



## Response to ACMA/Screen Australia Options Paper, June 2020

*Question 15: What promotion and discoverability requirements would be effective in the minimal and significant model?*

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We welcome the opportunity to contribute to the *Supporting Australian Stories on Our Screens* options paper consultation.

This submission draws on two ongoing research projects at RMIT. As part of an Australian Research Council Discovery Project with Prof Amanda Lotz and Prof Stuart Cunningham at Queensland University of Technology, we have been investigating the impact of SVOD services in Australia. Since 2017 we have also been studying the catalogues of SVOD services to better understand both the availability and the discoverability of Australian content. Our previous research, including a submission to the 2017 ACSIC review, is publicly available and has been cited in the Options Paper.<sup>1</sup>

Policy options for sustaining Australian screen production are carefully scoped in the Options Paper. However, we observe that demand-side factors have received less attention. In this submission we therefore focus on a different aspect of the local content challenge – the promotion and discoverability of Australian content in video-on-demand services. **Specifically, we address Question 15: *What promotion and discoverability requirements would be effective in the minimal and significant model?***

Our submission is structured as follows. First, we explain how production and discoverability are interrelated aspects of local content policy. We discuss international policy trends regarding discoverability and promotion, and present findings from our research into discoverability of local content in Australian SVOD services. We conclude with specific recommendations to inform policy decision-making as part of the wider package of reforms being considered by government.

## 1. The importance of an integrated approach to local content policy

As the Options Paper notes, Australia's existing policy framework for supporting local content is multifaceted and involves a number of interlinked mechanisms, including production support, the broadcast quota, and targeted support for genres susceptible to market failure. As noted in the Options Paper,

*Government interventions work in tandem. Indirect funding (tax rebates) provides incentives to produce a broad range of Australian programs, direct funding (provided for specific programs) ensures additional support for drama and documentary content, and regulation (quotas) guarantees that Australian programs are broadcast and seen on commercial television. (p7)*

Reflecting this multifaceted approach, the current broadcast quota implicitly serves a dual purpose that spans both industry policy and cultural policy. It ensures a minimum threshold of local production adequate to sustain the domestic screen production sector; and it also means that Australian stories can be easily **discovered and enjoyed** by Australian viewers due to their prominence in the prime-time television broadcast schedule. In other words, while the Broadcasting Services Act refers to the “availability” of local content, the broadcast quota has also functioned partly as a de facto “discoverability” policy, in the sense that it enabled a degree of visibility for Australian screen content within the broadcast schedule. This creates demand for – and builds the value of – Australian stories, stars, and intellectual property over time.

As we move into the next phase of Australian local content policy, this articulation between production and discoverability of local content is now in question. A content quota for SVOD services is not proposed within

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<sup>1</sup> Ramon Lobato and Alexa Scarlata, “Australian content in SVOD catalogs: availability and discoverability”, submission to the Australian and Children’s Screen Content Review, September 2017, <http://apo.org.au/node/134926>; Lobato and Scarlata, “Australian content in SVOD catalogs: availability and discoverability – 2018 edition,” report, RMIT University, October 2018, <https://apo.org.au/node/196611>; Lobato and Scarlata, “Australian content in SVOD catalogs: Availability and discoverability - 2019 edition”, Report, RMIT University, Melbourne, October 2019, <http://apo.org.au/node/264821>



any of the four models; and a discoverability mechanism, noted in Model 3, has not been specified in detail. In our view, the current policy direction presents a risk that that supply-side policy initiatives designed to sustain production investment and demand-side policy initiatives designed to enhance audience engagement with local content may become disarticulated. We also observe that the meaning of availability (as per the Broadcasting Services Act), and its relation to discoverability and promotion, are shifting due to fundamental changes in video service interface design and user behaviour.

We believe that the link between local content supply and demand needs to remain a focus for policy in Australia. Production obligations absent a discoverability requirement may lead to local content being produced in necessary amounts but “disappearing without a trace” and having negligible audience impact. **We support Option 3 as the most appropriate framework for ensuring that the cultural policy and industry policy objectives of local content continue to be addressed in an integrated manner.**

## 2. International precedents

As part of our Australian Research Council project we have been monitoring developments in the international policy debate about audiovisual discoverability and promotion to better understand the full spectrum of options available to government. Presently, the European Union, the United Kingdom and Canada are the jurisdictions where regulatory options are most developed. It is instructive to note how each territory is addressing this issue.

In the **European Union**, the relevant law is the 2018 revision to the Audiovisual Media Services Directive (AVMSD). The AVMSD recognises that supply and demand of European works must be coordinated to ensure that European titles are both available in sufficient number and easily discoverable within on-demand services. The elements of the AVMSD relevant to major SVOD services are as follows: (1) a *30% European content catalogue quota for on-demand audiovisual services* to ensure a sufficient pool of European film and TV titles in each service; (2) *production obligations* in certain EU territories, including Germany and France; and (3) a *promotion requirement* to ensure EU content is sufficiently visible and accessible to users of these services. This requirement is described in recital 35 of the revised AVMSD:

*Providers of on-demand audiovisual media services should promote the production and distribution of European works by ensuring that their catalogues contain a minimum share of European works and that they are given sufficient prominence. The labelling in metadata of audiovisual content that qualifies as a European work should be encouraged so that such metadata are available to media service providers. Prominence involves promoting European works through facilitating access to such works. Prominence can be ensured through various means such as a dedicated section for European works that is accessible from the service homepage, the possibility to search for European works in the search tool available as part of that service, the use of European works in campaigns of that service or a minimum percentage of European works promoted from that service's catalogue, for example by using banners or similar tools. (AVMSD 2018 revision, recital 35)*

Specific guidance for how these discoverability measures would operate in practice is currently being developed by a working group within the European Regulators Group for Audiovisual Media Services, which is advising the European Commission. The working group will report back later this year, at which point more details will be available on possible paths for implementation of the EU’s discoverability policy. It should be noted that the revised AVMSD (2018) builds on the precedents for VOD catalogue and prominence regulation established within the first AVMSD (2010). Thirteen EU member states have

introduced at national level additional catalogue and prominence requirements – of varying specificity and stringency – for VOD services.<sup>2</sup>

**Canada** is moving towards enshrining discoverability and prominence as central elements within its audiovisual policy. A major review of Canada’s Broadcasting Act (*Canada’s communications future: Time to act*) was completed in January 2020. Recommendation 63 of the Review states that major SVOD services and other media providers that “curate (as a primary purpose), aggregate, or enable the sharing of audio or audiovisual content” be subject to the following obligations:

- *catalogue or exhibition requirements [i.e. Canadian content quotas]*
- *prominence obligations*
- *the obligation to offer Canadian media content choices*
- *transparency requirements, notably that companies be transparent with the CRTC regarding how their algorithms operate, including audit requirements.*<sup>3</sup>

The proposed model would be administered by the Canadian Radio-television and Telecommunications Commission (CRTC) and would be sufficiently flexible to accommodate the particularities of different video services. The Review does not specify in detail the extent or combination of these possible measures, but simply notes these as appropriate mechanisms to achieve policy objectives regarding the discoverability of “CanCon” (Canadian content). In a recent interview the Canadian Heritage Minister Steven Guilbeault reaffirmed the government’s commitment to discoverability regulation, and stated that legislation would be introduced in the northern fall.<sup>4</sup>

In the **United Kingdom** discoverability regulation is now also being considered specifically in relation to public-service broadcasters (PSBs). The legislatively protected prominence of PSBs (e.g. first position in the channel line-up or EPG), which has long been a feature of UK media policy, has been eroded by the take-up of smart TVs and other connected TV hardware whose interface design does not afford UK PSBs the same guaranteed prominence, and in which prime positions and preferential integration is reserved for commercial partners or in-house services (e.g., Android TV prioritising YouTube search). The growing take-up of smart TV devices with privately curated user interfaces has created concern that the UK is “sleepwalking towards a world in which children and young people barely encounter PSB content” (Tony Hall, former Director-General of the BBC, 11 June 2018). In response, two recent inquiries in the UK have looked into the issue of discoverability:

- In 2019 Ofcom published findings of a statutory review in which it outlined “a new legislative framework for securing the prominence of PSB content”. Ofcom’s recommended approach is to “safeguard[...] the discoverability of PSB linear channels on the homepage”, so that BBC and other PSB apps are guaranteed prime position on the interfaces of all connected TV devices. Recognising the new importance of voice search and recommendation to discovery, the Ofcom review also recommends that “the new prominence framework’s definition of PSB on-demand

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<sup>2</sup> For an overview of national approaches see European Audiovisual Observatory, *Mapping of national rules for the promotion of European works in Europe* (Strasbourg: EAO, 2019). For analysis, see M. Trinidad García Leiva & Luis A. Albornoz, “VOD service providers and regulation in the European Union: an audiovisual diversity approach”, *International Journal of Cultural Policy*, in press (2020), <https://doi.org/10.1080/10286632.2020.1769614>.

<sup>3</sup> Broadcasting and Telecommunications Legislative Review Panel, *Canada’s communications future: Time to act*, final report, 29 January 2020, <https://www.ic.gc.ca/eic/site/110.nsf/eng/00012.html>

<sup>4</sup> Steven Guilbeault, Banff Virtual Keynote interview with Anja Karadeglija, June 16, <https://www.thewirereport.ca/2020/06/16/govt-to-introduce-web-giant-cancon-legislation-in-fall-guilbeault/>.



services includes disaggregated PSB content (e.g. in recommendation and search results) because these routes to content are likely to become more important to viewers over time”.<sup>5</sup>

- A separate House of Lords committee inquiry (‘Public service broadcasting in the age of video on demand’) delivered its final report in November 2019. The report endorsed Ofcom’s recommendations, stating that “Government should introduce legislation to implement a new prominence framework in line with Ofcom’s recommendations”.<sup>6</sup>

These developments in the UK, EU and Canada suggest that discoverability and prominence in on-demand video services is emerging as a significant area of policy debate, and that regulatory precedents are now starting to emerge. The timing of the Australian is optimal to take advantage of the insights from these substantive policy processes and associated industry consultations.

### 3. Findings from research into local content in Australian SVOD services

Our research since 2017 has examined the interrelated issues of availability and discoverability of Australian content within SVOD services. It is important to note that the *scale* of local content consumption on SVOD platforms is unknown, and cannot be known, due to the lack of publicly available viewing data. However, our data collection between 2017 and 2019 has established the following:

- Local content levels (i.e., proportion of Australian titles relative to the overall catalog) remain low on the major SVOD platforms – 1.7% on Netflix, 9.0% on Stan.
- The discoverability features of each SVOD service vary considerably. While some offer country of origin searching and dedicated categories for national television and cinema, others do not.
- Different services emphasise different discovery mechanisms. For example, Netflix makes extensive use of personalised recommendations, while Stan and Amazon Prime Video are less personalised.
- All services have design features enabling strategic promotion of titles, e.g., a home screen carousel. Table 1 notes the key differences in the interface design of the leading services:







|   |  |  |  |  |  |  |
|---|---|---|---|---|---|---|
| Australian content searchable                                       | Yes   | Yes   | No  | No  | No  | Limited   |
| Australian cinema drop-down category                                | No  | Yes   | No  | No  | No  | No  |
| Australian TV drop-down category                                    | No  | Yes   | No  | No  | No  | No  |
| Australian cinema recommendation row                                | Yes   | Sometimes   | No  | No  | No  | No  |
| Australian TV recommendation row                                    | Yes   | Sometimes   | No  | No  | No  | No  |
| Proportion of local content in catalog as of Sept 2019 <sup>7</sup> | 9%  | 1.6%  | ?   | N/A   | N/A   | N/A   |

Table 1: Discoverability features and local content levels in major SVOD services

<sup>5</sup> Ofcom, *Review of prominence for public service broadcasting: Recommendations to Government for a new framework to keep PSB TV prominent in an online world*, 4 July 2019, pp. 36-40.

<sup>6</sup> UK House of Lords Select Committee on Communications and Digital, *Public Service Broadcasting: As Vital as Ever*, report, 5 Nov 2019, p. 60.

<sup>7</sup> Source: Lobato and Scarlata, *Australian Content in SVOD Catalogs: Availability and Discoverability. 2019 edition*. NB: Disney+, Apple TV+ and Binge had not launched in Australia at time of data collection. Local content level for Prime Video cannot be determined due to catalog structure.



As Table 1 indicates, **Netflix** has the most advanced discoverability features, even though it carries only 1.6% Australian content. The Netflix interface includes dedicated drop-down categories for Australian movies and TV series. More specific categories (e.g., Critically Acclaimed Australian Movies, Australian Crime TV Shows) also appear as “titles related to” suggestions. Recommendation rows for Australian content may also appear for some users depending on their viewing history. Netflix’s country-of-origin metadata are generally quite reliable, allowing for easy searching by country. There are some quirks, however: Netflix’s most successful Australian original (Hannah Gadsby’s *Nanette*) is not tagged as Australian.

**Stan** also has good discoverability features and reliably includes recommendation rows such as “Australian comedy TV” and “Australian docos”. While there are no drop-down categories for Australian film or TV content, the relatively higher proportion of Australian content in Stan’s catalog (9%) means that Australian titles are naturally more visible in all categories compared to Netflix. Most (but not all) Australian titles are discoverable through keyword searches.

**Amazon Prime Video** is a more challenging environment for local content discoverability. Australian content in the catalog is not consistently searchable. Searching via keywords also returns many titles where Australia appears in an episode description but is not the country of origin (e.g., *Baywatch*, *Dogs with Jobs*). We observed no dedicated recommendation rows for local film or television.

**Binge**, Foxtel’s recently launched SVOD service, does not offer dedicated local drop-down categories or recommendation rows like Netflix and Stan. However, its catalog contains many Australian titles, some of which are discoverable through keyword searches.

**Apple TV+** and **Disney+** are limited in their local content discoverability features. Neither service is searchable via country of origin; nor do they feature recommendation rows highlighting local content. The amount of Australian content carried by each service appears to be very low to zero.

As the data above suggests, the major services in Australia vary significantly in their interface design, discoverability and promotion features. Some services – notably Netflix – have introduced useful features to make the local content titles as easily discoverable as possible. However, good discoverability features alone cannot compensate for the lack of relevant titles in the catalog. For example, we observe that in Stan and Binge recommendation rows and search actions are more likely to return Australian titles without the need for dedicated discovery features because of the higher level of Australian content in the catalog of each service. This underscores the need for production and discoverability policy to be developed in an integrated manner.

#### 4. Design considerations

The key interface features relevant to local content discoverability within SVOD platforms include:

- promoted titles (generally in a carousel at the top of the home screen)
- recommendation rows
- dedicated subcategories for local content (e.g., drop-downs)
- voice and text keyword search

Industry stakeholders have raised a number of concerns about the feasibility of regulating discoverability via intervention into one or more of these elements, noting possible risks and unintended consequences. In



its submission to the 2017 Australian and Children's Screen Content Review, Netflix downplayed its role in content promotion, submitting that the SVOD 'provides a personal experience that allows members to discover the most pleasing titles based on their personal preferences'.<sup>8</sup> A number of submissions to the UK House of Lords Inquiry argue that introducing prominence/discoverability requirements would entail negative effects for user experience, user personalization, search neutrality, consumer choice, and recommender system integrity. They observe that such regulation would result in additional costs for industry and may restrict capacity to innovate in interface design.<sup>9</sup>

We are mindful of these concerns, and of the need for any future discoverability regime to respect consumer choice and not impose unreasonable costs on providers. We would make three points in response:

1. *Selective prioritisation already occurs in SVOD services.* Discoverability features such as promotional slots and autoplay trailers are used to highlight original productions and other strategically important content. These and other interface elements already have some degree of human intervention according to company priorities. The argument that discoverability obligations necessarily compromise system design or "break the algorithm" may therefore be a misrepresentation. We agree that discoverability obligations for Australian content would add some additional complexity and costs, but it is likely that all services currently operating would be able to achieve this objective through a range of measures that may not include major changes to system design – for example, by adding dedicated rows, sections or subcategories; by enhancing search architecture; through more effective classification of local content in metadata; and so on. Global services operating in the EU such as Netflix and Disney+ are already preparing for discoverability and promotion requirements as per the revised AVMSD.
2. *Discoverability and prominence are crucial to the cultural policy objectives of the existing local content framework,* and are also integral to realizing the value of other public investment in media and communication, notably the funding of public-service broadcasters (the ABC and SBS). Given the rapid and substantial migration of audiences to SVOD platforms for scripted content viewing, government cannot "opt out" of this space without compromising the longstanding cultural policy objective of ensuring that local content is sufficiently prominent to audiences as to allow a meaningful level of audience engagement. We believe government needs to keep its options open if it is to achieve a meaningful return on the country's annual investment in public-service broadcasting and national screen production in the years ahead.
3. *Australian SVOD originals, while representing a growing share of overall screen production, do not always reach significant audiences under current market conditions.* For example, Netflix has now commissioned several original series and numerous coproductions in Australia. Yet we have observed that no Australian title has appeared in the Top 10 lists (film and television) of Netflix's Australian service since we began monitoring this feature in March 2020.

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<sup>8</sup> Netflix, submission to Australian and Children's Screen Content Review, 21 September 2017, p. 2.

<sup>9</sup> See submissions by Netflix, Samsung, LG and Sky to the House of Lords 'Public service broadcasting in the age of video on demand' inquiry, 2019, available at <https://www.parliament.uk/business/committees/committees-a-z/lords-select/communications-committee/inquiries/parliament-2017/public-service-broadcasting-and-vod/publications/>



## 5. Recommendations

We support **Option 3** which provides for an integrated programme of local content support encompassing both production obligations and a discoverability and promotion mechanism. The latter is described in the Options Paper as “flexible, principles-based promotion and discoverability requirements for Australian content [to be] applied across all platforms” (41).

In terms of the design of such requirements, we recommend a two-stage process of monitoring, consultation and voluntary undertakings followed – if necessary – by more direct regulatory intervention.

### Stage 1: ‘minimalist’ model

1. *Voluntary undertakings – metadata standards*: Ensuring that Australian content is tagged with appropriate metadata (and therefore discoverable via user searching) is the basis for effective discoverability. Our research suggests that not all services record country of origin within metadata, or do so irregularly. Many SVOD services do not make this information publicly available to the user, for example by a country of origin tag at the bottom of the title details page. There are also definitional inconsistencies regarding Australian content to be addressed, e.g., whether service-level classifications align to definitions enshrined in legislation.<sup>10</sup> ACMA could work with industry to adopt and implement common metadata standards for video-on-demand services. This will help to improve the overall quality of title metadata, which is the essential foundation for effective discoverability.
2. *Reporting requirements*: SVOD services could be asked to provide the following data, as a basis for determining whether Stage 2 regulation is appropriate:
  - relative performance of local content titles within their platforms (e.g., number and ranking of any Australian titles appearing within the top 500 most-viewed titles by viewing hours, or equivalent metric)
  - aggregate data on which discovery actions are most consequential (e.g., proportion of viewing actions driven by recommendations, search, or promo carousel spots)
  - contextual information on what variables are taken into account in determining relative prominence and discoverability of titles across each element of the interface
  - explanation of any system design features and other voluntary measures taken by the service to increase discoverability of local content

Such data would assist in establishing the scale of engagement with Australian content on SVOD services and would inform decision-making as to whether or not more significant discoverability requirements are appropriate. If necessary, reporting could be on a confidential basis with ACMA. There would be no need to divulge commercially sensitive information such as number of views, subscriber numbers, or algorithm design.

3. *Discoverability audits of SVOD services*: ACMA could consider carrying audits of local content discoverability in SVOD services, and other services (BVOD, TVOD) as appropriate. Data could be collected on an annual, biannual or monthly basis via manual or automated coding. An appropriate data framework for these audits would include:

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<sup>10</sup> Broadcasting Services (Australian Content) Standard 2016 and Broadcasting Services Act 1992.



- the number of Australian titles that feature on the home screen, noting differences between desktop, smart TV and mobile interfaces
- the relative 'screen real estate' devoted to these recommendations (i.e., accounting for the difference in prominence between featured autoplay trailers at the top of the screen and recommendation row inclusions)
- to account for the effects of personalisation, 'clean' profiles can be used as a proxy or multiple profiles can be 'trained' to simulate a range of distinct viewing habits.

If the measures above establish that there is a local content discoverability problem of sufficient scale to warrant more formal intervention, Stage 2 would then be triggered.

### Stage 2: "significant model"

A flexible model for direct intervention into discoverability is offered in the European Union's AVMSD revision, which specifies the following options:

*a dedicated section for European works that is accessible from the service homepage, the possibility to search for European works in the search tool available as part of that service, the use of European works in campaigns of that service or a minimum percentage of European works promoted from that service's catalogue, for example by using banners or similar tools. (AVMSD 2018 revision, recital 35)*

A prudent way forward for Australia would be to continue to monitor developments in Europe to gain a full understanding of the range of possible options being considered there. Once evidence becomes available on the effectiveness of the EU's discoverability policy, ACMA would be in a better position to implement an appropriate discoverability regime here in Australia, if necessary.

We observe that some of the options referenced in the AVMSD will be easier for services to implement than others. Introducing a local content search option should be practicable for most SVOD services. Similarly, requiring that a modest proportion of slots in the rotating promo carousel at the top of the home screen relate to Australian content should also be practicable given that these sections are already wholly or partly human-curated according to strategic objectives (e.g., promoting new originals).

Other options that may be more complex for services to implement include a mandated recommendation row for local content, a minimum percentage of local titles appearing across all recommendation rows, or a relative prioritisation of local titles via adjusting the algorithmic weighting of country of origin.

We note that services currently carrying little or no Australian content, such as Apple TV+ and Disney+, will obviously struggle to meet any discoverability requirements no matter how modest. This underscores the need for discoverability measures to be closely articulated to production and catalogue requirements, as is the case in the EU.

We agree with the argument that services should be given sufficient flexibility to address the discoverability policy objectives in ways appropriate to their individual interface design, and that some room for negotiation be built into any regulatory framework. Given that the importance of digital discoverability and prominence will only increase in coming years as a policy issue, we feel it is prudent for government to begin scoping some of these options and engaging with industry now so as to be prepared for the *possible* introduction of such measures in coming years.



In both the minimal and significant scenarios, we recommend attention to the following principles:

- *Government should keep regulatory options open and sufficiently flexible to account for future innovations in technology, service design, and user experience.*

Digital services are evolving very rapidly. An important issue in the years ahead will be hardware-level discoverability (e.g., recommendations delivered on the home screen of a smart TV, game console or streaming stick), which co-exists with the in-app recommendations that have been the focus of discussion to date (e.g., recommendations on SVOD home screens). Future innovations in device, service and interface design will add further complexity to this picture. We suggest that **any discoverability principles enacted in legislation or regulation should be sufficiently broad as to account, where necessary, for the emergence of new kinds of hardware and services without requiring new legislation.** We also expect that **PSB prominence (ABC and SBS) on connected TV platforms** is likely to emerge as a major issue for Australian media regulation in coming years, as has been the case in the UK and EU. We therefore recommend that government consider the prominence of PSB apps and content in conjunction with local content discoverability.

- *Leverage international best-practices.*

ACMA should continue to engage with regulatory agencies and experts overseas so that Australia may benefit from the implementation and consultation work carried out by groups such as Ofcom, Canadian Radio-television and Telecommunications Commission, European Audiovisual Observatory, and European Regulators Group for Audiovisual Media Services.

- *Discoverability depends on catalog depth.*

Our research has shown that discoverability features alone will not help users discover Australian content if it is not there to be discovered (i.e., if titles are not present in the catalog in sufficient quantity). This is why discoverability cannot be divorced from availability and production obligations; the three dimensions of the local content challenge need to be considered in tandem, and effective policy needs to cover all these elements in an integrated way.

- *'Ghettoization' of Australian content may not be a desirable outcome.*

While obligatory carriage of a local content recommendation row on SVOD services, such as Australian TV or Australian movies, is a possible option, we expect that some Australian creators and IP holders may instead prefer their content to be featured alongside quality international content rather than being contained within a nationally labelled row or section. Hence, it will be valuable to engage with the local production industry and rights-holders when deciding which if any of the possible discoverability mechanisms to adopt.

- *Scale thresholds should apply.*

As per the Options Paper, production and discoverability obligations should apply only to major SVOD services attracting significant audiences and revenues in Australia, and not to niche services.

In conclusion, while we feel it is premature to recommend introduction of one or more specific discoverability requirements at this stage, our evidence in this submission has focused instead on scoping the possible options – in line with international best-practices – and outlining a reporting programme that would more concretely establish the scale of intervention needed.