based on revenue is a more appropriate approach for determining content requirements for SVODs.

Expenditure-based requirements for Australian commercial broadcasters

The expenditure-based model we are proposing for commercial FTA broadcasters would see the minimum proportion of expenditure on Australian content as percentage of expenditure on overall content being based on the 3-year average of that proportion of expenditure by commercial FTA broadcasters for the 2012 to 2014 financial years. This timeframe, prior to Netflix starting in Australia in 2015, has been selected to avoid the distorting effects of providing the same quota of hours with dwindling revenues due to the surge in the uptake of SVOD services and online advertising in the last 5 years, and the dire consequences of COVID-19 in the 2019-20 financial year.

The proposed expenditure-based model would also recognise differences in the cultural value of some categories of content by requiring set percentages of expenditure to be invested in selected subcategories of Australian content, to support First Release Drama, Documentary, Children's and other content categories that are determined to be worthy of support. An expenditure-based subcategory system can be designed to take into account the current realities of audience usage of different platforms of content allowing FTA broadcasters flexibility to meet content requirements across different categories of programs.

Revenue-based content requirements for SVODs

As international SVOD providers such as Netflix, Amazon Prime Video, Apple TV + and Disney + are based overseas, their finances relating to expenditure on non-Australia content are far less transparent. Netflix and Amazon Prime Video in particular, have huge catalogues with expenditure on content amortised across global markets.

While Australian SVOD streaming service Stan has a far smaller catalogue and access to a smaller market, its operations and business model are similar to the overseas SVODs. It also has far lower overhead expenses than commercial FTA broadcasters.

So, a purely expenditure-based content requirement is not suitable for international or local SVOD services. We propose that SVOD providers be subject to a content requirement based on a proportion of their subscriber revenue in Australia, where that proportion is the same as the proportion of the combined subcategory requirement for commercial FTA broadcasters.

A more detailed explanation of how such an expenditure/revenue-based Australian content regulation system, would work is outlined in **section 6** of this submission.

If the Australian Government agrees to move forward with expenditure/revenue-based content requirements along the lines that we are proposing, the precise parameters of such regulations will need to be developed in further consultation with all stakeholders in the screen industry.

Our response to the Consultation Questions on the proposed Models below is made within this context.

5.1 RESPONSE TO MODEL 1 – STATUS QUO

Consultation questions

> **1. What outcomes for audiences and industry will the current system support, and for how long?**

The continued decline in revenue for commercial broadcasters reducing their ability to fund local production, the change in audience preference for watching drama and documentary on SVOD services, and the exceedingly low levels of Australian content on international SVOD services such as Netflix and others, means adopting the option proposed in Model 1 – Status Quo is not a viable option.

Model 1 can no longer provide appropriate support to maintain a vibrant local screen production industry into the future.

5.2 RESPONSE TO MODEL 2 – MINIMAL

Consultation questions

> **2. In the context of an Australian content transmission requirement for commercial FTA broadcasters what percentage requirement across all channels should apply?**

Content quotas that mandate a certain percentage of broadcast hours are no longer appropriate in the future as we move towards a platform-neutral model, ideally with expenditure-based Australian content requirements along the lines we are proposing.

However, to maximise the quantity of fresh Australian content produced and minimise the economic pain to both commercial FTA broadcasters and Australian screen production companies, a transitional period is proposed. It would start with an adjusted version of the current percentage of on-screen hours quota and sub-quota systems and phase them out over 3 to 5 years, in concert with the introduction of expenditure-based requirements.

Exact details of percentages during this transition should be developed in further consultation with the screen industry.

> **3. How should requirements to support Australian drama, documentary and children's programming be prioritised? For example, should sub-quota arrangements (or elements of these) be retained, or should a proportion of the overall transmission requirement be dedicated to these formats?**

As discussed above, we are in favour of replacing the current approach of Australian content regulation being based on a proportion of overall transmission hours (with sub-quota arrangements for drama, documentary and children's programming) with a new approach based on a proportion of overall program expenditure with 'weighted' sub-categories of expenditure on drama, documentary and children's programming and a new subcategory called Other Culturally Significant.

The process of how such 'weighting' of subcategories could work is discussed below in **section 6** of this submission, however, exact levels of 'weighting' or prioritisation for Australian content subcategories would be developed in a further consultation process with the screen industry.

4. Would contribution to an Australian Children's Content Fund by commercial FTA broadcasters, in lieu of broadcasting children's content, be feasible, and if so, at what level?

Australia's commercial FTA broadcasters have found significant audiences for Children's content in the past decades but their ratings for this content have declined severely over the last decade due to:

- Their decisions to relegate Children's content to lower rating multi-channels;
- The ABC's competitive advantage with Children's content, because many parents prefer their children not to be bombarded with advertising;
- The belated introduction of initially inferior Broadcast Video On Demand (BVOD) services and failure to effectively market Children's programming on BVOD as it evolves toward becoming the most popular platform for this content.

Developing new engaging content for children, adopting child friendly/parent friendly advertising policies and substantially ramping up and promoting BVOD delivery could potentially see commercial FTA networks regain Children's audiences.

However, since they have shown no motivation to go down this path and have been actively campaigning to shed their obligations for Children's content, we would support commercial FTA broadcasters having the choice of continuing to broadcast Children's programs on their FTA channels and BVOD players, or contributing to a Children's Content Fund that could be accessed by Australian producer's making content for the ABC, SBS/NITV and other Australian platforms. Screen Australia may be the most appropriate entity to administer such a Children's Content Fund.

The level of the commercial FTA broadcaster's contribution for such a Children's Content Fund could be set as a fixed levy to be shared by the networks each year. Or, in any given year, the contributions to a Children's Content Fund could be set at the same dollar level as the expenditure on Children's programming required under the expenditure-based Children's content sub-categories we are proposing. As this would effectively provide funding to make Children's programs that may end up being screened by their competition, a broadcaster choosing this option would receive a 'weighted' expenditure credit at a 'weight' to be determined by ACMA and Screen Australia.

When examining submissions to the recent *Australian and Children's Screen Content Review* 2017, it is clear the commercial networks want children's and local content quotas dropped and that companies such as Google/YouTube and Netflix prefer unrestricted competition.

Google argues for an absence of regulatory obligation and vetoes the provision of incentives as 'they are not aware of any empirical evidence of the lack of Australian content on YouTube' (Google 2017:3).

Netflix believes streaming services competing with each other, with free to air and with pay TV services 'encourages Australian producers to create great content that meets the growing global demand' referring to a 'virtuous cycle organically ensuring the Australian production industry is supported and that Australian content is seen by audiences everywhere'(Netflix 2017:9).

The Walt Disney Company is not in favour of content quotas, arguing that they are 'an inefficient mechanism to promote the creation of locally relevant content', however in recognition of the likelihood of the Australian government continuing to pursue quotas Disney adds: 'the quotas must be flexible enough to capture the kinds of content attractive to Australian children today and into the future, and also allow creators to respond to shifts in audience demand. Without this necessary flexibility, quotas will create a disincentive for creating the very programming that the Government is trying to promote (Disney 2017:2)'.

The Australian company Stan pushes for Government support for 'culturally significant content production' but argues that 'additional regulation of digital content production and distribution would be a mistake' and that policy needs to be 'forward looking' and 'nimble' (Stan 2017:4)

With such a powerful resistance to content quotas the establishment of an Australian Children's Content Fund to which the commercial FTA broadcasters and independent streaming companies contribute is recommended.

5. What, if any, amendments could be made to the NEDE scheme to improve outcomes for the sector?

Currently, Foxtel channels with over 50% drama content are required to spend 10% of their expenditure on Australian drama under the NEDE scheme. If the Government decides to move to an expenditure-based content requirement for FTA commercial channels and revenue-based for overseas SVOD services as we are proposing, we recommend the current NEDE arrangements be replaced with the same expenditure-based sub-categories as will pertain to the FTA commercial broadcasters.

Given its pre-existing high proportion of overseas channels, and historical recognition of this with the NEDE scheme, Foxtel would not be subject to the 77% Australian expenditure-based requirement across its overall programming spend.

However, under the approach we are proposing Foxtel would be subject to meeting the same proportions of expenditure-based subcategory requirements for Australian Drama, Documentary and Children's and Other Culturally Significant subcategories spread across all its Australian channels. This would be an achievable step towards platform-neutrality considering the different business model and programming structure of Foxtel's service compared to commercial FTA broadcasters and SVODs.

The application of our proposed expenditure-based Australian content regulation system to Foxtel is discussed in more detail in **section 6.3** below.

> **6. How should Australian content be defined in the minimal and significant models? Is there a need to revise key definitions, including first-release, documentary and children's programs?**

First-release Drama

First-release Drama should be defined as: feature films, telemovies, mini-series, TV and online drama series/serials, narrative comedy programs (sitcoms), fully scripted sketch comedy programs, animated drama, dramatised documentary and mockumentary.

Documentary

Documentary should continue to be defined under the current ACMA and Screen Australia definition as: 'a program that is a creative treatment of actuality, other than a news, current affairs, sports coverage, magazine, infotainment or light entertainment program, and corporate and/or training programs.'[2]

However, we are proposing that within this definition Documentary should be further regulated into 3 classes:

A. *Standalone Single Episode Documentaries*, where the documentary's theme and format are original and developed by Australian producers, directors or writers;
B. *Documentary Series with more than one episode*, where the series' structure and format are original and developed by Australian producers, directors or writers;
C. *Overseas Format Documentary Series with more than one episode*, where the series' structure and format are licensed by Australian producers from overseas broadcasters or production companies.

We have proposed splitting the Documentary sub-category into 3 different classes in the interest of maximising the diversity of Australian voices and stories on our screens and innovation in documentary content and form.

The second half of the 1990's and first half of the 2000's was the golden age of Australian documentary which saw the production of hundreds of diverse documentaries, winning hundreds of awards nationally and around the world. The majority of these were one-off stand-alone documentaries produced by small production companies. Over time a significant proportion came to be documentary series with Australian-developed formats, some having started as successful one-offs. eg *Grey Nomads* (1997); *Grey Voyagers* (2000).

Over the past decade Australian broadcasters have increasingly moved away from one-off documentaries towards commissioning documentary/factual series, often based on overseas formats, and increasingly acquired from larger production companies. While there has been some very good documentary series produced, the decline in commissioning one-off documentaries has seen a significant reduction in the originality of Australian stories being told and the diversity of people telling those stories.

We believe there is a place for all three of the new classes for Documentary. However, within the expenditure-based content requirements we are proposing, the different classes would be 'weighted' to foster the commissioning and production of more one-off documentaries and more Australian developed documentary series formats *vis a vis* foreign-owned series formats.

Children's Programs

When developing new mechanisms for government regulation and industry practice, revising key definitions and reflecting on shifting context is crucial to ensuring a flexible, forward thinking, platform neutral policy. We understand that 'The Children's Television Standards 2009' were due to 'sunset' on 1 October 2019, but this date was extended to 1 October 2021 to allow ACMA time to conduct a thematic review of the children's television requirements (ACMA 2019). However, due to the impact of COVID-19 this extension was negated in April 2020 when ACMA, in response to industry requests, announced 'temporary relief' for Australian drama, Australian documentary, and Children's and Preschool program quota obligations on commercial television licensees, and minimum levels of expenditure by subscription television broadcasting services on new eligible drama programs (ACMA 2020). To date, the impact of the removal of these obligations has yet to be fully measured.

We argue that when reviewing the children's television requirements for a national, as well as the transnational child audience, it is important to acknowledge the continuing dilemma of balancing issues of protectionism with rights. The dominant discourse in policy to date confirms an anxiety to simply protect young people from content deemed by adults to be unsuitable and a reluctance to include the rights of young people to have access to age specific, creative, innovative, diverse content. As former Australian Children's Television Foundation (ACTF) director Patricia Edgar argued in 2017, 'There is a need for a complete re-think, just as there was when the C classification and quotas were first introduced. This is a different time with very different challenges' (Edgar 2017:2).

In consideration of this, we recommend that the C Classification be reviewed and the Children's Television Standards (CTS) be amended to require minimum levels of live action drama to ensure first release Children's programs are not dominated by animation.

Other Culturally Significant Programs

We also propose introducing a new expenditure-based subcategory of Australian Content to be called '**Other Culturally Significant'**.

We are proposing this new subcategory because drama and documentary are not the only forms of screen content to make significant contributions to Australian culture.

The definition of Other Culturally Significant programming would include: music performance, dramatic performance, comedy performance, performance art; tonight shows and variety shows that showcase Australian pop culture; factual and entertainment programs that explore and review different facets of the Arts in Australia; satirical entertainment programs that critique Australian society and culture. (Pure scripted sketch comedy shows are not in this category because they already count as Drama).

Examples of such significant non-drama and non-documentary shows over the last six and a half decades of Australian television include:
In Melbourne Tonight (9);
Bandstand (9);
The Mavis Bramston Show (7);
UpTight (0/10);
Happening '70 (0/10);
The Norman Gunston Show (ABC);
Countdown (ABC);
Sounds Unlimited (7);
The Graham Kennedy Show (9);
Hey Hey It's Saturday (9);

The Big Gig (ABC);
The Late Show (ABC);
Denton (7);
Good News Week (ABC & 10);
The Panel (10);
Rove/Rove Live (9 & 10)
The Glass House (ABC);
The Dream with Roy & HG (7);
The Chaser's War On Everything (ABC);
RocKwiz (SBS);
The Movie Show/At The Movies (SBS & ABC);
Gruen (ABC);
Salam Café (Community TV Channel 31 & SBS);
The Book Club (ABC);
The Mix (ABC);
The Weekly with Charlie Pickering (ABC);
Tonightly (ABC);
Faboriginal (NITV).

In different ways these types of programs have supported the Arts, reflected, innovated and added value to our culture, critiqued our society, and contributed to Australian identity.

Nowadays these kinds of shows are more the domain of the ABC and SBS, but they have been very successful on commercial television in the past.

For those who were around watching TV in the 1960's, *The Mavis Bramston Show* on Channel 7 (1964-1968) was the "*Chaser's War On Everything*" or "*Saturday Night Live"* of its day – a live studio-based show with satirical sketches, songs and cutting commentary on Australian politics and society. It was an exceptionally popular show, which, at its ratings' peak, reached 50% of the Australian audience in July 1965.

Australian Commercial FTA broadcasters don't have much appetite to produce their own tonight/variety/chat shows anymore. The only recent exception to this would have been *Andrew Denton's Interview* on Seven (2018-2019). But this is not because Australian audiences are not interested in this program format. FTA broadcasters will happily rebroadcast *The Late Show with Stephen Colbert, The Tonight Show Starring Jimmy Fallon* and *The Graham Norton Show* because they cost a minuscule fraction of producing an Australian equivalent.

It is a similar situation with regards to the audience appeal of satirical shows. They would broadcast *Saturday Night Live* if Foxtel didn't have the rights, and because it was a high rating timeslot winner, they would have broadcast *The Chaser's War On Everything* at the time if they could have coaxed the show away from the ABC. But they aren't prepared to put in the time and money required to nurture, develop and pay for the development, marketing and audience-building for these kinds of programs.

The Other Culturally Significant subcategory we are proposing is in a similar situation to Australian Drama and Documentary – it has significant cultural value and we would see more of it on commercial TV if it were part of a local content subcategory.

Whichever new regulatory Model is adopted, the amount of Drama and Documentary on our commercial FTA networks will continue to see some decline as, as we have argued above, SVOD is now the natural home of these genres. As this decline happens it makes sense that the networks be required to increase their support for non-Drama, non-Documentary styles of programs that also have significant cultural value for Australia, particularly at a time when convergent technologies are now swamping us with overseas content.

The natural home of the proposed Other Cultural Significant subcategory is currently still the FTA broadcasters. With the support of the new regulatory regime we propose, and appropriate development and integration with their BVOD services, there is an opportunity for the commercial TV networks to build and retain audiences for such distinctive Australian content, and dominate and cement their ownership of this space before the SVOD services evolve into it.

As with our proposal for the treatment of Documentary as an expenditure-based subcategory, the Other Culturally Significant subcategory would also be 'weighted' for 3 classes of programs within this subcategory. The 3 classes of Other Cultural Significant would be distinguished as follows:

A. Satirical entertainment programs that critique Australian society and culture;
B. Tonight shows and variety shows that showcase Australian pop culture, and factual and entertainment programs that explore and review different facets of the Arts in Australia;
C. Music performance, dramatic performance, comedy performance, performance art.

7. To ensure a better understanding of the levels of Australian content broadcast on FTA television what additional data should be provided by the public broadcasters?

Public broadcasters such as the ABC and SBS should be required to report their hours screened and expenditure on all categories of content, including first release Drama, Documentary. Children's and Other Culturally Significant content on their FTA channels and hours available on their BVOD services in their publicly available annual reports each year.

Including this information in publicly available annual reports, as well as compulsory reporting to ACMA, should also be a requirement for commercial FTA broadcasters, and for Foxtel's Australian channels, so the general public can gain a better understanding of the levels of Australian content they are being delivered in return for their taxpayer support.

Local and international SVOD should also be required to report expenditure on, and hours and percentages of Australian content available in their libraries for streaming, in each financial year.

The categories of content where both hours and expenditure on Australian programs are annually reported should include:

- First Release Australian Adult Drama
- Repeat Australian Adult Drama
- First Release Australian Children's Drama
- Repeat Australian Children's Drama
- First Release Australian Children's Other
- Repeat Australian Children's Other
- First Release Australian Factual – Documentary
- Repeat Australian Factual – Documentary
- First Release Australian Other Culturally Significant
- Repeat Australian Other Culturally Significant
- Australian News and Current Affairs
- Australian Sport
- Australian Factual – Other
- Australian Light Entertainment - Variety
- Australian Light Entertainment - Other
- Australian Other Programming
- Total Australian Programs
- Overseas Drama
- Overseas Other
- Total Overseas Programs
- Total Programs

8. In the context of the model considerations listed on page 40, what revenue and subscriber thresholds would be appropriate for the minimal and significant models?

If the Government decides to continue with some form of modified hours-based quota system we suggest that these thresholds should be determined by Screen Australia and ACMA by conducting industry analysis and consultation.

If the Government decides to introduce an expenditure/revenue-based system - combining aspects of Model 2 and Model 3 as we are proposing - there is no need to consider ‘thresholds’ for revenue and subscribers as the system is designed to adjust to an appropriate level of required minimum expenditure on Australian content based on whatever the quantum of revenue and subscribers is.

There is however, a need to set expenditure-based percentages and subcategory expenditure formulas under this system, which we have addressed under **section 6** of this submission below.

9. What investment levels and library catalogue requirements might be considered appropriate voluntary undertakings for subscription streaming services?

We don’t believe voluntary undertakings by streaming services will achieve the necessary support for keeping an appropriate level of Australian stories on our screens. This is why we are advocating for a combination of some aspects of Model 2 with some aspects of Model 3, such as mandatory minimum Australian content investment levels for SVOD streaming services. The level of mandatory investment for streaming services should be based on a proportion of their annual revenue. In the interests of moving closer to platform neutrality, the appropriate level for this proportion would relate to the Australian content subcategory requirements on FTA broadcasters under the expenditure/revenue-based systems we are proposing. We make a recommendation as to what this level of investment as a proportion of SVOD content provider’s revenue could be in **section 6.2** of this submission.
However, the exact levels would be calculated when parameters have been decided after further consultation with SVOD streaming services, commercial FTA broadcasters and Australian screen production companies.

10. At what level should the Producer Offset be set for children’s programs and one-off feature length programs, and what other settings around minimum spend, qualifying spend and pathway to audience, would appropriately target support?

We would support the Screen Producers Australia position that the Producer Offset be raised to 40% for all categories of production currently eligible for a Producer Offset.

5.3 RESPONSE TO MODEL 3 – SIGNIFICANT

We believe that Model 3 is potentially the most viable option for levelling the playing-field and encouraging a desirable level of Australian content and adequate investment in a range of Australian content that will be flexible for the various players in the new screen ecosystem.

We believe that a model that requires all commercial content service providers to invest in a percentage of their expenditure (rather than revenue or the volume of their production) in Australian programming is an appropriate and beneficial approach for the industry and Australian viewers.

In terms of the options for investing in Australian content we support option A:

- **'Option A:** Service providers would be required to make Australian content available on their Australian service/s (investment in children's and one-off documentary formats could be incentivised by reducing the overall investment obligation for that provider).'

We believe that it would be problematic for service providers to contribute to a production fund for the reason that tensions may arise around receiving a fair share of the funds for production. Moreover, as a regulator, ACMA is not necessarily the organisation best suited to facilitate investment and production decisions. Therefore, allowing service providers to determine the production of their own content is the best option. This also has the advantage of increasing the number of 'gatekeepers' making investment decisions, rather than such decisions being made by a single agency, and will potentially lead to more diversity in the types of Australian content produced.

We fully support the following suggested measures:

- All commercial service providers are required to produce Australian programming.
- National broadcasters should receive specified amounts to fund Australia's children's content and potentially any other forms of content that are adequately being produced by the commercial providers.
- We agree that The Producer, Location and PDV Offsets should be set at a single rate for content on all platforms and should be available to all commercial providers.
- Commercial service providers should be required to report their investment in local content.

We address the specific questions for Model 3 below:

Consultation questions

11. Should scripted Australian content be limited to Australian drama, documentary and children's content, and are revisions to those terms necessary? Should it be limited to 'new' content, however defined?

In moving towards platform neutrality, there will still need to be requirements around investment in priority areas of content such as drama. For a provider such as Foxtel, for example, even though we agree that making content requirements applicable to all their Australian channels is a good option, without stipulations for the investment in certain subcategories of content, drama and other forms of content may decline.

We also believe that Screen Australia and ACMA should investigate or consult with key stakeholders around the levels at which required expenditure should be set for subcategories such as new Australian drama, documentary and children's programs under an expenditure-based system such as we are proposing, and they should make a determination based on their findings. Content formats such as drama, children's and documentary content should receive targeted investment under this new scheme.

12. How should revenue be calculated and what would be an appropriate investment percentage rate? Should that percentage be consistent across service providers or varied according to business models?

As outlined at the beginning of **section 5** above, we believe that the level of investment in content should be a scalable portion of the service providers' overall program expenditure for FTA broadcasters. However, for SVOD platforms we believe it should be a scalable portion of their revenue so that if the revenues of a certain service provider drops they are able to produce content levels at a portion that is commensurate and larger service providers are required to produce more content if they are more profitable.

In terms of a percentage, we suggest that Australian content investment should be 77% of overall program expenditure for commercial FTA broadcasters. For SVOD providers, the percentage of their overall revenue they are required to invest in for Australian content should initially be set at the same percentage as required of commercial FTA broadcasters for investment in drama, documentary children's and other cultural significant subcategories. The reasoning for this approach is explained in **section 6** of this submission.

17. **What level of Offset rebate should be provided across all platforms? Why would some Australian content require additional support, and should this be provided via direct or indirect funding? What other settings around minimum spend, qualifying spend and pathway to audience, would appropriately target support?**

In terms of incentives, we support the Screen Producers Australia approach of a flat rate of 40% for the Producer Offset and a flat rate of 30% for the Location and PDV Offsets. The lifting of the cap for television drama is a welcome change.

5.4 RESPONSE TO MODEL 4 – DEREGULATION

The removal of all regulation on content providers, tax rebates, production incentives and direct Screen Australia funding would inflict grievous bodily harm on the Australian screen industry.

The inevitability of this outcome is supported by an examination of the history of content regulation in Australia and by current comprehensive research. As the Options Paper has evidenced, a:

> PricewaterhouseCoopers (PwC) economic study stated that if quotas were eliminated on commercial television, children's programs would cease to be produced, drama programs would reduce by 90 per cent and documentary programs would be halved. In the absence of supporting regulatory mechanisms culturally significant Australian content would struggle to make it on screen.

Such a decimation of the screen industry would not only be a shocking blow to Australian culture and identity, it would also inflict hundreds of millions, if not billions of dollars damage on the Australian economy with the loss of jobs, export revenue and tourism.

Deregulation is not an option.

6. PROPOSED EXPENDITURE/REVENUE-BASED SYSTEM

We're proposing a system of content regulation based around expenditure/revenue because, as has been very effectively elucidated in the Options Paper, the current regime of fixed quotas for hours on screen is no longer viable for commercial FTA broadcasters or for delivering a desirable level of support for the Australian screen industry into the future.

Our proposed system is predicated on the idea that expenditure is an effective equivalent for hours of content production, but can be more flexibly and equitably applied across all screen platforms, in a way that is not financially onerous to any category of content provider and adapts to changing financial circumstances.

This system also aims to ensure that overall levels of expenditure on subcategories of Australian content currently deemed to have special cultural value such as Drama, Documentary and Children's programming is maintained at a minimum agreed level or ideally increases. This would be achieved using set expenditure ratios and 'weighted' ratios for subcategories as an incentive to encourage investment in content in those subcategories.

We are recommending that the current hours-based **55%** quota for overall Australian content be replaced with an expenditure-based system where a minimum of **77%** of overall content spend is required to be on Australian content. The current sub-quota and points system would be replaced with a system of required minimum subcategory expenditure percentages and 'weighted' expenditure credits.

A summary of the rationale for the 77% ratio of Australian content expenditure and how the proposed system would work follows below:

6.1 REQUIREMENTS COMMERCIAL FTA BROADCASTERS

Agreed Ratios of Australian Content Spend

What is a financially viable ratio of expenditure on Australian content for our commercial FTA broadcasters (CFTAB) that will deliver desirable levels of Australian content?

The combined CFTAB spend on Australian programming as a percentage of overall programming spend in the following years was:

Table 1.

2018-19	2017 to 2019 3-Year Average	2012 to 2014 3-Year Average
84.7%	**83.5%**	**76.7%**

Source: Based on ACMA aggregated data[3]

While the level would be determined in further consultation with the screen industry for demonstrating how the proposed system would work, in the interest of making an expenditure-based system more affordable for the networks whose revenues are declining, we will base ratios on a 3-Year Average of 2012 to 2014. This is also the three years prior to Netflix entering the market in Australia.

In that time period, **76.7%** of programming expenditure delivered **55%** on hours of Australian Content between 6am and midnight.

Of this **76.7%,** the combined CFTAB expenditure on subcategories of programming **as a percentage of total Australian programming spend** was:

Table 2.

2012 to 2014 3-Year Av. Percentage of Total Australian Content Expenditure First Release Adult Drama	2012 to 2014 3-Year Av. Percentage of Total Australian Content Expenditure First Release Children's Drama	2012 to 2014 3-Year Av. Percentage of Total Australian Content Expenditure First Release Children's Other	2012 to 2014 3-Year Av. Percentage of Total Australian Content Expenditure First Release Documentary
8.71%	**0.84%**	**0.85%**	**0.76%**

Source: Based on ACMA aggregated data[3]

Back in 2012 to 2014 these ratios of expenditure on sub-quota programming delivered the required Australian sub-quota content hours between 6am and midnight.

Under our proposed system, CFTABs would be mandated to meet similar minimum ratios of overall Australian content and minimum ratios of subcategory expenditure each year. If their overall program production, commissioning and acquisition expenditure goes up or down with revenue, their required Australian content expenditure would also go up or down.

This would lead to a decrease in both overall Australian content and subcategory content expenditure if revenues decrease, which would be of serious concern to Australia's screen production companies.

However, to maintain and promote subcategory investment, the proposed system also includes 'weighted' incentives in the form of expenditure credits to encourage CFTABs to increase their spending on subcategories such as Drama, Documentary and Children's programming.

Because the survival of Australian screen content, particularly Drama, Documentary and Children's subcategories faces dramatically increased challenges with the huge catalogue of worldwide content now competing for Australian eyeballs, we propose setting all required expenditure ratios slightly higher by rounding the percentages up. This would also make them simpler to administer.

These adjusted ratios for going forward with in the proposed expenditure-based system, which also in include our proposed new subcategory Other Culturally Significant* would be:

Table 3.

Required Total Australian Programming Expenditure (77%)	Effective Combined Australian Subcategory Expenditure (14%)	First Release Adult Drama	First Release Children's Drama	First Release Children's Other	First Release Documentary	First Release Other Culturally Significant
77%	**14%**	**9%**	**1%**	**1%**	**1%**	**2%**

*Given this new subcategory category Other Cultural Significant falls within Light Entertainment and Factual genres, which form a large percentage of the commercial broadcasters' program output and can be cheaper to produce, the required expenditure ratio for Other Cultural Significant has been set higher than for the Documentary or Children's subcategories.

Weighted Expenditure Credit Incentives

For every dollar spent on a subcategory, CFTABs would receive a 'weighted' expenditure credit for that sub category which would count towards their overall Australian content expenditure requirement.

For example: if the expenditure credit ratio is set at 50% (50 cents credit for every dollar spent), for First Release Drama, an individual commercial network spending $40 million on Drama would receive a $20 million dollar expenditure credit. This credit would then come off the bottom line of that commercial network's required overall Australia content expenditure for that year.

Say a broadcaster's hypothetical overall content spend for a given year is $600,000,000. The required minimum of 77% overall Australian content spend is $462,000,000.The required minimum of 14% of $462,000,000 of overall first release Australian content spend across all subcategories is $64,000,000.

Going back to the previous example, if a broadcaster spends $40,000,000 on Drama, they receive an expenditure credit of $20,000,000. That $20,000,000 is credited to their required overall Australian content spend of $462,000,000 for the year. Their effective required overall Australian content spend for the year has now been reduced to $442,000,000 or 73.7%.

When this broadcaster spends all of their required 14% on subcategories the $64,000,000 attracts an expenditure credit of $32,000,000. This leads to their effectively required minimum overall Australian content spend for the year being reduced to $430,000,000 or 71.6% of total content spend.

If the broadcaster chooses to spend above the required minimum on subcategories of first release Australian content, they will continue to attract more expenditure credits, and further reduce the required minimum overall Australian content expenditure as a percentage of their overall content expenditure.

So the proposed expenditure credit system provides a strong incentive for commercial FTA broadcasters to spend more on external commissioning or producing in house Australian subcategory content because it can reduce its required overall expenditure on Australian content.

We are not suggesting that the weighting ratio for Australian subcategory content should necessarily be set at 50%. This is a draft figure used to demonstrate how expenditure credits would work in the proposed system. We recommend that the final figure to be used should be developed with modelling to be undertaken by ACMA and Screen Australia in consultation with the screen industry.

Weighted Subcategory Ratios

Outcomes for required expenditure on subcategories and overall Australia content will vary depending on the parameters and ratios that are set. We envisage the final parameters would be developed in further consultation with all screen industry stakeholders. The following table demonstrates how the system would work with example parameters.

Table 4, shows the results expenditure-based Australian content requirements would deliver with these adjusted ratios if applied to the CFTAB's overall program expenditure for the 2019 financial year.

Table 4.

Example Expenditure with Weighted Subcategories for 2019 and Adjusted Expenditure Ratios

Proposed new system	Combined CFTAB total programming expenditure 2019 financial year	(55% Aust. Content Equivalent) effective required total Australian programming expenditure (77%)	Effective combined Australian subcategory expenditure (14%)	Adult Drama	Children's Drama	Children's Other	Documentary	Other Culturally Significant
Required Subcategory Expenditure Ratio		**77%**	**14%**	**9%**	**1%**	**1%**	**1%**	**2%**
Actual Dollar Spend Old System Quota	1,849,937,648	1,566,520,706	130,187,824	95,706,338	11,659,436	13,209,991	9,612,059	0
New System Required Minimum Aust. Content Expenditure		1,424,451,989	199,423,278	128,200,679	14,244,520	14,244,520	14,244,520	28,489,040
Weighted Expenditure Credit Ratio				50%	50%	50%	50%	50%
Weighted Expenditure Credit Dollars		**99,711,639**		**64,100,340**	**7,122,260**	**7,122,260**	**7,122,260**	**14,244,520**
Adjusted Minimum Required Australian Content Expenditure		**1,324,740,350**						
Adjusted Minimum Required Equivalent of Aust. Content Hours % Being Paid For		**51%**						
Subcategory Expenditure Increase			**69,235,454**	**32,494,341**	**2,585,084**	**1,034,529**	**4,632,461**	**28,489,040**

Source: Based on ACMA aggregated data[3] *All subcategory expenditure is First Release

As seen is Table 4, compared to the networks' actual content spend for 2019, under the proposed new expenditure-based system, overall the commercial FTA broadcasters would be required to increase their investment in:
Adult Drama by $32.5 million;
Children's Drama by $2.6 million;
Children's Other by $1 million;

Documentary by 4.6 million;
And from $0 to $28 million for the new Other Culturally Significant subcategory.

The overall subcategory investment expenditure would have increased by $69.2 million.

At the same time, the required overall Australian content expenditure under the new system would be $142 million lower than the Network's actual 2019 spend, without the weighted expenditure credits. With the weighted expenditure credits it would be a further $99.7 million lower. In terms of expenditure paying for hours equivalence (at the 2012 to 2014 3-year average rate), the CFTABs would have also effectively had their required overall minimum Australian content requirement reduced from **55%** to **51%.**

The proposed expenditure-based system simultaneously delivers increased investment in high value content subcategories and lowers overall Australian content expenditure requirements for the commercial FTA broadcasters, but would also require the development of associated rules.

Associated Rules

Under the system we propose there would also need to be associated rules to ensure that networks reasonably spread spending across a range of productions and can’t try to achieve a required subcategory expenditure ratio by spending most of it on one super-expensive series. And also rules to ensure required expenditure is actually spent on production not on facilities and corporate overheads. The details of these and other necessary rules would be developed in further consultation with the screen industry.

6.2 REQUIREMENTS FOR SVOD STREAMING SERVICES

Revenue-based content requirements

As already discussed in **section 5** of our submission above, expenditure-based content requirements are not appropriate for international SVOD services such as Netflix and Amazon Prime Video, due to their mode of delivery, exceedingly large pre-existing catalogues, ability to amortise content expenditure across global markets, and lack of transparency on overall content expenditure.

A revenue-based system is far more appropriate for SVODs, as their revenue can be easily calculated from subscriber numbers and subscription fees.

We propose that SVOD content providers be subject to a revenue-based content requirement where the same proposed CFTAB minimum subcategory expenditure ratios for First Release Australian Drama, Documentary, Children's programs and Other Culturally Significant content would apply to SVOD revenue.

For example, assuming the same 9% subcategory ratio for Australian First Release Drama as we are recommending for CFTABs, if Netflix were to generate revenue of $600 million in a year, its required minimum investment in Australian drama for that year would be $54 million. Similarly, applying the same proposed subcategory ratios for Documentary (1%), Children's Drama (1%), Children's Other (1%) and Other Culturally Significant (2%) it would be required to spend a minimum of:
$6 million on Australian Documentary;
$6 million on Children's Drama;
$6 million on Children's Other; and
$12 million on Other Culturally Significant programs.
A combined subcategory total of 14% of revenue adding up to a minimum $84 million on overall Australian content for that year.

Using this approach, for a local SVOD example, if Stan were to generate $160 million revenue in a year, its required minimum investment in Australian subcategory content for that year would be:
$14.4 million on Australian First Release Drama;
$1.6 million on Australian Documentary;
$1.6 million on Children's Drama;
$1.6 million on Children's Other; and
$3.2 million on Other Culturally Significant programs.
Adding up to a combined subcategory total of a minimum $22.4 million on overall Australian content for that year.

As Stan has been reported to have already invested $20 million in an original Australia drama series, The Commons[4], we assume Stan will easily meet the proposed minimum subcategory content requirements.

The success of Hannah Gadsby's *Nanette* on Netflix, which would fall within the proposed Other Culturally Significant category, shows that content produced originally for Australian audiences can rate and have impact globally.

Unlike the arrangements for CFTABs, there will not be any 'weighted' expenditure credits associated with the requirements for SVODS as they are not applicable to a revenue-based system.

If an SVOD service didn't want to invest in and screen Children's programs, the same as we propose for the CFTABs, it could have the option to pay a levy equivalent to their minimum required expenditure on Australian Children's programs to a Children's Content Production Fund.

Given that some of the genres of content within the Other Culturally Significant are not as yet home ground for SVOD services, we propose that they would be granted flexibility to reallocate up to half of their required expenditure in the Other Culturally Significant to the Documentary subcategory if they so wished.

While some SVOD services may voice objection, we expect the proposed minimum revenue-based Australian content investment requirements will not be financially onerous for SVOD content providers to comply with.

We further recommend that this proposed minimum revenue-based Australian content requirements for SVOD content providers be reviewed by ACMA and Screen Australia two years after it is introduced to consider increasing the ratio of annual revenue to spent on Australian programs.

Requirements for YouTube

Designing an appropriate Australian content mechanism to regulate Google's YouTube presents an interesting challenge considering the nature of its service.

Most of YouTube's content is amateur user-generated content, which it acquires for free. Australians are prolific creators of amateur videos for YouTube and this form of Australian content is proportionally well represented in its catalogue. The majority of this content does not compete directly with high-quality programming on commercial FTA television, subscription television and SVOD services. We are therefore not proposing an Australian content requirement for this aspect of YouTube's service.

YouTube also provides a paid SVOD service, YouTube Premium, for which it has commissioned some high-quality productions under the banner of ‘YouTube Originals’.

We propose that YouTube Premium be subject to the same revenue-based content requirements as we are proposing for other SVOD content providers.

That is, each year, YouTube would be required to invest a proportion of its revenue from Australian subscribers to YouTube Premium in commissioned Australian content. The proportion of investment required would be based on the same subcategory ratios for Australian content as other SVOD services: First Release Adult Drama (9%), Documentary (1%), Children’s Drama (1%), Children’s Other (1%) and Other Culturally Significant (2%).

6.3 REQUIREMENTS FOR SUBSCRIPTION TELEVISION

Expenditure-based content requirements

Foxtel is in a unique position as the only operator of subscription television service In Australia. In recent years it has also established an SVOD service for its catalogue and channels via its app, Foxtel Now (formerly Foxtel Play).

Foxtel’s different business model and mode of delivery were previously recognised when the government established the NEDE scheme for Australian content regulation of subscription television.

Considering Foxtel is not only a distributor of international channels but is a significant producer of Australian content with substantial production and infrastructure overheads, we have assessed Foxtel circumstances as being closer to that of a broadcaster than a purely library-based streaming service. Its SVOD service, Foxtel Now, is more akin to a BVOD service that people pay for, than a huge catalogue SVOD service like Netflix or Prime Video.

We therefore think it is more appropriate for an expenditure-based content requirement to be applied to Foxtel rather than revenue-based one.

We have already discussed the operation of the NEDE scheme and how it could be adjusted to integrate with the new expenditure-based system we are proposing in addressing Consultation Question 5 in **section 5.2** of this submission above.

We propose that the current NEDE scheme requirements be replaced with an expenditure-based system applying the same CFTAB subcategory expenditure ratios to Foxtel's local Australian Channels.

These subcategories ratios for minimum expenditure on Australian content, 9% on Adult Drama, 1% on Documentary, 1% Children's Drama, 1% Children's Other and 2% Other Culturally Significant, would be applied to the collective overall Australian content expenditure of all Foxtel's Australian channels combined.

This would be an achievable step towards platform neutrality considering the different business model and programming structure of Foxtel's service compared to commercial FTA broadcasters and SVODs.

Given its pre-existing high proportion of overseas channels, Foxtel would not be subject to the Australian expenditure-based requirement of 77% across its overall programming spend.

The finer details of such arrangements and transition to the new regulatory system would be developed in further consultation with Foxtel and the Australian screen production industry.

7. COMPLEMENTARY SUPPORT FOR AUSTRALIAN CONTENT

Since the reemergence of the screen industries in the 1970s, Australian government support in a range of different ways has been vital to the development and growth of the screen industries. These include direct government funding for institutions such as Screen Australia; arms-length direct funding of public broadcasters and their associated charters that require them to produce local content that ‘informs, educates and entertains’; tax incentives and public funding of screen education. As the Options Paper behind this inquiry makes clear, these different forms of government support work ‘in tandem’ and having healthy screen industries requires regular adjustment of the balance between these elements of support. The state agencies are also a vital part of the ecology, with a particular focus on employment and on inducting emerging filmmakers into the industries.

A key factor in the need for changing the nature and balance of these forms of government support is the evolving nature of the Australian market. As detailed by the Options Paper, the growth of pay television and streaming services mean that audiences have splintered, in turn making it harder to make expensive forms of content such as first release drama and social issue documentary at a profit. One result of this is that it has been harder to make a profit from commercial television than previously and indeed it would seem that Channels 7 and 10 in particular may be struggling for commercial viability. Amidst this landscape, maintenance and development of existing regulation of commercial broadcasters is critical, but so too is extending regulation to new market sectors such as streamed and online media, remedying the declining funding to the public broadcasters, and direct funding.

For the past six decades there has ‘always’ been an Australian screen industry that has depended upon a mix of government support across the spheres of regulation, tax support and direct and indirect government funding. It could be tempting therefore to assume that such local content is a *sine qua non* of the Australian screen ecology. A longer view of cultural history however would demonstrate that Australian productions were significant early in the twentieth century during the silent cinema era but struggled to compete and largely died away during the sound cinema era from the early 1930s with its requirements for a depth of capital hard to come by for Australians. The current tensions in the business model of the commercial television stations, with the added catalyst of hyper fast cultural and economic change brought on by the 2020 pandemic make it possible that we are living through what Malcom Gladwell(2000)[5] describes as a ‘tipping point’ that requires agile government intervention if we are to continue to enjoy at least the quantum of local content that we currently do in Australia.

‘Cultural Uplift’

In this context, the notion of ‘cultural uplift’ in the Options Paper is very important and greatly to be welcomed if an appropriate way of making this real in contemporary Australia can be found.

In our collective opinion, the best model we have for what ‘cultural uplift’ could look like is the Creative Nation comprehensive cultural policy[6], announced in October 1994. That policy, responding in particular to the nascent World Wide Web as an ‘information superhighway’ was determined that Australian culture not get swamped as the ability of cultural products to cross territories and borders in real time represented both a massive opportunity for Australian culture and an existential threat. This was the policy that provided the blueprint and funding for SBS Independent (that was so important for thirteen years as a source of independent production on Australian TV, including many of the Aboriginal filmmakers that today are at the forefront of our industry); Australia on CD; QANTM and other new media training hubs and the Commercial Television Production Fund.

Not all of the initiatives of Creative Nation had lasting impact, and there is no doubt that a Cultural Policy for the 21st Century would look quite different. But SBS Independent in particular is an example of a government-initiated and funded cultural initiative that garnered broad and bi-partisan public support and changed the face of local content and public television for many years.

8. THE ABC and SBS

The ABC and SBS have been a staple source of education, entertainment for the Australian public. Through the production of high-quality drama, documentary and radio programs, they have provided much-needed reflection on our cultural diversity enriching our values and our identity, for generations of Australians.

It is important to acknowledge that funding for Australia's two national broadcasters has been in decline for some time now. Further, a significant amount of the funding from Screen Agencies are linked to presales from broadcasters. A documentary maker for example, may have the support and interest of any or all of the federal- and state-funding agencies, but without the commitment of a broadcaster, the film cannot be funded. Cutting further funding from the ABC and SBS endangers jobs, diminishes the Australian creative pool and robs Australian audiences of the opportunity to celebrate and reflect on who we are as Australians.

It is therefore critical that we take this opportunity to consider reversing the declining funding for the ABC and SBS in order to cultivate a *creative nation* that seeks to safeguard Australian culture and develop our collective identity.

In an era of rapid technological and social changes, threatened by the rise of fake news and the ever-increasing influence of US based streaming services, we must look towards and rely on our national broadcasters as trusted sources that will produce new knowledge and information without bias.

In addition, broadcasters must support Screen Agencies in their efforts to consider putting more funding towards development of projects at conceptual stage. We must be ready to heed off claims that argue for viewing ratings as the ultimate arbiter of a show's success. It is only through proper development of programs that we can develop unique Australian voices.

9. COMMUNITY TV

We believe it is in Australia's interest for the government to reverse its decision to withdraw digital community television licences.

Community television functions as fertile ground for young Australian voices to form, develop and emerge and offers considerable value to the Australian screen industry and Australian culture:

- The overwhelming majority of its air time is by default, Australian content;
- It screens a vast diversity Australian stories and from a far more diverse range of voices than mainstream television;
- Since it started in 1993, thousands of people that have been volunteers with community TV programs and community TV stations have been trained in television and video production;
- This includes skills in working collaboratively which are essential to screen production, which people don’t learn making videos on their own and putting them on YouTube as isolated individuals;
- It offers young creative people an opportunity to experiment, innovate, develop their skills with the resources and support of an institutional structure and mentors that they won’t experience in their bedroom with a smartphone;
- Rove, and Hamish and Andy, are two shining examples of people who developed their ideas, skills and TV personas on community TV in Melbourne and went on to make significant contributions to Australian culture;
- Community TV stations also provide volunteers training in other skills, which while not direct screen skills, are fundamental to the screen industry, such as management, marketing, publicity, submission writing and office admin skills;
- It provides a curation service, that selects community programs of reasonable standard, offers feedback, clusters programs together, and effectively promotes them to achieve a greater profile and audience than many of them otherwise would, buried in the noise of millions of other videos on YouTube;
- Through paid sponsorship announcements it affords small businesses an opportunity to reach potential customers with inexpensive television advertising that they could never afford to pay for on commercial television;
- It supports arts in the cities it broadcasts in providing coverage of, and support for, local festivals, exhibitions, live music, plays and other performances that are rarely supported by commercial television and our national broadcasters;
- Delivering coverage of local community events and diverse cultures, it promotes harmony and social cohesion.

We recommend that the two community television stations still operating in Melbourne and Adelaide whose licences are set to expire on June 30, 2020 should have those licences permanently extended.

We also recommend that the government reallocate digital community television licences for Brisbane, Sydney and Perth, and open licence application processes in those cities as soon as possible.

Returning community TV licences to Brisbane Perth, Adelaide, Melbourne and Sydney, once those stations are all back in operation, would add over 30,000 hours a year of diverse Australian stories and voices to our screens – no quotas, no expenditure credits, no Producer Offsets or tax rebates required.

10. RECOMMENDATIONS

In consideration of the information provided in the Options Paper, and researching and developing our responses to the questions it raises, we have arrived at a number of recommendations, presented in various sections of this submission.

Our recommendations for maximising support for Australian stories on screen are summarised below.

Recommendations

1. The 55% Australian content quota and sub-quota and points system requirements for commercial FTA broadcasters should be replaced with an expenditure-based system for regulating Australian content.

2. The new expenditure-based system would require commercial FTA broadcasters to spend a minimum of 77% of their overall program expenditure on Australian content each year.

3. The commercial FTA broadcasters will be required to spend set proportions of their total Australian content expenditure on subcategories of Australian content. Those subcategories are recommended to be: Adult Drama, Documentary, Children's Drama, Children's Other and new subcategory called Other Culturally Significant.

4. The proportion of required minimum expenditure by commercial FTA broadcasters on these subcategories as a percentage of their total Australian content expenditure is recommended to be as follows:

First Release Australian Drama	9%
First Release Documentary	1%
First Release Children's Drama	1%
First Release Children's Other	1%
First Release Other Culturally Significant	2%

   (The rationale for these proportions is explained in section 6.1 of this submission)

5. The Other Culturally Significant subcategory content is recommended to be defined as programming that includes: music performance, dramatic performance, comedy performance, performance art; tonight shows and variety shows that showcase Australian pop culture; factual and entertainment programs that explore and review different facets of the Arts in Australia; satirical entertainment programs that critique Australian society and culture. It is further recommended that program content within the Other Cultural Significant subcategory would be defined in 3 classes:

A. Satirical entertainment programs that critique Australian society and culture;

B. Tonight shows and variety shows that showcase Australian pop culture, and factual and entertainment programs that explore and review different facets of the Arts in Australia;

C. Music performance, dramatic performance, comedy performance, performance art.

6 To provide a financial incentive to commercial FTA broadcasters to meet and exceed the proposed minimum levels of expenditure on subcategory content, it is recommended that subcategory expenditure be 'weighted' with a system of 'expenditure credits'. These proposed expenditure credits system would see commercial FTA broadcasters receive a credit for their expenditure on a subcategory as a 'weighted' proportion of that expenditure, which could then be credited against their overall 77% expenditure requirement for general Australian content. Put simply, the more they spend on required subcategory content, the more their requirement to spend on other Australia content to meet the 77% target is reduced. To reiterate:

> The 'weight' or ratio of an expenditure credit to a particular subcategory expenditure has been set at 50% for all subcategories in the model in this submission. In operation it would be set by ACMA and Screen Australia and may be set different 'weights' for different subcategories as they determined to be appropriate. The expenditure credit mechanism is explained in more detail in section 6.1 of this submission.

7 If a commercial broadcaster does not wish to produce and broadcast Children's programs on their FTA channels and BVOD players, it is recommended they be given the option of contributing an equivalent amount of expenditure as required for this subcategory to a to-be-established Children's Content Fund that could be accessed by Australian producer's making content for other Australian broadcasters and online platforms. It is recommended that the broadcaster would still receive a 'weighted' expenditure credit for their contribution to a Children's Content Fund at a 'weight' to be determined by ACMA and Screen Australia.

8 The NEDE scheme should be replaced with an expenditure-based system applying the same subcategory expenditure ratios to Foxtel's Australian Channels. These subcategories ratios for minimum expenditure on Australian content, 9% on Adult Drama, 1% on Documentary, 1% Children's Drama, 1% Children's Other and 2% Other Culturally Significant, would be applied to the

collective overall Australian content expenditure of all Foxtel's Australian channels combined.

9 It is recommended that the C Classification be reviewed and the Children's Television Standards (CTS) be amended to require minimum levels of live action drama to ensure first release Children's programs are not dominated by animation.

10 It is recommended that the definition of the Documentary subcategory be adjusted to distinguish three classes of documentary:

A. Standalone Single Episode Documentaries, where the documentary's theme and format are original and developed by Australian producers, directors or writers;
B. Documentary Series with more than one episode, where the series' structure and format are original and developed by Australian producers, directors or writers;
C. Overseas Format Documentary Series with more than one episode, where the series' structure and format are licensed by Australian producers from overseas broadcasters or production companies.

11 It is recommended that, as well as commercial FTA broadcasters, public broadcasters, the ABC and SBS, and Foxtel's Australian channels, should be required to report their hours screened and expenditure on all categories of content – including first release Drama, Documentary and Children's Drama, Children's Other, and Other Culturally Significant content on their FTA channels and BVOD services – to ACMA and Screen Australia. This information should be made publicly available in annual reports. Local and international SVOD content providers should also be required to report their expenditure on, and hours of Australian content available in their catalogue for streaming, in each financial year to ACMA and Screen Australia. This information should also be publicly available in annual reports. The categories of content where both hours and expenditure on Australian programs are annually reported are outlined on pages 15 and 16 (Section 5.2) of this submission.

12 It is recommended that Screen Producers Australia's (SPA) position that the Producers Offset be set at 40% for the Drama, Documentary and Children's subcategories of production and the PDV and Location Offsets be set at 30% should be adopted.

13 It is recommended that local and international SVOD content providers be required to spend minimum percentages of their annual revenue from Australian subscribers on first release Australian subcategory content where

those subcategory percentages are initially set at: Adult Drama (9%), Documentary (1%), Children's Drama (1%), Children's Other (1%) and Other Culturally Significant (2%). It is further recommended the percentages for required minimum expenditures on Australian content subcategories be reviewed by ACMA and Screen Australia two years after it is introduced to consider increasing the ratio of annual revenue required to be spent on Australian subcategory content.

14 Considering their role in Australian society and supporting Australian stories on screen, it is also recommended that the decline in funding of the ABC and SBS be reversed, and restored in real terms to levels equivalent to funding levels in 2010.

15 The two digital community television licences for Adelaide and Melbourne that are due to expire on 30 June 2020 should be permanently extended.

16 Permanent digital community television licences should be reallocated for Brisbane, Sydney and Perth, and a licence application process commenced in those cities as soon as possible.

11. REFERENCES

1. A phrase in common usage in the heyday of the Australian television industry, first credited to British press baron Lord Thompson discussing commercial television licenses in the UK in 1956, https://theconversation.com/the-end-is-nigh-for-full-service-free-to-air-television-in-australia-28849

2. Definition of Documentary https://www.screenaustralia.gov.au/fact-finders/production-trends/all-drama-production/about-the-data

3. ACMA Reports:
Broadcasting financial results 2013–14 Commercial radio and television aggregated licence data
Broadcasting financial results 2014–15 Commercial radio and television aggregated licence data
Broadcasting financial results 2015–16 Commercial radio and television aggregated licence data
Program expenditure information July 2018 – June 2019 Aggregated data for commercial television

4. Sydney Morning Herald, 26 June 2019, https://www.smh.com.au/entertainment/tv-and-radio/stan-s-biggest-gamble-yet-on-new-series-starring-downton-abbey-actress-20190625-p5216j.html

5. Australian Department of Communications and the Arts, *Creative Nation: Commonwealth cultural policy,* 1994.

6. Gladwell, Malcolm, *The Tipping Point: how little things can make a big difference,* Boston, Little Brown, 2000.

References relating to the discussion of Children's Programming:

ACMA 2017, 'Australian and Children's Screen Content Review', *Department of Infrastructure, Transport, Regional Development and Communications*, *Australian Government*, 21 September 2017. Retrieved 9 June 2020 https://www.communications.gov.au/have-your-say/australian-and-childrens-screen-content-review

ACMA 2019, 'Children's Television Standards Extended' *Australian Communications and Media Authority*, 29 April 2020. Retrieved 9 June 2020 https://www.acma.gov.au/childrens-television-standards-extended

ACMA 2020, 'COVID-19: Important information for industry' *Australian Communications and Media Authority*, 15 April 2020. Retrieved 9 June 2020 https://www.acma.gov.au/articles/2020-03/covid-19-important-information-industry

Edgar 2017, Submission to the 'Australian and Children's Screen Content Review', *Department of Infrastructure, Transport, Regional Development and Communications*, *Australian Government*, 21 September 2017. Retrieved 9 June 2020 https://www.communications.gov.au/have-your-say/australian-and-childrens-screen-content-review

Google 2017, Submission to the 'Australian and Children's Screen Content Review', *Department of Infrastructure, Transport, Regional Development and Communications*, *Australian Government*, 21 September 2017. Retrieved 9 June 2020 https://www.communications.gov.au/have-your-say/australian-and-childrens-screen-content-review

Netflix 2017, Submission to the 'Australian and Children's Screen Content Review', *Department of Infrastructure, Transport, Regional Development and Communications*, *Australian Government*, 21 September 2017. Retrieved 9 June 2020 https://www.communications.gov.au/have-your-say/australian-and-childrens-screen-content-review

Stan 2017, Submission to the 'Australian and Children's Screen Content Review', *Department of Infrastructure, Transport, Regional Development and Communications*, *Australian Government*, 21 September 2017. Retrieved 9 June 2020 https://www.communications.gov.au/have-your-say/australian-and-childrens-screen-content-review

The Walt Disney Company 2017, Submission to the 'Australian and Children's Screen Content Review', *Department of Infrastructure, Transport, Regional Development and Communications*, *Australian Government*, 21 September 2017. Retrieved 9 June 2020 https://www.communications.gov.au/have-your-say/australian-and-childrens-screen-content-review

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