

FOI

From: s 22(1) @networkten.com.au
Sent: Thursday, 3 August 2023 6:08 PM
To: s 22(1) @mo.dewr.gov.au
Cc: s 22(1)
Subject: Paramount/Network 10 catch-up and Free TV Prominence Showcase

Hey s 22(1) great to see you today, and Hey s 22(1) sorry we didn't get to meet today on the Teams call with the streamers.

RE: Cath-up/discussion with Paramount ANZ next Monday or Tuesday in Parliament House

It would be great to grab you both this coming Monday or Tuesday to have a chat all things streaming and Australian content, etc. but talk more specifically about Paramount in the context of the various policy issues.

Let me know a time(s) that works for you two on those days and I will either come to your office or meet you wherever suits.

s 22(1)

[Redacted]

[Redacted]

[Redacted]

[Redacted]

I look forward to hearing from you and seeing you next week!

s 22(1)
 s 22(1)
 Os 22(1) Ms 22(1)
 1 Saunders Street Pyrmont, Sydney, NSW 2009



Released under the Freedom of Information Act 1982 by the Minister for the Arts

Paramount acknowledges the Australian Aboriginal and Torres Strait Islander peoples as the first people of the nation and the traditional custodians of the lands where we live, learn and work.

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Joint Industry Letter - Targeted Consultation Paper: Refined Models

From: s 22(1) @stan.com.au>
To: tony.burke.mp@aph.gov.au
Cc: s 22(1) @amazon.com>, s 22(1) @networkten.com.au>, s 22(1) @netflix.com>, s 22(1) @anzsa.film>, s 22(1) @disney.com>, s 22(1) @mo.arts.gov.au, s 22(1) @mo.dewr.gov.au>
Date: Mon, 13 Nov 2023 00:18:00 +0000
Attachments: Joint Industry Letter re_ Australian screen content requirements for streaming services .pdf Office of Tony Burke MP.pdf (1.23 MB)

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CAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Dear Minister Burke

Please see attached a joint industry letter signed on behalf of Stan, Prime Video, Netflix, Disney+, Paramount+ and ANZSA.

Yours faithfully

s 22(1)

Stan Entertainment

s 22(1)

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**The Hon. Tony Burke MP
Minister for Arts
PO Box 6022
House of Representatives
Parliament House
Canberra ACT 2600**

Via email: Tony.Burke.mp@aph.gov.au
cc: s 22(1) @mo.dewr.gov.au; s 22(1) @mo.arts.gov.au

Dear Minister Burke,

The streaming services compete vigorously with one another to attract Australian audiences and we already have every incentive to create great Australian content - something we proudly deliver to our audiences year in and year out.

It is why we have worked constructively with your offices and the Department, in good faith, to suggest an investment obligation that is fair and flexible and that meets the Government's stated objective in the National Cultural Policy to ensure Australians can continue to see and hear quality home-grown content, regardless of which service they are using.

We are profoundly disappointed with the two models that have been put forward. They ignore the feedback we have provided. It is important that this regulation be implemented in a manner that is sustainable for all aspects of Australia's production industry.

Throughout this process we have highlighted our ongoing commitment to commissioning high-quality Australian content, across a range of genres, to meet the needs of our different viewing audiences. Instead, the models focus on a single restrictive category of content at an unsustainable level.

These models would have serious negative consequences on the diversity of content being produced, while having significant inflationary effects that will impact the sustainability of the production industry.

In light of the above, we urge you to rescope the consultation paper. It is not possible to effectively address the extent of these issues in the timeline you've set with these models as the starting point.

Yours sincerely,



NETFLIX



Stan.



Prime Video - position on streaming service obligations

From: s 22(1) [redacted]@amazon.com>
To: s 22(1) [redacted]@mo.dewr.gov.au> s 22(1) [redacted]@mo.dewr.gov.au
Cc: s 22(1) [redacted]@amazon.com>
Date: Thu, 30 Nov 2023 04:54:58 +0000
Attachments: Prime Video Position on Streaming Service Obligations November 2023.pdf (128.33 kB)

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Dear s 22(1) [redacted]

Thank you for meeting with Prime Video and the other streaming services in Canberra earlier this month. As Prime Video has consistently stated, we support an investment obligation that is fair, sustainable and flexible. I attach a two-page document setting out Prime Video's position on the models the Government has put forward. We will provide further details on our position in the submission we will lodge shortly in response to the targeted consultation paper.

We welcome further discussion on Prime Video's position, and look forward to continued constructive engagement on this issue.

Kind regards
s 22(1) [redacted]

s 22(1) [redacted]

s 22(1)@amazon.com | +s 22(1) [redacted]
Level 8, 2 Market Street, Sydney, NSW, 2000



Prime Video's investments in Australian content

Since 2019, Prime Video has invested in 27 Australian Originals, bringing back beloved series Neighbours, and Australian-related series such as Nine Perfect Strangers. Our investments have resulted in more than 2,500 jobs across Australia. The titles we've invested in include dramas, documentaries and light entertainment; shows like The Lost Flowers of Alice Hart, Deadloch, The Narrow Road to the Deep North, The Office, Hot Potato: The Story of the Wiggles, The Test Season 2, as well as our first Australian movie Five Blind Dates.

Prime Video offers a wide range of content to viewers, spanning genres including drama, documentary, comedy, unscripted and stand-up, both international and Australian. We are keenly focussed on Australian stories for Australian customers. Prime Video has a reputation for providing great local originals whatever country we operate in and no two country's content is the same.

By way of background, the latest ACMA figures for the streaming industry's investments for the 22-23 financial year show \$777m spent on Australian¹ and Australian-related content². Breaking that down, on the most recently available data for each, the spend on Australian drama within the ACCTS definition is:

- \$18.73m for Subscription TV;³
- \$67.03m for all commercial broadcasters combined;⁴ and
- \$215m for streaming services.⁵

We support an investment obligation that is fair, sustainable and flexible

We've consistently said that despite there not being an industry failure, we would support an investment obligation that is fair, sustainable and flexible. However, the current proposals are the opposite of that.

What has been proposed will be to the detriment of the industry and consumers

1. Contraction in the diversity of content being made.

- a. **Only drama, not other key genres such as documentary and light entertainment.** The National Cultural Policy itself highlights the importance of documentary, and we know Australians love light entertainment. Combined with the artificially high level of the obligation, the proposals would make it difficult for us to produce anything other than drama as narrowly defined.
- b. **Only ACCTS Australian content** which is a very narrow and rigid definition of Australian content - only titles that are under the creative control of Australians (ACCTS). In particular, this would exclude Australian-related content - which is what we have been reporting to the ACMA for the last few years - or even content that meets the Significant Australian Content test applied by Screen Australia.⁶

2. Sharp inflationary effects that will impact the sustainability of the production industry.

The proposed models would substantially increase demand in an area of content production

¹ s10 Broadcasting Services (Australian Content and Children's Television) Standards 2020 (ACCTS)

² Programs that meet some, but not all of the criteria for an Australian program under the ACCTS

³ TV in Australia: Spending on subscription TV drama Aggregated report 2021-22 FY

⁴ TV in Australia: Spending on commercial programs Aggregated report 2021-22 FY

⁵ SVOD content in Australia: Spending on Australian programs by SVOD providers Aggregated report 2022-23 FY

⁶ S376-70(1) Income Tax Assessment Act 1997

already at capacity, which will only exacerbate issues we are already seeing with inflationary pressure on production costs as well as the availability of crew and studio space.

3. **Set at a level that will require investment decisions to respond to regulation, not consumers.** By forcing streamers to commission one restrictive type of content at an artificially high rate, in an environment with inflated prices, the proposals jeopardise the capacity to create quality Australian content. The fact that the obligations ratchet up with growth is a perverse incentive – for example a small increase in subscriber numbers could tip a service into a substantially higher level of obligation. These obligations would also likely reduce the attractiveness of the sector to new entrants, thereby reducing the diversity of content, the benefits of innovation and competition for customers and ultimately providing less revenue for the production sector.
4. **Reduce customer choice and force trade-offs.** We believe in delivering value to our Prime members, and a broad selection of compelling content is a big part of that. If we were forced to invest an unnaturally high component of our content spend in Australian drama, we would need to make trade-offs between what consumers want to watch and what we are regulated to make. It would severely limit our capacity to licence international films and TV series with A+ talent (many of whom are Australian), including multi-cultural content like Korean drama, Japanese anime and Bollywood movies. This is a negative for our diverse Australian community.
5. **Impact the sustainability of the streaming industry.** We are focused on efficiently delivering value to customers in a competitive industry. Increasing content costs, specifically in a content category that is seeing high inflation (143% on labour costs alone⁷) will impact on the value we can provide, which could lead to us needing to raise prices for consumers.

Shows that respond to Australian viewers' interests would not qualify under the proposals

1. **Nine Perfect Strangers** would not qualify as it does not meet the definition of Australian under the ACCTS. That's despite it being produced with Australian producer, Made Up Stories, based on an Australian author's novel, filmed in Byron Bay and featuring Nicole Kidman and Asher Keddie.
2. **The Wiggles** would not qualify as it is a documentary. This is despite the fact that it tells the story of an Australian entertainment sensation. *Hot Potato: The Story of The Wiggles* was written and directed by an Australian, had Australian producers, was filmed in Australia and post production was done in Australia. The Wiggles premiered at SXSW Sydney and Adelaide Film Festival in October before it launched globally in 240 countries and territories.
3. **The Test** would not qualify as it is a documentary. *The Test* provides insight into the inner sanctum of the Australian Men's Cricket Team through the players' own voices. Produced by Cricket Australia Films in partnership with Australian production company Whooshka Media, it has a majority Australian cast and crew and was directed by Australians. As well as being successful in Australia, it's been an international success in cricket loving territories including India, South Africa, New Zealand and the UK.
4. **The Defenders**, again as a documentary would not qualify. It is produced by an Australian company, the majority of the cast and crew are Australian. This June, it won the best Australian Documentary Award at the Sydney Film Festival.

⁷ <https://www.abs.gov.au/statistics/industry/technology-and-innovation/film-television-and-digital-games-australia/latest-release>

Fwd: Confidential Submission of Nine & Stan: Refined Models

From: s 22(1) @stan.com.au>
To: s 22(1) @mo.dewr.gov.au>, s 22(1) @mo.communications.gov.au
Cc: s 22(1) @nine.com.au>
Date: Fri, 15 Dec 2023 06:07:48 +0000
Attachments: Confidential Nine Stan Submission - Refined Models 15.12.pdf (847.98 kB)

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Hi s 22(1) - thanks again for your time earlier this week; forwarding you a copy of our confidential written submission re the refined models which we sent to the Department earlier today. You can call me any time to discuss.

Regards
s 22(1)

From: s 22(1) @stan.com.au>
Date: F
Subject: Confidential Submission of Nine & Stan: Refined Models
To: s 22(1) @arts.gov.au>, s 22(1)
 s 22(1)
Cc: s 22(1) @nine.com.au>

With apologies for the delay in providing this, please find attached a confidential submission from Nine and Stan to the Targeted Stakeholder Consultation Paper on the "Refined Models" proposed for the Australian screen content requirements on streaming services.

We ask the entirety of the submission be treated as confidential information and be subject to limitations on its use and distribution in the absence of Nine/Stan's express consent.

Please do not hesitate to call me if you have any questions or require any clarifications in the meantime.

With regards
s 22(1)

Stan
s 22(1)

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CONFIDENTIAL SUBMISSION

15 December 2023

To: Assistant Secretary, Australian Screen and Arts Workforce Development Branch
Department of Infrastructure, Transport, Regional Development, Communications and the Arts

Dear Assistant Secretary

Targeted Consultation Paper – Refined Models: Re Australian screen content requirements on streaming services

Nine and Stan welcome the opportunity to provide a submission to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts in response to the two Refined Models put forward in the Targeted Consultation Paper on Australian screen content requirements on streaming services.

Both Refined Models are unworkable for Stan and Nine, and both will have a disproportionately negative impact on Stan as a locally-owned single territory service. The two Refined Models:

- put Stan at a material competitive disadvantage to Foxtel, s 22(1) [REDACTED], when compared with Foxtel's current New Eligible Drama Expenditure ("NEDE") obligations;
- create an unsustainable level of investment for Stan, s 22(1) [REDACTED];
- are inconsistent in operation, particularly with respect to the fulfilment of the content spend obligations, given that Stan is only able to count its investment for Australia-only exploitation rights, whereas the global streamers are able to take into account their investment for global exploitation rights; and
- exacerbate an already overheated production sector which is currently dealing with unprecedented levels of cost inflation and lack of access to crew and critical infrastructure.

The proposed Revenue Model is inherently unworkable as:

- no revenue model can fairly solve for the diversity of business models amongst the streamers operating in Australia. Stan, as a single territory service that is unable to cross-subsidise its streaming operations with other business units, will be particularly disadvantaged with the introduction of the Revenue Model; and
- an obligation calculated on 10% of Stan's revenue would effectively require Stan to s 22(1) [REDACTED] "new" or "premiere" programming towards new Australian programs only (leaving no budget to licence "new" US, UK or international programs and rendering Stan's business uncompetitive and unsustainable). An obligation calculated on 20% of Stan's revenue would s 22(1) [REDACTED].



The proposed Expenditure Model is unacceptable in its currently proposed form for the following reasons:

- As noted above, any obligation above 10% would require Stan to operate under a materially more onerous Australian content regime when compared with the obligations of its direct competitor Foxtel under the NEDE scheme; and
- The progressive nature of the proposed Expenditure Model effectively delivers compounding growth as content costs organically increase.

Stan and Nine reiterate their long-held position that there is no market failure that warrants any significant intervention, a position that has again been affirmed by both Screen Australia's Drama Report and ACMA's Report on Spending on Australia Programs by SVOD Providers for financial year 2023. However, if Government continues to pursue a policy of regulation, Stan and Nine support an expenditure model that mirrors the NEDE scheme that currently applies to Foxtel; a position that continues to have broad industry support across commercial television, subscription television and the streaming services operating in Australia.

If Government does not accept this approach, Nine and Stan would support an expenditure model that is set at a sustainable level and measures fulfilment of an investment obligation against the total budget of the Australian program that has been invested in (and not just the actual expenditure incurred). This would be the only way to ensure a level playing field for single-territory services, who only invest for Australian commercialisation rights, against global services, who typically contribute the entirety of a budget in exchange for global commercialisation rights.

The proposed narrow definition of "Australian program" – a definition that does not actually guarantee the Australian cultural bona fides of a project – amplifies the issues identified above. Under this definition, culturally significant projects such as Stan's *Revealed* documentary series which is produced in collaboration with 60 Minutes, focussing on in-depth investigative reporting and coverage of important Australian issues which are in the public interest, could not be counted towards the fulfilment of a content quota obligation. Likewise, Australian-related programs like *Ten Pound Poms* with substantive Australian creative contributions and cultural significance would not be counted. This narrow definition will hamstring single territory streamers like Stan from being able to include international elements like a renowned foreign writer or a multinational cast into their commissions, which are increasingly essential for attracting international financing.

According to the latest Screen Australia Drama Report, the average cost-per-hour for series made for subscription streaming increased an additional 7% from financial year 2022 rates) to record highs, some 21% above the 5-year average. With cost inflation being such a critical issue within the Australian production sector, it would be detrimental to commence any new regime on 1 July 2024. At the very least, implementation should be delayed to financial year 2025 in order to minimise what will be an immediate additional inflationary force. This should then be followed by a transitional period of at least three years to allow an ordered ramp-up of obligation. This time frame is necessary for industry stakeholders to plan, strategise, adapt and make necessary adjustments.

Stan's unique position in the Australian media landscape, coupled with the fact it will be disproportionately impacted by the introduction of a content quota regime, means that any new scheme will need to be coupled with a number of additional measures – inclusion in the Government's prominence framework and priority to Screen Australia investment. These will act as a necessary counterbalance to the inequalities that will be forced on Stan.

Further detail on the above points is set out in the Submission below.



We look forward to continued consultation to ensure that Australia has an appropriate content quota regime that does not significantly impact on the competitive viability of Stan. Please do reach out to either of us if you require any further information.

Yours faithfully

s 22(1)

Mike Sneesby
Chief Executive Officer
Nine Entertainment Co

Martin Kugeler
Chief Executive Officer
Stan



Annexure – Nine and Stan’s submission

Stan and Nine reiterate their long-held positions that there is no market failure that warrants any significant intervention. This has again been recently affirmed by Screen Australia’s Drama Report for 2023, which reported A\$2.23 billion of total production expenditure across a record 213 titles and again confirmed subscription platforms as the largest category of spend within Australian TV and VOD¹, and ACMA’s Report on Spending on Australia Programs by SVOD Providers for financial year 2023, which revealed a total investment by the 5 primary subscription streaming services of A\$220 million on 67 commissions or co-commissioned Australian programs.²

Putting the above positions to one side, both of the Refined Models put forward in the Targeted Consultation Paper are extremely problematic and will result in a number of unintended consequences for the market which could significantly impact on the competitive viability and sustainability of Stan. We highlight the following particular issues and inequalities:

1. **Foxtel**^{s 22(1)} **would operate under different requirements: Foxtel**^{s 22(1)} across both its streaming services (Binge, Kayo and Foxtel Now) as well as its traditional set-top box business (Foxtel). Foxtel has, in recent years, outbid Stan for output licensing deals with major Hollywood studios Warner Bros/HBO³ and NBC Universal⁴, as well as for sports rights like the AFL⁵ and UFC.

With approximately 3 million entertainment subscribers across set-top box, Foxtel Now and Binge⁶, Foxtel currently has more subscribers than Stan (which is at approximately 2.5 million subscribers). Foxtel’s revenue across its streaming and set-top box business (~A\$3 billion) is also 7 times higher than Stan’s revenue.

Foxtel operates under the NEDE scheme, which requires subscription TV licensees that broadcast drama channels to invest 10% of their total expenditure in new Australian drama programs. Under the NEDE rules, Foxtel is able to spread a significant portion of its obligation amongst its third-party channel providers. In financial year 2023, a total of A\$18.42 million was spent on new Australian drama programs by Foxtel and its channel providers, broadly in-line with the 2021–22 financial year, when A\$18.72 million was spent.

If Stan’s total expenditure on Australian scripted productions in financial year 2023 was subject to the NEDE rules, Stan would have had a content obligation of A\$16m. By way of comparison,

¹ Screen Australia, *Drama Report 2022/23: Production of feature films, TV and online drama in Australia in 2022–23*, <<https://www.screenaustralia.gov.au/fact-finders/reports-and-key-issues/reports-and-discussion-papers/drama-report>>

² Australian Communications and Media Authority, *Spending by subscription video on demand providers 2022-23 (2023)* 8 November, Interactive Report <<https://www.acma.gov.au/spending-subscription-video-demand-providers>>

³ Meade, Amanda, ‘Streaming wars: why Foxtel paid ‘eye-popping rights fee’ to extend HBO content deal’ *The Guardian* (2023) 4 March, <<https://www.theguardian.com/media/2023/mar/04/streaming-wars-why-foxtel-paid-eye-popping-rights-fee-to-extend-hbo-content-deal>>

⁴ Saimos, Zoe, ‘Foxtel clinches NBCUniversal content deal as Stan shifts strategy’ *Sydney Morning Herald* (2022) 17 October <<https://www.smh.com.au/business/companies/foxtel-clinches-nbcuniversal-content-deal-as-stan-shifts-strategy-20221016-p5bq47.html>>

⁵ Dixon, Ed, ‘AFL inks record AU\$4.5bn broadcast rights deal with Foxtel, Seven and Telstra’, *SportsPro Media* (2022) 6 September, <https://www.sportspromedia.com/news/afl-tv-broadcast-rights-2025-2031-foxtel-seven-telstra-gillon-mclachlan/?zephhr_sso_ott=IkuKwK>

⁶ News Corporation. *NewsCorp Fiscal 2023 Fourth Quarter and Full Year Key Financial Highlights (2023)*, 20 August <https://newscorp.com/wp-content/uploads/2023/08/Q4-FY2023-Earnings_FINAL_10-August-2023.pdf>

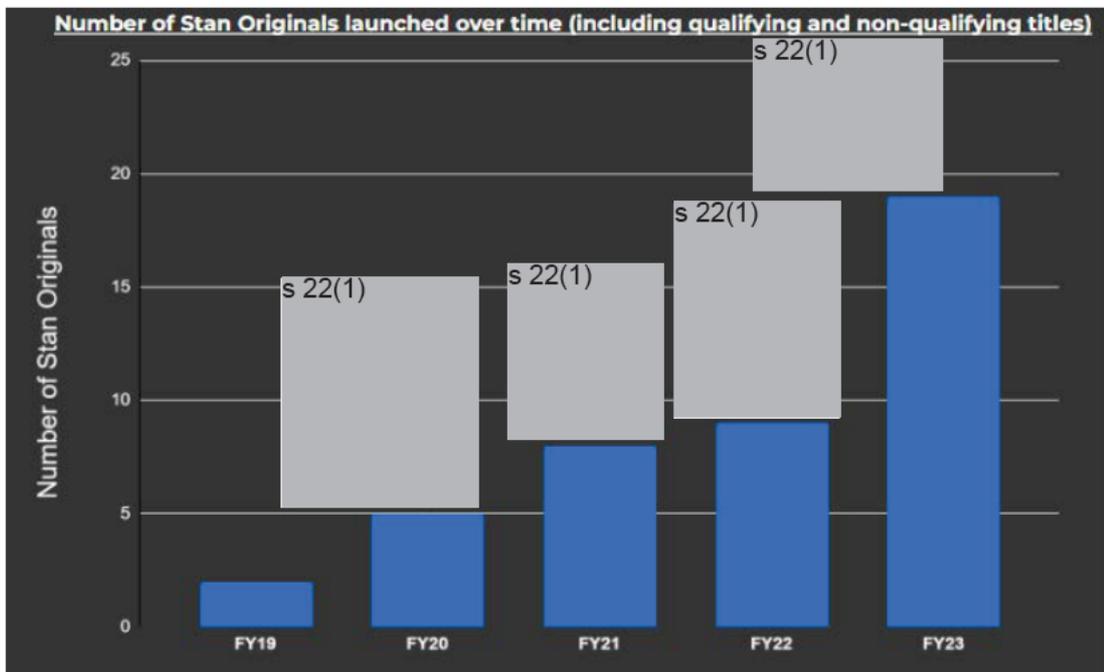


if Stan’s expenditure was calculated using each of the Refined Models, Stan’s content obligation would have been as follows:

- **15% Progressive Expenditure Model:** A\$ s 22(1), being a s 22(1) % increase on the NEDE base case;
- **10% Revenue Model:** A\$ s 22(1), being a s 22(1) % increase on the NEDE base case; and
- **20% Revenue Model:** A\$ s 22(1), being a s 22(1) % increase on the NEDE base case.

Both Refined Models would require Stan to operate under a substantially more onerous Australian content regime when compared with the current NEDE scheme. The Refined Models would therefore put Stan at a dramatic competitive disadvantage to Foxtel, s 22(1)

2. **Stan’s current investment levels are at s 22(1) ; setting this as a minimum obligation is unviable:** Stan is s 22(1) and requires flexibility with how it invests its content expenditure. In November 2023, Screen Australia’s Drama Report for financial year 2023 confirmed Stan as the largest commissioner of Australian drama for the third consecutive year.⁷ This unprecedented level of commissioning activity has grown over the past 3 years in direct response to the loss of major international content output deals. This has been as a result of distributors of new premiere content launching their own direct-to-consumer services (Disney+, Paramount+) as well as other studios tying up their new premiere content slates with Foxtel (Warner/HBO, Universal NBC). The result of this has seen Stan pursue a strategy of increasing its Stan Original commission output, s 22(1).



s 22(1)

⁷ Screen Australia, *Drama Report 2022/23: Production of feature films, TV and online drama in Australia in 2022–23*, <<https://www.screenaustralia.gov.au/fact-finders/reports-and-key-issues/reports-and-discussion-papers/drama-report>>



3. **Stan will find it hard to compete within a production sector that is already overheated:** Both Refined Models will amplify the current scarcity of production facilities, key crew and key creatives, further fuelling considerable cost inflation within the production sector. This is a perspective shared by free-to-air television, subscription television and the streaming services alike.

We have previously noted the 2021 survey conducted by Screen Producers Australia, pursuant to which 80% of Australian producers reported difficulty in crewing productions due to the unprecedented levels of production activity in Australia, with 95% of those surveyed reporting an increase in production costs of between 24% and 75%.⁸ We have also previously informally shared examples with the Department illustrating the inflationary pressures affecting recent Stan commissions.

We can now supplement these with a further recent case-study based on a ^{s 22(1)} x 1 hour drama that was green-lit by Stan in February 2023 and is currently in pre-production, with production in ^{s 22(1)} scheduled for **s 22(1)**. For this project, a revised budget presented by the producers in November 2023 returned an unexpected “overage” (ie an unexpected increase in the cost of production) of approximately A\$1.3 million; with the budgeted cost of the drama series increasing from A\$8.7 million (from budget dated February 2023) to \$10 million (from updated budget dated November 2023). There is a real risk that the series will not proceed to production unless Stan intervenes to finance a substantial proportion of this overage, which is above and beyond Stan’s already substantive investment. The producer has indicated the following key drivers of this overage:

- Higher wages for crew, with costs having increased 25% on average, and with some departments up as much as 60%: Crew in ^{s 22(1)} who have been able to secure premium drama wages on global streamer commissions, are now requiring these increased wages for standard productions. Heads of department coming off higher budget global streamer commissions are now demanding more crew per department than would normally be engaged for a standard drama.
- Travel and accommodation costs have increased 152%: As a result of the limited availability of crew in ^{s 22(1)} due to a combination of competing ^{s 22(1)} productions and crew turning down work due to exhaustion following back-to-back projects, the producer will need to ‘import’ crew from interstate. This has caused a material increase in travel and accommodation costs.
- Production equipment costs have increased 38%: Equipment suppliers in ^{s 22(1)} are unable to resource multiple projects at once, so the producers will need to source key equipment (including production trucks) from other States. The cost of driving and freighting production equipment to ^{s 22(1)} is material.

4. **The Refined Models do not reflect the disadvantage of single territory streamers only investing in Australian exploitation rights**

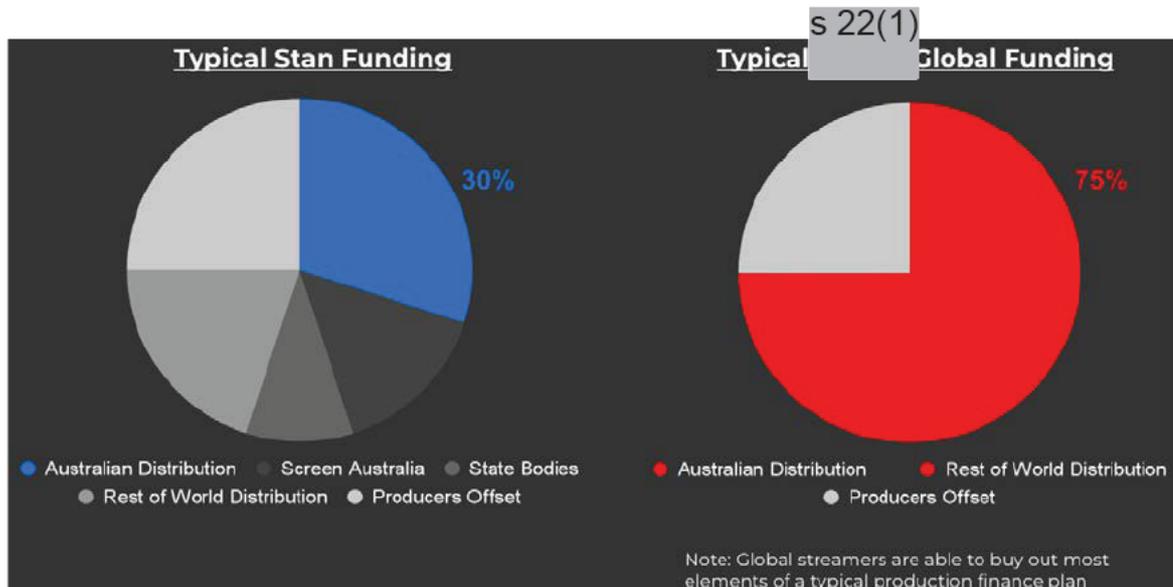
For its local commissions, Stan’s investment typically represents approximately ^{s 22(1)}% of the total budget of a new Australian program, for which it secures Australian exploitation rights. The

⁸ Keast, Jackie, ‘SPA survey suggests production boom is leading to skill shortages’, *IF Magazine* (2021) 26 April, <<https://if.com.au/spa-survey-suggests-production-boom-is-leading-to-skill-shortages/>>



remaining ^{s 22(1)} % of the budget is typically funded by Screen Australia and State bodies (where available), the producer's investment via their access to the producer offset and, importantly, via substantial investments by international distributors for the "rest of the world" exploitation rights.

This is compared with global streamers ^{s 22(1)} who, outside of the producer's investment via access to the producer offset, are typically able to fund the entirety of a new Australian program's budget, in exchange for which the global streamer secures global exploitation rights.



This means that, for the same Australian production, Stan would only be able to count its approximately 30% investment on average (paid for Australia-only exploitation rights) towards fulfilment of its content quota obligation, while a global streamer would be able to count the entirety of its approximately 75% investment on average (including the global portion of its exploitation rights) towards fulfilment of its content quota obligation.

As a result of Stan only being able to count its investment for Australian exploitation, Stan would be required to commission more than double the number of Australian programs for a given level of commitment in order to fulfil an equivalent level of content quota obligation versus a global streamer. This would place Stan at a material disadvantage.

A content quota model where the spend obligation is calculated with reference to the total production budget of programs being invested in, and not just the amount being invested, is the only way to ensure that a level playing field between single territory Australian streamers and the global streamers is maintained.

This is one of our key recommendations as set out below.

5. Revenue Model

(a) No Revenue Model can fairly solve for the diversity of business models

We believe that the diversity and complexity of revenue models amongst existing streamers, demonstrated below, makes revenue attribution difficult, and an unreliable



and inequitable basis for regulation - one that is likely to lead to unfair outcomes for Stan:

	Stan.	BINGE foxtel now	NETFLIX	prime video	Disney+	Amazon+	Apple TV+
Distribution	Single Territory	Single Territory	Global	Global	Global	Multi-Territory	Global
Entertainment subscription	✓	✓	✓	✓	✓	✓	✓
Sport Standalone		✓ (Kayo)					
Sport Add-on	✓	✓ (Foxtel Now)					
Sport Integrated				Announced		✓	
Ad-Tier		✓	✓	Announced	Currently Overseas	Announced	
Bundle		PayTV Bundles		Free with Prime Delivery	Discounted with OnePass		Free with device
Other revenue streams		Device, PayTV, utilities		Retail and delivery	Merchandise, theme parks		Device sales, Music

Specifically, the practice of global diversified companies offering “free” or bundled subscriptions to their SVOD services as part of a larger product or service package distort revenue figures and undermine the effectiveness of using “revenue” as a basis of calculating regulatory obligations. As examples:

- a 3-12 month subscription to the Apple TV+ streaming service is frequently bundled at no additional cost with the purchase of an Apple iPhone or other Apple product;
- the Amazon Prime Video streaming service is included as a free feature as part of a broader Amazon subscription bundle that includes ecommerce delivery, music streaming, ebooks and online gaming subscription; and
- Disney is able to commercialise the brands it grows on its Disney+ streaming service via its merchandising and theme park businesses.

A number of these global companies do not expect their streaming services to generate revenues or be profitable; they are instead used as a tool to drive profits in other parts of their business.

Minister Burke has indicated a preference for the Revenue model, on the basis that the Expenditure model will permit multi-territory services to be able to “game” the regime, by artificially reducing licence fees charged by their related entities in Australia in an effort to minimise their content quota obligation. We believe this risk can be adequately mitigated through a combination of mandatory reporting and ACMA oversight and intervention. We believe that the greater risk, one that cannot be so easily mitigated, is the ability for streaming businesses that are cross-subsidised by other business units to minimise their revenues to their advantage.

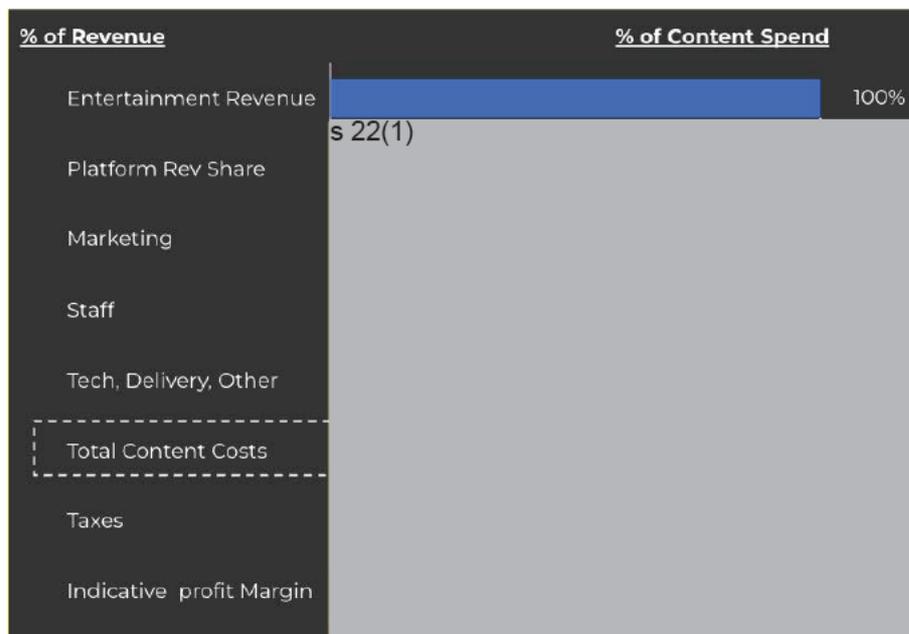
(b) The proposed Revenue model would prevent Stan from s 22(1)

Set out below is an indicative P&L of a local streamer. This indicative P&L shows that, following coverage of its operating costs across marketing, staff, technology, delivery and third party platform distribution, and factoring in the need to achieve a



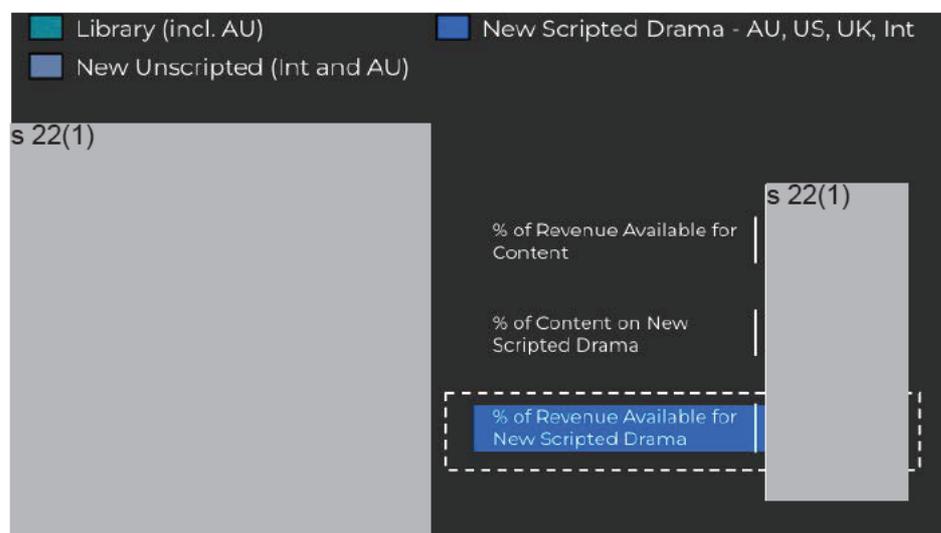
sustainable margin, approximately only $\$ 22(1)$ of revenues would typically be available for it to spend on its entire content slate.

In order to attract and retain subscribers, a successful SVOD platform requires a mix of premiere/new and library programming, comprised of a mix of US, UK, Australian and international content across a wide range of content genres.



The diagram below shows that, historically, more than $\$ 22(1)$ Stan's expenditure on content (representing $\$ 22(1)$ % of revenue) has been on library content with only approximately $\$ 22(1)$ of its expenditure (representing $\$ 22(1)$ % of revenue) being on new scripted content across all territories. As such, an obligation to invest 10% of revenue on Australian scripted drama would leave Stan $\$ 22(1)$

In addition to this, a 20% of revenue obligation would require Stan to $\$ 22(1)$



Released under the Freedom of Information Act 1982 by the Minister for the Arts



6. Progressive Expenditure Model

(a) Any expenditure model in excess of 10% will put Stan at a dramatic competitive disadvantage to S 22(1) Foxtel

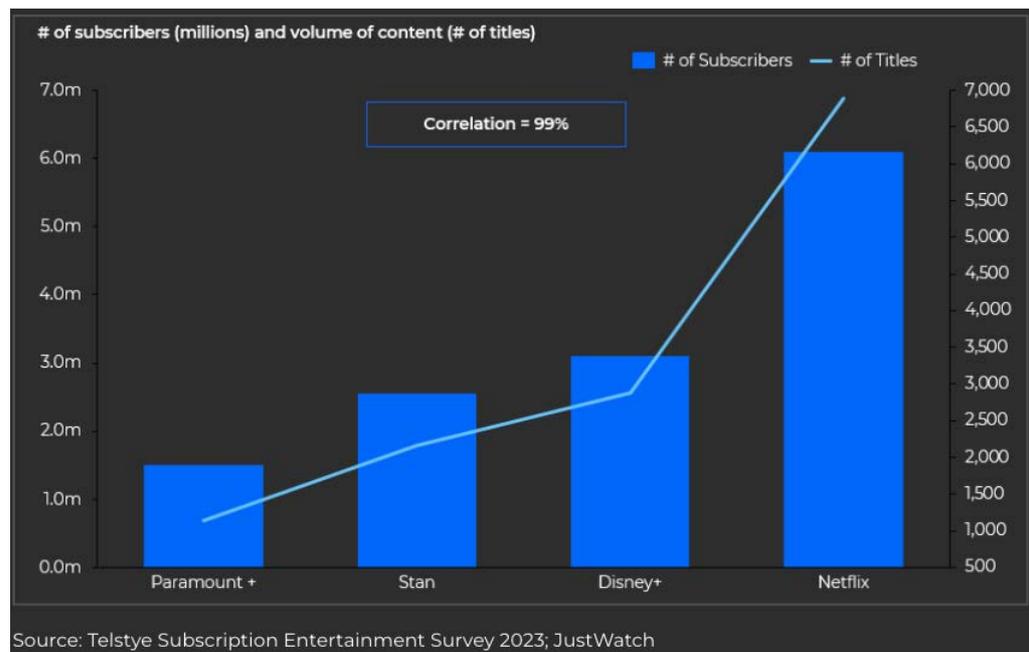
Under the proposed Progressive Expenditure Model, Stan would be subject to a 15% of expenditure obligation from day 1 of the new regime, with a projection that it would hit a 20% obligation within ^{s.22} years. As noted earlier, this would put Stan at a material disadvantage to its closest competitor Foxtel, despite having fewer subscribers, lower revenue and less content expenditure overall, and would effectively render Stan unable to competitively bid for premium international content and sports rights against Foxtel in the future.

(b) A subscriber multiple makes the required growth for content obligations for streamers punitive

A model that overlays a subscriber multiple on top of content expenditure is artificially and unnecessarily inflating an already material built-in cost growth, making the resulting escalations punitive and unsustainable.

This built-in cost growth already guarantees an organic growth in content quota obligation.

As shown in the diagram below, there is an extremely high correlation between the number of subscribers on a given streaming platform and the volume of content available on that platform. There is therefore an implicit growth in content volume (and therefore expenditure) required in order to achieve subscriber growth.



Furthermore, content costs per episode have risen dramatically in recent years, exacerbating the impact of increasing content volume on underlying content costs. The



latest Screen Australia Drama Report concluded that the average cost-per-hour for series made for subscription streaming continued to increase in financial year 2023 (7% above financial year 2022), and was now 21% above the 5-year average.⁹ Stan’s data shows the following substantive increases to the cost of both licensed and commissioned content:

Cost growth per episode (vs 2015)	Library TV show	Top 1st Run rates	Original productions
2018	s 22(1)		
2021	s 22(1)		
2023	s 22(1)		

There is therefore no material risk that a service will materially reduce its expenditure in order to minimise its content quota obligations. To do so would be to undermine its ability to retain and acquire subscribers and would place its entire commercial model under significant pressure.

The worked example below illustrates that as a streaming service aims to increase its subscriber base from 1.5 million to 2.0 million subscribers, it will likely have to increase its content volume by s 22(1). Alongside this, it will face annual content cost growth per episode of approximately s 22(1)% (s 22(1)% when compounded over s 22(1) years). These two factors would result in the streamer’s content costs growing by s 22(1)% over s 22(1) years. Applying an additional escalating multiplier obligation percentage on top of this content cost growth results in the streamer’s Australian content obligation increasing by s 22(1)% over s 22(1) years.

Worked example	
Starting subscribers (thousand)	s 22(1)
Starting obligation	s 22(1)
Ending subscribers (thousand)	s 22(1)
Ending obligation	s 22(1)
Growth in volume of content required to achieve subscriber growth	s 22(1)
Annual cost growth per episode per annum	s 22(1)
Actual cost growth	s 22(1)
Growth in obligation (including multiplier)	s 22(1)

Note: assumes subscriber growth is achieved over a s 22(1) year period

⁹ Screen Australia, *Drama Report 2022/23: Production of feature films, TV and online drama in Australia in 2022–23*, p26 <<https://www.screenaustralia.gov.au/fact-finders/reports-and-key-issues/reports-and-discussion-papers/drama-report>>



7. Definition of “Australian program”

The proposed definition of “Australian program”, based on the narrow definition in the Broadcasting Services (Australian Content and Children’s Television) Standards 2020 (Cth) (“ACCTS”) is very limiting and would not meet the Government’s cultural objectives of this proposed regulation. In this regard:

- Use of an overly narrow definition will likely lead the streamers to compete fiercely for qualifying projects from what is a limited IP pool. Stan would again be impacted disproportionately, with limitations on how much it can invest, as a licensee of Australia-only rights, and a lack of deep-pockets enjoyed by the global streamers.
- A narrow definition will hamstring single territory streamers like Stan from being able to include international elements in their commissions, such as a renowned foreign writer or a multinational cast into their commissions. These international elements are increasingly essential for attracting international financing.
- There is no policy rationale to exclude documentaries from the scope of any content quota regime – factual documentaries have an important role to play in the cultural fabric of Australia. If content quota obligations are too onerous, there is a genuine risk that streamers will need to redirect their investments from non-qualifying programming, such as documentaries, towards a very narrow type of qualifying drama.
- If the introduction of content quotas for streamers is a cultural policy objective for Government, as clarified by Minister Burke in the November Roundtable, the ACCTS definition is not the means to achieve this. For instance, under the ACCTS definition, a project featuring American accents, set in America and focused on American subject-matter could qualify, provided it was produced in Australia and involved several key creative personnel of Australian origin.
- We believe that a project should qualify under any content quota regime if it meets the “Australian program” definition or the “Significant Australian Content” test.¹⁰ The SAC test has long been recognised by Screen Australia and the Australian Taxation Office as the appropriate measure of the “Australian” bona fides of a film or television project. Several factors are considered collectively to assess whether a film or television project meets the SAC test, including content origin, creative contribution and nationality of crew and talent, but also including important elements like cultural connection to Australia, location and setting, and primary dialogue/accents.

8. Timing

Government has repeatedly indicated that any new legislated content quota regime for streamers would commence operation on 1 July 2024. This is unreasonable and will not give industry players across free-to-air, subscription television and subscription streaming adequate time to mitigate and manage for what will be an immediate increase to the inflationary pressures being experienced in the production sector. This should be followed by a transitional period of at least three years in order to allow industry stakeholders to plan,

¹⁰ *Income Tax Assessment Act 1997* (Cth), s 376–70. See also paragraph 2.2 of the Screen Australia Producer Offset Guidelines available at: <https://www.screenaustralia.gov.au/getmedia/70b2fae6-232c-4a48-be6d-e970aead20d9/Guidelines-producer-offset-2022.pdf>



adapt and adjust accordingly. For example, production pipelines for the next two years are largely locked in, while Stan is already planning productions which will not be released until financial year 2027.

9. The need for equalisation measures to counter the disproportionate impact that content quotas will have on Stan

Stan is uniquely positioned in the Australian media landscape, with:

- common ownership with the holder of a commercial free-to-air television licence;
- a sole focus, as a single territory service, on servicing Australian audiences; and
- a demonstrated long-term and significant commitment to Australian content,

making it different from any other subscription streaming service currently available in Australia. As a single territory player, Stan stands to suffer more than any other service from the major regulatory changes currently being proposed. Material changes such as Australian content requirements for streaming services and the legislated prominence framework will upend the competitive landscape, with Stan disproportionately impacted. Therefore, there is strong rationale for Stan's unique position to be acknowledged and addressed as part of the implementation of such regulations. The ways in which Stan's unique position could be appropriately addressed include the prioritisation of Screen Australia and other government funding and inclusion in the legislated prominence framework.

(a) Funding challenges

The introduction of content quotas comes in an environment where Stan is facing challenges securing local and international investment in its original commissions:

- As noted earlier, unlike global streamers which can fund the entirety of a project's budget, Stan relies on investment support from Screen Australia and the State funding bodies, as well as the crucial investment of an international distributor.
- Stan would be unable to fund its current volume of commissions without the support of these Government funding bodies. However, international streamers like Amazon Prime Video are now benefiting from Screen Australia investment. As Screen Australia funding is finite, securing access to Government funding has become increasingly more competitive for all local commissioners including Stan and Nine. The implementation of a content quota regime for streamers will further increase competition for this funding, directly impacting Stan.
- Sourcing international financing for Stan commissions is also challenged. International distributors are under no obligation to invest in Australian projects. Thus, Stan's commissioned projects compete for a finite amount of international investment dollars within a global marketplace of film and television projects. The rising cost of Australian productions, an issue identified earlier in this Submission, means that international distributors are increasingly being asked to increase the amounts they are investing in Australian projects, making investment in them less appealing. Industry consolidation also means there are



fewer large distributors in the market.¹¹ International investment is also prone to prevailing global market conditions. For instance, there are current challenges within the US where overall budgets for licensed content are contracting and therefore the market for non-US content is under pressure.

These underlying challenges are unique to single territory streamers, who, unlike global competitors, are genuinely unable to commission new projects without other supportive financiers. This highlights the Government's responsibility to address these issues within a content quota regime. This will become particularly critical as these challenges are poised to intensify under such regulation. We are therefore recommending a prioritisation of Screen Australia and other government funding to Stan and organisations with similar key attributes.

(b) Prominence challenges

There is a strong public policy rationale to include Stan and organisations with similar key attributes in the Government's recently-announced prominence framework. The extension of the framework to include Stan would be a vital cog in mitigating the underlying inequalities that a content quota regime will impose on a single territory streamer, and will ensure a level playing field with the global streamers is maintained.

It should also be noted that, outside the proposed prominence framework, Stan's positioning on smart devices relies on commercial negotiations and tenancy fees which, in some cases, are payable to Stan's direct global competitors (e.g. Amazon and Apple) who also manufacture and operate smart devices.

In this regard:

- Stan's inclusion in the prominence framework is critical for Australian viewers given its position as the leading local streaming service and its position as the largest commercial commissioner of Australian scripted programs. These commissions include a raft of world-class Australian productions, with a particular focus on culturally significant and important Australian stories, including *Bali 2002*, *Nitram* and *Black Snow*, which is set in the Australian South Sea Islander community of Far North Queensland. As noted in recent industry commentary¹²:

Stan commissions more local drama than any other streamer, and most of it is excellent. So given there is now controversy about which apps should appear first on smart TVs, how about giving prominence to those networks and streamers with the most Aussie content?

- Stan is increasingly collaborating with the Nine Network on the production of original projects. Stan and the Nine Network have recently co-produced *Bali 2002*, two seasons of *Love Triangle* and the new series *Scrublands* (which

¹¹ See for instance *Ravindran, Manori*, 'The Variety Roundtable: How international TV distributors are surviving U.S. consolidation, soaring costs and new streaming players' *Variety* (2022) <<https://variety.com/2022/tv/global/international-tv-distribution-roundtable-netflix-amazon-streaming-1235402528/>>

¹² Mercado, Andrew, 'Mercado on TV: *Scrublands* a compelling new drama on the platform with most Aussie content', *Mediaweek* (2023) 17 November <<https://www.mediaweek.com.au/mercado-on-tv-scrublands-a-compelling-new-drama-on-the-platform-with-most-aussie-content/>>



premiered on Stan in November). This further highlights how Stan's approach to Australian content production is distinguished from that of the global streamers.

- In the documentary space, Stan co-produces its *Revealed* documentary series in collaboration with 60 Minutes, focussing on in-depth investigative reporting and coverage of important Australian topics, including an exposé into Melbourne's sex trafficking underbelly (*Revealed - Trafficked*), an exploration into the fight to preserve the Great Barrier Reef (*Revealed - Reefshot*), an exposé into the rise of neo-Nazi activity in suburban Australia (*Revealed - Amongst Us*) and more recently, a full-length insight into the defamation proceedings brought by war criminal Ben Roberts-Smith (*Revealed - Truth on Trial*).
- Stan is increasing its involvement in the live broadcast of significant Australian events - having recently live streamed the *ARIA Awards* in conjunction with the Nine Network.
- Stan also invests significantly in the coverage of Australian sports, including Rugby Union, with all Wallabies and Wallaroos Test matches, Super Pacific Rugby, State club competitions, and men's and women's Rugby World Cups streaming on Stan, as well as Australian tennis, motorsport and cycling properties. Stan will also supplement Nine's free-to-air coverage of the Paris 2024 Olympics and Paralympics.

For these reasons, it is proposed that for Stan's service:

- where there are multiple feeds of apps visible on the home screen/primary access point, Stan would be in the first position of the feed where other SVOD services (e.g. Netflix, Amazon, Disney+, Binge and Kayo) sit.
- where there is only one feed visible on the home screen/primary access point, Stan would sit immediately after the free and local terrestrial TV and BVOD services (in the same feed) but always visible on the home screen without scrolling.

Stan should also be included in any legislated prominence in relation to remote controls, voice functionality, search, physical packaging and point-of-sale marketing materials, as well as any other current and future technologies designed for the purpose of accessing and promoting the availability of content and apps on connected devices.

10. Recommendations

1. Government to reconsider the introduction of the NEDE model to subscription streamers; a fair and sustainable position that continues to have broad industry support across commercial television, the streaming services operating in Australia and Foxtel.
2. If this is not supported by Government, we support the introduction of an expenditure model which obligates streamers to invest a sustainable level of its drama and documentary expenditure on new Australian content but only where fulfilment of the



spend obligation is calculated with reference to the total production budget of programs being invested in, and not just the amount being invested. This is the only way to ensure that a level playing field between single territory Australian streamers and the global streamers is maintained. We would be happy to

3. The definition of what qualifies as an “Australian program” be expanded to include projects that meet either ACCTS definition or the “Significant Australian Content” test.
4. Commencement of regulation to be pushed back until at least the financial year 2025 in order to manage what will be an immediate increase to the inflationary pressures within the production industry, to be followed by a transitional period of at least three years to allow an ordered ramp-up of obligation.
5. The following equalisation measures to recognise the disproportionate impact that regulation will have on Stan, plus Stan’s unique ownership structure and commitment to Australia:
 - a. a prioritisation of Screen Australia and other government funding to Stan; and
 - b. Stan to be included in the Government’s recently-announced prominence framework in the manner described above.

FW: Paramount correspondence - Proposed Australian content obligation for Subscription Streaming Platforms

s 22(1)

From: s 22(1) [redacted]@networkten.com.au>
 Sent: Friday, 4 1:39 PM
 To: s 22(1) [redacted]@mo.dewr.gov.au>
 Subject: Paramount correspondence - Proposed Australian content obligation for Subscription Streaming Platforms

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Dear Minister,

We understand a decision on an investment obligation on streaming services is imminent.

During the much welcomed consultation period, we have consistently said that despite there not being a market failure, we would support a local content investment obligation that is fair, flexible and sustainable.

I write today on behalf of Paramount (Australia & New Zealand) to reiterate our position. We have consistently advocated for a model broadly aligned with longstanding requirements for subscription broadcasters (Foxtel), in essence that 10% of licenced drama program expenditure made to populate content on the local Paramount+ service should be spent on Australian drama. To require anything above and beyond this proposal will discriminate against our company and will not create a level playing field. Further, it will put Australia in breach of its obligations under the Australia-United States Free Trade Agreement.

The models proposed by the Government to date are excessive, out of step with international norms and would have negative consequences on the diversity of Australian content being produced, as well as having significant inflationary effects that will impact the sustainability of the industry. Points that we have articulated frequently.

We have worked in good faith at every step along the way to help the Government design a fair, flexible and sustainable investment obligation. Paramount simply seeks of you and your government to ensure any investment obligation achieves harmonisation between subscription broadcasters and subscription streaming services in line with existing laws.

I'd be more than happy to discuss this with you at any time should you wish to understand our arguments more.

Kind regards,

s 22(1)

u s 22(1) [redacted] m s 22(1) [redacted]
 1 Saunders Street Pyrmont, Sydney, NSW 2009



Paramount acknowledges the Australian Aboriginal and Torres Strait Islander peoples as the first people of the nation and the traditional custodians of the lands where we live, learn and work.

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Letter from s 22(1) Prime Video

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Cc: s 22(1) @mo.dewr.gov.au> s 22(1) @amazon.com>
 s 22(1) @mo.dewr.gov.au>, s 22(1) @amazon.com>
Bcc: s 22(1) @mo.dewr.gov.au>
Date: Fri, 12 Apr 2024 02:15:14 +0000
Attachments: Letter to The Hon Tony Burke MP.pdf (492.58 kB)

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Dear Minister,

Thank you again for making the time to meet with s 22(1) last month. Please see the attached letter from s 22(1)

As requested, included in the letter is a list of additional elements that could be added to the ACCTS definition of Australian content, so as to provide for more flexibility in the content that could be produced under any Australian content investment obligation.

Regards,

s 22(1)

Australia, New Zealand, and Southeast Asia
 s 22(1)@amazon.com | +s 22(1)
 Level 8, 2 Market Street, Sydney, NSW, 2000





12 April 2024

The Hon Tony Burke MP
Minister for the Arts
House of Representatives
Parliament House
Canberra ACT 2600

Via email: s 22(1) [REDACTED]@dewr.gov.au

Dear Minister Burke,

Thank you for meeting with me in Canberra on 20 March to discuss Prime Video's investments in Australia, as well as the Government's proposed Australian content investment obligation on streaming services.

I was pleased to have had the opportunity to discuss Prime Video's commitment to Australia with you. Our commitment to telling Australian stories and creating local jobs is demonstrated in the investments we have made in Australia to date. In fact, we have just announced the new Australian romantic drama series, *Top End Bub*, which brings back the beloved characters of *Top End Wedding*, and is created, executive produced, written and stars Australia's Miranda Tapsell. Going into production in May 2024, we will be filming in the Northern Territory and Adelaide.

This series is in addition to the 28 Australian Originals we have invested in since 2019. Those investments have resulted in more than 2,500 jobs across the country. The titles commissioned include dramas, documentaries and light entertainment such as *The Lost Flowers of Alice Hart*, *Deadloch*, *The Narrow Road to the Deep North*, *The Office*, *Hot Potato: The Story of the Wiggles*, *The Test Seasons 2 and 3*, as well as our first Australian movie, *Five Blind Dates*.

I also valued the opportunity to discuss with you Prime Video's concerns with the Government's proposed local content investment obligation. Despite record levels of investment and no evidence of an industry failure, we have consistently said Prime Video would support an obligation that is fair, flexible and sustainable. Any model that does not align with longstanding requirements for subscription broadcasters will disadvantage streaming services and will not create a level playing field. In my respectful view, the models proposed by the Government to date are excessive, out of step with international norms and would have negative consequences for the diversity of Australian content being produced, and have significant inflationary effects that will impact the long-term sustainability of the industry.

One of the concerns I raised with you was the contraction in the diversity of content that would be eligible under the models the Government proposed last year. Specifically, the omission of other genres, such as documentary, as well as the application of a rigid, narrow definition of Australian content. I was pleased you raised the potential for greater flexibility in the definition of Australian content, which is an approach Prime Video would support.

A definition allowing streaming services to meet a minimum number of elements from a combination of the *Broadcasting Services (Australian Content and Children's Television) Standards 2020* (ACCTS) test plus several

additional elements would secure a higher diversity of content, while providing flexibility for streaming services to make high-quality content that we know our Australian audiences love.

You asked Prime Video to consider what these could consist of, and I have set out suggestions below. I believe these complement the ACCTS test and are consistent with the intention of the *National Cultural Policy*. Our thinking is that productions would need to meet five of the ten elements, where the elements comprise the existing five ACCTS elements plus the additional ones below. In the event fewer overall elements are desired, we have listed the additional elements in our preferred order of priority:

- Whether the program is based on an Australian story; or is 'about' Australia or Australians; or is based on an underlying literary work by an Australian author.
- Whether the Director of Photography or Chief Camera Operator is Australian.
- Whether the Production Designer or Art Director is Australian.
- Whether the Picture Editor is Australian.
- Whether the Composer, or Composers of any soundtrack accompanying the program, is/are Australian.

However, as I mentioned in the meeting, Prime Video does not require greater flexibility in the definition of Australian content under the ACCTS, so long as the corresponding investment obligation does not exceed 10% of a streaming service's local production budget.

The Prime Video Australia team welcomes further discussion on the above suggestions, as well as continued engagement with you and your office on the proposed local content investment obligation. Please do not hesitate to have your staff contact s 22(1) by email s 22(1)@amazon.com) or phone (+s 22(1)) at any stage.

If you have any plans to travel to the United States, I would be delighted to arrange for you to be hosted at Amazon MGM studios in Los Angeles or at our headquarters in Seattle.

Yours faithfully,
s 22(1)

s 22(1)
s 22(1)

Prime Video

Proposed Australian content investment obligation model

From: s 22(1) @amazon.com>
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Dear Ministers,

Please see the attached letter from Prime Video.

Yours faithfully,

s 22(1)

Aland, and Southeast Asia

s 22(1) @amazon.com | s 22(1)
 Level 8, 2 Market Street, Sydney, NSW, 2000





13 May 2024

The Hon Tony Burke MP
Minister for the Arts
House of Representatives
Parliament House
Canberra ACT 2600

The Hon Michelle Rowland MP
Minister for Communications
House of Representatives
Parliament House
Canberra ACT 2600

Via email: **s 22(1)** @dewr.gov.au
Copy to: **s 22(1)**

Via email: *michelle.rowland.mp@aph.gov.au*
Copy to: **s 22(1)**

Proposed Australian content investment obligation model

Dear Minister Burke and Minister Rowland

We appreciate the Government's continuing, constructive engagement on the development of an Australian content investment obligation for streaming services. We thank you for sharing further details about the proposed obligation and for seeking our feedback.

Prime Video continues to make substantial investments in Australian content that meet our viewers' needs. For instance, Prime Video recently announced that it's commissioning a new Australian drama series, *Top End Bub*, which follows the global hit Australian film *Top End Wedding*. Starring Australian Miranda Tapsell, it will be produced by Australian production company Goalpost Pictures and directors Christian van Vuuren and Shari Sebbens. The series went into production in May and will be filmed in the Northern Territory and Adelaide. This production is in addition to the 29 Australian original series and features Prime Video has commissioned since 2019.

As you know, investment in Australian content in general and drama in particular is at record levels. Much of this investment is being driven by streaming services. So it is not surprising to learn that the recently released *2023 Television and Media Survey* commissioned by the Department of Communications¹ found that the majority of Australians believe streaming services have enough Australian content. Despite this, we have consistently said Prime Video would not oppose an obligation that is fair, flexible and sustainable.

In this spirit, we remain of the view that any model that does not align with longstanding requirements for subscription broadcasters, will disadvantage streaming services, and will result in an uneven playing field. To that end, we maintain our view that any obligation to invest in Australian content should not exceed the rate of 10% of a streaming service's locally-administered spend on drama programs for the service. The definition of Australian content could be defined in accordance with the *Broadcasting Services (Australian Content and*

¹ <https://www.infrastructure.gov.au/media-communications-arts/television/television-and-media-surveys>

Children's Television) Standards 2020 (ACCTS). As previously discussed, in the event an obligation were to exceed this level, then further flexibility in qualifying content would be needed, both in terms of the definition of Australian content and the genres that could be acquitted under the obligation.

When we met, you invited us to share our feedback on the model outlined during our conversation. To that end, **attached** is a table that sets out our understanding of the proposed model along with our comments.

s 22(1)



s 22(1)



It is well known that Australian parents value the ABC for their children's viewing. 2022 Swinburne University research², funded by the Australian Children's Television Foundation, found that Australian parents favoured streaming services that have "child-friendly" apps and platforms. Specifically, it identified parents selecting iView (65%), ABC Kids (62%), and ABC ME (29%) among the top services their children regularly use. Other popular services included YouTube Kids and Netflix kids. In contrast, that same research found that Prime Video was not a service used as often to view children's content.

s 22(1)



s 22(1)



² <https://www.swinburne.edu.au/news/2022/05/new-research-shows-the-way-families-watch-TV-is-changing/>

We would welcome the opportunity to discuss these matters further. Please do not hesitate to have your staff contact S 22(1) by email (S 22(1)@amazon.com) or phone (+S 22(1)).

Yours faithfully

s 22(1)

s 22(1)

, Prime Video

		<p>s 22(1)</p> <p>[Redacted]</p> <p>To the extent that the government wishes to encourage streaming services to produce children’s content, we recommend that it do so through an incentive, which the Government previously considered. That incentive could take the form of a multiplier as is being proposed for content that has an initial theatrical release or that is co-commissioned with a free to air broadcaster.</p>
<p>6</p>	<p>Sub quota for documentary</p> <p>There would be a sub quota for documentary content set at a minimum of 5% of the obligation, with a maximum of 15%.</p>	<p>As set out above, including a sub quota for documentary content would discriminate against streaming services given that there is presently no obligation on subscription broadcasters to commission documentaries. We also note that there has been no lack of high quality documentaries commissioned in Australia in recent years. Similarly, there is no evidence to suggest that streaming services are producing Australian documentaries at the expense of Australian drama.</p> <p>Including a sub-quota for documentaries would be unnecessary if the investment obligation was limited to drama in the way we propose. However, if the obligation goes beyond 10%, our view is that services should not be required to produce documentaries, but should have the ability to acquit any amount of their obligation producing documentaries if they so choose. s 22(1)</p> <p>[Redacted]</p> <p>[Redacted]</p>
<p>7</p>	<p>Carry-forward</p> <p>Yearly acquittal of the obligation with an option to carry forward 10% of expenditure from one year to the next. Any shortfall in expenditure would need to be made up the following year.</p>	<p>s 22(1)</p> <p>[Redacted]</p> <p>[Redacted]</p>

		<p>s 22(1)</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
8	<p>Reporting to the ACMA</p> <p>The ACMA would be responsible for scrutinising our locally administered expenditure and in particular ensuring that we were not licensing overseas drama for the Australian service cheaply so as to reduce the overall obligation.</p>	<p>The reporting obligations for streaming services should be aligned to what is required of subscription broadcasters under the existing New Eligible Drama Expenditure scheme.</p>
9	<p>Reporting to Screen Australia</p> <p>Screen Australia would be responsible for scrutinising the production agreements into which we enter so as to ensure we are engaging on commercial terms and not inflating our costs in a way that circumvents our obligations.</p>	<p>We have long said that we support reporting obligations to the ACMA in line with those that fall on subscription broadcasters. The addition of Screen Australia reporting is unusual and unnecessary. Based on our understanding of the potential concern that has been said to warrant this oversight, we do not believe that it is a reasonable one. We would be pleased to further discuss this matter with you to allay any concerns you may have.</p> <p>If some comfort is desired on pricing of production agreements then at most statutory declarations to the ACMA could be required, attesting to the honest belief these productions have been negotiated on arm's length commercial terms.</p>

Foxtel Group | Australian content obligation for streaming services

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Date: Thu, 16 May 2024 02:06:27 +0000
Attachments: The Foxtel Group Product Suite 160524F.pdf (153.79 kB)

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Hi s 22(1)

Just following up on our conversation last week in relation to the Australian content obligation that will apply to streaming services.

As promised, I have attached a summary of our product suite which draws out the distinction between Foxtel Go and Foxtel Now (and our other products).

As I also mentioned, we pay s 22(1) a fee to enable our s 22(1) customers to receive an entitlement to s 22(1) as part of their service. s 22(1)

Our concern is to avoid these fees being picked up as "expenditure" and to avoid double-taxation. It is essentially the same issue that arises in relation to linear channels.

Our suggestion is as follows (using the drafting from the November Consultation Paper).

Total drama expenditure for Australia: this excludes expenditure on third party linear channels and subscription streaming services provided as part of the subscription.

Rationale is as follows:

- Third party subscription streaming services will be subject to their own obligation under the scheme; s 22(1)
- This is also consistent with the existing NEDE scheme where for channel providers such as the BBC, the required amount of NEDE is calculated based on the channel provider's total program spend for their drama channels, and the channel provider satisfies the NEDE obligation through its own expenditure on NEDE.

Please let me know if you need anything further or would like to discuss.

Kind regards

s 22(1)

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Confidential

The Foxtel Group Product Suite

The Foxtel Group (**Foxtel**) provides a range of subscription television services to Australians, delivered under different brands and via different technology including satellite and internet, while using the same entertainment, news, and sports content. The Foxtel Group suite of products includes Foxtel, Foxtel Go, Foxtel Now, Binge, Flash, Kayo, Lifestyle, Watch NRL/Watch AFL and Hubbl.

Residential and Commercial STB Services

- Foxtel delivers a premium subscription television broadcast service (which includes live and on-demand content) via satellite and internet to residential set-top-boxes (STBs) including iQ3, iQ4 and iQ5 and the business iQ for commercial subscribers. Foxtel also provides access to third-party apps on iQ3, iQ4 and iQ5 STBs.
- Foxtel Go is an on-the-go version of Foxtel's residential STB service made available via internet to existing Foxtel subscribers at no additional cost. Subscribers can view content live and on-demand through mobiles and tablets and compatible web browsers.

Streaming

- Foxtel Now is essentially an OTT version of Foxtel's STB service available via internet. Subscribers can view content live and on demand through smart TVs, mobiles and tablets, compatible web browsers and other compatible devices.

Services operated by Foxtel subsidiary Hubbl Pty Ltd:

- BINGE is a general entertainment product available by internet that offers a variety of entertainment content including TV series and movies that are also available on Foxtel's STB service. Subscribers can view live and on-demand content through smart TVs, mobiles and tablets, Hubbl, Hubbl Glass, compatible web browsers and other compatible devices.
- Kayo is a streaming product featuring sports content from Australia and across the globe including NFL, NRL, BBL and F1. Subscribers can view live and on-demand content through smart TVs, mobiles and tablets, Hubbl, Hubbl Glass, compatible web browsers and other compatible devices.
- Lifestyle is a streaming product featuring lifestyle and reality content from Australia and across the globe including cooking, property, renovation and travel content. Subscribers can view live and on-demand content through Hubbl, Hubbl Glass and compatible web browsers.
- Flash is a news streaming product that provides access to a variety of global and local news services. Subscribers can view live and on-demand content through mobiles and tablets, Hubbl, Hubbl Glass and compatible web browsers.

Services operated by Fox Sports:

- Watch NRL/Watch AFL are streaming products which allow subscribers outside of Australia to view NRL/AFL content. Watch NRL/Watch AFL are available on mobiles, compatible web browsers and other compatible devices.

Content Aggregation Devices

Provided by Foxtel subsidiary Hubbl Pty Ltd:

- Hubbl is small plug-and-play device that consolidates streaming entertainment and free-to-air television into one user interface. Hubbl plugs into subscribers' TVs through an HDMI cable and allows subscribers to switch seamlessly between programming from different services.
- Hubbl Glass is a 4K-capable, connected TV with built-in Hubbl, requiring internet only and no antenna. Hubbl Glass provides all the features of Hubbl plus Quantum Dot Display Technology and six built-in speakers for 360° Dolby Atmos sound.