



**The Australian Directors' Guild
Submission on the Australian Government
Media Reform Green Paper
Modernising television regulation in Australia
May 2021**

TABLE OF CONTENTS

Executive Summary	3
Who We Are	5
Introduction	5
Why Australian Screen Content Matters Culturally and Economically	5
Why Government Intervention Is Necessary	6
The Impact of Deregulation	6
Content Regulation Needs to Respond to Levels of Influence	7
Reform Needs to Track with Audience Migration	7
Media Reform Needs to Be Properly Staged	8
An Opportunity for Transformative Growth	8
Responses to Submission Questions	9
All Consultation Questions	19
Submission Contacts	23

EXECUTIVE SUMMARY

The ADG welcomes the opportunity to submit to the Media Reform Green Paper – its inclusion of proposals for Australian content obligations on streaming platforms is a critical and now, following the partial deregulation of commercial free-to-air television, an urgently needed component of the media reform process.

1. The ADG submits that all remaining Australian content obligations applying to commercial free-to-air television broadcasters should continue. It does not support an incentive for broadcasters taking up the proposed new class of television licence being a complete deregulation of their Australian content obligations.
2. The ADG supports the use of spectrum sale proceeds for the delivery of public screen policy outcomes provided a reduction in direct support through screen agencies is not a consequence of an additional screen content fund (CAST).
3. The ADG proposes that the investment obligation apply to all types of SVODs, BVODs and AVODs with no exemption for platforms owned by a corporate structure that also owns a broadcasting licence.
4. The ADG does not support the proposed halving of the already modest 10% local content investment rate for subscription television nor does it support the proposition that the rate of streaming obligation should be ‘harmonised’ with this lower rate.
5. The ADG proposes that eligible SVOD, AVOD and BVOD platforms invest 20% of their Australian-sourced gross revenue into commissioning new Australian content.
6. The ADG proposes a regulatory obligation which is a combination of both expenditure and genre sub quota minimum hours and/or points systems that appropriately incentivise quality and volumes of production. The ADG proposes that regulated entities are required to report annually on these key indicators.
7. The ADG proposes that regulatory obligations also include transmission and promotion obligations for new Australian content and that the definition of ‘Australian’ content be that in the Producer Offset legislation through its Significant Australian Content (SAC) test.
8. The ADG does not support the proposed revenue threshold of \$100m and proposes thresholds of \$50m Australian gross revenue per annum and 500k subscribers.
9. The ADG does not support the proposal that the investment obligation is acquitted with ANY genre of Australian content. The ADG proposes an obligation to commission into genres (scripted drama, documentary and children’s) commensurate with each platform’s current engagement with non-Australian content in that genre. The ADG also proposes that a proportion of the regulatory obligation is acquitted through the commissioning of First Nations content.

10. The ADG proposes that the investment obligation is only acquitted through newly commissioned programs, and that expenditure on licensing and acquisitions should not be eligible for meeting regulatory requirements. The ADG also submits that regulated entities are required to work with independent Australian production companies with a minimum requirement of 80% of their expenditure obligation spent in the independent sector.
11. A greater certainty and predictability in investment levels, objectives, and genre priorities for the ABC & SBS would be welcomed by the local screen sector and would be of great assistance in respect of business planning and creative development. The ADG welcomes further engagement with government and the public broadcasters on a new regulatory framework that protects minimum levels that the ABC and SBS commissions in new Australian content for children's, scripted drama, and documentary genres. Any prescribed genre levels should be appropriately aligned with each broadcaster's unique charter. We strongly recommend that any regulatory obligation is tied to an increase in direct funding. This is critical as, for example, the ABC's role in commissioning children's content has increased significantly following the removal of commercial broadcast sub quotas for this genre.
12. The Government's decision to move swiftly to deregulate commercial free-to-air television has led to a substantial reduction in production and an almost total decline in commissioning of children's content. There is now an urgent need for regulatory implementation and the ADG proposes that new investment obligations on SVODs and AVODs commence on 1 January 2022.
13. Additionally, if staged swiftly, the implementation of streamer content obligations would provide employment continuity for the cast, crews and businesses currently supporting the higher levels in international 'footloose' production stimulated by the Locations Offset, reducing the risk of them drifting offshore as projects relocate to other competing jurisdictions.

WHO WE ARE:

The Australian Directors' Guild (ADG) is a Registered Organisation under the Fair Work Act 2009 and union representing Australian directors who are engaged in work in the film, television, online, arts and entertainment, music clips, animation, commercial advertising, and related industries. Formed by 18 independent directors in 1982, the ADG grew to over 1,200 members by 2020 including Baz Luhrmann, Peter Weir, Gillian Armstrong, Fred Schepisi and Phillip Noyce to name a few.

Directors are responsible for creatively leading stories on the screen as well as the cast and crew behind them. ADG's members play a significant role in the production process as creators. As a cultural organization the ADG also seeks to advance an understanding of the director's role by sharing and exchanging future-focused knowledge and skills

The ADG aims to improve professional standards, conditions, and remuneration for Australian Screen Directors, protect and advance the creative rights of our members and promote a cultural voice that is truly representative of Australia's innate diversity.

The ADG is affiliated through the International Association of English-Speaking Directors Organisations (IAESDO) with the Broadcasting, Entertainment Cinematograph and Theatre Union (BECTU), the Directors Guild of America (DGA), the Directors Guild of Canada (DGC), Directors UK, the Screen Directors Guild of Ireland (SDGI) and the Screen Directors Guild of New Zealand (SDGNZ). The ADG is also a member of the Copyright Council

INTRODUCTION

This is a watershed moment for the Australian screen industry and the audiences it creates content for. The ADG believes fundamentally that all platforms gaining significant economic benefit from Australian audiences have an obligation to make a commensurate contribution back to Australian public screen policy outcomes.

WHY AUSTRALIAN SCREEN CONTENT MATTERS CULTURALLY AND ECONOMICALLY

Screen content that has a strong focus on Australian stories, voices and perspectives remains popular with consumers and helps to reflect Australia both to itself, and to the rest of the world. It can support cultural identity, social cohesion, and points of connection between Australian citizens.¹

The benefit to supporting Australian screen content, specifically in the market failure areas, is its significant strong economic and employment contribution coupled with this fundamental necessity of satisfying the need and appetite for our stories on our screens. Investment in the Australian screen sector also has strong flow-through economic and employment benefits for other local industries with wide recognition that Australian screen content is a significant driver for two of Australia's biggest industries, tourism, and international education.

¹ Media Reform Green Paper - Modernising television regulation in Australia – November 2020

WHY GOVERNMENT INTERVENTION IS NECESSARY

However, due to Australia's small market, this content can be financially risky to produce, with costs often not able to be recouped in the domestic market. Radio, newspapers, and the broader arts sector also play a role in articulating Australian values and stories, which help shape the cultural fabric of our society.²

There is a long-standing history of regulation in the Australian screen industry. The broadcast quota rules were there to remedy 'market failure': viewing audience and the market for Australian content is small, making Australian content comparatively expensive to produce and access compared to international content in English. The current *Make it Australian* joint guild campaign referenced the successful 1960s *TV – Make it Australian campaign*. Back then, government support for Australian film and TV was non-existent. There was no Australian film and TV industry to speak of. In 1961 one per cent of drama on television was Australian. The other 99 per cent was foreign. The campaign led to commercial television being obliged to broadcast Australian content.

Government correctly stepped in to ensure quality local content was made. Out of bipartisan government support, our Australian film and TV industry was created from nothing. This intervention has contributed most significantly to the talent and skills to make strong, distinctive Australian content - for cultural diversity, to make us competitive globally and to create jobs.

60 years on from our original campaign, with the recent deregulation of commercial free-to-air broadcasters, the Australian screen industry faces similar challenges.

Regulated quotas are the most effective way to ensure our content is seen and gives assurance to direct public funding and private investors in knowing there is a pathway to audience.

THE IMPACT OF DEREGULATION

In September this year [2020], the Government announced its first stage of reforms. This deals with the Australian content obligations which apply to free-to-air television networks, and with the mechanisms to provide funding support to the Australian screen production sector.²

The ADG commends the government for increasing the claimable amount under the PO for Australian TV drama, from 20% to 30%. But to a very significant degree, Australians get to see great local stories at home because of the combined forces of financial assistance AND regulation and the government watered down the local content rules that apply to Seven, Nine and Ten by removing sub-quotas on drama, children's content, and documentary programs, and changing the points-based system.

There is an urgent need, particularly given the collapse in commissioning in certain genres impacted by this partial deregulation. The ADG were made aware that Australian drama productions in development were cancelled overnight because of the TV announcements. The removal of the sub quotas is leading to fewer new productions across the board. More alarmingly, there is now no regulatory obligation for any Australian commercial TV station to produce or show Australian children's content.

² Media Reform Green Paper - Modernising television regulation in Australia – November 2020

Further reduction in production levels will follow from the government's decision to halve the requirement for Foxtel to invest in Australian drama content from July 1 this year. This relaxing of regulation without regard to the knock-on impacts elsewhere in the screen ecosystem is much more than a missed opportunity; rather, it represents losses of hundreds of millions of dollars to the independent production sector.

CONTENT REGULATION NEEDS TO RESPOND TO LEVELS OF INFLUENCE

A regulatory policy challenge—the regulatory levers that are currently used to achieve social, cultural, and economic policy outcomes—diversity of voices, provision of local content (especially in regional communities), investment in Australian content—are all targeted at the existing media businesses that are the most challenged.³

The *Broadcasting Services Act 1992*, the primary piece of legislation for screen content delivering public policy outcomes, has undergone continued reform during its lifetime, however the level of regulation applying to some of the most popular services (streaming platforms), given their exponential growth, is now completely out of phase with their influence on the community. It is essential that our regulatory frameworks transform to accommodate these recent seismic shifts in the market.

REFORM NEEDS TO TRACK WITH AUDIENCE MIGRATION

Over the past two decades there has been a fundamental shift in the way audio-visual media content is produced and consumed, with audiences shifting to online and on-demand content and away from linear consumption.³

Audience migration has accelerated in the last 2 years with streamers like Netflix adding significant subscriptions during the COVID-19 pandemic in contrast to the Australian broadcasters, whose revenues and employment levels continued to fall. Illogically, government has not regulated the platforms that audiences are migrating to. It has not implemented appropriate reform synchronous with this fundamental shift. Absent regulation, levels of Australian content on streaming platforms is minimal and inconsistent for example Australian content in Netflix's catalogue fell from 2.5% in 2017 to 1.6% in 2018⁴

Netflix, Disney+ and other platforms with a combined local subscription base now topping 16 million⁵ should have been mandated to show Australian content before any changes were made to quotas for the commercial free-to-air broadcasters.

The streamers' Australian earnings are substantial, with PwC estimating the platforms combined Australian revenue is \$2 billion a year, and this is forecast to grow sharply in the coming years.⁵ We also note that some of these companies are contributing minimal Australian taxes.⁶

Quota obligations for streamers has been part of the Australian public policy discourse for many years with a recognition that a sustainable local screen ecosystem requires that companies with the greatest capacity to invest, take on a responsibility for commissioning and programming Australian content. Yet currently the streamers have no obligation to contribute to the Australian local screen sector and no obligation to give back to the audiences they profit significantly from.

³ Media Reform Green Paper - Modernising television regulation in Australia – November 2020

⁴ <https://mumbrella.com.au/local-film-and-tv-content-makes-up-just-1-6-of-netflixs-australian-catalogue-546113>

⁵ <https://www.pwc.com.au/industry/entertainment-and-media-trends-analysis/outlook/subscription-television.html>

⁶ <https://www.afr.com/companies/media-and-marketing/netflix-reveals-australian-tax-bill-for-2020-20210502-p57o5v>

MEDIA REFORM NEEDS TO BE PROPERLY STAGED

In its response to the Digital Platforms Inquiry, the Morrison Government committed to commence a staged process to reform media regulation towards an end state of a platform-neutral regulatory framework covering both online and offline delivery of media content to Australian consumers.⁷

Media reforms with the scale and reach enacted and proposed by the government requires a wholistic and coherent cross-platform (online and offline) overview. The staging to this point has been far from optimal. The piecemeal approach that suspended and ultimately relaxed Australian content obligations for commercial free-to-air broadcast quotas had the inevitable and eminently predictable consequence of a substantial reduction in the levels of locally produced content. A correctly staged framework would have predicted and accounted for this. Now, unless other investment support is found to fill this 'production void', the consequence will be a serious contraction in the Australian screen sector's capacity to create quality Australian content. Appropriate and timely regulation of SVODs, BVODs and AVODs is critical.

AN OPPORTUNITY FOR TRANSFORMATIVE GROWTH

The Australian media sector is a significant segment of the domestic economy, employing approximately 90,000 Australians in 2018–19. It generated an estimated \$47.7 billion of domestic revenue through advertising and consumer spend in 2019.⁷

Certainty is also critically important for the Australian media sector. Important in terms of business planning, creative development and important in terms of attracting investment to develop skills, create career development pathways and new jobs.

The right regulatory settings will drive significant benefits in terms of investment, skills development and jobs leading to stronger sector economic output and greater export opportunity. Most importantly the right settings will deliver significant benefits to Australian audiences from higher levels of high quality culturally relevant screen content.

Importantly, regulatory reform that delivers increased screen sector investment growth would stimulate employment at higher levels and with better gender balance compared to other significant Australian sectors. In a broader economic context, recent Australia Institute analysis of ABS data suggests that whilst there is wide recognition that the arts and entertainment sector (which includes screen content production) has an important cultural impact, the contribution the sector makes economically is largely neglected. Its analysis concluded that the arts & entertainment sector employs four times as many Australians as coalmining and the same number of Australians as the entire finance sector.

It goes on to note that for every additional \$1bn in turnover in the mining industry, an additional 472 jobs are created. For every additional \$1bn in turnover in the building industry, 1,242 new jobs are created. In the arts and entertainment sector, however, 4,297 new jobs are created with each \$1bn in additional turnover. The analysis also notes that for each dollar invested, the arts and entertainment sector employ twice as many men and 10 times as many women as the building and construction industry.⁸

⁷ Media Reform Green Paper - Modernising television regulation in Australia – November 2020

⁸ Culture beats construction in Covid economic recovery, report finds | Culture | The Guardian

RESPONSES TO GREEN PAPER CONSULTATION QUESTIONS

A NEW CLASS OF TELEVISION BROADCASTING LICENCE

3.1 Is the deregulatory benefit on offer sufficient to encourage commercial television broadcasters to take up this offer?

The ADG does not support the incentive for broadcasters to take up the new class of television licence being further deregulation of Australian content obligations and the Green Paper offered no basis for policy to support further deregulation.

The substantial recent deregulation of Australian content obligations has already benefited Broadcasters and the minor remaining requirements should be preserved to ensure no future reduction of Australian content for Australian audiences.

The ADG does not support the incentive for broadcasters taking up the new class of television licence being complete deregulation of Australian content obligations on commercial free-to-air television.

3.3 What elements of the existing regulatory framework should continue to apply?

The free-to-air commercial broadcasters have recently taken significant benefit from deregulation, further deregulation is not merited at this time.

The ADG submits that all remaining Australian content obligations applying to commercial free-to-air television broadcasters should continue.

SUPPORTING BROADER MEDIA POLICY OUTCOMES

5.1 Do you consider that revenue from the sale of spectrum could be used to support public policy initiatives for media?

The ADG welcomes the proposed creation of the Create Australian Screen Trust (CAST) and its recognition that increased direct funding support for vulnerable genres is vital.

The ADG supports the use of spectrum sale proceeds for the delivery of public policy outcomes related to Australian screen content provided it is additive to the overall funding picture and does not result in a reduction in screen agency direct support.

The ADG supports the government's proposal that the CAST fund is administered by Screen Australia with funding recommendations from the trustees of CAST with a strong recommendation that funding is distributed across all state funding bodies to generate production activity with regional and state diversity. We submit that creators, with a significant expertise in generating the content, have representation on any CAST decision-making panel with representatives from the ADG and the Australian Writers' Guild expressly included.

It is our view, however, that a voluntary opt-in sale of this type and scale would not be without its complications, and it is likely that years would pass before funds from the spectrum sale flow to the proposed CAST fund, if indeed it eventuates at all.

We therefore submit that any potential funding outcomes from the CAST fund should not be factored as a benefit in any projected overall media reform outcomes at this time.

The ADG supports the use of spectrum sale proceeds for the delivery of public screen policy outcomes provided a reduction in direct support through screen agencies is not a consequence of an additional screen content fund.

5.2 Are there examples of best practice in providing sustainable and targeted support in other jurisdictions?

The ADG supports standalone budget funding for cultural policy outcomes and not funding contingent on other non-related elements such as whether a proposed new class of licence, and spectrum arrangements are sufficient to incentivise broadcasters to sign up.

HARMONISING AUSTRALIAN CONTENT OBLIGATIONS

Application of Investment obligation to all types of SVODs, BVODs and AVODs.

6.1 Should the investment obligation apply to all types of SVODs, BVODs and AVODs including those that specialise in content such as sport?

Stan is one of a largest and most popular streamers with an individual content and consumer offering separate to and distinct from its parent company's television services and Paramount + is part of a global conglomerate. The ADG opposes the proposed exemption of local streamer Stan (in the current market) and, Paramount+ (when it launches) or any platform subsequently launching on the basis that it is part of a corporate structure that holds a broadcasting license.

The Australian media sector has many commonly owned content platforms which are not exempted because of common ownership from their regulatory frameworks. It is evidence that regulatory protections are required for each individual content service a consumer connects with at the point of interaction.

The Green Paper is not clear on the rationale for this exemption, nor is there a precedent apparent in Australian media law and the ADG feels this exemption is contrary to the governing policy principles informing the proposed media reforms. The ADG also is concerned that common ownership exemptions could provide potential for businesses to find means of exploiting this system in ways not yet considered.

The ADG proposes that the investment obligation apply to all types of SVODs, BVODs and AVODs with no exemption for services owned by a corporate structure that also owns a broadcasting licence.

Rate of investment Obligation

6.2 Would a rate of investment of five per cent of Australian revenue be reasonable? Is there an alternative rate that is more appropriate?

The ADG supports the Green Paper's preference for a revenue-based regulatory obligation for streaming platforms as it provides regulatory simplicity benefitting the regulated streamers, the lawmakers, and new entrants. A revenue-based obligation aligns with emerging international models and importantly adjusts over time with business performance. This was a missing element in the regulation applied to commercial free-to-air television leading to regulatory pressure for change from those broadcasters for some time.

The ADG does not support the proposed cut to the rate of the already modest (10%) subscription television's drama requirement which ensures their customers have access to a range of quality Australian drama. Nor does the ADG support a proposal that the rate of streaming obligation matches the proposed rate of obligation for subscription television (5%) from July 1.

This simplistic approach does not appropriately consider that subscription television and streaming platforms are very different businesses models at entirely different stages of their life cycles, nor will it offset the reduced spending on adult drama and children's content following the partial deregulation of commercial free-to-air television.

Modelling by Screen Producers Australia shows that the relaxation of the local content quotas on the commercial free-to-air broadcasters in 2020 will result in an annual loss of \$100 million in local content production with an average current annual contribution from SVODs to Australian drama over the last three years of \$62.3 million.⁹

Our assessment of the appropriate rate of obligation for streaming platforms at 20% is built around not just the transitioning of this lost level of investment (and capturing existing streamer productions levels) but seizing the opportunity to capitalise on a high growth market and deliver stronger levels of production to deliver significant incremental investment in skills and jobs without any additional impact on public funding. SPA modelling shows that a 20% rate of obligation would deliver approximately \$366 million in Australian content investment annually, driving an additional 10,000 industry jobs creating over 300 hours of Australian content to streaming audiences each year.

The European Union's mandates that all SVODs operating there provide at least a 30% share of European work in their catalogues and ensure prominence of those works. A regulatory obligation set at 20% follows the European model legislated by the French government, which requires SVOD platforms to reinvest up to 25% of their local revenue into local content production. Existing Canadian content regulation for broadcasting providers in Canada is revenue-based and this has proved to be a stable and successful model. Canadian domestic broadcasters are currently required to invest between 25% and 45% of their revenue into Canadian content, and the Canadian government is now working towards a harmonisation of this regulation for cable TV and 'online' companies such as Netflix and Disney+¹⁰

A timely implementation of obligations in-line with international precedents is important for several reasons including the real risk to Australia from streaming platforms directing production spend to jurisdictions in which there are mandated minimum investment levels.

Whilst an influx of international production driven by our relative COVID safety and \$400m in Locations Offset top-ups is currently stretching industry capacity, this is not a reason to impose lower local content obligations on streamers. When the world goes back to normal and comparable financial incentives are provided elsewhere, a significant proportion of this 'footloose' production will return to closer time zones with better exchange rates. If correctly staged, the implementation of streamer content obligations would provide employment continuity for crews and businesses currently engaged in international production reducing the risk of them following productions to competing offshore jurisdictions.

⁹ <https://www.screenaustralia.gov.au/fact-finders/production-trends/online-drama>

¹⁰ Canada to Force Netflix, Amazon Prime to Pay for Local Content', The Hollywood Reporter, 3 November 2020.

The ADG does not support a proposal that the rate of streaming obligation should be matched to the rate of obligation that is proposed to apply to subscription television (5%). The ADG proposes that Eligible SVOD and AVOD services should invest 20% of their Australian-sourced gross revenue into commissioning new Australian content.

Alternate Models

6.3 Should alternative models, such as a percentage of overall programming expenditure, be considered?

The ADG submits that the optimal quota framework is one that incorporates both overall expenditure and hours of content to measure Australian content obligations for each regulated entity. The system should appropriately consider relevant factors such as the genre/type of programming for each platform, the time of day for linear broadcasters or the number of downloads/views for digital platforms. Minimum volume requirements, or points systems that incentivise both levels and quality of production would also be appropriate to consider.

The ADG is concerned that risk exists in a singular revenue-based measurement for a regulated entity to meet its obligations by producing single large budget productions to support broad global marketing objectives and not necessarily long-term Australian audience engagement and retention. This concentration of production investment would result in substantially less locally commissioned titles and therefore less engagement with a diverse range of Australian creatives and independent production companies. This would ultimately lead to a contraction in local production capacity and represents a lost opportunity for sustained industry growth.

The ADG proposes that regulatory obligations should include transmission and promotion obligations for new Australian content. Without any obligation to deliver and promote local content to Australian audiences, there's potential that a platform invests in Australian productions that might not be seen (intentionally or inadvertently). Particularly where content is offered algorithmically based on platform preference or individual viewing behaviour.

Canadian¹¹ and European¹² regulatory frameworks include requirements to ensure that local content is promoted and provided prominence across the platforms.

With respect to a regulatory definition of 'Australian' content, the ADG believes that the creation of a new definition would create uncertainty and complexity. Two definitions currently exist; the Significant Australian Content test (part of the Producer Offset legislation) and the Children's Content Standard 2020. The ADG submits that the definition of 'Australian' content be that in the Producer Offset legislation through its Significant Australian Content test.

The ADG proposes a streaming obligation which is a combination of both expenditure and genre sub quota hours and/or points systems that appropriately incentivise production quality and volume with a requirement that regulated entities report annually on these key indicators. Additionally, the ADG proposes that regulatory obligations must include transmission and promotion obligations for new Australian content and that the definition of 'Australian' content be that in the Producer Offset legislation through its Significant Australian Content test.

¹¹ <https://www.ic.gc.ca/eic/site/110.nsf/eng/00012.html>

¹² <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L1808&from=EN>

Thresholds

6.4 Is the proposed revenue threshold of \$100 million reasonable?

To ensure that regulatory obligations do not impede smaller emerging providers and new entrants to the streaming sector, the ADG supports the Green Paper's proposal for platform eligibility thresholds. The ADG also supports linking thresholds to a regulated entity's gross Australian revenue and its subscriber numbers in Australia.

However, the ADG submits that thresholds should be set at \$50 million gross Australian revenue per year and 500,000 Australian subscribers. The level of \$100m proposed in the Green Paper would not capture stable and mature platforms already operating in Australia with significant reach and influence. From data available in the public domain, the ADG believes a threshold of 500,000 subscribers would incorporate Netflix, Stan, Disney+, Amazon Prime & Binge into the regulatory framework. These businesses are not new entrants nor are they small, in fact the majority are owned by large multi-nationals.

The ADG does not support the proposed revenue threshold of \$100m and proposes a gross Australian revenue threshold of \$50m per year and a subscriber threshold of 500k Australian subscribers.

Genre

6.5 Should the investment obligation be able to be fulfilled with any genre of Australian content, or genres such as drama, children's programming, or documentaries?

In April 2020, great uncertainty was caused in the production sector when the government announced a temporary suspension of Australian content obligations for commercial free-to-air television broadcasters. The suspension was aimed at alleviating the financial pressures stated by these broadcasters because of a marked decline in advertising revenue and because of interruptions to the supply of local content because of COVID-related lockdowns.

The ADG was made aware by producers that Channel Seven and the Nine Network cancelled productions in advanced development shortly after the government announced in September that the quotas would return in a relaxed form from January 1, 2021.¹³

The removal of the sub quotas is leading to fewer and less new productions across the board and a collapse in commissioning in certain vulnerable genres, particularly Australian children's content. Further reduction in production levels will inevitably follow from the government's decision to halve the requirement for Foxtel to invest in Australian drama content from July 1 this year.

This relaxing of regulation requires a wholistic and coherent cross-platform overview which looks to appropriately protect at-risk genres. Recent history and international precedent show that the inevitable consequence of removing or relaxing content quotas is a substantial reduction in the amount of locally produced content.

¹³ Department of Infrastructure, Transport, Regional Development and Communications, Modernising Australian Screen Content Settings.

As a recent example, following sustained complaints from Public Service Broadcasters that Children’s content was no longer commercially viable, in 2003 the UK government took the decision to reduce obligations on this genre. The result was catastrophic with a 95% reduction in children’s content between 2003 and 2015.¹⁴

There followed a significant industry campaign and in 2017 the government ultimately reintroduced its power to mandate quotas. It is now spending significant public funds to bring UK children’s screen content back to prior levels.

The ADG does not support the proposal that the investment obligation be able to be fulfilled with ANY genre of Australian content. To preserve vulnerable genres, the ADG proposes a revenue-based obligation that includes an obligation to commission sub-quotas of scripted drama, documentary, children’s genres.

The ADG notes that streaming platforms preference and specialise in certain genres more than the broad/general offerings provided by commercial free-to-air television and subscription television. The ADG believes it would therefore be commercially inappropriate to require a streaming service to engage and invest in a genre that is not otherwise a characteristic of its catalogue. The genre sub-quotas, the ADG would propose, should be commensurate with the platform’s level of current engagement with non-Australian content in a genre. The ADG feels it would be appropriate for a regulator to have a role in determining sub-quotas requirements as a proportion of the overall regulatory obligation and the ADG welcomes further discussion on how sub-quotas are determined.

Whilst specific funding is available through NITV and Screen Australia’s Indigenous unit, the ADG notes that Australia currently lacks a requirement for the private sector to engage in First Nations content, content which faces financing and marketplace challenges yet is of great cultural significance. The ADG submits there is opportunity in the regulatory structure for streaming platforms to support this genre, with less reliance on existing government funding models. The ADG recommends further engagement with relevant stakeholders on the important issues surrounding the definition of First Nations content.

The ADG does not support the proposal that the investment obligation be able to be fulfilled with any genre of Australian content. The ADG proposes an obligation to commission into genres (scripted drama, documentary and children’s) commensurate with the platform’s current engagement with non-Australian content in that genre as well as a proportion of the regulatory obligation being acquitted through commissioning of First Nations content.

Commissioned and Acquired Content

6.6 Should the investment obligation be geared to commissioned content, or broadened to permit the acquisition of Australian content that would satisfy the first release requirement?

Determining the type of expenditure regulatory obligation will acquit and how platforms engage with the local independent screen sector are fundamental to determining the economic flow-through benefits. This is particularly important in respect of providing sustained growth opportunity for the independent production sector.

¹⁴ Robert Kenny and Tim Suter, *Children’s television – a crisis of choice The case for greater commercial PSB investment in Children’s TV*, 26 February 2015.

The ADG submits that expenditure on acquisitions and licensing should not be eligible for meeting regulatory obligations. The requirement should only be able to be acquitted through newly commissioned programs.

Inherently, the commissioning platform's early participation in the creative process is critical to the quality and success of the final content, it also builds deep creative relationships from which future opportunities emerge. Whilst income from acquisitions and licensing has its financial benefits, financial and creative engagement in the development of a project is of most importance to the Australian independent production sector. For many independent production businesses, it is the key to creating a sustainable business model.

The presence of multiple industry participants establishes diverse pathways for all creative professionals and is a necessary part of sustaining a diverse local production sector. It is how a broad range of ideas are delivered into the Australian content ecosystem. The ADG is concerned that local investment could trend towards 'in-house' production where this would not be the case. This would result in substantial reduction and reduced diversity in commissioning opportunities.

The ADG submits that regulated entities be required to work with independent Australian production companies with a minimum requirement of 80% of their expenditure obligation spent on the independent sector.

The ADG would not support an acquittal of a platform's investment obligation by way of contribution to a content fund. The ADG has concerns that this model prevents local creatives and production businesses from building direct and meaningful relationships with the commissioning platforms.

The ADG proposes that the investment obligation should only be able to be acquitted through newly commissioned programs, and that expenditure on licensing and acquisitions should not be eligible for meeting regulatory requirements. The ADG also submits that regulated entities be required to work with independent Australian production companies with a minimum requirement of 80% of their expenditure obligation spent in the independent sector.

Scope

6.7 Should the investment obligation capture broader categories of content investment, such as pre- and post- production?

The quality and success of a production is driven by the commissioning platform's early engagement in the creative process. It allows a commissioning platform to bring its knowledge and market expertise into decision-making which will deliver audience appeal and market success.

Importantly it also enables local creatives and content producers to work directly with the commissioning platform and build deep creative and commercial relationships that deliver future content commissions.

The ADG supports an investment obligation that captures pre- and post-production.

THE ROLE OF THE ABC & SBS IN PROVIDING AUSTRALIAN CONTENT

Current Levels of Produced and Commissioned Content

7.1 Is the current amount of Australian content produced and commissioned by the ABC and SBS appropriate?

Whilst public broadcasters continue to make a meaningful contribution to ensuring that Australian audiences can see screen content created by them, for them, and about them, they are currently not subject to the same content quota obligations as commercial free-to-air television broadcasters. To form an accurate view on the question of whether the amount of Australian content currently produced by the ABC & SBS is appropriate, the ADG would need to see the data from the proposed enhanced National Broadcasters Reporting Regime. This said, it is highly likely that there is a need for increased funding for both public broadcasters to ensure stability and growth in produced and commissioned Australian content.

To form an accurate view on the question of whether the amount of Australian content currently produced by the ABC & SBS is appropriate, the ADG would need to see the data from the proposed enhanced National Broadcasters Reporting Regime. This said, it is highly likely that there should be an increase in funding for both public broadcasters to ensure stability and growth in produced and commissioned Australian content.

Statutory Obligation

7.2 How should a statutory obligation for the ABC and SBS to provide Australian content be constructed?

A greater certainty and predictability in the investment levels and objectives and genre priorities of the ABC & SBS would be welcomed by the local screen sector and would be of great assistance in respect of business planning and creative development.

We welcome further engagement with government and the public broadcasters in respect of the structuring of any statutory obligations with an ultimate objective of ensuring that future public funding for Australian content is not redirected to other areas of the public broadcaster's budgets.

The ADG supports, in principle, new regulatory frameworks for the ABC and SBS which protect the minimum levels of Australian content they commission. These should accommodate and be aligned with their unique charters and should provide certainty for Australian scripted content, children's content, and documentary.

The removal of commercial broadcaster's sub quotas for Australian children's content means the importance of ABC's role in commissioning this genre has increased significantly. Whilst the government looked to partially offset reduced production levels with incremental funding for the Australian Children's Television Foundation (ACTF) there surprisingly was no new funding announced for the ABC and SBS given they are now left with the sole responsibility of commissioning and broadcasting Australian children's in Australia.

For the government to receive a return on its increased investment in the ACTF the public broadcasters need to be appropriately incentivised and funded to purchase it.

The ADG welcomes further engagement with government and the public broadcasters on a new regulatory framework that protects the minimum levels that the ABC and SBS commissions in new Australian content for children's, scripted drama, and documentary genres. Any prescribed levels should be appropriately aligned with their unique charters. We strongly recommend that any regulatory obligation is tied to an increase in direct funding, this is critical as, for example, the ABC's role in commissioning children's content has increased significantly following the removal of commercial broadcast sub quotas for this genre.

Regulatory Impact of ABC & SBS content obligations to the Screen Production Industry

7.3 What impact would the imposition of a clear Australian content obligation for the ABC and SBS have on the Australian screen production industry, and the provision of Australian content more broadly?

The impact would be a greater certainty and predictability in the investment priorities, objectives, and genre priorities of the ABC & SBS and this would be welcomed by the local screen sector and would be of great assistance in respect of business planning and creative development.

THE WAY FORWARD

Timeframe

8.1 Is the timeframe proposed in this chapter realistic?

The negative impact on production investment delivered by the Government's decision to move swiftly to partially deregulate subscription television and commercial free-to-air television is ongoing. As mentioned earlier in this submission, this relaxation of regulation, according to SPA's modelling, will result in an annual reduction in local production of approximately \$100 million and the industry is already feeling its effects.

The ADG notes that the Green Paper proposes a timetable for commencing new regulatory obligations of 1 July 2022. The ADG is concerned that this constitutes an unsustainable delay. There is a strong likelihood of continued damaging contraction in the local production sector until such time as a new regulatory framework is implemented.

Given the Government's decision to move swiftly to deregulate subscription television and commercial free-to-air television there is now an urgent need for regulatory implementation and the ADG proposes that new investment obligations on SVODs and AVODs commence as soon as possible, on 1 January 2022. The ADG submits that the concept of Australian content obligations for streaming services, both here and internationally, has been a public policy conversation for several years. The prospect of regulation should not be an unexpected one for the streaming platforms already operating in Australia.

Timeline

8.2 Are there any particular stages that would require a greater or lesser period?

There is a current risk of serious contraction in independent production capacity because of the swift deregulation of commercial free-to-air broadcasters. The sector urgently needs certainty on investments in Australian content by streaming platforms.

The Green Paper proposes an approach for implementation of regulatory obligations that could conceivably result in large streaming services delaying their contribution to Australian content for at least 2 years. It proposes a two-step process whereby an expectation would be set by Government and then, if the regulated entities didn't meet this expectation for two consecutive years, the government would then have the power to implement formal regulatory obligations. The ADG submits that immediate implementation of clear and enforceable regulatory obligations is warranted and does not support this staged approach.

The timetable for regulatory reform set out in the Green Paper was in the context of the original date for submissions of March 2021. The ADG submits that any time extended for submissions should not lead to a delay in the decision and implementation timetable.

The ADG does not support the two-stage implementation approach proposed in the Green Paper. The ADG submits that an immediate implementation of well-defined and well-regulated obligations is urgently needed to address the reduced production levels resulting from deregulation of free-to-air commercial broadcasters.

Risks & Factors of Transition Timing

8.3 Are there particular risks and factors that need to be taken into account in terms of the timing for the transition to the new licensing and regulatory model?

As noted elsewhere in our submission, ongoing risk exists of industry contraction because of deregulatory reform. The Government's proposed implementation approach may result in streaming services delaying any contribution to Australian screen content for at least 2 years. The ADG is concerned that this constitutes an unsustainable delay with a strong likelihood of damaging impact to the local production sector capacity. There is significant risk for children's content, following the removal of minimum obligations on commercial free-to-air television. This makes regulatory interventions to support this genre an immediate necessity.

An influx of international production driven by our relative COVID safety and \$400m in Locations Offset top-ups is currently providing strong employment growth for local crews and a much-welcomed economic boost to screen industry infrastructure and technology companies. However, as the world goes back to normal there is risk that these gains will be lost. Inevitably comparable or better financial incentives will be introduced by competing jurisdictions in closer time zones with more favourable exchange rates as they look to stimulate recovery in their own screen sectors.

A significant proportion of this 'footloose' production will drift offshore and the Australian talent and screen businesses currently supporting it could follow. If staged correctly and swiftly the implementation of streamer content obligations has every opportunity to provide employment continuity for these cast, crews, and businesses.

As well as the overall decline in production levels resulting from free-to-air deregulation, the ADG has observed an almost total decline in commissioning of children's content. This makes intervention an immediate priority. Additionally, if staged correctly and swiftly the implementation of streamer content obligations would provide employment continuity for the cast, crews and businesses currently supporting the higher levels in international 'footloose' production offsetting the risk of them relocating internationally as projects relocate to other competing jurisdictions.

ALL CONSULTATION QUESTIONS:

CHAPTER 3

<i>3.1 Is the deregulatory benefit on offer sufficient to encourage commercial television broadcasters to take up this offer?</i>
The ADG does not support the incentive for broadcasters taking up the new class of television licence being complete deregulation of Australian content obligations on commercial free-to-air television.
<i>3.2 Are there any other features which could attach to a new licence that would assist in broadcasters transitioning to a new and more sustainable business model?</i>
No comment.
<i>3.3 What elements of the existing regulatory framework should continue to apply?</i>
The ADG submits that all remaining Australian content obligations applying to commercial free-to-air television broadcasters should continue.
<i>3.4 Should the new licence arrangements be uniform for all commercial television broadcasting licensees, or should there be differences for metropolitan and regional / remote broadcasters?</i>
No comment.
<i>3.5 When do you think the new licence framework should come into effect?</i>
No Comment.
<i>3.6 What further measures should be considered that would assist regional commercial broadcasters in remaining sustainable?</i>
No comment.

CHAPTER 4

<i>4.1 Should Australia continue to operate digital television systems using the DVB-T standard and the MPEG-4 compression technique? Are there other options that should be considered?</i>
No comment.
<i>4.2 How should the new multiplex transmitter licences operate? Should broadcasters be required to form a company for the purposes of holding the new multiplex licences?</i>
No comment.
<i>4.3 How can the Government work with industry to minimise disruption for households during the proposed transition?</i>
No comment.
<i>4.4 Is it important for free-to-air broadcasters to maintain the precise number and picture quality of channels currently offered?</i>
No comment.
<i>4.5 Should the transition model prioritise the capacity for broadcasters to provide significantly more services, or services of a significantly higher audio-visual quality (such as UHD)?</i>
No comment.
<i>4.6 What would the cost savings be for broadcasters? Over what period would these potential savings be realised?</i>
No comment.

CHAPTER 4 (Cont'd)

4.7 What would be the impact on owners of transmission facilities?

No comment.

CHAPTER 5

5.1. Do you consider that revenue from the sale of spectrum could be used to support public policy initiatives for media?

The ADG supports the use of spectrum sale proceeds for the delivery of public screen policy outcomes provided a reduction in direct support through screen agencies is not a consequence of an additional screen content fund.

5.2 Are there examples of best practice in providing sustainable and targeted support in other jurisdictions?

The ADG supports standalone budget funding for cultural policy outcomes and not funding contingent on other non-related elements such as whether a proposed new class of licence, and spectrum arrangements are sufficient to incentivise broadcasters to sign up.

CHAPTER 6

6.1 Should the investment obligation apply to all types of SVODs, BVODs and AVODs including those that specialise in content such as sport?

The ADG proposes that the investment obligation apply to all types of SVODs, BVODs and AVODs with no exemption for services owned by a corporate structure that also owns a broadcasting licence.

6.2 Would a rate of investment of five per cent of Australian revenue be reasonable? Is there an alternative rate that is more appropriate?

The ADG does not support a proposal that the rate of streaming obligation should be matched to the rate of obligation that is proposed to apply to subscription television (5%). The ADG proposes that Eligible SVOD and AVOD services should invest 20% of their Australian-sourced gross revenue into commissioning new Australian content.

6.3 Should alternative models, such as a percentage of overall programming expenditure, be considered?

The ADG proposes a streaming obligation which is a combination of both expenditure and genre sub quota hours and/or points systems that appropriately incentivise production quality and volume with a requirement that regulated entities report annually on these key indicators. Additionally, the ADG proposes that regulatory obligations must include transmission and promotion obligations for new Australian content and that the definition of 'Australian' content be that in the Producer Offset legislation through its Significant Australian Content test.

6.4 Is the proposed revenue threshold of \$100 million reasonable?

The ADG does not support the proposed revenue threshold of \$100m and proposes a gross Australian revenue threshold of \$50m per year and a subscriber threshold of 500k Australian subscribers.

CHAPTER 6 (Cont'd)

6.5 Should the investment obligation be able to be fulfilled with any genre of Australian content, or genres such as drama, children's programming, or documentaries?

The ADG does not support the proposal that the investment obligation be able to be fulfilled with any genre of Australian content. The ADG proposes an obligation to commission into genres (scripted drama, documentary and children's) commensurate with the platform's current engagement with non-Australian content in that genre as well as a proportion of the regulatory obligation being acquitted through commissioning of First Nations content.

6.6 Should the investment obligation be geared to commissioned content, or broadened to permit the acquisition of Australian content that would satisfy the first release requirement?

The ADG proposes that the investment obligation should only be able to be acquitted through newly commissioned programs, and that expenditure on licensing and acquisitions should not be eligible for meeting regulatory requirements. The ADG also submits that regulated entities be required to work with independent Australian production companies with a minimum requirement of 80% of their expenditure obligation spent in the independent sector.

6.7 Should the investment obligation capture broader categories of content investment, such as pre and post- production?

The ADG supports an investment obligation that captures pre- and post-production.

CHAPTER 7

7.1 Is the current amount of Australian content produced and commissioned by the ABC and SBS appropriate?

To form an accurate view on the question of whether the amount of Australian content currently produced by the ABC & SBS is appropriate, the ADG would need to see the data from the proposed enhanced National Broadcasters Reporting Regime. This said, it is highly likely that there should be an increase in funding for both public broadcasters to ensure stability and growth in produced and commissioned Australian content.

7.2 How should a statutory obligation for the ABC and SBS to provide Australian content be constructed?

The ADG welcomes further engagement with government and the public broadcasters on a new regulatory framework that protects the minimum levels that the ABC and SBS commissions in new Australian content for children's, scripted drama, and documentary genres. Any prescribed levels should be appropriately aligned with their unique charters. We strongly recommend that any regulatory obligation is tied to an increase in direct funding, this is critical as, for example, the ABC's role in commissioning children's content has increased significantly following the removal of commercial broadcast sub quotas for this genre.

7.3 What impact would the imposition of a clear Australian content obligation for the ABC and SBS have on the Australian screen production industry, and the provision of Australian content more broadly?

The impact would be a greater certainty and predictability in the investment priorities, objectives, and genre priorities of the ABC & SBS and this would be welcomed by the local screen sector and would be of great assistance in respect of business planning and creative development.

CHAPTER 8

8.1 Is the timeframe proposed in this chapter realistic?

Given the Government's decision to move swiftly to deregulate subscription television and commercial free-to-air television there is now an urgent need for regulatory implementation and the ADG proposes that new investment obligations on SVODs and AVODs commence as soon as possible, on 1 January 2022. The ADG submits that the concept of Australian content obligations for streaming services, both here and internationally, has been a public policy conversation for several years. The prospect of regulation should not be an unexpected one for the streaming platforms already operating in Australia.

8.2 Are there any particular stages that would require a greater or lesser period of time?

The ADG does not support the two-stage implementation approach proposed in the Green Paper. The ADG submits that an immediate implementation of well-defined and well-regulated obligations is urgently needed to address the reduced production levels resulting from deregulation of free-to-air commercial broadcasters.

8.3 Are there particular risks and factors that need to be taken into account in terms of the timing for the transition to the new licensing and regulatory model?

As well as the overall decline in production levels resulting from free-to-air deregulation, the ADG has observed an almost total decline in commissioning of children's content. This makes intervention an immediate priority. Additionally, if staged correctly and swiftly the implementation of streamer content obligations would provide employment continuity for the cast, crews and businesses currently supporting the higher levels in international 'footloose' production offsetting the risk of them relocating internationally as projects relocate to other competing jurisdictions.

Contact Name:

Alaric McAusland
Executive Director

Organisation Name:

The Australian Directors' Guild

Address:

Suite 28/330 Wattle Street
Ultimo
NSW 2007

Phone:

(02) 9555 7045

Email:

alaric@adg.org.au

This submission is provided for public publishing.