

Supporting Australian Stories on our Screens

SUBMISSION BY



Seven West Media

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Submission by Seven West Media

EXECUTIVE SUMMARY

- Commercial free-to-air broadcasters make a substantial contribution to the Australian economy and are the most significant source of funding for the Australian production sector. A viable commercial free-to-air television industry is therefore essential to ensure that Australian audiences continue to have access to screen content that reflects our national identity.
- Given the significant changes that have occurred across the content market over the last 10-15 years it is clear the existing regulatory framework for Australian Content is no longer fit for purpose and that substantial change is urgently required. The current system of onerous and highly specific quota obligations that apply only to one part of the market (commercial and subscription broadcasters) but not to their online equivalents, is clearly an unfair market distortion that is harming Australian businesses, as identified by the ACCC in its Digital Platforms Inquiry Report.
- At the same time, the intended benefit of the existing regulations to audiences is diminishing as content consumption shifts to unregulated platforms. This is particularly the case for Children's Content obligations, where the audience has almost entirely shifted to the ABC and online, where there are no local content obligations - but each commercial broadcaster continues to face an obligation to broadcast over 390 hours of C and P programs a year, costing millions of dollars and with an average audience of less than 1000 children.
- Seven supports deregulation of content quotas (Model 4) coupled with robust production incentives and support as the ideal way to encourage the production of Australian content in a way that does not distort competition between distribution platforms.
- However, if the Government is not satisfied that deregulation will deliver a sufficient quantity of certain types of socially desirable Australian content it is critical that:
 - a. genre based sub-quota obligations on commercial broadcasters need to be considerably reduced and made more flexible (as detailed in the Free TV Submission) including appropriate recognition of the contribution of high frequency serials like *Home and Away*; and
 - b. if any quotas are imposed on broadcasters, then all substantial content distribution platforms within Australia should also bear some regulatory obligation in relation to Australian Content, including Netflix and other large streaming services.
- We do not consider it is necessary for commercial broadcasters and online distribution platforms to have identical regulatory obligations, however it is no longer appropriate that

broadcasters are the only platform that bears any obligations, when an estimated 70% of Australians now subscribe to one or more streaming services.

- Government support for screen production, including tax offsets and discretionary direct funding via Screen Australia has played a key role in the growth and development of a world class production sector in Australia, supporting the creation and retention of jobs and skills in Australia. It is essential to retain these incentives and remove current disparities including:
 - increasing the Producer Offset for TV drama to be equal to the offset available for feature films; and
 - allowing broadcasters to access to Screen Australia funding.
- Retaining the existing regulatory settings, which rely heavily on broadcast quotas, focusses the content production industry on servicing an inflated demand for regulated genres that do not match with changing audience tastes for content consumption and do not best position Australia to take advantage of the opportunities of a growing global content market.

1 Introduction

Seven West Media Limited (**SWM**) welcomes the opportunity to submit our views to the Supporting Australian Stories on our Screen (**Options Paper**). We commend Screen Australia and the ACMA for their overview of the significant economic and cultural contribution of screen content and the current state of play within the industry.

SWM supports the submission of Free TV Australia. The further comments in this submission should be viewed as supplementary to the submission of Free TV.

2 About Seven West Media

Seven West Media is one of Australia's leading integrated media companies, with a portfolio of television, publishing and digital properties.

The Seven Network is the home of many of Australia's favourite programs including *Big Brother*, *Home and Away*, *Better Homes and Gardens*, *7NEWS* and *Sunrise*, as well as Cricket, the AFL and the Olympic Games. Everyday millions of Australians rely Seven as their most important source of trusted news, live sport and entertainment.

Seven is also one of the country's largest producers of Australian content, producing thousands of hours per annum of drama, entertainment, news and public affairs, in addition to commissioning substantial amounts of content from Australia's world class independent producers.

We are a significant employer, directly employing around 1500 people in our television business, including productions, news, sport, programming, engineering, sales, finance and management, and thousands more on a casual or "run-of-show" basis.

Many of Seven's productions and formats have made their way to international screens, including *Home and Away*, *A Place to Call Home*, *Winners and Losers*, *Packed to the Rafters*, *My Kitchen Rules*, *House Rules*, and *Border Security*. Beyond the mere dollar value of these cultural exports, these classic Australian programs play a significant role in promoting Australian culture and values, showcasing our talents on and off screen and strengthening Australia's positive image as a destination for business and tourism.

Seven is committed to ensuring that we can maintain a strong and vibrant Australian voice in drama, news and current affairs, sport and general entertainment. However, given the competitive landscape we are now at a critical juncture where regulatory reform is urgently required. If this does not occur a free and reliable service that is greatly valued by Australians and accessed by millions of them each day, is at risk.

2 Australian Content Quotas

It is abundantly clear, as has been recognized by the ACCC, that regulation of content has not kept pace with the speed of technological advancement. As a result, companies like Seven are being held back from being able to fairly compete and thrive in the modern media landscape.

Australian Content requirements for commercial broadcasters have existed in a format very close to their current form since the 1990s. The Content Standard primarily involves hours-based quotas relating to specific program genres - drama, documentary, children's drama and other children's and preschool programs. In addition, the Broadcasting Services Act provides for an annual minimum transmission quota of 55% Australian programming on the primary channel and 1460 hours of Australian Content across the multi-channels. Competing digital platforms and SVOD services have no similar Australian content obligation.

In the last 15 years the media landscape has profoundly altered. There is now a proliferation of sources of screen content delivered over the internet – both free and subscription – to a variety of devices. It is estimated that the average Australian now spends 5 hours a day on the internet and over 70% of Australian adults have at least one subscription television or streaming service. At the same time, television revenues are declining, with digital advertising now accounting for over 50% of Australian advertising spend.

As set out in the Free TV Submission, we believe that maintaining the Status Quo (Model 1) and Minimal Change (Model 2) are fundamentally unviable options. Given the fundamental shift in the competitive landscape and the challenging industry conditions that currently exist for commercial broadcasters, it is time to substantially review and reconsider the current Australian Content regulatory framework.

We need to either move to an entirely deregulated model, where Australian Content is incentivised via tax offsets and direct funding support, or alternatively, if quotas imposed then those obligations must be spread across all platforms, including the National Broadcasters and each of the SVOD services with a substantial Australian presence.

It is clear that Australia audiences do have a strong appetite for Australian content and all commercial broadcasters are significantly exceeding the current 55% transmission quota. We have a world class content production industry in Australia that is actually thriving: all of the top programs on commercial free to air television are generally Australian made; and our well-funded national broadcasters also make a substantial contribution to ensuring that audiences have access to a diverse range of quality locally made content, including children's content and multicultural content. There is a legitimate case to be made that the Australian market no longer requires the highly interventionist regulatory imposition of genre specific quota obligations on the commercial sector.

Serious consideration should be given to simply letting audiences, platforms and the content creators determine what content gets commissioned, with a light touch regulatory framework including:

- Government incentives to make Australia an attractive location for production; and
- Maintaining the overall 55% transmission quota on commercial broadcasters' primary channels, ensuring a substantial volume of Australian Content continues to be produced; and
- Maintaining our substantial National Broadcasters – who exist for the very purpose of protecting against any market failure of the commercial market to provide sufficient culturally desirable content, such as Australian children's content.

The Children's Content quotas on commercial broadcasters are clear case of regulation that is no longer meeting any of its intended objectives. Each commercial broadcaster is currently required to provide 390 hours of C and P programs each year. That is over 1170 hours combined per year of children's content (at least a third of which must be first release), and that is just between the commercial broadcasters and not even including the ABC. For a market the size of Australia that is arguably an excessive obligation in terms of hours, even if kids were watching the content.

The C and P obligations are costing industry around \$25 million per year and most C and P programs screen to less than 1000 children.

All the research shows that children now spend most of their screen time watching unregulated online platforms, dedicated commercial free children's channels like ABC4Kids, and subscription services. This has been the case for many years and yet the quotas remain in place on the one platform children are not watching, with no obligation on those platforms that children are watching. There no reason that commercial broadcasters should continue to bear a responsibility to provide an industry support mechanism for children's content creators.

We believe that the Children's Content obligations should be immediately withdrawn - for 2021 onwards. Tied funding could be provided to the ABC as a transitional measure to minimise any impact on the production sector. However, we note that a large proportion of children's content production is now undertaken in-house so the impacts across the independent production sector would be minimal. The audience certainly would not miss the content as it is clear they are not watching it now.

Children do still watch some commercial TV when they are co-viewing with their families, watching sport, movies and family entertainment shows like Australia's Got Talent. OzTAM figures show that of the top 50 programs watched by children, there was not one C or P program. Commercial broadcasters need the flexibility to focus resources on commissioning content with broad appeal and there is no doubt that Australian produced family entertainment programs will continue to be a key part of the schedule.

Similarly, in relation to Australian drama, the existing quota obligations that apply only to commercial broadcasters are excessive. While drama will always be a part of our service, the level of the existing drama sub-quotas is problematic, given viewing trends show audience preferences have shifted towards greater online, on-demand consumption for scripted content. The use of New Zealand content by some broadcasters to meet the existing drama quota should be viewed primarily as evidence that the existing obligation has been set too high and in no longer in line with the amount of Australian drama audiences want to watch on commercial TV.

Most Australian dramas on commercial TV are currently loss making. One exception to this is *Home and Away*, which maintains a reliable local audience (both for broadcast and for catch-up viewing) along with incredible international success. Over the last three decades *Home and Away* has employed thousands of cast members, production crew and writers. Many of Australia's internationally recognised actors gained early television experience and exposure on *Home and Away*, including Isla Fischer, Julian McMahon, Simon Baker, Naomi Watts, Guy Pearce, Chris Hemsworth, Melissa George, Heath Ledger, Dannii Minogue, Luke Mitchell and Isabel Lucas.

In terms of cultural policy objectives, it is arguable no program has been more successful at selling Australia and its way of life – but it is completely undervalued by the current quota system.

However, the current drama points system disincentivises investing in a program like *Home and Away*. Under the current drama points system, acquiring the rights to feature film creates no new jobs but is awarded higher points under the current system because it is a film. Whereas *Home and Away* gets less points (purely because it is produced at a rate of more than 1 hour a week) even though it is commissioned for broadcast and creates a substantial amount of jobs and investment in Australian. If some form of drama quota is to be retained for commercial broadcasters, then the anomalous treatment of *Home and Away* and other high frequency series must be addressed.

If quotas are retained, we support the proposal in the Free TV Submission to have one single combined points target for documentary, children's content and drama, without requiring a specific amount from each genre. The aims of the combined points target model would be to:

- provide some flexibility for broadcasters to differentiate their services and determine the right mix of documentary, drama and children's programming for their audience and business strategy;
- reduce the overall burden on broadcasters to reflect the realities of the new media landscape;
- set the right incentives by:
 - providing higher points for original commissioned content than acquired content;
 - giving commissioned drama higher points based on the level of Qualifying Australian Production Expenditure (QAPE) rather than format;
 - awarding higher points for content like C Drama that has a high cultural value but is less financially viable – to incentivise rather than require children's content.

However, if any quotas are to be imposed then we believe it is also time for SVOD platforms such as Netflix, to also pull their weight. All commercial platforms with significant Australian audience share and revenues should be required contribute towards Australian cultural policy objectives, as is happening in Europe. The existing regulatory disparity was specifically identified by the ACCC as creating competitive imbalance and should be addressed.

While we don't think it is necessary for commercial broadcasters and online platforms to have identical regulatory obligations, it is no longer appropriate that broadcasters are the only platforms that bear substantial quota obligations, when an estimated 70% of Australians now subscribe to one or more subscription or streaming services. Indeed, it could be argued that foreign based content distribution platforms should have higher obligations than local commercial broadcasters in respect of drama and children's content because:

- children's content and drama are key genres where audience migration to on-demand platforms is highest;
- commercial broadcasters already bear an obligation that 55% of the content on their primary channel must be Australian content;
- commercial broadcasters already contribute significant public benefit by their investment in news and current affairs.

While an estimated 11 million Australians have access to Netflix, which is the largest SVOD service currently in Australia, Netflix has very little Australian content. As noted in the Options Paper, research by RMIT in 2019 estimated that Australian titles made up just 1.7% of Netflix's Australian catalogue.

Along with increasing the demand of Australian content, imposing Australian content obligations on SVOD platforms would be a range of likely additional benefits to industry including:

- placing Australian content such as drama and children's content in the environment it is increasingly likely to be viewed;
- increasing co-productions between streamers and broadcasters – potentially enhancing the viability of very high end productions; and
- increasing the export of Australian content and delivering Australian content to a diverse international audience – as most streaming platforms are foreign international businesses.

Retaining the existing regulatory settings, which rely heavily on broadcast quotas, focusses the content production industry on servicing an inflated demand for regulated genres that do not match with changing audience tastes for content consumption and do not best position Australia to take advantage of the opportunities of a growing global content market. An increase to the Producer Offset along with some form of obligation on multi-national streaming companies would significantly position the Australian production industry for growth – both in terms of local stories and also as a production destination for foreign content at a time when many markets are still struggling with the impacts of COVID-19.

3 Tax Incentives

Seven support calls by Free TV Australia, the Screen Producers Association and others to increase the level of the Producer Offset to 40% for television production.

The Producer Offset tax incentive has played a powerful role in incentivising Australian production of feature films, TV drama and documentaries since it was introduced in 2007. However, we do not believe it makes sense to continue to differentiate between feature films, which can access an offset of 40% of qualifying expenditure, and television projects that are limited to 20% offset. The 65 episode cap should also be removed.

Seven strongly supports the Producer Offset and PDV Offset as market based mechanisms that play a crucial role in the financial viability of many Australian productions. Screen Australia conducted a review of the Producer Offset in 2012, which concluded that overall production of feature films, TV drama and documentaries had increased since the offsets were introduced in 2007 and *particularly that the offset had helped to support high-budget, high production-value content that has performed well in Australia and overseas.*

However, the Producer Offset for television drama is currently only 20% while for feature films the available offset is 40%. We believe there is no reason to maintain this disparity. The Convergence Review noted that there was significant support for raising the offset level for television so that it is consistent with the rate for feature films and recommended that *“premium television content exceeding a qualifying threshold should attract the 40% offset available under the Producer Offset Scheme.”*¹

¹ Department of Broadband Communications and the Digital Economy, Recommendation 16, Convergence Review Final Report, March 2012.

There is a strong argument that Australian television programs are actually more widely viewed than feature films and that therefore the public benefit from tax incentive measures is greater. Providing this increased incentive for TV drama production would encourage greater investment in the Australian production industry and provide an additional incentive for broadcasters and other platforms to invest in drama at a time when drama is difficult to monetise in the local market due to increasing audience fragmentation.

In addition, we support calls that consideration be given to widening the genres of content that are able to access the Producer Offset. Many programs outside of the drama and documentary genres are just as expensive to produce, and provide employment and training for large production crews, utilizing Australian production and post-production facilities.

The availability of the Producer Offset for documentary, but not for other types of unscripted programs creates a discrepancy in tax treatment that is dependent on subjective/qualitative judgments about creative treatment. This creates uncertainty regarding eligibility at the time of commissioning factual programs. If the Producer Offset does remain limited to the drama and documentary genres, then more certainty is required in relation to the criteria being applied to distinguish “documentary” from “reality” and “infotainment”.

The PDV Offset is another vital support mechanism for the production sector which has successfully maintained post-production facilities, skills and jobs within Australia. According to the Location and PDV Offset Guidelines, the intention of the offset is to provide an additional financial incentive for the production and post production of large budget screen productions in Australia. In particular, the Guidelines note that the Government recognises the economic, employment and skills development opportunities large budget film and television productions bring to Australia—and to Australians working in the film industry – and that the PDV Offset is aimed at enabling the Australian visual effects, post production and animation sector to continue to develop its reputation as the best and most cost-effective in the world. We believe that the PDV Offset is currently achieving those aims and should be continued.

Consideration should also be given to ways in which the administration of the offsets could be streamlined and better tailored to television production. Time is definitely of the essence when it comes to production support mechanisms and any administrative efficiencies that can speed up processing would make a real difference because funds are being reimbursed retrospectively and are often needed to cash-flow further investment in production and/or to repay loans.

5 Screen Australia funding

Seven supports the Free TV Submission that in-house production should not be excluded from applying for Screen Australia funding.

Broadcasters are currently the only content producers excluded from receiving funding or other assistance from Screen Australia. For example, competing online platform such as Netflix would not be excluded from eligibility and neither would the production businesses of foreign broadcast networks, such as BBC Studios. Screen Australia has also launched a number of initiatives to fund content for platforms such as You Tube.

There is nothing in the Screen Australia Act to indicate an intention by the government to exclude in-house production by broadcasters or related companies from receiving support. Yet Screen

Australia has maintained a set of funding guidelines that expressly exclude broadcasters from eligibility.

The production industry structure is very different now to when Screen Australia's predecessors (the Australian Film Commission, Film Finance Corporation Australia and Film Australia Limited) were established. The independent television production sector in Australia is now dominated by large foreign owned production businesses. However, Seven Productions is excluded from applying for funding despite being an Australian owned business, retaining revenue and jobs in Australia.

To best support Australian Stories on our Screen we need to abandon the outdated notion that "in-house" production is different from "independent" production, and less worthy of support. A thriving production sector relies on both types of production; the quality of content produced is equivalent and the economic and social contribution of both types of production business is the same. Independent producers now also have a large number of distribution platforms to acquire their content, including subscription television and new digital distribution platforms.

In-house production by broadcasters plays a vital role in the overall production sector alongside independent production. In-house production departments provide many performers and creatives with valuable jobs and training and an opportunity to increase their skills base. It is often in-house production that allows aspiring producers, writers, actors, set designers and others to take risks, make mistakes and learn from a wider creative team without the fear of adverse personal financial consequences. The opportunity to move between run of show regular employment with a broadcaster such as Seven and independent projects is a welcome one for many in the production industry – and especially those with family responsibilities, who may wish to remain in the production industry but may also need the security of ongoing and regular employment.

We support the work of Screen Australia and we do believe there is an ongoing role for discretionary funding within the range of Government support provided to the sector. However, in our view all applications for discretionary funding should be assessed on their creative merit.

6 Conclusion

We commend the Government for undertaking this review and emphasise that action must follow on an urgent basis. Commercial broadcasters are the lynchpin in the Australian production sector and we firmly support the cultural and economic importance of Australian screen content. However, in order to be able to continue to play this important role, a flexible and appropriate regulatory framework is necessary and is increasingly urgent.

In particular, as the industry seeks to rebuild following the impacts of COVID-19, we need to have certainty as soon as possible regarding future regulatory obligations and support for Australian Stories on our Screens.

While shifting to a model of full deregulation may require a degree of transition, we would urge the Government to announce an immediate end the Children's Content obligations on commercial broadcasters for 2021 and onwards. It has been clear for some time that these regulations are an unacceptable waste of time and resources, that are placed on an industry that is financially stressed.