

South Australian Film Corporation submission to *Supporting Australian stories on our screens – Options paper*

Introduction

The South Australian Film Corporation (SAFC) was established by the South Australian Government in 1972 and began as a production company. In 1994 it ceased producing and became South Australia's lead screen agency, providing support for screen production, industry development, and operating production facilities at Adelaide Studios.

In line with our strategic objectives, the SAFC's purpose is to support, position, and champion South Australian screen businesses to achieve creative excellence and prosperity, contributing to a robust South Australian economy and creative vibrancy. The screen production industry in South Australia contributed a total of \$119.5 million to gross state product (GSP) in 2017-18, with 1,170 full time equivalent (FTE) employees employed directly and indirectly across South Australia.¹ The industry continues to grow, with Screen Australia's most recent drama report showing \$110 million in drama expenditure in South Australia in 2018-19 – with South Australia the only jurisdiction to report four consecutive years of growth.²

This submission reflects the position of the SAFC as the South Australian State Government's Statutory Authority responsible for screen investment and screen industry development. While we have consulted with the South Australian screen industry in forming our response, this submission does not purport to reflect the views of all industry participants in South Australia. We have encouraged individual industry participants to make their own submissions to this inquiry.

The SAFC is broadly in support of Model 3 as outlined in the *Options paper*. However, we note that the specific details of the model are not proposed, and would be developed following consultation with stakeholders. We consider it vital to adequately consult with the screen production and Post Production, Digital and Visual Effects (PDV) industry before designing these reforms, and to undertake modelling or analysis to confirm any intended and unintended effects of reform. Australian stories on screens are not possible without a prosperous Australian screen industry. Any reforms should therefore consider not only the impact on those who commission content, but on those who develop and produce it.

The SAFC's response assumes that a platform-neutral regulatory framework is the desired end-goal of this review.

What is an Australian story?

It is stated in the *Options paper* that "Australian stories reflect who we are as a nation, to ourselves and to the world." The SAFC agrees with this statement. However, we submit that the concept warrants further discussion as the fundamental basis for this review.

Australian stories capture those stories *about Australians*, as well as stories *made by Australians* or *owned by Australians*. The most appropriate policy, and its justification, may be different in each case. Many stories may fall within more than one category.

Relevantly, an objective of the *Broadcasting Services Act 1992* is to "promote the role of broadcasting services in developing and reflecting a sense of Australian identity, character and cultural diversity".³ Australian identity was identified in 2011 as an *enduring concept* underpinning the regulation of communications and media in Australia, reflecting the important role of broadcasting services in developing and enhancing Australian identity.⁴ However, it was also identified as a *broken concept*, given the range of services not covered by Australian content quotas, meaning that Australian stories are not always accessible on the services used by

¹ Deloitte Access Economics, *Economic contribution of South Australian screen production* (report commissioned by the South Australian Film Corporation, March 2019).

² Screen Australia, *Drama report – Production of feature films, TV and online drama in Australia in 2018/19* (2019).

³ *Broadcasting Services Act 1992* (Cth) s 3(e).

⁴ Australian Communications and Media Authority (ACMA), *Enduring concepts – Communications and media in Australia* (November 2011) p 44.

Australians.⁵ Both the importance of content reflecting and enhancing Australian identity, and the difficulties in ensuring this content is accessible across all platforms, still hold as true today as in 2011.

The concept of Australian identity refers to those stories *about Australians*. Stories about Australians are as diverse as the 25 million Australians who live here. That means diversity in cultural background, upbringing, place of birth, gender, sexuality, age and region of residence, among other factors. The SAFC asserts that the stories about Australians on our screens should represent this diversity, and that this should be a guiding principle when undertaking reform.

Equally important is the concept of Australian made and, in particular, Australian owned stories. It is the submission of the SAFC that these stories should be afforded additional support through offset mechanisms rewarding independent, Australian-owned intellectual property (IP). This reflects both the economic and cultural importance of supporting Australians to write and produce their own stories.

Content obligations

The SAFC is broadly in support of Model 3, Option A, as outlined in the *Options paper*. All content service providers that meet scale thresholds, including subscription services, should be required to invest a percentage of their Australian revenue (across all services) in new Australian scripted programming and report their investment to the ACMA. The SAFC recommends that all content service providers (not only commercial providers as highlighted in Model 3) be subject to this requirement, in order to level the playing field and achieve the Australian stories objective.

It is recommended that the definition of new Australian scripted programming consider the following:

- 'New' should broadly refer to first-release content.
- 'Australian' should *either* refer to content which is majority made in Australia with Australian key creative personnel, or where Australian producers own the IP, reflecting the policy objective to ensure Australian stories are available on screens.
- 'Scripted programming' should include all drama, documentary and children's programs. The key definitional term should be 'scripted' which would exclude reality television and light entertainment but is otherwise genre- and format-neutral.

Service providers should meet their obligation via direct commissioning from suppliers, not by way of a contribution to an Australian Production Fund (APF). Such a fund would create distance between suppliers of content (producers and production companies) and buyers of content (service providers), therefore creating disconnect in the market. A fund may also interfere with the true cost and value of content, leading to devaluation. The SAFC therefore supports Option A; reflecting the commerciality of children's and documentary formats, it is recommended that investment in these formats be incentivised by setting the overall obligation for that provider accordingly.

The SAFC agrees that the investment rate be based on a percentage of Australian revenue, but submits that consideration also be given to whether that service provider has or is eligible to receive other government funding or subsidies such as discounted or free access to the broadcast spectrum. The SAFC recommends that the revenue approach be coupled with a points- or hours-based system that guarantees a minimum volume of production activity. This system should be designed such that it can be applied to current service provider models, or any other models that may be developed in the future.

The SAFC agreed that flexible, principles-based promotion and discoverability requirements for Australian content should be applied across all platforms. To ensure that Australian stories are seen by Australian audiences, it is recommended that consideration be given to the channel or platform on which content is transmitted. The channel or platform on which Australian content is transmitted to achieve content obligations should meet a minimum threshold for audience market share.

⁵ Australian Communications and Media Authority (ACMA), *Broken concepts – The Australian communications legislative landscape* (August 2011) p 17.

All service providers which operate in Australia must report their investment to the ACMA, regardless of whether they are at a sufficient scale to be obliged to invest in content. Reporting should require data on (in addition to current reporting requirements and items identified in the *Options paper*):

- The format and genre of the content.
- Whether the content was developed and produced in-house or externally.
- Whether the content is first release or repeat.
- On which channel or platform the content is transmitted.
- Where in Australia the content was developed and produced.
- Whether the content was supported by any direct or indirect funding mechanisms from Australian or state governments.
- Who retains rights to the IP.

It is our assertion that significantly less Australian content would be generated in the absence of regulation and, in particular, less of that content which is more expensive to commission compared to purchasing from overseas – drama, documentaries and children’s programs. Ensuring these programs are shown on our screens requires both content obligations and incentive mechanisms.

Australian Government support, including offsets, funding and public broadcasters

The SAFC has considered all Australian Government support mechanisms collectively in this submission, reflecting the fact that the mechanisms outlined are generally driven by a set of common policy objectives. Based on our earlier definition of Australian stories, it is submitted these policy objectives should include:

- Diversity in the stories about Australians shown on screens, reflecting the diversity of Australians as a population.
- Diversity in where screen content is developed and produced, reflecting the diversity of Australia’s landscape and communities across the country, as well as the importance of developing a capable and skilled workforce across each jurisdiction including regional and urban areas.
- Supporting industry and skills development in the screen sector, recognising the importance of training and development programs, as well as the capacity of foreign productions to up-skill.
- Encouraging the development and retention of IP in Australia, acknowledging the economic and cultural importance of supporting Australians to write and produce their own stories.

Offset and incentive mechanisms

A number of different tax rebates are provided by the Australian Government to incentivise Australian screen production and post-production. The Producer Offset, PDV Offset and Location Offset (plus the Location Incentive) are mutually exclusive and designed to address different policy objectives.

There is significant variation in the available rebate and conditions to access each offset. According to feedback from industry, this variation has led to uncertainty and confusion in the market, as well as a perception that the system, in some cases, favours foreign stories or producers.

The SAFC supports the creation of a single, harmonised offset for scripted content on all platforms. Offset and incentive mechanisms are critical for the South Australian and Australian screen industry. Screen Australia’s *Skin in the Game* report found that 91% of surveyed production companies indicated that the Producer Offset was “critically important” to the operation of their businesses, and 92% of respondents considered their equity stake in projects had increased since the introduction of the Producer Offset.⁶ Anecdotally and through industry surveys, this finding has been confirmed for the South Australian industry. Similarly, major South Australian PDV companies have stated that the Australian Government’s PDV Offset is critical to the viability of their businesses.

The SAFC submits that all Australian screen incentives should be clear and straightforward to understand – both to support investment in Australian content, and to encourage foreign projects

⁶ Screen Australia, *Skin in the Game – The Producer Offset 10 years on* (November 2017).

to be made in Australia. Olsberg SPI in its report *Best Practice in Screen Sector Development* suggested that the structure and process of best-practice automatic incentives “should be simple and clear”, while “legislation and guidelines should provide certainty on all areas of eligibility and with a lack of subjectivity”.⁷

It is therefore suggested that a single rate of 30% be established for all formats and platforms. This reduces regulatory uncertainty, while maintaining Australia’s competitiveness on the world stage. To further remove complexities which exist within the current system, the SAFC supports the removal of the 65 hour cap and current minimum duration requirements. All independently-produced content should be eligible for the offset provided minimum Qualifying Australian Production Expenditure (QAPE) thresholds are met and an arm’s length market distribution transaction is demonstrated. We recommend that the sector be consulted to determine which formats are eligible for the offset.

The *Options paper* raises the concept of a ‘cultural uplift’ for children’s content and one-off, feature length content which is sufficiently ‘Australian’ or of ‘cultural significance’. It is the submission of the SAFC that this cultural test would create an additional layer of complexity and uncertainty for investors and producers. Arguably, it is also unnecessary where other bodies are funded to develop children’s content and content of cultural significance (which are considered in subsequent sections of this submission).

Rather, the SAFC recommends an uplift of 10% where independent Australian producers control the IP. The objective is to incentivise the development and production of a diverse range of Australian stories, while enabling independent producers to retain their IP and earn royalties which flow back to Australia. Australian Bureau of Statistics data shows that total foreign royalties earned from cinema, film and multimedia averaged \$172 million annually between 2007-08 and 2012-13, and averaged \$222 million per year from 2013-14 to 2018-19 – representing the first and second six-year intervals after the introduction of the Producer Offset.⁸ There may be further scope to increase this figure (together with other foreign exports associated with screen content, such as foreign box office earnings and licensing earnings).

The SAFC submits that specific modelling should be undertaken to evaluate whether a 10% uplift of this nature could lead to increased Australian exports and a larger screen industry. Prior analysis undertaken by PwC in 2015 found that increasing the Producer Offset to 40% for all eligible projects would generate an additional \$35.2 million in value added (contribution to gross domestic product) after accounting for the cost to government.⁹ The South Australian PDV Rebate of 10% has also been successful, with the state’s share of drama PDV expenditure increasing from 9% of Australia’s total in 2016-17 to 18% in 2018-19 following the introduction of the PDV Rebate in early 2018.¹⁰ This increase has led to strong economic outcomes, with a significant proportion of this work on foreign productions. In addition, South Australia’s broader investment in high-value international productions such as *Mortal Kombat* and *The Tourist* (upcoming) supports the capability and recognition of South Australia as a world-class destination for screen production and post-production.

The SAFC also submits that the offset be modified to allow productions to elect the frequency at which they wish to receive the rebate. Enabling productions to receive their rebate monthly or quarterly, rather than at the conclusion of the production, would mean that productions no longer need to obtain significant loans at the outset, saving significant interest costs throughout the life of a production.

In line with a platform-neutral approach, this offset should extend to all parts of the screen sector, including digital games. Supporting the creation of digital games in Australia meets the aforementioned policy objectives. Given the economic potential of the game development sector,

⁷ Olsberg SPI, *Best Practice in Screen Sector Development* (report commissioned by the Association of Film Commissioners International, 2019).

⁸ Inclusive of royalties on film; television; home entertainment and other audiovisual services, at current prices. Australian Bureau of Statistics, *Balance of Payments and International Investment Position, Australia, Dec 2019*, cat. no. 5302.0 (3 March 2020).

⁹ PwC, *Potential impacts of adjusting the producer offset* (report commissioned by ASTRA, August 2015).

¹⁰ Screen Australia, *Drama report – Production of feature films, TV and online drama in Australia in 2018/19* (2019).

and the fact that digital games are also stories on screens, there does not appear to be a logic to their exclusion in a platform-neutral regulatory environment. Indeed, the South Australian Government announced on 21 June 2020 that it has extended its 10% PDV Rebate to game development, recognising the growth potential of the industry and the flow-on benefits of skills and technology developed within the industry. The rebate, which applies to qualifying production expenditure in South Australia, will help to attract international companies and make established South Australian companies more competitive in both fee for service and own IP initiatives.¹¹

Screen Australia and other Australian Government funding

Direct funding through Screen Australia and other government-funded sources, including the Australian Children's Television Foundation, provide critical support for the industry. An increase in indirect funding via a harmonised offset could reduce the need for Screen Australia to directly fund productions. It is submitted by the SAFC that such an approach would lead to a stronger, market-driven industry with a commercial incentive to produce high-quality content. Assuming the creation of a single, harmonised offset with an Australian IP uplift, it is the SAFC's submission that Screen Australia funding should be directed to achieve three primary objectives:

- To support content development, better positioning industry for commercial commissions.
- To broadly support training and development of the industry, particularly for under-represented cohorts.
- To invest in the production of content of cultural significance, which would not otherwise be produced.

This approach could release Screen Australia's existing funding base (which should not be reduced) to target the objectives listed above. A broad focus on industry development, potentially delivered in conjunction with other institutions, could better enable the industry to take advantage of the domestic and international opportunities presented by a harmonised offset and updated content obligations.

It is the position of the SAFC that Screen Australia, as an Australian Government agency, should ensure its funding benefits all Australians, enabling the development of a strong screen industry across the country. East coast Australian jurisdictions have an advantage due to a critical mass of head offices, investors and workers enabled by larger populations. Government funding should be used to address this uneven playing field through industry development.

Content of cultural significance should still be supported by Screen Australia, through the provision of top-up investment. We believe it is this content – which would otherwise not be produced in a purely commercial environment, but is nevertheless crucial in telling Australian stories – that should be the beneficiary of Screen Australia funding. Children's content should be similarly supported by Screen Australia and the Australian Children's Television Foundation, recognising the importance of Australian children seeing themselves reflected on screen.

Public broadcasters

Australia's public broadcasters play a vital role in the screen industry through their commissions of Australian stories. For a smaller jurisdiction such as South Australia, these commissions are a key pathway to market for local content. The ABC and SBS are also crucial in commissioning and distributing culturally significant content, on both their primary and sister channels (such as NITV).

The SAFC submits that the ABC and SBS should be subject to the same content quotas as commercial broadcasters. Their funding should be provided at such a level which ensures they are able to deliver Australian content of sufficient quantity and quality to meet these obligations. Given that content shown on Australia's public broadcasters should reflect Australia's diversity, commissions should be sourced from across Australia's states and territories.

In line with Model 3 as outlined in the *Options paper*, the SAFC agrees that public broadcasters should be required to allocate specific funding for Australian children's programming. However, it

¹¹ Hon David Ridgway MLC, 'Game on! South Australia targets jobs and investment in \$180 billion games sector' (Media Release, 21 June 2020).

is submitted that additional funding is provided to enable public broadcasters to commission this work, as well as to commission documentaries.

Consistent with our suggested policy objectives, the SAFC also submits that additional funding be provided to NITV to enable it to commission more content which reflects and represents Australia's First Nations peoples and cultures.

Summary of recommendations

- Australian stories should prominently feature on Australian screens – no matter the size of the screen or how the content is delivered. Australian stories capture those stories *about Australians*, as well as stories *made by Australians* or *owned by Australians*. Supporting the creation and transmission of Australian stories on screens is important for both cultural and economic reasons.
- Any regulation should reflect these dual objectives and apply in a platform-neutral way. Regulation should also be as clear and simple as possible to create certainty in the market.
- The SAFC is broadly in support of Model 3, Option A, as outlined in the *Options paper*. The following amendments are recommended:
 - Content obligations:
 - All content service providers (not only commercial providers) should be subject to content obligations.
 - Service providers should meet their obligation via direct commissioning from suppliers, not by way of a contribution to an Australian Production Fund (APF). Investment in children's and documentary formats should be incentivised by setting the overall obligation for that provider accordingly.
 - The investment rate should be based on a percentage of Australian revenue, with consideration also given as to whether that service provider has or is eligible to receive other government funding or subsidies, such as discounted or free access to the broadcast spectrum. The revenue approach should also be coupled with a points- or hours-based system that guarantees a minimum volume of production activity.
 - Flexible and principles-based promotion and discoverability requirements for Australian content should consider the audience market share of the channel or platform on which Australian content is transmitted.
 - Offsets and incentives:
 - A harmonised offset of 30% should be implemented for scripted content on all platforms.
 - The 65 hour cap and minimum duration requirements should be removed. All independently-produced content should be eligible for the offset provided minimum Qualifying Australian Production Expenditure (QAPE) thresholds are met and an arm's length market distribution transaction is demonstrated.
 - The harmonised offset should be coupled with an 'uplift' of 10% where independent Australian producers control the IP.
 - In line with a platform-neutral approach, this offset should extend to all parts of the screen sector, including digital games.
 - Productions should be allowed to elect the frequency at which they wish to receive the rebate, to minimise the cost of loans.
 - Screen Australia and other Australian Government funding:
 - An increase in indirect funding via a harmonised offset could reduce the need for Screen Australia to directly fund productions. Screen Australia funding should be directed to support content development, industry development and content of cultural significance.
 - Screen Australia should ensure its funding benefits all Australians, enabling the development of a strong screen industry across the country, addressing the advantages enjoyed by the sector in larger Australian jurisdictions.

- Public broadcasters:
 - Public broadcasters should be subject to the same content quotas as commercial broadcasters.
 - Public broadcasters should be provided with specific funding to commission children's programming and documentaries, and additional funding provided to NITV to enable it to commission content which reflects and represents Australia's First Nations peoples and cultures.
 - Commissions should be sourced from across all Australian jurisdictions.