Supporting Australian Stories on our screens

Response to March 2020 Options Paper

Submission of the Media Entertainment and Arts Alliance (MEAA)

11 June 2020

MEAA represent approximately 8,000 performers and crew working in the Australian screen production sector. MEAA welcome the opportunity to respond to the *Supporting Australian stories on our screens - Options Paper* of March 2020 (Options Paper). The Options Paper is a well-considered exposition of the issues confronting the screen sector with respect to Australian content.

MEAA's position on each of the matters canvassed in the Options Paper is as follows:

Streaming Services

- Streaming services must be captured by content rules by:
    - fixed % of Australian revenues (at least 10 per cent) to be invested in Australian programs; <u>and</u>
    - fixed portion of each streaming service's catalogue be Australian content

Content Standards

- MEAA support maintaining the overarching 55% Australian programming content standard across all broadcast television, including the ABC and SBS/NITV

Adult Drama Standard

- MEAA support retention and extension of the Adult Drama content standard so that it covers commercial and public television plus streaming services.

Children's Content

- Responsibility for children's television production be shared across all providers: linear and digital, commercial and public, with streaming services either mandated to produce children's content *or* devote a portion of their revenues (based on a new levy) to children's television production
- That the Australian Broadcasting Corporation (ABC) become the central children's television content production house and transmitter, subject to additional funding
- That commercial television C and P quotas be reduced in proportion to the ABC's increased production levels
- That the Producer Offset be set at 40% for the production of Australian live action children's drama

Documentary

- MEAA support retention of the 20 hours per year documentary requirement and extending these obligations to streaming services.

Subscription broadcast television (SBT)

- MEAA support retention of the New Eligible Drama Expenditure scheme, which requires SBT services to invest at least 10 per cent of their total program expenditure on new Australian drama.

New Zealand Productions

- MEAA support a cap on the number of hours of NZ content can be used each year by broadcast licence holders.
- MEAA also support amending the definition of 'first release' so that content first aired in NZ or NZ content aired in another country first cannot be classified as first release Australian content.

ABC and SBS

- The ABC and SBS (including NITV) should be subject to Australian content rules and required to report performance against these standards each year.

Producer Offset

- MEAA support a platform/format neutral 30% offset, with 40% able to be claimed for children's live action drama production and majority Australian productions.

Location Offset

- MEAA support merging the location *offset* and location *incentive* to form a 30% offset.

PDV (Post Digital Visual Effects) Offset

- The current PDV Offset is fit for purpose at the current rate of 30%.

Mutual Exclusivity of Offsets

- MEAA support recipients of producer and location offsets being able to access PDV offset.

MEAA's Submission

This submission reflects content in previous MEAA submissions to Australian content-related reviews in 2017[1] and 2018[2]. MEAA's position has also been informed by the recommendations in the Final Report of the House of Representatives Inquiry into the Australian Film and Television Industry (HOR Inquiry)[3], which was tabled in December 2017.

Although the impact of COVID-19 on the screen sector is out of scope in this review, MEAA submit that reform decisions must be informed by the crisis that, with very few exceptions, has shut the screen production pipeline. As was acknowledged in the Ministerial Statement accompanying the release of the Options Paper:

> *COVID-19 has only reinforced the economic trends described in this options paper. Broadcast television is under greater pressure than before; streaming services are expanding further. This only accentuates the disparity in regulatory treatment they receive.*[4]

MEAA's submission therefore contains information in its May, 2020 submission to the Senate Inquiry into the Australian Government's response to the COVID-19 pandemic.

[1] House Standing Committee on Communications and the Arts Inquiry into the Australian Film and Television Industry

[2] Environment and Communications References Committee Inquiry Into the Economic and Cultural Value of Australian Content on Broadcast, Radio And Streaming Services

[3] House of Representatives Standing Committee on Communications and the Arts, Report on the Inquiry into the Australian Film and Television Industry, December 2017 (HOR Inquiry Report)

[4] Hon Paul Fletcher, Minister for Communications, CyberSafety and the Arts, 14 April 2020, at: https://www.communications.gov.au/what-we-do/television/ministerial-statement

The Four Reform Models
MEAA has considered the four models set out in the Options Paper. We have not seriously entertained models 1 and 4, other than Model 1's propositions that existing content quotas (with variations to children's content quotas) continue to apply to FTA broadcasters and the New Eligible Drama Expenditure (NEDE) scheme be maintained.

Although Model 2 (minimal change) contains constructive proposals, it lacks precision regarding individual organisations' obligations to produce quality dramatic content by genre. We favour more comprehensive change on quotas where genre and sub-genre rules apply to individual service providers. MEAA also rejects the partial shift in the application of the Producer Offset (at an unspecified rate).

MEAA support model 3, with the above qualifications concerning retention of content quotas and the NEDE scheme.

Australian Content Quotas
MEAA is mindful of the observation in a 2011 report by PwC[5] that 'the removal of quotas on commercial television would see children's programs cease production, drama programs reduced by 90 per cent and documentary programs would be halved.[6] This threat remains valid, almost ten years on.

We also strongly agree with the view that 'Australian drama, documentary, and children's content have recognised cultural value and can drive significant revenue but is also vulnerable without government intervention'.[7]

These two statements underline MEAA's overall position with respect to content quotas: unless such requirements are mandated by government, the quality and range of programs telling Australian stories will dissolve.

Free to air broadcast television
In asserting this overarching view, MEAA is aware that substantial changes are sweeping through the Australian broadcast television market. Digital competitors, unimagined less than ten years ago, and rapidly changing means of consuming screen content, threaten our once stable and bountiful commercial broadcast television system.

MEAA accept that Australian commercial television broadcasters are facing ongoing structural and revenue challenges. Revenue losses, unheralded mismatches between revenue and profits, falling audiences and consumers increasingly in the thrall of digital platforms, are now the backdrop against which commercial television functions.

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[5] *How Do Local Content Requirements Impact Australian Productions? Review and Analysis of Broadcast Sector Minimum Content Requirements*, PwC, report prepared for the Department of Broadband, Communications and the Digital Economy, 2011, p. 49. Cited in Options Paper, page 7
[6] Options Paper, page 7
[7] Options Paper, page 32

While industry revenues are forecast to fall at annualised rate of 2.8% over next five years[8], MEAA do not subscribe to the notion that commercial television has collapsed. PwC has rated overall value of the FTA television sector (for linear and BVOD) at $3.69 billion in 2019, with modest growth projected (to $3.83 billion) over the next four years. The weekly cumulative reach broadcast television was 18.3 million people from July to December 2019, with consumers taking in an average of 65 hours of broadcast television each month, including 57 minutes and 55 seconds of live consumption.[9]

The commercial television sector is resilient, adaptive and combative. About $3.8 billion in ad revenues continue to accrue to the TV market each year,[10] the same as in 2013. Although the total advertising market declined by almost 5 per cent in calendar 2019 (from the year to December 2018), BVOD advertising increased by 39%.[11] While BVOD growth is unlikely to entirely arrest the fall of ad revenues, it is cause for some optimism.

The industry organisation, ThinkTV, said earlier this year that, 'the performance of BVOD continues to buck general market performance trends' and despite the overall drop in [ad] revenue, BVOD showed significant strength, rising 42.8 per cent for the six months to December 31, 2019'.[12]

The value of the commercial networks' BVOD services has surged from $78 million in 2017, to $182 million in 2019. PwC estimates that this sector will enjoy between 20 per cent and 40 per cent year-on-year growth for the next three years and that the BVOD market will be valued at $441 million in 2023.[13]

It follows that MEAA do not accept that a case has been made for wholesale removal of content quota obligations. To be clear, MEAA support the retention of quotas for Australian drama programs and documentaries for commercial television and the extension of these quotas to public broadcasters. Our view about streaming services' contribution to dramatic content is set out later in this submission.

Children's Content

The one area of the current Broadcast Services Standard that may warrant alteration is children's content. As is well-known, commercial broadcasters are required to air 260 hours of Australian C programs and 130 hours of Australian P programs each year during children's viewing times.[14] [15] Within this 390 hour window, at least 25 hours of first-release Australian C drama is to be screened each year and 96 hours over three years.

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[8] See table 2 in Options Paper, page 30

[9] ThinkTV ThinkPack for H2, 2019, pages 4 and 5

[10] The *Australian Financial Review* reported in May 2020 that the total television market, which includes BVOD, commercial metropolitan and regional free-to-air and subscription TV, fell 4.8 per cent to $3.86 billion for calendar 2019.

[11] TV advertising revenue drops 5.9% amid 'challenging market conditions', Hannah Blackiston, Mumbrella, 5 February 2020

[12] TV advertising revenue drops 5.9% amid 'challenging market conditions', Hannah Blackiston, Mumbrella, 5 February 2020

[13] Entertainment and Media Outlook 2019, PwC, Free to Air Television chapter.

[14] C is Children's programming; P is preschool programming.

[15] C and P programs may only be aired at particular times: early morning/late afternoon and evening for C programs and P programs between 7am and 4.30pm on weekdays.

MEAA firmly believe that there is an unequivocal cultural dividend connected to mandating Australian children's content requirements. Kids also like Australian-specific productions, a fact supported in the 2013 Child's Play report by Screen Australia[16] and elsewhere. Australian content for children not only enriches young audiences; these programs are also a critical pathway for future generations of performers and allied creative forces.

Children's program production, however, finds itself with virtually no friends in the sector that singularly bears responsibility for its production: commercial FTA television.

On one level, the requirement to produce 32 hours of Australian first release children's drama each year represents 0.73% of broadcast hours between 7am and 7pm,[17] seems a modest imposition. So too does the regulator's view that the commercial networks spend 1.6% of their programming budgets on children's content – including foreign programming – with new Australian production amounting to 0.5% of program spending.[18]

Unfortunately, children's television has endured a steady campaign by commercial broadcasters to rid themselves of what they see as commercially unviable content. This distaste has been reflected in a range of decisions by television networks that have severely compromised the cultural and financial value of children's programs and its appeal to young people: poor scheduling, constrained investment and relegation of content to multi-channels.

Jenny Buckland, the Chief Executive of the Australian Children's Foundation (ACTF) observed in 2017 that 'over the last decade, commercial broadcasters have reduced their annual spend on children's content from around $30 million each to $10 million each.[19]

Although commercial broadcasters have not done kids programming any special favours, a range of objective obstacles are also at play that, collectively, provide the rationale for alternate commercial broadcaster responsibilities for children's television. Together with a declining revenue bases across free-to-air commercial broadcasters, these include:

- Changing children's viewing habits: children are no longer viewing drama and other productions through television networks in the same numbers; when they do, it is for less time;[20]
- Digital platforms such as YouTube[21] now hold sway when it comes to screen time for children and youth.[22] An average Australian child now uses 3.2 devices and 2.9 different platforms to watch children's programs;[23]

[16] See *Child's Play*, 2013, page 4. It refers to 54% of child respondents saying they liked Australian dramas 'the best'
[17] ACTF Convergence Review submission, 2011, page 23
[18] Local drama on life support as TV networks threaten to pull the plug, Amanda Meade, The Guardian, 1 March 2020
[19] ACTF, Australian Children's Content Review submission, September 2017, page 14
[20] While the TV set is the most frequently used device to view children's programs, online services make up three of the four top platforms most frequently used among children aged 0–14. Daily use is most frequent for free video-on-demand (VOD) content through YouTube (27 per cent), with subscription services, such as Netflix, and free-to-air TV catch-up services, such as iView, used daily by 14 per cent and 11 per cent of children respectively. Live broadcast TV is the second most frequent platform used daily at 19 per cent. See: Children's television viewing and multi-screen behaviour - Analysis 2005-16 OzTAM audience data and 2017 survey of parents, carers and guardians, ACMA, August 2017, p.p. 1-2

- Streaming and BVOD services enable children to view what they want when they want;
- The emergence of more dedicated children's channels on pay TV and ABC3; and
- Advertising restrictions faced by commercial broadcasters' during screening times

According to ACMA, average child audiences for broadcast television declined 16 per cent between 2005 (234,000) and 2016 (197,000). For commercial TV, the average audience declined by 33 per cent between 2005 (168,000) and 2016 (113,000).[24]

We now find ourselves at the point where the Australian Children's Television Foundation (ACTF) has said the state of children's television constitutes 'market failure' warranting government intervention.[25] The HOR Inquiry recognised the troubled state of children's TV and recommended that:

- Children's television move at least in part to an 'expenditure-based system for new-release children's [content]';[26] and
- Ensure that a high variety of high-quality Australian content for children continues to be available across all platforms[27]

MEAA agree with these cross-party recommendations and support partial and contingent relaxation of the existing children's content rules as they apply to commercial television.

It follows that MEAA does not support commercial FTA television receiving a 'free pass' with respect to children's television production obligations. Children's television, where properly valued and available on demand, is popular and in many instances, commercially viable. Nine in 10 children (92 per cent) watch children's programs on a TV set, with six in 10 (62 per cent) using it daily.[28] In addition, and as the Options Paper notes, children's content is the second highest rating genre on BVOD services (behind drama) and makes up 18 per cent of all viewing on this kind of platform.[29]

Accordingly, MEAA support the following features of the children's television production system:

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[21] The Options Paper, at page 24, states that video sharing sites such as YouTube account for a 'significant proportion of children's content consumption, with 68% of children aged between 0 and 14 watching children's programs on these services in 2016.

[22] Children are no longer restricted to viewing content on one platform, with nearly all children viewing children's programs on multiple platforms and multiple devices—only four per cent of children aged 0–14 use one device and one platform. See: Children's television viewing and multi-screen behaviour - Analysis 2005-16 OzTAM audience data and 2017 survey of parents, carers and guardians, ACMA, August 2017, p. 19

[23] See: Children's television viewing and multi-screen behaviour - Analysis 2005-16 OzTAM audience data and 2017 survey of parents, carers and guardians, ACMA, August 2017, p. 1

[24] Children's television viewing and multi-screen behaviour - Analysis 2005-16 OzTAM audience data and 2017 survey of parents, carers and guardians, ACMA, August 2017, p. 7

[25] ACTF submission to Australian and Children's Content Review

[26] HOR Inquiry Report, paragraph 3.97, page 54

[27] HOR Inquiry Report, paragraph 3.97, page 55

[28] Children's television viewing and multi-screen behaviour - Analysis 2005-16 OzTAM audience data and 2017 survey of parents, carers and guardians, ACMA, August 2017, p. 18

[29] Options Paper, p. 24

- Responsibility for children's television be shared across all providers: linear and digital, with streaming services either mandated to produce children's content *or* devote a portion of their revenues (based on a new levy) to children's television production;
- That the Australian Broadcasting Corporation (ABC) becomes the central children's television content production house and transmitter, subject to additional funding;
- That commercial FTA C and P quotas be reduced in proportion to the ABC's increased production levels; and
- That the Producer Offset be set at 40% for Australian live action children's drama production.

Central Role for the ABC

With respect to MEAA's second point, we submit that the ABC should become the central provider and broadcaster of children's content. It is arguable that the ABC already performs this role. We note that the ABC informed the Inquiry into the Australian Film and Television Industry in 2017 that the ABC showed about 3400 hours of Australian content for children per year across its channels.[30]

The ACTF referred to ACMA's recent view that 65 per cent of children nominate an ABC children's channel as their favourite, followed by subscription television at 22 per cent.[31] In 2018-19, seven of the 15 Australian children's television drama titles that went into production were financed by the ABC, including *Bluey*.[32]

To build upon the ABC's already strong presence in this field, further financial support would be required. The ABC would also need to be comfortable with an enhanced role, lest it be viewed as an 'emergency' provider of children's programs.

Animation

The final area of children's television covered by this submission is the apparent takeover by animation of the children's drama production sector. As the ACTF has remarked, between 1997 and 2016, annual average hours of children's animated drama went from 45 to 96 hours per year, while hours of live action drama decreased from 71 to 35 hours.[33] The 2018-19 Drama Report commented that 'animated titles have made up the bulk of production slates over the past five years'.[34]

The Drama Report also stated that the 5-year average expenditure for children's live action drama is $26 million per annum, while the corresponding animation outlay was $39 million per year.[35]

MEAA support the Australian animation sector and the current PDV offset arrangements, but we do acknowledge that producers of animated children's content presently receive higher government rebates

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[30] Evidence of David Anderson to Inquiry, 16 June 2017, Committee Hansard, page 21

[31] ACTF, Australian Children's Content Review submission, September 2017, page 21

[32] Free TV calls for Australian content reform as report shows over $1bn in spending on drama production, Hannah Blackiston, Mumbrella, 1 November, 2019

[33] ACTF, Australian Children's Content Review submission, September 2017, page 14

[34] Although there was an upwards bump in live action drama in 2018-19, with 61 hours of such production, compared to a previous 4-year average of 24.5 hours. This was still lower than the 71 hours of animated content produced in 2018-19. See: Drama Report 2018-19, page 17

[35] Screen Australia Drama Report, page 19

than producers of live action television drama, despite the lower cost of producing animated content.[36] In this regard, MEAA note that the 2017 consultation paper for the Australian Children's Screen Content Review stated that 10 of out 14 domestic children's titles produced in 2015-16 were animated, with most productions accessing the 30 per cent PDV offset instead of the 20% producer offset (for television).[37]

In a cultural sense, MEAA also acknowledge the view that the Australian character of animated content can be perceptibly lower than in live action drama. The ACTF has commented, in this respect, that live action children's drama 'is almost always situated in an Australian setting with familiar characters, settings and voices. Animation does that, too, but frequently doesn't'. Animation can be prone to having a "predominantly 'international' accent."[38]

Live action children's drama should be elevated and regarded as a critically important form of screen production. MEAA believe that the proposals set out earlier in this submission, especially the application of the highest level of producer offset, will assist in maintaining and bolstering this important sub-genre.

Drama Quotas

The current quota applying to first-run adult Australian drama – across movies, mini-series and serials – require each commercial television broadcaster to score at least 250 points for first-release Australian adult drama per year and a three-year score of 860 points.[39]

Subscription broadcaster television drama channels, and drama channel package providers, are required to invest at least 10 per cent of their total program expenditure on new Australian drama.

The Options Paper observes that although budgets for Australian dramas are increasing, total annual expenditure on Australian drama by commercial broadcasters has decreased since 2010-11'.[40] This fact is borne out in ACMA's consolidated compliance results from 2009 to 2018. This data shows that commercial television invested approximately $130 million in drama production in 2012 to 2014, but slipped to about $100 million in 2014 to 2016, $126 million spent in 2016-17, but this was followed by a sharp fall to $92.4 million in 2017-18.[41] Investment in drama improved to $114 million in 2018-19. [42]

Overall, 2018-19 saw the production of 37 Australian TV drama titles, with $334 million in expenditure. Outside commercial television funding contributions, public broadcasters contributed a combined $58 million, with the ABC providing the most finance of any single network.[43]

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[36] This is generally true, the Drama Report 2018-19 put the 5-year average hourly spend on live action drama at $0.885 million per hour versus $$0.828 million per hour for animation.

[37] Australian Children's Screen Content Review, Discussion Paper, Department of Communications and the Arts, page 8

[38] ACTF Submission to Children's Content Review, September 2017, page 16

[39] The score is calculated by multiplying a 'format factor' by the duration of the program. The format factor is a scale based on a combination of program type (serial or series, feature film, telemovie, mini-series or stand-alone drama of less than 90 minutes) and/or the level of licence fee paid.

[40] *Options Paper*, page 32

[41] See ACMA Comparison of Compliance Results – Metropolitan Commercial Television Networks, May 2019, page 19

[42] Screen Australia Drama Report 2018-19, page 22

[43] The ABC provided finance to 28 drama titles across TV and online. Screen Australia Drama Report 2018-19, page 19

Adult drama quotas are a mainstay of the Australian screen industry. Of all the quotas, sub-quotas and rebates, it is perhaps the first release drama production quota that makes the single greatest contribution to the industry's sustainability. MEAA is however concerned that the variability of drama funding and the number of titles funded each year. Static or falling investment by commercial television providers (itself a product of revenue falls), together with declining adult audiences for free-to-air broadcasters[44], will not sustain the Australian screen industry and its 30,000 workers into the future.

There are plain cultural benefits in these stories being told and plain cultural deficits in permitting the further encroachment of content bought off-the-shelf from overseas. There is also a dividend in requiring public broadcasters to report production levels of such content on an annual basis.

MEAA therefore strongly support:

- Retention of the current drama quotas applying to commercial FTA television;
- Extension of these requirements to public broadcasters; and
- Extending obligations to produce adult drama to streaming services.

Broadcast Subscription Television (New Eligible Drama Expenditure)
The NEDE scheme requires broadcast subscription television providers to spend at least 10 per cent of total program expenditure for each drama channel on new Australian drama programs.

MEAA note that the 2018-19 Screen Drama Report observed that finance from subscription television broadcasters declined for the third year in 2018-19, to $12 million, and had dropped to a five year low.[45] Only three titles were produced. This is most likely a reflection of diminishing revenues[46] and subscriber numbers at Foxtel, the dominant broadcast subscription provider. Foxtel's total subscriber base was 2.95 million in early 2020, up 3% compared to the prior year[47], but revenue is down, with News Corp writing the company's value down by nearly $US1 billion (AUD1.5 billion) in May, 2020.[48]

In all of the circumstances, MEAA support retention of the NEDE as it stands. The NEDE requirement is already flexible in so far as Australian content drama spending is linked to overall company performance. We are not aware of any compelling arguments to sustain the increased flexibility options set out in models 2 and 3 in the Options Paper.

Capture of Streaming Services in Content Rules[49]
Over the past five years, MEAA's members have been concerned by increasing regulatory inequality between commercial broadcasters and digital platforms such as Netflix, Amazon, Stan and more recently, Disney-Plus. These entities are not subject to minimum Australian content rules, despite exponential

[44] See Figures 2 and 4 in Options Paper, pages 19 and 21 respectively
[45] Screen Australia Drama Report 2018-19, page 22
[46] The Options Paper, at page 30, points to revenue declining from $2.9 billion in 2013-14 to $2.4 billion in 2016-17. The position has not improved since that period.
[47] Foxtel subscribers up, but revenue down, Mariam Cheik-Hussein, AdNews, 7 February 2020
[48] News Corp's billion dollar write-down for Foxtel, Chris Pash, AdNews, 8 May 2020
[49] This section is largely a reproduction of MEAA's submission to the Senate Select Committee's inquiry into the federal government's response to the Coronavirus.

subscriber and user growth, having billions of dollars of international production funding at their disposal and having access to a range of screen production incentives, namely location and post-production offsets.[50]

In contrast to the contracting commercial television sector, which, as stated above, makes the single greatest (collective) contribution towards drama production in Australia, spending on online dramatic first release, across Netflix, Stan, Amazon, YouTube and Facebook totaled $40 million (with overall budgets of $53 million[51]) in 2018-19. This figure was 25 per cent less than in 2017-18.

This reduction came at a time when SVOD's market value is booming. In 2019, PwC estimated Australia's SVOD's market value at $1.48 billion. PwC estimates the figure will be $2.68 billion in 2023, with growth calculated at about 16 per cent per annum.[52] If PwC's forecasts are correct, the SVOD sector's total value will be $700 million less than the Australian entire commercial television sector valuation of $3.8 billion in 2023.

Since 2016, more Australians have had some form of pay TV than do not. At May 2019, 71 per cent of Australian adults with a television had at least one subscription. About 1 million more Australians gained access to a streaming service in 2019 alone.[53]

Roy Morgan released new data in March 2020, which stated that 12.2 million Australians have access to Netflix (6 million subscribers). Stan has 3.7 million users (1.8 million subscribers), while Amazon Prime Video has a reach of 1.5 million Australians, based on 600,000 subscribers.[54]

Disney Plus, which only entered the Australian market in November 2019, now reaches 1.8 million viewers, placing it in fourth in the SVOD market, while YouTube Premium has 1.48 million.[55]

It is notable that many Australian households subscribe to more than one SVOD company. Roy Morgan reported in December 2019 that 3.4 million Australians have access to both Netflix and Foxtel, while 3.1 million have access to both Netflix and Stan.[56]

Netflix's market capitalisation in April 2020 was USD $187.3 billion, putting it just ahead of Disney's USD $186.6 billion.[57] Australia's commercial television networks are simply not of this scale.

This scale allows such streaming services to spend massive amounts on productions. For example, Netflix confirmed earlier this year that it will spend $15 billion on content during 2019, its largest annual budget to

[50] Since 2019
[51] The additional $13 million was spent outside Australia
[52] Entertainment and Media Outlook, 2019, PwC, Subscription Television Chapter
[53] ibid
[54] *Disney Plus attracts over 1.8 million in first 3 months*, Roy Morgan, Finding No 8348, 31 March 2020
[55] ibid
[56] *14.5 million Australians already have Pay TV / Subscription TV as Disney+ enters the market*, Roy Morgan, Finding No 8218, 2 December 2019.
[57] *Netflix Worth More Than Disney After Streamer's Stock Hits All-Time High*, Todd Spangler**,** Variety, 15 April 2020

date,[58] while Amazon disclosed that for the first quarter of 2019, it spent $1.7 billion on video and music content, equating to about USD $7 billion for the year.[59]

To give an example of streaming service production expenditure outside of the USA, Netflix revealed in last year that it will spend USD $500 million making more than 50 TV shows and films in the UK over 2019-20.[60]

In addition to the economic might of the international streamers, we also acknowledge PwC's view that SVOD has 'increasingly become the dominant platform for professionally produced drama'.[61]

It is well past time that our content rules were modernised to reflect contemporary viewing habits and consumption and to capture a portion of the budgets overseas entities like Netflix and Amazon expend on programs each year.

It is plainly unsustainable that the part of the screen industry with the greatest capacity to pay bears no responsibility to producing and carrying Australian content, especially in an environment where these providers can now access government-funded Location and PDV offsets.[62]

MEAA's position is clear: companies that derive significant benefits from Australian consumers and which have access to government screen rebates should be subject to Australian content requirements. This much was recognised by the HOR Inquiry, which supported the principles of platform neutrality and capture of new market entrants more than two years ago.[63]

Australia would not be alone in moving to regulate streaming services. In 2018, the European Parliament voted in favour of a new quota for content on streaming services. Services, such as Netflix and Amazon Prime Video, will have to make sure that at least 30 percent of their catalogs in Europe come from European countries.[64] Each member country has until September 2020 to incorporate the new rules into their domestic laws.

New Zealand Content

The Content Standard recognises New Zealand programs equally with Australian programs.[65] This allows Australian commercial broadcasters to count New Zealand content towards Australian content requirements.

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[58] Netflix Raising $2 billion in Debt Amid Original Content Push, Georg Szaili, Hollywood Reporter, 21 October 2019

[59] Amazon on pace to spend $7 billion on video and music content this year, according to new disclosure, Eugene Kim, CNBC, 26 April 2019.

[60] Netflix to spend $500m on British-made TV shows and films, Mark Sweney and Tara Conlan, Guardian, 20 September 2019.

[61] Options Paper, page 22

[62] See: Federal Government extends Offsets to Streamers, Inside Film, 11 April 2019

[63] HOR Inquiry Report, paragraph 3.97, page 54

[64] The E.U.'s audiovisual media services directive states that member states "shall ensure that media service providers of on-demand audiovisual media services under their jurisdiction secure at least a 30 per cent share of European works in their catalogues and ensure prominence of those works."

[65] New Zealand programs are recognised so as to be consistent with the Protocol on Trade in Services to the Australia New Zealand Closer Economic Relations Trade Agreement of 1988.

Between 2013 and 2017, Seven aired between 233 hours and 407 hours of NZ content per year,[66] clearly the largest NZ content broadcaster of any of the commercial networks.

We are concerned that a network can, in the case of Seven, air over 400 hours of New Zealand content in a single year and count this towards its overall Australian content obligations. Similarly, we are troubled that Nine could use 45 hours of drama produced in New Zealand and use it for quota compliance, as it did in 2016.[67]

MEAA acknowledge that altering the amount of New Zealand screen product on Australian televisions may be difficult, due to Closer Economic Relations Trade Agreement[68] and the High Court of Australia's 1998 decision in *Project Blue Sky*[69] that the Australian Content Standard (as it then was) did not provide equal treatment for Australian and New Zealand programs because only Australian content could be used to satisfy quota obligations.

Notwithstanding trade agreement- related barriers to change, MEAA note with interest that the Producer Offset guidelines state that for the purposes of determining eligibility for the offset, that the significant Australian content test does not apply to New Zealand projects and that 'Australia … does not include New Zealand'[70]. The arrangement is also perplexing because New Zealand has no corresponding obligations with respect to quotas.

If change was possible, MEAA would support a yearly cap on New Zealand content in order to ensure the integrity of Australia-specific content quotas.

At the very least, MEAA would welcome the adoption of recommendation 6 of the HOR Inquiry that 'first-release' be redefined to mean first broadcast anywhere in the world.[71] Such a step would prevent Australian broadcasters counting drama programs already screened in New Zealand as first release in Australia and counting such productions towards their quota obligations.

Producer Offset

With respect to Australian content, the Producer Offset is the primary incentive to produce Australian films with significant Australian content.[72] Rebates totalling $208 million were paid to producers for 164 productions in 2018-19,[73] [74] with $104 million of this amount going to feature films.

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[66] ACMA Comparison of Compliance Results – Metropolitan Commercial Television Networks, 2009 – 2018, ACMA, May 2019, page 16

[67] ACMA Comparison of Compliance Results – Metropolitan Commercial Television Networks, 2009 – 2018, ACMA, May 2019, page 17

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

[69] Project Blue Sky v Australian Broadcasting Authority (1998) 194 CLR 355

[70] See page 6 of Producer Offset Guidelines, as updated to 1 December 2018

[71] Report of the House of Representatives Inquiry into the Australian Film and Television Industry, 7 December 2017, at paragraph 3.109, page 56

[72] To be eligible, a company has to either permanently reside or be permanently established in Australia.

[73] Screen Australia Annual Report 2018-19

Although Screen Australia's November 2017 publication, *Skin in the game: The Producer Offset 10 years on,* pointed to the appeal of the offset,[75] the current arrangement of 40 per cent rebates for film and 20 per cent for other formats is clearly outdated.

There is widespread industry support for the producer offset to become platform neutral and equalised at 30 per cent for any format, with an additional 10 per cent for productions that have majority Australian creatives (performers and crew) and for genres that are deemed vulnerable, such as children's television. The screen industry's support for an equalised rebate was recognised in the HOR Inquiry, which advocated for change in 2017 through the introduction of a 'single offset level of 30 per cent for all types of qualifying production …' [76]

The policy bases for this reform are compelling: the Producer Offset is key to generating Australian content, the production of which must be accelerated to enable the screen sector's recovery from COVID-19; and distinctions between 'film' and other delivery formats, such as television series and online content generally, are antiquated and bely the fact that all platforms generate high quality output, especially in the field of drama.

We note with respect to the existing spending thresholds of $500,000 per hour for a range of production types, that of the Australian features budgets for 2018-19, 79 per cent (26 films) had expenditure of less than $10 million, with 48 per cent (16 titles) spending less than $5 million. Only seven films (21 per cent of the total) spent greater than $10 million. MEAA therefore seek a reduction in the eligible spending thresholds to enable improved access to the offset.

MEAA also request the removal of the arbitrary 65 hour cap to series, as supported by HOR Inquiry.[77]

Location Offset

The key means of attracting offshore film investment is the Location Offset. This is a 16.5 per cent offset on (QAPE)[78] for film and television projects filmed in Australia with a minimum spend of over $15 million or $1 million per hour on television. It does not depend on Australian content per se.

The Federal Government reshaped the Location Offset in May 2018 by increasing funding through its $140 million Location *Incentive*, worth $35 million per year over four years. The Location Incentive is a merit-assessed grant of up to 13.5 per cent of QAPE and complements, and is additional to, the Government's 16.5 per cent Location Offset. (The effective total rebate for eligible companies is 30 per cent.)

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[74] For any eligible project, the offset is paid by the government to the production company through the company's tax return after the project is completed.

[75] The report found that: 91 per cent of surveyed production companies indicated that the PO was "critically important" to the operation of their businesses; 92 per cent of respondents considered their equity stake in projects had increased since the introduction of the PO, with 61 per cent indicating that it had "significantly increased"; 98 per cent of companies working in the TV/ streaming sector retained all of their PO equity; and 87 per cent of respondents said the PO contributed to their ability to consistently produce content.

[76] HOR Inquiry Report, recommendation 1, paragraph 2.69, page 25

[77] HOR Inquiry Report, recommendation 1, paragraph 2.69 page 25

[78] Qualifying expenditure

The Location Offset is vitally important in attracting investment for productions that could be filmed in a range of countries. Large and medium sized production companies are not sentimental about where projects are filmed, but Australia does have an extremely strong reputation, not only for its values and peaceable nature, but the skills and talent of its screen creatives. We simply need to be competitive.

As Village Roadshow said in 2017:

> *"Australia is considered by the major global film production studios as one of the four only 'full service' locations for film production, along with the United State, Canada and the United Kingdom. In spite of this, major Hollywood productions have steered clear of Australia … because of the uncompetitive level of the location offset …"*[79]

Unfortunately – and as the recent Options Paper paper observed - the 16.5 per cent (fixed) offset is not internationally competitive – see table below[80]; although the amount was boosted up to an effective level of 30 per cent through the addition of the location incentive, the $35 million in funding each year is a discretionary grant and is due to expire in 2022. It is currently inconceivable that the screen sector will have recovered to pre-COVID-19 levels of activity by that time.

Table 2.4 Incentives for location shooting in 2006 and in 2016	**Tax Credit/Offset Rate 2006**	**Tax Credit/Offset Rate 2016**
Australia	12.5%	16.5%
New Zealand	12.5%	20-25%
United Kingdom	16%	25%
Ireland	20%	32%
Ontario	18%	21.5% + 37% production labour
British Columbia	18%	43.72% production labour
Quebec	20%	20% 37% production labour
Louisiana	10-20%	30%
Georgia	9-12%	30%

We further note the view in the Options Paper that some in the Australian screen industry are concerned that the 30 per cent (overall) rebate for foreign productions is greater than the 20 per cent offset available to non-feature film Australian productions.[81]

[79] HOR Inquiry Report, page 29
[80] Source: *Ausfilm* Submission to the Inquiry into the Australian Film And Television Industry, 2015-16
[81] Screen Options Paper, page 35.

The Australian screen industry needs certainty about the future of Location Offsets and incentives. MEAA's preference is that the incentive amount be folded into an overall location rebate totaling 30 per cent of qualifying expenditure. This is consistent with the view of the HOR Inquiry into the Australian Film and Television Industry, which recommended that the Government should:

> *Increase the location offset to an internationally competitive level of 30 per cent. This will eliminate the need for top-up grants and provide more financial certainty to overseas production companies considering Australia as a destination.*[82]

In addition, we submit that strong consideration ought to also be given to lowering the minimum spending thresholds from $15 million to make more productions eligible for the incentive.

PDV (Post Digital Visual Effects) Offset

The PDV Offset is a 30 per cent offset[83] on the QAPE that relates to post, digital and visual effects production for a film. Productions in Australia[84] and overseas can access this offset, so long as the minimum qualifying expenditure threshold of $500,000 is satisfied.

In 2018-19, total PDV outlays were $261 million, with $153 million of this spent on Australian productions and $91 million on foreign PDV-only projects.[85] The split between features and television drama (including online) was $181 million for features and $80 million for online.[86]

MEAA believes that this offset is sound and fit for purpose.

Decoupling Offsets

The HOR Inquiry agreed that additional benefits would accrue to the screen sector when it recommended decoupling the location and PDV offsets so that both can potentially be claimed for the same production.[87] The Committee also recommended that legislation should be amended so that 'productions commissioned for any content platform will be eligible for the location and PDV offsets if QAPE requirements are met'.[88]

In a period of contracted screen activity, we submit that there is a compelling case for the amending the rules concerning offsets in order to make Australia a stand-out destination for screen activity for all genres and formats.

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[82] Final Report of the HOR Inquiry into the Australian Film and Television Industry, Recommendation2, para 2.124, page 36
[83] It was 15 per cent prior to 2011
[84] Services to Australian productions accounted for 53 per cent of all PDV spend over the last 5 years. Source: Screen Australia Drama Report 2018-2019 - Production of feature films, TV and online drama in Australia in 2018/19
[85] Screen Australia Drama Report 2018-19, page 26
[86] Screen Australia Drama Report 2018-19, page 27
[87] HOR Inquiry into the Australian Film and Television Industry, recommendation 2, at paragraph 2.124, page 36
[88] HOR Inquiry into the Australian Film and Television Industry, recommendation2, at paragraph 2.124, page 36