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Supporting Australian stories on our screens

Options paper

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Contents

Broadcasters are concentrating their drama investments into shorter-running dramas, with the total hours of Australian TV drama dropping from a peak of 852 hours in 1997–1998 to 441 hours in 2018–2019.[146] The average cost per hour of all Australian drama titles increased seven per cent between 2017–18 and 2018–19.[147]

The table below shows the quantity of vulnerable genres provided to audiences under the sub-quota requirements for commercial broadcasters.[148]

Table 3: Compliance of commercial broadcasters with quotas (2014–18)

Sub-quotas on commercial broadcasters	First-release Aus doco	First-release Aus drama	First-release Aus children's drama	First-release Aus children's programs	All children's programs	All Aus preschool programs
Sub-quotas on commercial broadcasters	Five-year average	(triennial score 2014–2016)	(triennial score 2015–2017)	Five-year average	Five-year average	Five-year average
Minimum annual requirement	20 hours	860 points	96 hours	130 hours	260 hours	130 hours
Seven	87	883	96	130	261	131
Nine	27	870	97	130	314	130
Ten	34	874	96	132	262	130

Broadcasters tend to meet or only marginally exceed sub-quotas for Australian drama, children's and preschool programs.

A decade ago, top Australian FTA dramas could reasonably aim for two million viewers on FTA television. In 2019, the highest rating drama program was series 4 of Utopia, with 1.2 million average viewers.[149] As audiences move away from traditional broadcast platforms, particularly to view drama programs online, the production of drama for FTA broadcast becomes more commercially unsustainable.

As already highlighted, child audiences for dedicated P- and C-classified programming on commercial FTA channels have significantly reduced, as the ABC's children's offerings increase in popularity and child audiences shift online.[150]

Stakeholders have also raised concerns that children's drama quotas are often acquitted via animated content without obvious Australian elements. Children's drama can cost as much as adult drama, but with a smaller potential audience. It is also difficult to finance and monetise, in part due to complex scheduling and advertising restrictions on children's content broadcast on commercial television contained in the CTS. These rules have not kept pace with changes in children's viewing behaviours, broadcasting practice (including new dedicated channels for 'destination viewing') and the rise of on demand viewing.

The ACMA's compliance results show that broadcasters are comfortably exceeding the first-release documentary sub-quota each year. In addition to traditional nature and social documentaries, broadcasters are counting long running observational series such as RBT, Bondi Rescue, Highway Patrol and Border Security towards their obligation. The number of individual documentary titles produced each year is in decline, with a clear shift towards series production.[151]

[146] Screen Australia drama productions statistics and Screen Australia, *2018-19 Drama Report*, 2019, p. 14.
[147] Screen Australia, *2018-19 Drama Report*, 2019, p. 14.
[148] Explanatory statement to the Broadcasting Services (Australian Content) Standard 2016.
[149] OzTAM and RegionalTAM, 5-city-metro, combined markets, total people, average audience, consolidated 28 day. Metro viewers = 941,000. Compiled by Screen Australia, *'CEO's 2019 Year in Review and 2020 Preview'*, 2020, accessed 26 February 2020.
[150] Although the ABC's dedicated children's channels have successfully captured the broadcast television audience for children's content including drama content, the ABC Charter does not specifically require the ABC to provide Australian children's content. The ABC relies entirely on government support to deliver high quality children's productions.
[151] Screen Australia, *Documentary production statistics: activity summary*, 2018.

Spend requirements on subscription TV broadcasters

Unlike quota requirements, the NEDE scheme for subscription broadcasters links Australian content to total overall program expenditure, allowing levels of expenditure on new Australian drama content to rise and fall depending on industry conditions. Under the scheme, expenditure on new Australian drama programs has increased since 2012–13, with 2017–18 marking a record high expenditure of $56.72 million on Australian and New Zealand drama programs.[152] However, given the declining performance of Foxtel's subscription broadcasting service, the dominant subscription broadcaster, it is anticipated that this trend will not continue for 2018–19 and is likely to decline.

Tax incentives and direct funding

Indirect funding via tax offsets has proven successful, but current rebate settings are not suited to a converging environment. The Producer Offset is available for projects with significant Australian content, providing a 40 per cent rebate for eligible feature films, and a 20 per cent rebate for other eligible content. Distinctions between films released in cinemas, and content released via television and online, are disappearing for both industry and audience, leading to calls for a harmonised Producer Offset that would allow creators to seek audiences on their preferred platform.

In addition, pressures on the budgets of feature films will often incentivise producers to invest their own money into productions on the basis that a tax offset will cover their expenses. In these circumstances the Producer Offset serves as a way of propping up individual project budgets and is less effective in supporting the ongoing sustainability of businesses.

The Location Offset is the primary mechanism for attracting large budget international productions to Australia to provide greater economic, employment and skill development opportunities for the Australian sector. However, at the current rate of 16.5 per cent, the policy objective of the Location Offset is not being realised because Australia is not competitive with other jurisdictions that offer more attractive incentives. To compete with higher foreign incentives, the Location Incentive program offers funding up to 13.5 per cent of QAPE for eligible international footloose productions. It can be combined with the Location Offset to effectively provide a 30 per cent rebate. As at 10 March 2020, $123 million has been announced to attract ten productions which will generate over $970 million in investment in Australia's economy. Several sections of the production industry have called for the Location Offset to be raised to 30 per cent to create a guaranteed, competitive rebate. Others are concerned that 30 per cent rebates offer higher subsidy for foreign productions than the 20 per cent Producer Offset rebate for Australian projects that are not feature films.

The PDV Offset offers a 30 per cent rebate for eligible post-production, digital and visual effects work. The objective of the PDV Offset is to attract post-production, digital and visual effects production to Australia, regardless of where the project is shot. The content formats that are eligible under the Location and PDV Offsets are broader than under the Producer Offset. A broader range of eligible content formats maximises the benefits of attracting international investment, creating jobs and providing training opportunities for the local industry. The broader eligibility settings and a minimum QAPE threshold of $500,000 has resulted in a significant and unexpected rise in domestic reality television and infotainment/lifestyle/light entertainment productions applying to the PDV Offset. The PDV Offset, given its higher rate of 30 per cent, is also being accessed by children's animated series rather than the 20 per cent Producer Offset. This may encourage the production of animation over live action.

Direct funding via Screen Australia is under pressure from fragmenting audiences and rising costs. Screen Australia funds high quality, culturally valuable content released in cinemas, on broadcast and subscription television, and online (including via SVOD and social media platforms). The fragmentation of audiences across these multiple platforms has increased demand for funding, spreading it thinner at the same time as production costs are increasing as producers seek to compete with international content.

Funding and commissioning of content

Changes in audience behaviour are challenging the traditional financial models for Australian content creation.

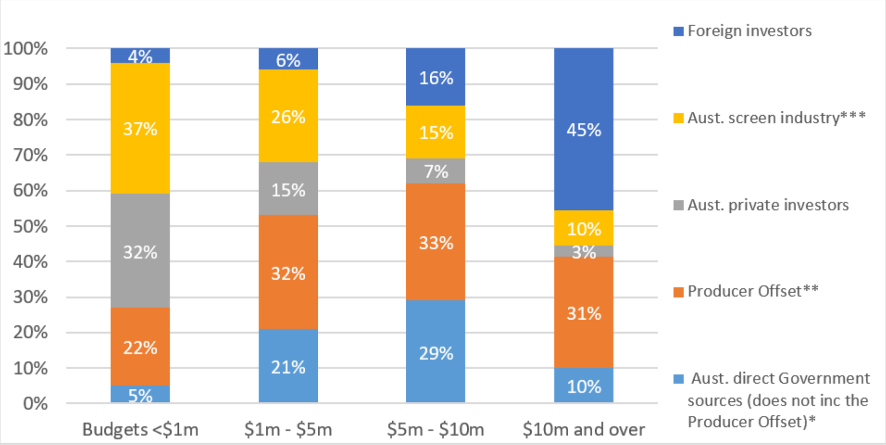
When cinemas and commercial and FTA broadcasters show new content, they generally try to attract a very large audience during a limited period. Producers retain the rights to distribute their content via other means such as foreign box offices and broadcasters, Blu-ray and DVD sales, online platforms and other

[152] ACMA, Spending-and-targets, accessed 12 December 2019.

services. Public funding such as the Offsets and Screen Australia funding was largely designed to support these traditional models and encourage producers to retain meaningful equity and future revenue streams.

Every feature film is financed from unique sources, but trends are evident across budget brackets.

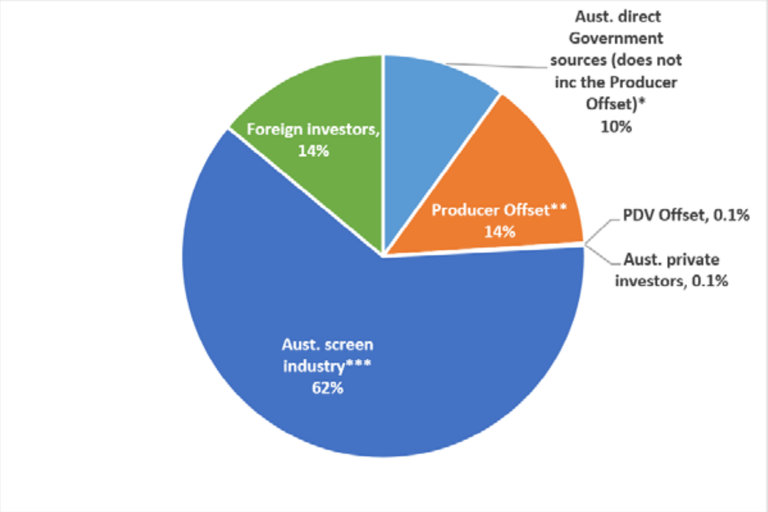
Figure 14: Finance sources for Australian drama feature films, five-year average (2014–15 to 2018–19)



Source: Screen Australia production statistics. Figures based on five-year averages for titles entering production 2014–15 to 2018–19. See footnote for more information.[153]

The films that source a higher percentage of their budgets from government support are mid-budget films. These films often have limited releases, and due to changing cinema audience preferences and growing competition, can struggle to compete. If lower and mid-budget films do not quickly find an audience, they can quickly disappear from cinema screens.

Figure 15: Finance of Australian TV drama (excluding children's), five-year average 2014–15 to 2018–19



Source: Screen Australia production statistics. Figures based on five-year averages for titles entering production 2014–15 to 2018–19. See footnote for more information.[154]

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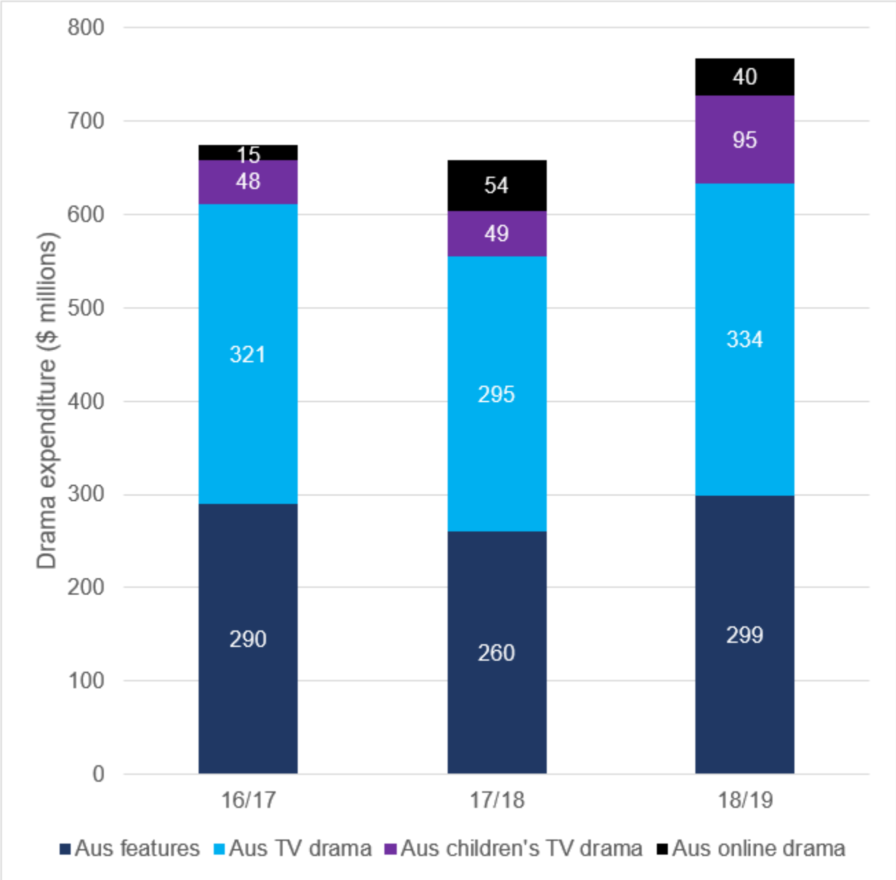
[153] Notes: Figures may not total exactly due to rounding.
* Includes direct funding from Australian state and federal agencies and funding bodies. Equity investments and grants only—distribution guarantees, loans and underwriting are not included.
** The Producer Offset amount is taken from the finance plan of each title. For Screen Australia funded projects—the agency only requires 90 per cent of the anticipated Offset in the finance plan for features and television projects. A producer is entitled to retain the difference for their own purposes, but many producers still include it in the finance plan. For this reason, the Producer Offset amounts listed above may be lower than what is eventually received from the Australian Taxation Office for each project.
*** Finance provided by Australian-based producers and production companies, distribution companies, FTA broadcasters (commercial and public) and subscription TV channels. The Producer Offset, cash flowed in various ways, is listed separately.
[154] Notes: Figures may not total exactly due to rounding. Children's TV Drama titles have been excluded. Online titles have been excluded, though titles of 60 minutes or more, that entered production prior to 2016-17 and were made for

Television projects are chiefly financed by broadcasters, which pay a licence fee for the rights to show content during a limited premiere run, and often invest for a share of equity in the project. The amount of foreign investment in Australian TV drama has increased in recent years.

The content commissioning model for SVODs differs from broadcasters in several ways. Australian drama created for SVOD platforms tends to have higher production values. The average cost per hour of Australian SVOD drama miniseries is around 1.5 times the average cost per hour of Australian TV drama miniseries.[155] However, total spend in Australia on online drama, which includes SVOD content, remains low compared to TV drama and features.

Figure 16: Spend in Australia on Australian drama 2016–17 to 2018–19



Source: Screen Australia drama statistics.[156]

The global SVOD market is growing quickly and is contested by large international platforms, some national services such as Stan, and a variety of niche services. When SVOD platforms commission new content, they may pay a large upfront fee for all rights to show the content, in all territories, for several years if not forever. A platform may provide the vast majority of finance, with some support from tax rebates and direct government funding. Producers may earn a significant sum up front, but no longer gain from the traditional 'long tail' of revenue.

Competition for fragmenting audiences is challenging the financing of all content. Government funding does not fully reflect current financing models, costs, and audience behaviour. Rising budgets can increase the quality of a project but test financially challenged Australian broadcasters. And the increasing role of foreign investment may lead to lesser influence over content from Australian commissioners and key creatives. These challenges are particularly acute for children's content, where costs may be comparable to adult drama, but broadcaster investment is often much lower and financing pathways via theatrical and online distribution can be limited.

an SVOD or BVOD, are included due to a change in reporting method. See the Screen Australia, *2018-19 Drama Report*, p. 42 for more details, and footnote above for *, ** and ***.

[155] Screen Australia production statistics.

[156] Screen Australian, *2018-19 Drama Report*, p. 5. See page 4 for definitions.

Long-term effects of maintaining the status quo

If current arrangements are maintained without adjustment, it seems likely that the ecosystem that supports Australian content will continue to contract. Production levels may fall to a new ‘floor’, cheaper productions may be used to fill broadcast quotas, and international productions may leave Australia with a downward impact on sector jobs. The Producer, Location and PDV Offsets, which are not targeted to the ‘new normal’ of production and viewing of content on online platforms, may also generate unintended consequences.

Over time, broadcasters may not be able to meet quota requirements if they can no longer afford to produce the required content and investment in the broadcasting industry could stall or fail. At worst, this could ultimately result in less, and lower quality, Australian content for Australian audiences. Meanwhile, the newer and growing content services may continue to make no or comparatively minimal investment in Australian content. Australian users of these services may not have new Australian content to view, while Australian content creators may miss pivotal opportunities for international finance and audiences.

This changed environment necessitates review of existing regulatory inequities to advance opportunities for the production sector on popular platforms. To maintain the status quo, guides the Australian industry to a domestically regulated content slate that, while providing some guarantee of annual demand, provides for little innovation and longer-term growth. Reforms can encourage the industry towards more diverse, future-facing opportunities that reflect modern viewing, and enable Australian content to ‘cut through’ global competition for audiences.

As the ACCC’s DPI final report indicated, continuing to heavily regulate a sector under pressure while allowing a booming sector to remain unregulated, does not represent a level-playing field. Government support measures and regulatory interventions must therefore be updated, such that all content providers and distributors that derive a significant financial benefit from Australian consumers, contribute to the broader ecosystem by way of investment and/or production of Australian content.

Options for change

The indicative models outlined below propose various new obligations and incentives for services whose primary purpose in Australia is the commissioning or acquisition of narrative video content. These services include national and commercial FTA broadcasters, subscription broadcasters (and channel providers) and subscription streaming (online) services.

The models have been developed following broad policy principles:

> Australian screen stories are important culturally and economically

> Our stories should be available on the screens we watch

> Regulation and incentives should be fit for purpose, effective and efficient.

The models and associated questions have been designed to stimulate informed debate. It is recognised that regulatory reform does not necessarily mean imposing identical regulations across all entities. Rather, the models seek greater consistency across services, while taking into account relevant differences, to best support Australian stories on our screens.

Reforms should be undertaken following consultation with stakeholders, and include a practical transition pathway.

Model considerations

> It is proposed that new obligations for online services are limited to subscription streaming services, the primary purpose of which is to commission and/or acquire narrative content and which meet certain scale thresholds. For example, thresholds could be nominally set at Australian revenue exceeding $200–300 million and total monthly paid Australian subscribers of 500,000–700,000. The thresholds aim to limit the application of Australian content rules to broadcasting services and large SVOD services, while providing flexibility to capture other services if required as they grow and evolve.

> It is proposed that BVOD and online services provided for free by FTA commercial and national broadcasters, would be excluded from obligations proposed for subscription streaming services under model 1 (status quo) and 2 (minimal). However, should FTA broadcasters' online services, under model 2, more closely resemble those of subscription streaming services in future, they could eventually be subject to the same requirements. Model 3 revenue provisions, relate to all the services of commercial content service providers, therefore, FTA catch-up and online revenue would be included as would revenue from any online services associated with subscription broadcasting.

> Terms such as 'new', 'first-release', 'commissioned', 'scripted', and 'Australian content' are proposed to be defined in the context of further consultation. These terms should not be assumed to reflect existing legislated definitions.

Further matters for consideration are discussed at Appendix A.

Model 1: Status quo

Policy objective

This model would retain the existing regulations and incentives to make and show Australian programs, which focus on traditional platforms. The status quo would prevail in circumstances where no future regulatory option can be implemented.

Obligations

Transmission quotas and sub-quotas on commercial FTA broadcasters

Transmission quotas, including sub-quotas set out in the ACS and CTS, on commercial FTA licensees would be retained under current arrangements.

NEDE scheme for subscription broadcasters

The NEDE scheme that applies to subscription broadcasting licensees and channel providers, would remain in place under current regulatory settings.

Australian content on national broadcasters

No new obligations would be introduced.

Australian content on subscription streaming services

No new obligations would be introduced.

Incentives

The Producer Offset, PDV and Location Offsets and Location Incentive would be retained under current arrangements. Screen Australia direct funding would continue.

Consultation questions

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

Model 2: Minimal

Policy objective

The purpose of this model is to fine-tune and modernise existing regulatory and funding arrangements to better reflect the contemporary media landscape. This model seeks to engage subscription streaming services on a voluntary basis, potentially as a precursor to future regulation, if needed.

Obligations

Transmission quotas on commercial FTA broadcasters

A transmission quota on commercial FTA licensees would be required but measured across all channels annually affording broadcasters' greater flexibility to acquit obligations and more freedom to establish niche channels. These requirements recognise broadcasters' access to public spectrum and ensures that all Australians would continue to have access to a minimum amount of free Australian content.

The distinction between primary and non-primary channels would be removed.

Sub-quota requirements on Commercial FTA broadcasters

Requirements for the transmission of minimum amounts of Australian drama, documentary and children's programming would be revised to provide greater flexibility. This could include requiring a proportion of the overall transmission quota to be dedicated to one or more of these formats.

Measures currently contained in the ACS and CTS would be amended to ensure obligations were more suitable to the contemporary media environment, including:

> removing requirements for P programs and repeat C programs

> removing prescriptive rules on the amount, scheduling and content of advertising to children, where these elements are adequately covered by other industry codes

> revising the definition of 'first-release' to address anomalies in the treatment of New Zealand content

> simplifying the drama points attribution system to better target new, commissioned Australian content.

This model could provide the flexibility for commercial FTA broadcasters to contribute to an Australian Children's Content Fund in lieu of broadcasting children's content.

NEDE scheme for subscription broadcasters

The NEDE scheme that applies to subscription broadcasters could be revised and rebalanced, including allowing broadcasters to flexibly acquit their obligation across formats.

Voluntary undertakings for subscription streaming services

The model proposes that subscription streaming services that meet scale and service thresholds would be requested to voluntarily make undertakings to the ACMA to invest in and promote Australian content on their services. For example, undertakings could include a certain level of hours of Australian content in catalogues, and potential investment as a proportion of Australian revenue. Individual services would outline their plans for meeting these expectations (which would be made publicly available) including reporting periodically on performance.

Reporting requirements for national broadcasters

National broadcasters' boards would be requested to report annually to Parliament on expenditure on, and hours of, Australian drama, documentary and children's content, to provide greater transparency and acknowledgement of their Australian content contribution.

Incentives

The Producer Offset would be reformed in response to audience and marketplace changes since its introduction in 2007. To recognise audience viewing of feature films across new platforms, a single flat rate Producer Offset would be provided to one-off, feature-length films regardless of platform. This single flat rate Producer Offset would also be provided to children's content distributed on any platform in recognition of the increasing pressure on financing this content. The current 20 per cent Producer Offset for other content would continue. The 65-hour cap on drama would be removed, to support long-running, successful titles. Minimum thresholds for some content would be raised, and reforms to clarify qualifying spend would be introduced. Projects could be required to demonstrate an appropriate pathway to their audience.

The Location and PDV Offsets would remain unchanged. The Location Incentive would be renewed in future years, to ensure targeted, ongoing support to attract international footloose, large budget production to enhance the capacity of the Australian industry.

Consultation questions

2. In the context of an Australian content transmission requirement for commercial FTA broadcasters what percentage requirement across all channels should apply?
3. How should requirements to support Australian drama, documentary and children's programming be prioritised? For example, should sub-quota arrangements (or elements of these) be retained, or should a proportion of the overall transmission requirement be dedicated to these formats?
4. Would contribution to an Australian Children's Content Fund by commercial FTA broadcasters, in lieu of broadcasting children's content, be feasible, and if so, at what level?
5. What, if any, amendments could be made to the NEDE scheme to improve outcomes for the sector?
6. How should Australian content be defined in the minimal and significant models? Is there a need to revise key definitions, including first-release, documentary and children's programs?
7. To ensure a better understanding of the levels of Australian content broadcast on FTA television what additional data should be provided by the public broadcasters?
8. In the context of the model considerations listed on page 40, what revenue and subscriber thresholds would be appropriate for the minimal and significant models?
9. What investment levels and library catalogue requirements might be considered appropriate voluntary undertakings for subscription streaming services?
10. At what level should the Producer Offset be set for children's programs and one-off feature length programs, and what other settings around minimum spend, qualifying spend and pathway to audience, would appropriately target support?

Model 3: Significant

Policy objective

The purpose of this model is to establish platform-neutral, future facing obligations and incentives that take into account individual platform offerings and audience engagement.

Obligations

Australian content investment requirements

All commercial content service providers, including subscription services, that meet scale thresholds, would be required to invest a percentage of their revenue (across all services) in new Australian scripted programming and report their investment to the ACMA. The investment rate, as a proportion of Australian revenue, would be approved by the ACMA, potentially reflecting the various platforms' business models, program formats and content genres.

The following options outline two alternative approaches for implementing an investment requirement across all service providers:

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

Service providers would be required to contribute to an Australian Production Fund (APF), to be administered by Screen Australia (APF funding would be allocated to drama, documentary and children's programming).

Option B: Service providers would be required to negotiate bespoke Australian content investment plans with the ACMA. The ACMA would take into account the specific business model of each service and how services would collectively achieve certain policy objectives. Investment expectations could be set by the ACMA to achieve outcomes in the public interest. The ACMA may also set specific investment expectations for certain genres, including new Australian drama, documentary and children's programs.

National broadcasters to allocate specific funding to children's programming

The ABC and SBS would be required to allocate specified amounts of funding for Australian children's programming to distribute on their services, whether linear or online. This requirement would counter-balance the likely reduction in preschool and children's production by commercial FTA broadcasters, and ensure that the particularly vulnerable genre of children's programming continues to be made available to audiences for free.

Promotion and discoverability

Flexible, principles-based promotion and discoverability requirements for Australian content would be applied across all platforms. This would enable platforms to tailor their approach according to their unique business models.

Reporting requirements

To ensure compliance across services, new reporting and transparency requirements are proposed across all platforms in line with their respective obligations. Under this model, reporting requirements would include revenue information to ensure that percentage investment requirements are correctly calculated.

In addition to reporting on compliance with requirements to fund certain levels of content, national broadcasters would be required to report to Parliament on total Australian drama, documentary and children's programming expenditure and hours broadcast/provided online.

Incentives

The Producer, Location and PDV Offsets would be set at a single rate for content on all platforms, creating a platform neutral approach.

The Location Incentive would not be continued. Format and threshold eligibility would be refined across the new Offset regime.

Under this model, some Australian content would require further support. A 'cultural uplift' could be introduced to provide further support via the Producer Offset for children's content and one-off, feature-length content. A points-based test for significant Australian content could measure factors such as presence of lead Australian writers, producers and directors; presence of Australian key cast; and whether most of the production occurs in Australia. Alternatively, children's content and one-off, feature-length content of quality and cultural significance could receive additional support through increased direct funding from Screen Australia. Further reforms to the Producer Offset would include removal of the 65-hour cap on drama and minimum duration requirements. Minimum spend thresholds would be revised, and various QAPE reforms to clarify allowable expenditure would be introduced. Projects could be required to demonstrate an appropriate pathway to their audience. Screen Australia would continue to directly fund quality content of cultural significance.

Consultation questions

11. Should scripted Australian content be limited to Australian drama, documentary and children's content, and are revisions to those terms necessary? Should it be limited to 'new' content, however defined?
12. How should revenue be calculated and what would be an appropriate investment percentage rate? Should that percentage be consistent across service providers or varied according to business models?
13. In relation to implementation option B for commercial content service providers, how often should these investment plans be negotiated?
14. In relation to option B for commercial content service providers, what authority should the ACMA have to negotiate investment plans and impose minimum requirements?
15. What promotion and discoverability requirements would be effective in the minimal and significant model?
16. What would be an appropriate level of funding for national broadcasters to allocate to children's content?
17. What level of Offset rebate should be provided across all platforms? Why would some Australian content require additional support, and should this be provided via direct or indirect funding? What other settings around minimum spend, qualifying spend and pathway to audience, would appropriately target support?

Model 4: Deregulation

Policy objective

The purpose of this model is to remove all regulation and remove or revise incentives to make Australian programs, in order to support platform neutral deregulation.

Obligations

All obligations removed

All content providers would have the ability to make programming decisions based on their business models, audience preferences and objectives, without government intervention. A level playing field would be established as a consequence of deregulating screen sector support arrangements.

National broadcasters

No change to current funding arrangements.

Incentives

Two alternative implementation options are proposed under this model.

Option A: That all Screen Australia (direct) and Offset (indirect) funding would be removed, resulting in full deregulation of Australian screen content support mechanisms.

Option B: The Producer, Location and PDV Offsets would all be set at a single rate for content distributed on any platform. Minimum spend thresholds would be examined and reformed to ensure the rebates efficiently target content of scale. The Location Incentive would not be continued. Eligibility of formats would be modernised and standardised across the new Offset regime. Screen Australia direct funding would be discontinued to focus support on content of scale that has secured finance from sources other than government.

Consultation questions

18. What Australian content would be provided in the absence of content regulations or incentives?

19. If a single rate Offset was provided to support market-based projects what level should it be set at? What formats should be included and excluded? What qualifying expenditure thresholds and other settings should apply?

Appendix A: Additional matters

Implementation issues

A number of implementation issues have been identified which may impact the composition and feasibility of the models proposed in this paper.

Australia's international obligations

Australia has obligations under the New Zealand Closer Economic Relations Trade Agreement (ANZCERTA) Services and Investment Protocols, and the Australia-United States Free Trade Agreement (AUSFTA). Any proposed changes to Australian content support arrangements would need to be considered with respect to their feasibility under these agreements.

Definitions

Successful implementation will depend on key definitions, including Australian content, drama, documentary, children's programming, scripted, first-release and new programs. Under current arrangements, definitions vary between schemes and legislation. Ideally, definitions would be harmonised to create greater consistency between regulatory interventions and government incentives. However, the precise scope of each definition may differ between proposed models, depending on a model's core objective and the actual regulatory mechanisms employed.

Australian 'link'

In addition to establishing appropriate service and scale thresholds, the Australian 'link' for services captured by any new arrangements will also need to be clearly defined. Options could include services 'targeting' Australians, services 'available' to Australians or definitions in Schedule 8 to the BSA, the *Interactive Gambling Act 2001* and e-Safety legislation.

Form of regulation

The models outlined in this paper consider various regulatory obligations which may be placed on content services. Consideration will need to be given to whether the obligations would take the form of direct regulation or co-regulation. For instance, obligations could be imposed directly on content services by way of legislation/legislative instrument or under co-regulatory arrangements, in which regulated entities are required to include minimum requirements in codes of practice that would be overseen by the ACMA. The appropriate form of regulation may differ depending on the final agreed model and mix of obligations.

In conjunction with this, consideration will need to be given to the way regulations are to be applied to services. For instance, whether obligations would be expressed as licence conditions, as is currently the case for broadcasters. International examples, such as proposals included in a recent review of Canada's screen support arrangements to establish a new system for 'registering' services, might also provide useful guidance. Another option may be to follow the model applied under the BSA gambling advertising rules.

Implementation timing

Legislative amendments

All models, other than model 1, are likely to require some degree of legislative amendment. The degree and complexity of this change will affect the timeframes for full implementation of each model.

Transitioning to a new model

The transition approach will depend, in part, on how soon a new model is agreed, the composition of the final model, and decisions about the timeframes for completing full implementation of the new arrangements. In any case, it is proposed that the final agreed model be implemented in stages over three to four years.

Appendix B: Glossary of terms

Glossary of terms

Term	Description
AACTA awards	Australian Academy of Cinema and Television Arts Awards
ABC	Australian Broadcasting Corporation
ABS	Australian Bureau of Statistics
ACCC	Australian Competition and Consumer Commission
ACMA	Australian Communications and Media Authority
ACS	Broadcasting Services (Australian Content) Standard 2016
ANZCERTA	Australia-New Zealand Closer Economic Relations Trade Agreement
Australian drama program	Currently defined for the purposes of Australian content transmission quotas at ACS 7
Australian program	Currently defined for the purposes of Australian content transmission quotas at ACS 6
APF	Australian Production Fund is a proposal within model 3 of this paper
ASPI	The Australian Screen Production Incentive provides tax incentives for film, television and other screen production in Australia, including the Producer Offset, Location Offset, PDV Offset and Location Incentive.
AUSFTA	Australia-United States Free Trade Agreement
AVOD	Advertising-based video on demand services
AVMSD	EU's Audiovisual Media Services Directive
BCAR	Bureau of Communications and Arts Research
BSA	*Broadcasting Services Act 1992* (Cwlth)
BVOD	Broadcaster video on demand services
Children	Currently defined for the purposes of Australian content transmission quotas at CTS 5 as people younger than 14 years of age.
Children's programming	Programming made specifically for children.
C program	Currently defined for the purposes of Australian content transmission quotas at CTS 5 as a program that has been classified by the ACMA, or a person or body appointed by the ACMA for that purpose, as a program which meets the criteria of suitability for children in CTS 6(1), and is broadcast in a C period.
CRTC	Canadian Radio-Television and Telecommunications Commission
CTS	Children's Television Standards 2009
Discoverability	The ability for a piece of content to be 'discovered' or found by its audience
DPI	The ACCC's *Digital Platforms Inquiry*
Documentary program	Currently defined for the purposes of Australian content transmission quotas at ACS 6 as a program that is a creative treatment of actuality other than a news, current affairs, sports coverage, magazine, infotainment or light entertainment program. See also the ACMA Documentary guidelines 2004.
Drama program	Currently defined for the purposes of the NEDE scheme at section 103B of the BSA
Eligible drama program	Currently defined for the purposes of the NEDE scheme at section 103B of the BSA
First-release	Currently defined for the purposes of Australian content transmission quotas at ACS 8
Footloose international productions	A production that takes place in a different country to where it originated: for example, an American feature that is filmed in Australia.
ITAA	*Income Tax Assessment Act 1997* (Cwlth) The Producer Offset, Location Offset and PDV Offset are provided for in Division 376
Independent producer	Currently defined for the purposes of Australian content transmission quotas at ACS 6A
Location Offset	A 16.5 per cent rebate that supports the production of large-budget film and television projects shot in Australia. Set out in section 376-10 of the ITAA
National broadcasters	The ABC and SBS

Appendix D: International approaches to content regulation and funding

Content quotas on broadcast television and online

Content quota systems remain in use in a number of comparable jurisdictions. The European Union (EU), the UK, Ireland and Canada are examples of jurisdictions that impose content quotas on broadcast television to protect the production, distribution and accessibility of national productions.

In Canada, television licensees are subject to Canadian exhibition quotas (content quotas) which vary in size, and the time of day to which they apply, depending on the type of service.[157]

The EU's Audiovisual Media Services Directive (AVMSD) governs the coordination of national legislation for all audio-visual media, including the promotion and distribution of European works. Articles 16 and 17 specify that qualifying broadcast channels must devote at least 50 per cent of their transmission time to European works, and of that, 10 per cent to independently produced European works.[158] These rules are in force in both the UK and Ireland.

The UK applies additional content quotas on broadcasting services. The UK Office of Communications (Ofcom) is required by the *Communications Act 2003* (UK) to set specific content quota obligations on public service broadcasters (PSBs).[159] Quotas are established as licence conditions and are set for original productions, independent productions, out of London productions, news and current affairs and regional programs (Scotland, Wales, Northern Ireland).[160]

In 2003, the UK removed children's content quota requirements from PSBs, other than the BBC which continues to have in place content quotas for its two dedicated children's channels CBBC and CBeebies. Between 2003 and 2014, investment in first run children's UK originations by ITV, Five and Channel 4, fell by 95 per cent (£59m to £3m).[161] Over the same period the number of first run originations on commercial PSBs fell by 85 per cent from 621 hours to 93 hours.[162]

In November 2017, Ofcom commenced a children's content review of PSB children's (people under 16 years) programming on television and online. The review identified a number of areas of concern, including a limited range of 'original, high-quality children's programs available that allow UK children to see their lives, reflective of the UK today, played out on screen'.[163]

Each broadcaster has submitted a plan responding to concerns raised by Ofcom. Ofcom has stated it will monitor and consider these plans as part of its PSB Review and its licensing renewal process.[164]

In some of these jurisdictions, quota regimes have been extended to apply to online services to help level the playing field. Amendments to the AVMSD in November 2018 specified that European works must comprise 30 per cent of on demand audio-visual service providers' catalogues and member states must implement the new rules by September 2020.[165]

Ireland has recently completed consultation on the implementation of this new obligation and published a new Online Safety and Media Regulation Bill. Responses to the consultation called for the regulator to consider the different nature of services and their business models in applying the quota. It is understood that in France, a 60 per cent European works quota is already in place.[166] The UK has not announced further steps since its exit from the European Union.

[157] See, CRTC, *Let's talk TV—the way forward: Broadcasting Regulatory Policy 2015-86.*
[158] Some exceptions apply to these rules.
[159] This includes the BBC and the main channels of Channel 3 services, Channel 4, Channel 5 and S4C.
[160] These apply to Channel 3 and BBC only.
[161] Communications and Media Research, *Policy Solutions and International Perspectives on the Funding of Public Service Media Content for Children: A Report for Stakeholders*, University of Westminster, 2016, p. 7.
[162] ibid., p. 7.
[163] Ofcom, *Open letter to ITV, Channel 4 and Channel 5*, 24 July 2018.
[164] Ofcom, *Children's content review: our response to ITV, Channel 4 and Channel 5 plans*, 3 July 2019.
[165] This rule applies regardless of the 'country of origin' of the service, that is, a member state may impose a requirement on services established in a different member state. See Article 13 of the AVMSD.
[166] See David Koskas, 'In addition to a 20 per cent European content quota, new legislation would allow countries, such as France, to force streaming giants to invest in European films and TV series', *The Hollywood Reporter*, 25 May 2016, accessed 10 December 2019.

Expenditure and revenue obligations

Quotas can be complemented by expenditure requirements, taxes and levies. In Europe, the AVMSD allows member states to require on-demand service providers to contribute to the development of European audio-visual productions, either by investing directly in content or by contributing to national funds. The level of contribution in each country should be proportional to their on-demand revenues in that country.[167]

Some European jurisdictions such as France and Germany already require domestic and international streaming services to contribute a percentage of their revenue to a national film funding body.[168] Germany imposes a levy of 1.8 per cent of turnover up to €20 million and 2.5 per cent in excess of €20 million which is paid to Filmförderungsanstalt.[169] In France, obligations extend beyond the scope of the AVMSD to capture free video sharing services, such as YouTube, provided they target French audiences.[170] The percentage and method of calculation for a direct investment obligation in France is quite complicated and depends on the type of service, the size of the catalogue and the window from theatrical release. A single Video and VOD tax is also imposed at two per cent of the price paid (raised to 10 per cent for pornographic works).[171] France also has in place a direct investment obligation for catch-up services (provided their income is not included in the resources of the television service they originate from).

In 2015, the Canadian Radio-Television and Telecommunications Commission (CRTC) shifted its regulatory policy away from content quotas to one based more heavily on expenditure.[172] Canadian programming expenditure requirements are set out in individual licences.

Industry concerns have been raised in Canada in relation to a reported decline in Canadian children's programming, following regulatory changes since 2010, including more flexible Canadian content spending arrangements for broadcasters, and reduced Canadian content quotas implemented in 2016.[173]

The Canadian government is currently working towards introducing new legislation by the end of 2020, 'that will take appropriate measures to ensure that all content providers, including internet giants, offer meaningful levels of Canadian content in their catalogues, contribute to the creation of Canadian content in both Official Languages, promote this content and make it easily accessible on their platforms'.[174]

In June 2018, the Canadian Government appointed an external panel to review broadcasting and telecommunications legislation. The panel's recently published final report recommended that the Canadian Government regulate media content undertakings.[175] These undertakings would be sorted into three defined categories and have different obligations (see table below).[176] Traditional licensed services remain under the current licensing regime.[177] Online services, including those owned by foreign companies, come under a new registration scheme.[178]

[167] This rule applies regardless of the 'country of origin' of the service, that is, a member state may impose a requirement on services established in a different member state. See Article 13 of the AVMSD.
[168] Netflix disputed the German Federal Film Board levy, but the European Court of Justice dismissed the suit. See Martin Blaney, 'Netflix finally agrees to contribute to Germany's national film fund', *Screen Daily*, 16 February 2019, accessed 16 January 2020.
[169] Prof Dr Karen Donders et al, *Obligations on on-demand audiovisual media services providers to financially contribute to the production of European works*, Vrije Universiteit Brussel, 2018, p. 69.
[170] ibid., p. 37.
[171] ibid., pp. 35, 36 and 63.
[172] See, CRTC, *Let's talk TV—the way forward: Broadcasting Regulatory Policy 2015-86.*
[173] Krashinsky Robertson, S, *Why Canada's reputation as a kids TV production powerhouse is under threat*, 24 August 2018, accessed 6 January 2020.
[174] Minister of Canadian Heritage Mandate, *Letter to Minister Guilbeault*, 13 December 2019, accessed 15 January 2020.
[175] Broadcasting and telecommunications legislative review panel, *Canada's Communications Future: Time to Act, 29 January 2020. The panel made 97 recommendations to the Minister of Innovation, Science and Industry and the Honourable Minister of Canadian Heritage.*
[176] ibid., pp. 131, 145-7 and150. CRTC should also have flexibility to establish classes for those conducting more than one activity. Table 4 outlines recommendations 54, 61-2 and 66.
[177] ibid., p. 135. Recommendation 56-7.
[178] ibid.

Table 4: Categories and financial obligations of media content undertakings

Definition	Example	Financial obligation
Media curation undertaking means an undertaking whose primary purpose is to provide a service of the dissemination of media content over which it exercises editorial control In this context, editorial control means effective control over the creation or selection of media content, including through agreements with rights holders with respect to its creation or dissemination	Traditional Canadian programming services, as well as online streaming services (Amazon Prime, Crave, Netflix, TVOD services, Spotify and illico.tv)	**Primary obligation**: **Spending requirements** > Based on a percentage of Canadian-derived revenue (to be set by CRTC) **Alternative obligation** where spending requirements are not appropriate (e.g. audio streaming services): **Levy**
Media aggregation undertaking means an undertaking that, in whole or in part, provides a service that aggregates and disseminates media content provided by media curation undertakings	Cable companies (traditional Broadcast Distribution Undertakings (BDUs) as well as their online offerings); new virtual BDUs that package a number of online streaming services (e.g. StackTV); and news aggregators (MSN News and Yahoo! News)	**Primary obligation**: **Levy** > Proceeds go to a Certified Independent Production Fund (CIPF), and other funds or approved programs
Media sharing undertaking means an undertaking that, in whole or in part, provides a service that enables users to share media content for which the provider does not have editorial control, but which the provider organises or controls	YouTube, Facebook, and other sharing platforms to the extent they enable the sharing of audio or audiovisual content, or alphanumeric news content	**Primary obligation**: **Levy** > Proceeds go to a CIPF and other funds or approved programs[179]

Other key recommendations made by the panel's final report *relevant to this paper include that:*

- 'the Broadcasting Act be amended to establish that it applies to undertakings carried on in part within Canada, irrespective of whether they have a place of business in Canada'[180]
- CRTC may by regulation, condition of licence, or condition of registration impose:
  - discoverability requirements on all media content undertakings[181], including 'catalogue or exhibition requirements; 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'[182]
  - CRTC should have the power to regulate economic relationships between media content undertakings and content producers, including terms of trade, and the power to resolve disputes between these undertakings.[183]

The Canadian Government is considering the report and its recommendations.

[179] Ibid., p. 150. Recommendation 66.
[180] Ibid., pp. 134 and 149. Recommendation 55. This would include undertakings, persons, and entities that disseminate media content by telecommunications to Canadians or make media content available to Canadians for compensation.
[181] Except those whose primary purpose is to provide a service for the dissemination of alphanumeric news content over which it exercises editorial control.
[182] Ibid., p. 148. Recommendation 63.
[183] Ibid., p. 145. Recommendation 61.

Content funding and incentives

Most developed economies provide a mixture of content funding support via tax incentives and creatively assessed project funding. Countries offer varying levels of support for content, but generally provide a mix of ‘indirect’ tax incentives for eligible content regardless of its perceived quality, and ‘direct’ funding for projects based on assessable criteria including a project’s quality and cultural impact.

EU member states provide a range of indirect and direct funding. The EU also offers funding and support via the Creative Europe program.

The UK provides indirect tax-based funding for film, high-end television (including children’s television) and digital games. Direct, qualitatively-assessed funding is provided for films by a range of agencies and funds, while direct support for television content is more limited.

New Zealand operates a contestable fund in lieu of regulatory intervention (New Zealand has never imposed local production quotas on broadcasting services).[184] Direct funding is provided for local, foreign and PDV content by way of a grant. Additional funding is available for foreign projects that demonstrate significant economic benefits to New Zealand. Local projects that spend above a certain amount receive support as an equity share rather than a grant. Indirect support is capped at various levels. Funding for television content is administered by New Zealand On Air, which is charged under the *Broadcasting Act 1989* (NZ), with reflecting and developing New Zealand identity and culture through promoting programs about New Zealand or New Zealand interests. Te Mangai Paho (Maori Broadcasting Funding Agency) was established in 1993 and is responsible for promoting Maori language and Maori culture through the provision of funding to audio-visual works.

The Canadian Government offers tax incentives for film and television programs. Several Government agencies provide direct funding for drama and documentary films, while funding for television productions, related digital media content and interactive digital media projects is funded by the Canada Media Fund through contributions from Government and Canadian broadcasters.

The Canadian independent panel’s final report (referenced above) also recommended that the Canadian government:

> ‘establish a single public institution tasked with funding the creation, production and discoverability of Canadian productions on all screens’[185]

> target funding at projects supporting cultural outcomes regardless of screen, platform or format[186]

> ensure that a significant portion of financing go to productions where ‘all key creative positions are occupied by Canadians’.[187]

Digital disruption is having common effects around the world, with countries affected to varying degrees and considering different regulatory responses. The effects may be more acute in English-speaking countries, where foreign content, particularly from the US and UK and often created at high cost, exerts considerable influence in an ‘on demand’ world. Amazon Prime, Disney, Netflix and others are spending record amounts to create compelling content and compete for audiences. The global reach, audience impact and significant resources of these businesses is driving change for content creators, consumers and governments.

[184] Roger Horrocks, *A History of Television in New Zealand*, NZOnScreen, accessed 25 December 2019. No comparable jurisdictions with content quotas in place have removed them entirely in favour of an exclusively funding based model.
[185] This body would combine the functions of the Canada Media Fund and Telefilm Canada. Recommendation 65. ibid., p. 150.
[186] ibid., pp. 149-50.
[187] ibid., pp. 151.