

Response to Media Reform Green Paper

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Professor Amanda D. Lotz (QUT), assoc. professor Anna Potter (USC), assoc. professor Kevin Sanson (QUT), and Oliver Eklund compose a research team investigating an ARC-funded Discovery Project (DP210100849) examining the economic and technological factors that challenge Making Australian Television in the 21st Century. The team also authored the 'Assessment of Media Business Models and Supports' report for the Department of Infrastructure, Transport, Regional Development and Communications in 2020.

Executive Summary

The Media Reform Green Paper released by the Government is multifaceted and proposes substantive revisions to the foundations of Australian media. The paper awkwardly bases solutions to several distinct policy issues on spectrum restacking and fails to offer a coherent vision for 21st century Australian video policy or key aims of reform. Such a vision is needed to assess the likely success of the proposed measures and implications for Australians as well as industry sectors.

Recommendations

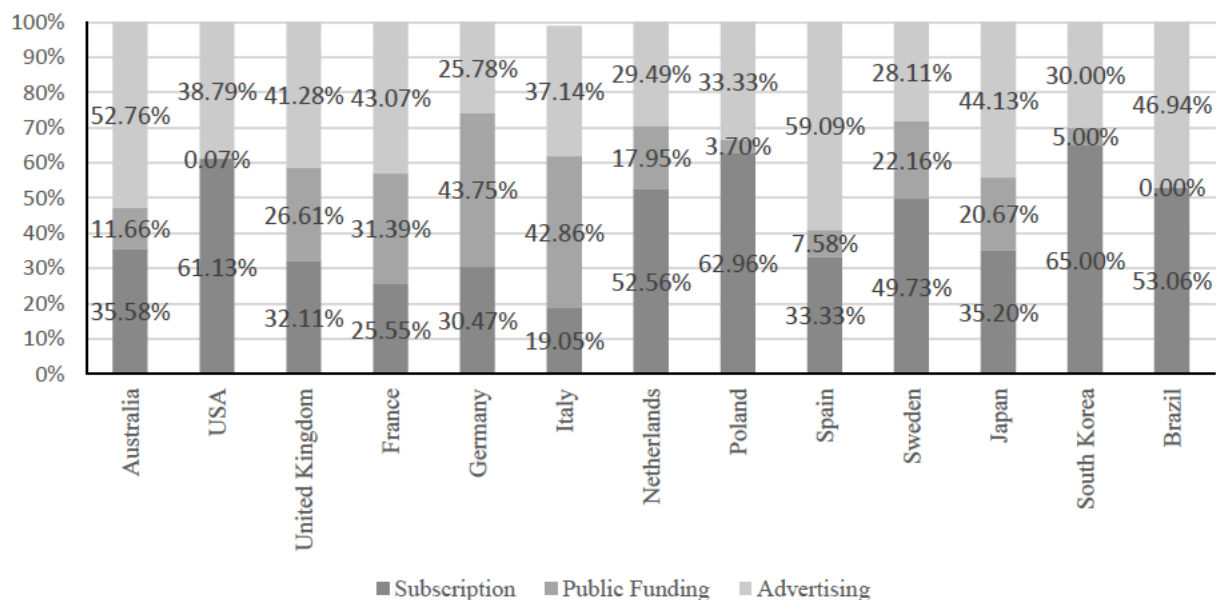
- Reconsider the 'new licence' proposal. Australians should be clearly informed of the costs and other implications of restacking and selling spectrum.
- Recognise the differences between the markets and economic dynamics of SVODs and ad-funded television. The weakening position of commercial broadcasters won't be fixed by the proposed action on SVODs.
- Separate economic development policy and the metrics used to evaluate it from cultural policy goals such as supporting 'Australian stories.' Enforce use of a culture test of 'Australian content' in awarding funding that is part of cultural policy.
- Develop a contestable fund awarded on a strong cultural test as a mechanism of cultural policy. Award funding for such content at a level that replaces the need for foreign funders.
- Ensure that any new obligations on the national broadcasters are accompanied by tied and ongoing funding.

Australia faces a radically changed marketplace in which advertisers no longer fund media such as newspapers or commercial broadcasters to the extent previously the norm. The Australian television ecosystem is overdependent on advertising relative to countries

worldwide (see Figure 1), while broader changes in the global industry have increased pressure to produce content with only limited Australian specificity. The growing reliance of the Australian television industry on funding from outside of Australia – typically a third of budgets, but as much as two-thirds of budgets for high-end drama – also leads content produced in Australia to limit or eliminate its Australian specificity.

The Media Reform Green Paper claims ‘Media Reform’ as its goal but focuses on altering spectrum without raising the substantive consequences of this change for Australians nor providing a compelling argument for its need. The Paper misconstrues the dynamics of the video market in crucial ways. It proposes a solution (eliminate commercial broadcasters’ license fee and local content requirements) unrelated to the problem (diminished advertiser spending in the sector due to superior alternative advertising tools). The Paper proposes major changes in Australian media policy without adequate evidence or justification, and by linking all reform to spectrum restacking.

Figure 1: Per Capital Television Revenue



Source: Ofcom. 2017. *International Communications Market Report 2017* (IHS Markit)

Extraordinary elimination of Australians’ spectrum rights

The question of spectrum policy at the core of this Paper warrants its own discussion and debate distinct from the potential subsequent actions the report proposes.

The Media Reform Green Paper’s core intervention proposes changing the licensing structure of Australian television broadcasting. This is an extraordinary change, and the Paper fails to address what is at stake for Australians in revising spectrum policy in the manner suggested. It presents no data to indicate how and why restacking is needed; potential buyers or the competitive interest in the spectrum intended to be sold; or the costs to be incurred by national broadcasters or Australians as a result of the restacking – all of which are crucial considerations. The offer of a ‘new license’ functions as a ‘wolf in

sheep's clothing' in this report that claims to be about media reform but instead appears motivated by a desire to sell 'excess' spectrum.

The changes to broadcast licenses suggested in the Paper violate the principles of Australian broadcast policy. What the report frames as a 'tax' only became so in 2017, a rebranding of the license fee that was created as a mechanism by which broadcasters compensate the Australian people for the ability to use the electromagnetic spectrum (a public good). Without use of the spectrum, commercial broadcasters have no way to reach the audiences that they sell to advertisers. They do not own this spectrum. Rather broadcast policy has allowed them to use it in exchange for an annual fee (revised to the Commercial Broadcasting Tax in 2017) and expectations of service to the Australian people – for example through offering a minimum level of Australian programming. Legislators have substantially reduced the amount paid by broadcasters in recent years, lowering their contribution to public funds by half in 2013 to 4.5% of gross revenue, and by another quarter in 2016 (to 3.375%). Since 2020, no fees/taxes have been levied and instead \$41 million dollars have been rebated at the decision of the Minister.

This change to spectrum policy can reasonably be evaluated and debated, but the Paper fails to offer compelling argument for why the Australian people are no longer owed recompense for allowing commercial broadcasters to use their spectrum. Moreover, the Paper describes this 'tax' as 'burdensome' (p.11), a phrasing that captures the prioritisation of the position of commercial broadcasters over that of the Australian people. Remunerating Australians for broadcasters' access to a public good – access that enables broadcasters to accumulate millions in annual revenue – is not something burdensome to Australians.

The Paper does not use plain language to state the details most relevant to Australians: that the restacking and selling of spectrum involves a reduction of the free-to-air channels available to them. It is likely the case that fewer commercial channels are an economic necessity given declining advertiser spending. Australians with access to broadband now have more options to supplement free-to-air channels, which will help them replace lost service (albeit while requiring direct payment). However, access to broadband service varies considerably and grounds to mandate accessibility features (closed captioning; audio description) are more difficult for services non-reliant on use of a public good. Greater clarity on the implications of restacking for national broadcasters and the resulting diminishment of their service is needed, especially in light of reduced free-to-air commercial service.

Misperceived competitive forces and misaligned solutions

The Paper discusses a haphazard mix of current issues such as approaches for ensuring local content and the challenges of funding media in the face of declining advertiser spending on print and commercial television. In this discussion, the Paper either misstates or misunderstands the core economic dimensions of how commercial broadcasters are challenged by the evolution of the advertising market. Two separate markets exist, one that

sells attention for advertising dollars, another that sells access to video libraries to subscribers.¹

As a result of this fundamental misperception, the proposal makes several claims about market dynamics that are patently false. In short, neither the license fee/tax nor SVODs are the core threat to the business of commercial broadcasters as constructed by the Paper. Rather, the development of new advertising technologies such as search and social media has provided advertisers with preferred tools for buying attention and led to their decreased spending on the attention offered by Australian commercial broadcasters.

As a result, the 'solution' of 'new licenses' does not align to the problems identified in the Paper. This problem/solution structure is like identifying too much traffic as a problem but proposing that everyone drive blue cars. Eliminating the compensation paid for use of a public good does not solve the problem of increased competition for advertiser spending from new and better advertising tools. There is no policy setting that can reverse what is fundamentally innovation within the advertising sector. The Paper's proposal reduces operational costs for commercial broadcasters, but fully at the expense of Australians and to the unwarranted benefit of corporations and shareholders.

Misclassification of SVODs

The Green Paper does not specify a justification for placing content regulations on SVODs, ignores the key differences between SVODs and linear, ad-supported services, and proposes a mechanism of regulation fundamentally at odds with the business of global SVODs. The suggested imperative of harmonisation as the reason for introducing content regulations appears disingenuous given the Paper simultaneously reduces or eliminates requirements on commercial broadcast services and remaining provisions are hours-based rather than based on revenue (in other words, not in harmony). It is impossible to make or evaluate policy without understanding the purpose, but the approach to SVOD content obligations suggested has several flaws that are likely to result in poor policy measures.

Unlike advertiser-supported television, SVODs are part of a straightforward marketplace. They offer a service, and if the value of that service is suitable, viewers elect to pay for it. They do not use scarce publicly owned spectrum; they do not offer something to viewers in exchange for attention to be sold to advertisers; they do not select to make a scarce amount of content available at a particular time. This strongly distinguishes them from other audiovisual services available to consumers and upon which content obligations have been expected.

To date, millions of Australians have found value in the SVODs offered. The Media Content Consumption Survey finds 73% of Australians pay for one service, 48% two, and 28% three.² It is unclear why the government finds it necessary to dictate the features of the product

¹ Ramon Lobato and Amanda D. Lotz, June 2021. 'Beyond Streaming Wars: Rethinking Competition in Video Services,' *Media Industries Journal* (available by request); Amanda D. Lotz, Anna Potter, and Catherine Johnson, under review, available by request. 'Understanding the Changing Television Market: A Comparison of the Macroeconomy of the US, UK, and Australia,' *Convergence*.

² Social Research Centre for the Department of Infrastructure, Transport, Regional Development and Communications, Nov. 2020. Figure 30 p.37.

these services offer. The government has not made content requirements of similar sectors such as video rental stores or cinemas. Rather, these entities similarly reliant on consumer payment have selected the media offered to consumers based on demand (willingness to pay).

Key risks

Fewer services for Australians

The proposed obligations ignore the reality that the value proposition of some services derives from curating and offering particular kinds of content. Many SVODs are global services available in Australia but based on global provision of a particular video product, not operating bespoke national services. The proposed obligations may make Australia too inhospitable to services based on offering specific types of content – Indian film, British detective series, arthouse cinema – which is arguably a disservice to Australians with a taste for such content that is unmet by linear providers.

Locally produced but not Australian stories

Developing locally meaningful content is contrary to the core function of global SVODs. Content produced in fulfilment of the proposed requirement would likely be designed to add value to a global subscriber base by appealing to audiences in multiple territories. As the next section explores, the suggested use of a ‘passport’ based definition of Australian content further increases this likelihood.

Diminished value of local SVODs

In suggesting a local production/acquisition requirement, the proposal fails to consider the risks that mandating Australian content on global services pose for the domestic services with less capital to spend on program libraries. A key part of the current value proposition offered by Stan is the distinction that comes from its inclusion of Australian content. For example, right now Stan and Netflix are complements (note they are the two most-subscribed services).³ If new rules force local content on Netflix, it becomes a stronger substitute. The market failure of Stan (a SVOD with a business aligned to offering Australian content) would be a far worse outcome for the availability of Australian stories than the Australian commissions this policy might encourage.

If the concern is ensuring production of more Australian content (itself more of an economic than cultural goal), then incentives or requirements should be targeted to Australian services. The worst-case scenario here for Australians is that global SVODs pull out of Australia and new services avoid the Australian market, reducing the choices available.

Content funds not quotas

Requiring all SVODs to produce levels of Australian content is a poor approach to achieving cultural goals due to poor alignment with the business model of global SVODs. Rather, if harmonisation of local content expectations and the production of ‘Australian stories’ are the goals, a more effective approach would be to require contribution to a contestable fund reliant on a strong cultural test. To achieve harmonisation, contribution to the fund should

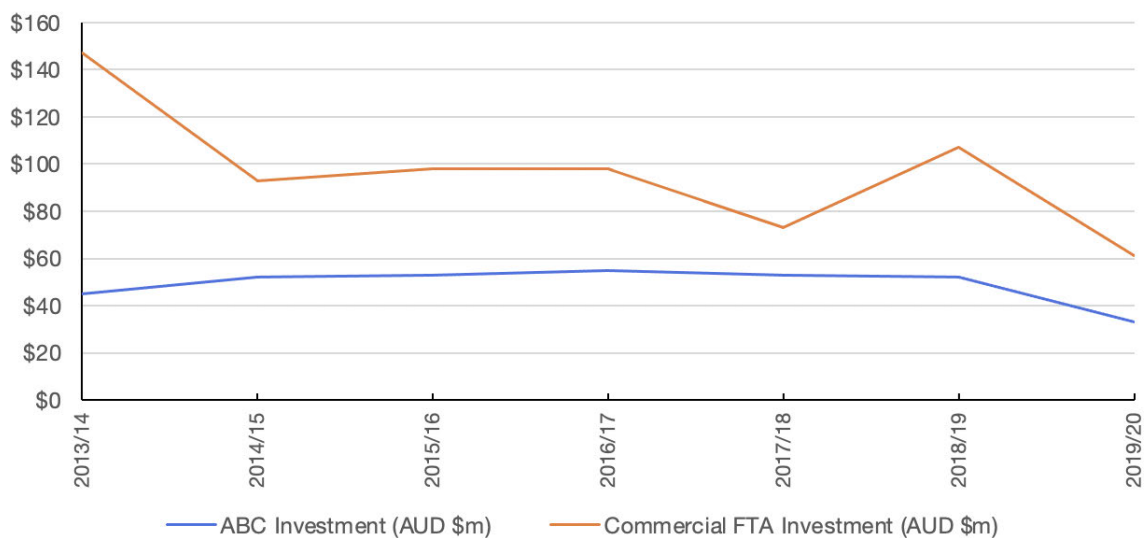
³ Ibid. Figure 26, p. 36

be required of commercial broadcasters in light of loosened subquota expectations, and instead of Foxtel’s NEDE requirement.

Imposing a levy or quota will likely have the consequence of making these services more expensive to Australians. Required contributions should be low enough to avoid discouraging subscription. Much of the challenge the Australian audiovisual ecosystem currently faces results from its low level of subscriber support compared to norms in other countries. The implications of this lower subscriber contribution make Australia’s crisis more acute when combined with diminishing advertiser spending and decreased public spending that results from paused indexation on the national broadcasters’ budgets (see Figure 1).

There is no explanation of the reasoning for the Paper’s suggestion of 5% of revenue as a suitable mechanism, nor the logic of the 20% advocated in recent months by various screen industry advocacy bodies.⁴ For reference, our estimates suggest that 5% of Netflix Australian revenues amount to roughly \$58 million dollars (\$16 standard monthly fee x 12 mo x 6m subs x .05). Current (2019/20) annual ABC drama spending was \$33 million and the combined commercial broadcasters spent \$61 million (see Figure 2). It is difficult to support an argument that a global service should spend substantially more on Australian content than individual domestic services do.

Figure 2: ABC and Commercial FTA Drama Investment 2013/14-2019/20



Source: Screen Australia, The Drama Report 2019/20, p. 23

If the paramount goals of policy are to harmonise across services and support Australian stories, requiring a standard percentage of gross revenue across commercial broadcasters, SVODs (including Stan and Binge), AVOD, and Foxtel be contributed annually to a contestable fund with an enforced culture test is an effective and efficient approach.⁵ That

⁴ MEAA, ‘Screen creatives visit Canberra to call for action on local content’ 16 Mar. 2021; <https://www.meaa.org/mediaroom/screen-creatives-visit-canberra-to-call-for-action-on-local-content/>

⁵ This research team does not believe harmonisation is an appropriate goal, as detailed in our 2020 ‘Supporting Australian Stories on Our Screen’ Options Paper,

percentage is likely not more than five percent. (The advantage of using gross revenue is that it disables ‘creative accounting’ that reduces the base, but by nature it is a very high figure that does not account for the substantial costs of these businesses; two percent might be appropriate assuming the Commercial Broadcasting Tax stays in place at 3.375%). These entities, as well as the national broadcasters, would be eligible to commission content supported by the fund as well. (Local content quotas should remain on commercial broadcasters unless they purchase their spectrum).

Inadequate definition of ‘Australian Content’

The Paper refers to the achievement and delivery of social, cultural and economic policy outcomes – including the availability of Australian stories on television screens. But the Paper proposes a definition of ‘Australian content’ for SVODs that is reliant on the nationality of creatives, and such a definition does not guarantee the cultural outcome of ‘Australian stories’ highlighted as a key aim in the paper.

Inconsistent and poorly tuned criteria of ‘Australian’ content is an existing problem with policy structures (Broadcasting Services Act and its ‘creative elements test’ and Screen Australia Act) that this moment of media reform should address. Two categories of definitions exist:

Category 1 – Nationality of creatives (‘passport rules’)/location of production – This category, which is the foundation of the Broadcasting Services (Australian Content and Children’s Television) Standards 2020, is used when classifying content as Australian for quota purposes. It relies exclusively on the nationality of those with creative control of the content. However, the nationality of key creative practitioners does not guarantee the telling of Australian stories, and passport holders need not even be working in Australia. In practice, this definition prioritises the employment of Australian citizens and residents in screen production activity, not the telling of Australian stories. Production in Australia is also often used as a criterion. Like passports, using location of production aligns to economic development priorities rather than cultural policy as set forth in BSA 3.1(e, ea).

Category 2 – Subject matter – For Producer Offset eligibility, Screen Australia includes consideration of whether a production has ‘significant Australian content’. However, access to the offset is based on five criteria, only one of which emphasises ‘the subject matter of the film’. The remaining criteria pertain to place of production, passports, and budgets. None of these criteria adequately safeguards cultural or social outcomes; all could apply to production activity with little or no specific relevance to Australian audiences.

Screen Australia's direct funding supports currently use yet different criteria, while the Australian Children's Television Foundation 'encourages' 'an Australian voice and point of view.'⁶ The Screen Australia Act of 2008 suggests a 'culture test' to receive direct funding:

'In an environment where the Producer Offset provides the primary means of Government support for projects with commercial potential, Screen Australia's investment and slate management principles are governed by its enabling legislation, the Screen Australia Act 2008, to: ensure the development of a diverse range of Australian programs that deal with matters of national interest or importance to Australians, or that illustrate or interpret aspects of Australia or the life and activities of Australian people'.⁷

Reviewing the titles funded by Screen Australia suggests this culture test is not being consistently applied. Rather, as Screen Australia acknowledges, 'commercial potential' also plays a role in funding decisions. This works to the detriment of richly Australian content that is less likely to enjoy commercial success internationally because of its Australian specificity.

We raise this critique because the Green Paper sets forth the current norm of Screen Australia direct funding as a model for its proposed 'CAST' fund and because the Paper repeatedly claims 'making Australian stories available on our television screens' as a key intent of reform. Without definitions of 'Australian content' that are more sophisticated than the passport status of those with creative control or location of production, new rules will not have the intended outcome.

Of the criteria for demarcating 'Australian stories', nationality and production location-based definitions prioritise economic goals; they can accomplish cultural goals, but do not do so reliably. Subject matter criteria, particularly use of a 'culture test', more reliably achieve both economic and cultural goals. However, in current policy, subject matter is one of multiple criteria and inessential to funding (at least in the Producer Offset, which Screen Australia defines as a support for projects with commercial potential).⁸ In the direct funding support for which a culture test seems to exist, it is not used as a requirement. For reference, the Producer Offset has been the dominant source of support for Australian television drama; since 2013, it has accounted for an average of 59% of combined federal funding or offset awarded in support of Australian television.

Rather than building on current flawed designations that do not guarantee cultural goals, policy reform should allocate some funding explicitly for deeply Australian content by enforcing a culture test as a requirement to obtain the highest funding levels. The definition should require stories to represent or reflect Australian cultural identity – in any of its

⁶ The Children's Television Standard 6 required children's television to be 'appropriate for Australian children'. Although ACMA had not rigorously enforced Standard 6 for some time, the demise of the CTS removes an important cultural safeguard for Australian children's television.

⁷ From Screen Australia's website (<https://www.screenaustralia.gov.au/funding-and-support/television/production/general-tv-svod-production>)

⁸ It is difficult to evaluate the effectiveness and efficiency of the Producer Offset because unlike screen agencies elsewhere, Screen Australia will not reveal the titles supported.

diverse forms – and situate Australian audiences in their specific cultural and geographic contexts.

Moreover, new higher levels of funding need to be made available for this deeply Australian content that is disincentivised by industry norms that presume culturally specific content is harder to sell outside of Australia. Currently, Australian drama relies on foreign investors for an average of one-third of production budgets (though our interviews with producers indicate that figure may be closer to two-thirds for high-end drama). Creatives face pressure to diminish the Australian specificity of their projects in order to achieve necessary foreign investment. In order to create richly Australian stories, government must provide funding equivalent to foreign investment. Requiring the input of foreign money to create the budget forces creatives to be accountable to the foreign audience.

The current proposal risks failing to support Australian stories and merely offering industry support. The market drive for international sales discourages the development of ‘Australian stories’ advocated by the Green Paper. Stories with cultural specificity require higher levels of domestic support than currently possible. Producers recount changes to Australian specificity required to secure foreign funding and have internalised the need to only tell stories about Australians that will make sense to audiences around the world. Not all Australian production can or should meet the standards of a strong culture test, but the reliable existence of some deeply Australian stories requires tiered funding that supports some projects that prioritise Australian viewers over international audiences.

Critical supports underdeveloped

Separate from the primary question of spectrum reallocation, the report raises several other major policy issues. These are underdeveloped and are based on many unknowns (will the restacking go forward; what kind of revenue will result; what amount of revenue will flow to funds). Many of these policy areas require attention irrespective and independent of a fully considered assessment of adjustments to spectrum policy and its consequences.

For instance, local content quotas are a core component of Australian broadcast policy. They ensure that commercial broadcasters that earn considerable revenue from using Australia’s spectrum compensate Australians by providing service in the public good. The suggestion of removing the quotas from the ‘multichannels’ disrupts existing cultural policy. The current dynamics – in which commercial broadcasters prioritise their ‘main’ channel and use multichannels to service more specific audience niches should not be presumed as fixed. Local content quotas on all commercial channels are warranted. It is also unclear what channels will remain after restacking.

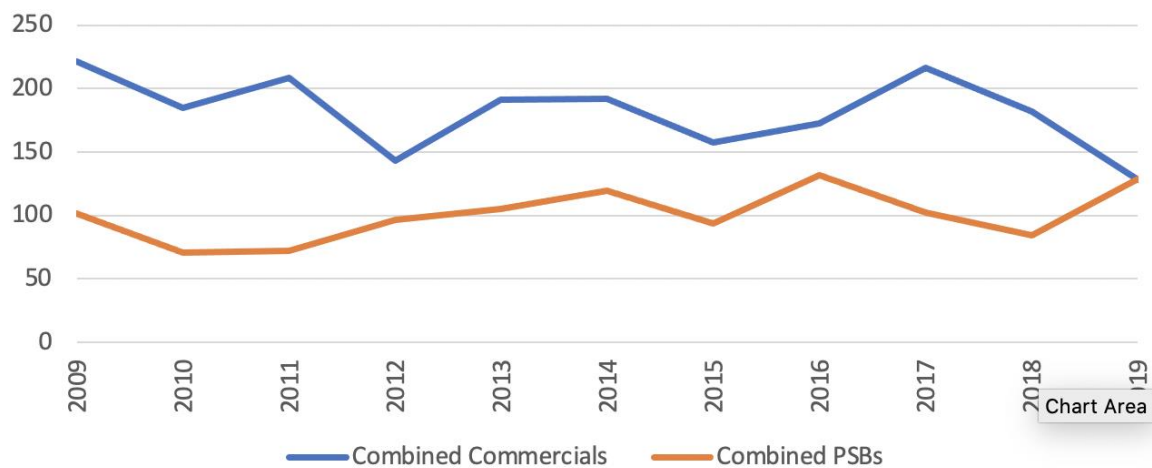
The proposed funds, CAST and PING, suggest a useful rethinking of policy in a way that may better achieve goals given the dynamics of the 21st century. The fund suggested by this submission might align with the CAST fund and contribute annual funding that improves its sustainability. The Paper is very thin on details about these funds, and their success in policy terms hinges critically on details. The Paper does not suggest the percentage of revenues that these funds would receive, which is critical to evaluating the quid pro quo suggested by the Paper. Further, the makeup and selection of the fund managers are crucial details, as are the independence of the funds – and their managers – from economic development

advocacy. Their operation would also require a degree of transparency currently lacking in the sector’s supports. To be clear, these funds should serve the Australian people as measured through metrics of cultural value, not be operated to serve Australian industry, nor be measured through economic metrics. Creating such funds is part of a solution, but unlikely to fix the structural problems facing commercial media (either print or broadcasting and particularly in regional and remote Australia).

Additionally, it is crucial to point out that significant negative consequences are likely to result from creating new expectations of the national broadcasters, as the Paper proposes, without attached funding, particularly in a context in which funding freezes have already challenged budgets. Creating an unfunded mandate that requires particular content of the ABC without dedicated and reliable funding poses real risks to the organisation’s ability to fulfill the many equally important expectations made of it. Any such new obligations must have adequate tied and ongoing funding.

It is the case that the ABC is a strong provider of Australian content even without quota-style requirements and that the ABC has been the dominant producer of adult drama and children’s programming relative to any single provider since 2012 (excepting soap operas, and except in 2018).⁹ Figure 3 shows, excluding the two daily soaps, the three commercial broadcasters currently produce the same number of hours as the national broadcasters (mostly just the ABC) has trended slightly up.

Figure 3: Hours of Australian Drama (daily soaps excluded), 2009–2019



Source: Screen Australia, Drama Report 2009–2020

However, it is also the case that the replacement of subquota requirements on commercial broadcasters with the points system of the 2020 Broadcast Services Standards creates new risks of drastically diminished Australian drama availability and may leave only the ABC, SBS, and Stan with a business strategy that supports commissioning Australian drama.

⁹ Potter and Lotz, under review; draft available upon request.

Conclusion

In addition to the concerns highlighted, the Green Paper does not address a core problem with the existing policy structure that should be a top priority in an effort to modernise Australian video policy: the conflation of economic and cultural aims.

Separating supports of the production sector (producer offsets, state funding agencies' contributions', location incentives) from those designed to support the telling of Australian stories would improve the efficiency and effectiveness of policy in this sector. This problem is addressed substantively in our submission to the 2020 'Supporting Australian Stories on Our Screen' Options Paper.¹⁰ What this means in practice is separating the dual priorities of Screen Australia to support the production of Australian stories and operate economic supports to the sector into distinct agencies with particularly tuned KPI.

Developing stronger criteria of Australian content that warrants public investment and offering higher levels of funding to incentivise the particularly Australian stories intended by cultural policy are crucial aspects of 21st century policy reform given heightened market pressures that prioritise content accessible to global audiences. Enforcing existing culture test language would be a valuable first step.

¹⁰ <https://www.communications.gov.au/sites/default/files/submissions/sass-amanda-d.-lotz-anna-potter-and-kevin-sanson.pdf>