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# OPTIONS PAPER

## SUPPORTING AUSTRALIAN STORIES ON OUR SCREENS

### SCREENWEST RESPONSE TO SCREEN AUSTRALIA AND AUSTRALIAN COMMUNICATION AND MEDIA AUTHORITY

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## Context

- At the Federal Government’s request, Screen Australia and the Australian Communications and Media Authority (ACMA) have co-authored an Options Paper, entitled “Supporting Australian stories on our screens” which was released in March 2020.
- This request followed the Australian Competition and Consumer Commission’s (ACCC) Digital Platforms Inquiry (DPI) Report, part of which placed a spotlight on how current screen content regulation differs for digital providers (subscription television and online streaming services) to offline providers (commercial free-to-air (FTA) television).
- The Federal Government has stated its intent to reform media regulation over a staged process to make this regulatory framework platform neutral. <sup>1</sup>
- Feedback has been requested on the Models outlined below, with a focus on:
  - the extent of Australian content obligations on free-to-air television broadcasters (including drama and children’s content); and
  - whether there should be Australian content obligations on subscription video-on-demand services.
  - whether, in order to support Australian screen content, other changes to the policy framework are required.

## Four Models in the Options Paper

	Summary	Objective
Model 1	Status Quo	To retain existing regulations and incentives to make and show Australian programs, which focus on traditional platforms. The status quo will prevail in circumstances where no future regulatory option can be implemented.
Model 2	Minimal change	To fine-tune and modernise existing regulatory and funding arrangements to better reflect the contemporary media landscape. This model seeks to engage subscription streaming services on a voluntary basis, potentially as a precursor to future regulation, if needed.

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<sup>1</sup> Australian Government, [Regulating in the digital age, Government Response and Implementation Roadmap for the Digital Platforms Inquiry](#), p. 12.

Model 3	Significant change	To establish platform-neutral, future facing obligations and incentives that take into account individual platform offerings and audience engagement.
Model 4	Deregulation	To remove all regulation and remove or revise incentives to make Australian programs, in order to support platform neutral deregulation.

*See Annexure One for greater detail on these Models.*

### Screenwest's Position on the Models

- Model 1: Existing regulation is no longer fit for purpose: it does not maximise audiences' access to quality Australian content, unfairly places Australian content obligations on free-to-air providers of Australian content and Foxtel, rather than on all content providers and does not enhance industry viability.
- Model 2: The voluntary basis for undertakings does not guarantee sufficient certainty to achieve the stated objectives for Australian audiences, as well as to underpin economic and cultural outcomes resulting from the screen sector's activities.
- Model 3, with some adjustments and additions, is recommended as the most suitable model, subject to further consultation and policy development.
- Model 4, which proposes complete deregulation, would not support a suitable level of diverse Australian screen content across genres of drama (including children's content) and documentary programming.

### Screenwest's Guiding Principles

- Cultural and economic benefits result from audiences having access to quality Australian screen content showing diverse stories and locations from around Australia.
- Thriving creative industries, comprising a range of enterprises of differing sizes across Australia, are needed to achieve these benefits (whether to our culture or economy, via tourism, export revenue and employment).
- Australian children deserve to have access to both live action and animated stories which reflect their own accents, environments and experiences. The burden across three commercial broadcasters (\$23.5m in 2015-16 for children's drama and other content), compared to Australian sport (\$498m) is negligible to achieve this policy objective.
- Diversity and inclusion within the screen industry are a key objective of all programs and policies.
- Government intervention in the marketplace continues to be required to achieve these outcomes.
- Online and offline content providers should be regulated in a fair, platform-neutral manner.
- Both digital and offline screen content providers benefit from the distribution and content creation systems in Australia (whether spectrum access, use of broadband networks or direct and indirect finance for content creation). In return for this benefit, obligations to

support the Government's cultural and economic priorities for the Australian people are appropriate.

## Screenwest's Recommendation: Model 3, with key variations/additions

### Model 3: Position:

#### Australian Content Requirements:

##### Supported:

- √ All commercial content providers be required to allocate a percentage of Australian revenue towards the commissioning of new Australian content.
- √ ACMA to approve this rate taking into account the platforms' business models, program formats and content genres.
- √ Option B (where ACMA sets specific investment expectations for new Australian drama including children's) and documentary content, within a bespoke Australian content plan.

##### Not Supported:

- X The ability for service providers under Option B to exclude genres (ie. all children's or drama or factual programming).
- X Option A, as it would enable service providers to elect to contribute to an Australian Production Fund to be administered by Screen Australia, rather than screening this content on their own platforms. Excluding certain genres of content from free-to-air platforms is inconsistent with the Government's cultural and economic priorities to provide the Australian people with free access to these genres of screen content.

#### National Broadcasters:

##### Supported:

- √ An obligation to commission an agreed percentage of revenue on Australian children's live action and animation content. This obligation should exist irrespective of obligations on other service providers for expenditure on pre-school ("P") and/or qualifying children's ("C") content.
- √ An obligation to report to Parliament on total Australian drama, documentary and children's programming expenditure and hours broadcast/provided online.

##### Addition:

- √ All content service providers (including national broadcasters) be required to invest a percentage of revenue into new Australian content created regionally. Culturally it is

important that Australian audiences see themselves in stories and locations that reflect all of Australia.

- √ All content service providers (including national broadcasters) required to implement appropriate diversity inclusion strategies.

## Incentives:

### Variation Proposed:

- √ The Producer Offset be increased to 40% for all independent productions, whether television live action and animation, factual or drama productions, consistent with previous levels for feature films. This would create a platform-neutral approach for Australian independent productions and acknowledge the value of intellectual property creation and ownership. Additional costs of this increased percentage would be offset through either an annual or per project AUD cap on incentives available to inbound productions via the Location Offset and PDV Offset.
- √ Inbound productions be able to access the Location Offset at an increased rate of 30% from 16.5% to be internationally competitive and certain, with a specified cap. Content intended to be shown on a streaming service only be eligible to access the Location Offset.
- √ The Post-Production, Digital, Visual Effects Offset (PDV Offset) for inbound productions remains at 30%, with a specified AUD cap. Content intended to be shown on a streaming service only be eligible to access the PDV Offset.
- √ Consideration should be given to reducing the QAPE threshold per hour for television series, acknowledging that innovative, entertaining and compelling content is often created in the situation comedy and factual genres with smaller budgets.

### Supported:

- √ The Producer Offset to remove the 65-hour cap on drama and factual production and minimum duration requirements, plus revise minimum spend thresholds reform areas of QAPE to clarify allowable expenditure.
- √ Projects continue to be required to demonstrate an appropriate pathway to their audience.
- √ Screen Australia to continue to directly fund quality content of cultural significance.

## Annexure One: Four Models

Four indicative models have been presented by ACMA and Screen Australia, as outlined below. It is important to note that some key elements of one model may be considered suitable to be included in another model).

The Options Paper summarizes the various Models’ objectives as being:

### Model 1—Status Quo

<b>Objective</b>	To retain existing regulations and incentives to make and show Australian programs, which focus on traditional platforms. The status quo will prevail in circumstances where no future regulatory option can be implemented.
<b>Features</b>	<p><b>Commercial FTA broadcasters:</b> retain transmission quota requirements (primary and secondary) and existing sub-quota obligations.</p> <p><b>Subscription broadcasters:</b> retain New Eligible Drama Expenditure (NEDE) scheme.</p> <p><b>Subscription streamers:</b> no obligations.</p> <p><b>National broadcasters:</b> no change.</p>
<b>Features</b>	<b>Offsets:</b> no change.

### Model 2—Minimal

<b>Objective</b>	To fine-tune and modernise existing regulatory and funding arrangements to better reflect the contemporary media landscape. This model seeks to engage subscription streaming services on a voluntary basis, potentially as a precursor to future regulation, if needed.
<b>Features</b>	<p><b>Commercial FTA broadcasters:</b> revise transmission quota requirements and flexibly apply them across all channels, revise sub-quotas to give greater flexibility, including removal of requirements for preschool (P) programs.</p> <p><b>Subscription broadcasters:</b> revise the NEDE scheme, and provide flexibility to acquit obligations across program genres.</p> <p><b>Subscription streamers:</b> set voluntary content investment undertakings with the ACMA.</p> <p><b>National broadcasters:</b> request better reporting to Parliament on Australian content hours and expenditure.</p>

<b>Features</b>	<b>Offsets:</b> a Producer Offset with a single flat rate applying to one-off feature length films and children’s content distributed on any platform (other Offset rates unchanged).
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### Model 3—Significant

<b>Objective</b>	To establish platform-neutral, future facing obligations and incentives that take into account individual platform offerings and audience engagement.
<b>Features</b>	All commercial content service providers (including subscription services): require investment in a percentage of revenue into new Australian content, under one of two implementation approaches:  A. invest a percentage of Australian revenue into Australian content that must be made available on their Australian services, or make an equivalent contribution to a new Australian Production Fund (APF) B. negotiate individual Australian content investment plans in line with expectations set by the ACMA. <b>National broadcasters:</b> allocated funding for Australian children’s programming
<b>Features</b>	Offsets: a single flat rate Offset for all platforms with modified thresholds and potential for a ‘cultural uplift’.

### Model 4—Deregulation

<b>Objective</b>	To remove all regulation and remove or revise incentives to make Australian programs, in order to support platform neutral deregulation.
<b>Features</b>	All services: all content obligations removed.
<b>Features</b>	Offsets: either:  A. all Offsets removed, or B. all Offsets provided at a single rate to projects of scale which attract significant market investment.