SCREEN PRODUCERS AUSTRALIA

34 Fitzroy Street Surry Hills
NSW 2010 Australia
+ 61 2 9360 8988
screenproducersaustralia.org.au

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Screen Producers Australia's pre-Budget submission

Screen Producers Australia was formed by the screen industry to represent large and small enterprises across a diverse production slate of feature film, television and interactive content.

As the peak industry and trade body, we consult with a membership of more than 450 production businesses in the preparation of our submissions. This consultation is augmented by ongoing discussions with our elected Council and appointed Policy Working Group representatives. Our members employ over 17,000 Australians and drive more than $1.7 billion worth of annual production activity from the independent sector.

On behalf of these businesses we are focused on delivering a healthy commercial environment through ongoing engagement with elements of the labour force, including directors, writers, actors and crew, as well as with broadcasters, distributors and government in all its various forms. This coordinated dialogue ensures that our industry is successful, employment levels are strong and the community's expectations of access to high quality Australian content have been met.

Screen Producers Australia welcomes the opportunity to provide a pre-budget submission.

For further information about this submission please contact James Cheatley, Director, Policy and Government Relations (james.cheatley@screenproducers.org.au)

Executive Summary

Screen Producers Australia has identified market failure for Australian producers of film and television content. In the market for television content, this market failure is an inherent feature of the market, which is set up by government itself through legislation (*Broadcasting Services Act 1992*).

As broadcasters come under pressure in the advertising market from Google and Facebook (noting the ACCC inquiry into the market effects of those companies), this market failure expresses itself through buyers seeking "more for less" from producers. It is incumbent, therefore, on government to address this market failure by ensuring fair contracting in the market. Without government action to address market failure, there will be an accelerating decline in the number of sustainable production businesses, which in turn will have an impact on jobs, skills development, the diversity of Australian content and hasten the brain drain to larger markets. These demand-side market issues can be ameliorated through interventions that ensure fair contracting between producer and broadcaster.

With regard to supply-side issues, the producer offset (*Income Tax Assessment Act 1997* Division 376) has been a hugely successful source of secure funding for Australian productions. However, offset legislation has not been significantly updated since it was introduced and some modernisation is required to make its scope platform-agnostic. SPA recommends harmonising the producer offset at 40 per cent and returning the producer offset to its original policy intention – that it is for producers, not broadcasters.

Further opportunities to grow the industry are through increasing and facilitating trade. The Government should commit to concluding the Denmark Co-Production treaty.

SPA makes four recommendations.

The Government should:

1) intervene in the market to address competition issues and misuse of market power
2) extend local content obligations to new market entrants
3) harmonise and modernise offset legislation while returning the policy framework to its original intention that the producer is the beneficiary of the offset, and
4) conclude more and renegotiate better co-production treaties to facilitate increased film and television exports.

Competition issues

At SCREEN FOREVER in 2016, in a speech titled *The Good, the Bad and the Possible*,[1] Graeme Mason identified some market realities as they relate to Australian producers:

- "Television has many specific challenges, at least in scripted and documentary/factual, the areas Screen Australia is involved in. *For a start, buyers want more for less money*."
- "But judging the deals coming to us, some producers seem to have been coerced into putting aside business realities."
- "Some producers are also being railroaded into asking Screen Australia to sweep aside long-held terms."
- "Many film and TV producers – experienced and not – expect and want us to police deals."

The market for television content in Australia is an oligopsony. An oligopsony – like its inverse, an oligopoly (few sellers, many buyers) – is a form of imperfect competition. Sellers can be at a major disadvantage in an oligopsony. A large number of producers[2] compete with one another for access to spectrum, a public good, which is controlled by a small number of broadcasters.

The disadvantages of an oligopsony include:

- Buyers can set sellers off against each other, thereby lowering the purchase price paid to all sellers.
- Buyers can dictate costs of sellers through imposing exact specifications relating to quantity, quality, suppliers, wages, innovation and rights.
- Buyers are able to pass on risk inherent in the product.

The market has come under significant pressure to compete with Google and Facebook for advertising revenue.[3] For audience, Netflix, Stan and other new market entrants continue to grow significant subscription bases. For example, since entering the market in 2015, Netflix has nearly four million Australian subscribers.[4] By way of comparison, Netflix launched in France a year earlier than in Australia and has two thirds that number of subscribers in that territory.[5] These new market entrants bring with them a wealth of content to Australian audiences, the vast majority of which is foreign.

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[1] https://www.screenaustralia.gov.au/getmedia/aa9d4041-f0fd-45d2-8764-633d44d930d4/SPA-2016-speech.pdf
[2] 2819 film and production businesses in 2015-16, see Australian Bureau of Statistics, 8679.0 - Film, Television and Digital Games, Australia, 2015-16.
[3] Google and Facebook account for 85 per cent of new online advertising spend and 2017 is the year that globally, online advertising spend has overtaken television advertising spend: Kleiner Perkins Internet Trends 2017. The Government has recently announced an ACCC inquiry into the dominance of Google and Facebook in the advertising market.
[4] http://www.roymorgan.com/findings/7242-netflix-subscriptions-march-2017-201706080957
[5] https://www.broadbandtvnews.com/2017/01/09/france-televisions-top-launch-netflix-rival-producers/

These two factors, declining advertising revenues and audience fragmentation have conspired against Australian producers, as Graeme Mason outlines above. The Australian Bureau of Statistics report *Film, Television and Digital Games, Australia, 2015-16* shows between 2011-12 and 2015-16, there has been negligible growth of five per cent in total income for production businesses from $2.2 billion to $2.3 billion, while production income is down six per cent over the same period to $1.6 billion. We have seen KEO Films, a UK owned but locally run production company, close its Australian operations, citing difficult market conditions in Australia.[6]

Without government intervention, the market structure and current market conditions will continue to disadvantage Australian producers to the benefit of either international competitors who operate in more favourable market conditions or broadcasters who commission content from producers. This will in turn, disadvantage Australian audiences through a lack of diversity in quality Australian programming. A cohort of strong Australian producers in the market is key to a diversity of quality Australian programming. The key to a strong Australian production sector that supplies the market is producers' capacity to retain the intellectual property in their productions and leverage this through international trade.

Demand side issues

In the Australian market, there exist three categories of regulated buyer:

- public (ABC and SBS)
- commercial (Channel 7, Channel 9 and Network 10), and
- subscription (Foxtel).

The new market entrants (Stan, Netflix, Telstra TV etc.) but these services are not creatures of regulation, indeed barely regulated at all. Their effects on the market are discussed below. This section will distinguish between "regulated buyers" and "unregulated buyers".

Regulated buyers

The regulated buyers in the market exist because of government intervention: the ABC and SBS by virtue of their enabling legislation; the commercials and Foxtel owe their existence to licences afforded under the *Broadcasting Services Act 1992* with government thus far supporting commercial broadcasters by restricting the number of commercial broadcast licences to three[7] and affording them privileged access to live sporting events through the anti-siphoning list. With regard to levels of Australian programming, the government has a different approach to regulation depending on the nature of the broadcaster. These regulations are demand-side interventions in the market and have been demonstrated to be largely successful, yet not without problems, in achieving their public policy objectives.

The ABC and SBS are independent of government and the levels of Australian programming is informed by their interpretations of their interdependent charters.

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[6] http://www.screenhub.com.au/news-article/news/television/david-tiley/keo-kod-as-war-on-waste-company-goes-into-the-bin-253947

[7] Section 37A, *Broadcasting Services Act 1992*.

Absent any specific obligations to Australian content, the public broadcasters can align their commissions and acquisitions to other priorities.

Commercial broadcasters

The commercial broadcasters have local content obligations in the form of quotas (transmission, sub-genre). These quotas exist for a variety of strong public policy reasons: the importance of Australian stories, narrative and expressions on Australian screens, a quid pro quo for privileged access to a public asset, the importance of a local independent production industry of sufficient size and scope that has capability and capacity to supply the quotas.

The Government has made a series of decisions to make commercial broadcasters more competitive. These decisions, which are outlined in the *Screen Production Industry Policy Ledger* at **Attachment A**, include abolishing broadcast licence fees and no action to date on New Zealand content (a House of Representatives committee recommended a solution to the New Zealand content loophole late last year[8]). An unintended consequence of these decisions is that in making the commercial broadcasters more competitive, it has made the value proposition for in-house production more appealing, to the detriment of the independent sector. In-house production has increased from 44 per cent of all production costs in 2011/12 to 55 per cent in 2015/16.[9]

The quotas are minimum requirements. The commercial broadcasters comfortably meet their overall transmission quotas, but the results for sub-genre quotas for first run drama, documentary and children's programming are less comfortable reading. That the commercial broadcasters' results either barely met the minimum requirements or fell below the minimum requirements indicates their level of commitment to those genres is dictated by those obligations.

As PwC modelling suggested in 2011,[10] if the quotas were removed the level of programming would fall significantly. PwC used three hypothetical scenario that modelled the likely effect of changes to the Australian minimum content requirements.

With regard to the first hypothetical scenario "The minimum content requirements are removed and all other levels of government support remain the same", PwC's modelling provides a cautionary tale. Where Australian content requirements are removed, PwC estimated the volume of Australian content broadcast would fall to approximately 43 per cent. The level of investment in Australian television content would fall approximately 28 per cent and in the short run employment in the television production and broadcasting sector would fall by approximately 2,000 full time equivalent jobs. Documentary production was expected to halve. Subscription broadcast spend on Australian drama was expected to fall to 6 per cent. No children's content was expected to be produced. This is consistent with the effect of

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[8] The House Standing Committee on Communications and the Arts, *Report on the inquiry into the Australian film and television industry,* Tabled 7 December 2017.
[9] Australian Bureau of Statistics, 8679.0 - *Film, Television and Digital Games, Australia, 2015-16*.
[10] PwC, *Minimum content requirements research report*, 2011

removing children's quotas in the UK, where expenditure fell 93 per cent after quotas were removed.[11]

It is an open question whether if the current obligations are removed or reduced they are able to be re-introduced or restated because of Australia's free trade agreement with the United States. Moreover, the Legislation (Exemptions and Other Matters) Regulation 2015, which was introduced without industry consultation,[12] removes parliamentary oversight of any executive decision to remove or reduce the quotas.

It is not a coincidence that of all the genres, commercial broadcasters' expenditure fell only in those genres that are the subject of quotas. It is indicative of the approach adopted to these "at risk" genres by commercial broadcasters. Should the quotas be removed, an unregulated market will not deliver anywhere near the same level of drama, documentary and children's program that is currently produced.

The past ten years

As noted in SPA's 2017 submission to the Standing Committee on Communications and the Arts Inquiry into factors contributing to the growth and sustainability of the Australian film and television industry, production levels have been static or declining for many genres. An overview of the levels of expenditure and hours on adult drama, children's television and documentaries for the past ten years is at **Attachment B**.

How can quotas be met while expenditure falls?

There are two main reasons why quota obligations can be met while expenditure can remain "stagnant or decrease" for drama, documentaries and children's programs: the increasing use of New Zealand content to acquit Australian content obligations and competition issues determined by the structure of the market.

New Zealand content

The increasing use of New Zealand content to acquit Australian content obligations is not included in the table. The availability of cheap second-run NZ content to acquit first-run Australian content obligations means Australian producers are competing with NZ producers at a price point that is uncompetitive. This is on the basis that the content is either purchased in its second window after airing in New Zealand or because the cost of production in New Zealand is often cheaper (labour costs are lower) or more heavily subsidised (some New Zealand television content attracts a 40 per cent tax offset. This, together with oligopsonic market conditions, means Australian producers are hamstrung from competing at a level playing field, with deleterious effects over the long term for sustainability of the independent production sector.

This loophole means that instead of commissioning new Australian-produced content, commercial television broadcasters can buy second-run, cheap New Zealand programs and have them qualify as Australian programs to acquit their obligations under the Australian Content Standard.

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[11] http://www.telegraph.co.uk/news/2017/04/17/broadcasters-forced-invest-british-made-childrens-tv-programmes/

[12] Question 169 asked by Senator Hanson-Young of the Australian Communications and Media Authority, Questions on Notice, Budget Estimates May 2017.

In 2014, the commercial television broadcasters averaged 180 hours of New Zealand content that qualified as Australian. In 2015, the commercial television broadcasters averaged 135 hours.[13] Hypothetically, assuming the entirety of the 135 hours was substituted for first run miniseries drama and the cost of first-run Australian drama miniseries averages nearly $1.368 an hour,[14] the loss to the Australian production industry is estimated to be $184.68m in 2015.[15]

In late 2017, the House Standing Committee on Communications and the Arts Inquiry into factors contributing to the growth and sustainability of the Australian film and television industry recommended the Government close the New Zealand content loophole by redefining the concept of "first release":

> "The committee recommends that first-release be redefined to mean first broadcast anywhere in the world."

Competition issues

As noted above, the market for television programs in Australia is an oligopsony, a form of imperfect competition which hands buyers great control over the market. The broadcasters can use this market power to play producers off against one another to demand more, for less, while bringing more production in-house. Another concerning trend emerging in the market is increasing vertically-integrated broadcasters that produce more content in-house. According to ABS data, this trend is increasing. In 2015-16, 55 per cent of production costs were in-house, compared to 44 per cent in 2011-12. The worst-case long-term scenario if this trend continues is a handful of vertically-integrated broadcasters, all that have their headquarters within a handful of kilometres from the Sydney CBD, controlling the development, generation and output of Australian programming for Australian audiences.

How does the Government regulate the market power of the broadcasters?

Outside general competition law, there exists two *de facto* arrangements to address the market power of broadcasters: a minimum licence fee in the Australian Content Standard and Screen Australia's terms of trade.

Australian content standard

Section 11 of the ACS sets out a formula for calculating the drama score for an Australian drama program: 'drama score = format factor x duration (in hours)'. Drama series and serials acquired by broadcasters from independent producers for certain a determined minimum licence fee receive a higher format factor than other series and serials. There is also a tiered treatment of feature films in recognition of the disparity in licence fees paid by licensees. This minimum licence fee increases annually.

This market intervention is a tacit admission of market failure and provides an incentive to a broadcaster to contract with an independent producer at a price determined by the government.

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[13] In 2016, the average was 110 hours.
[14] Screen Australia, *Drama Report 2015-2016*.
[15] http://www.abs.gov.au/ausstats/abs@.nsf/mf/8679.0

Screen Australia's terms of trade

Screen Australia's terms of trade broadly outline the core terms on which it transacts its business. Including Screen Australia investment in a production is an incentive for both the producer and broadcaster: producers can obtain the benefit of having Screen Australia at the table with its terms of trade, broadcasters have the benefit of a reduction in the overall cost of content.

Among other things, Screen Australia's terms of trade:

- denies broadcasters access to Screen Australia funding
- guarantees at least award (or above award if agreed) rates for employees, and
- seeks to ensure the producer retains some margin on the offset (10 per cent for feature films and television, 15 per cent for documentaries).

As outlined by Graeme Mason at SCREEN FOREVER, these terms of trade seek to ensure producers may contract on a long-term sustainable basis by retaining a margin on their productions. The margin is there to be drawn upon if production costs balloon, but also to ensure production businesses can retain some equity in productions. Critically, they also exclude broadcasters from program funding, which assists independent producers to build sustainable businesses and contribute to a diverse slate of programming.[16] These terms of trade only apply where Screen Australia is involved in some way. However, Screen Australia is not involved in most contracts in the market. For example, Screen Australia does not invest in light entertainment or reality television. Moreover, licence fees paid by commercial broadcasters have significantly dropped to the point where some producers have felt they had to work outside of Screen Australia minimums in order to get a project produced.

The solution to market failure

There is one solution to address market failure created by the oligopsonic market structure: legislated terms of trade that sets a standard for contracting between big and small business.

David Fernández-Quejada has written on the nature of quota obligations and their effect on the market:

> "The simple implementation of quota policies leads to a scenario of low-cost entry and plentiful suppliers; in other words, an oligopsonic market in which broadcasters control the bottleneck of access to the television spectrum. In this context, producers have no chance to build assets, meaning that growth can only occur at the expense of other competitors or from a quota increase. However, this hypothetical increase cannot be a long-term solution because the tendency is to reproduce the same scenario. *The only solution is the one that the UK implemented in 2003: a regulatory intervention on the terms of trade governing agreements between broadcasters and producers that allows*

[16] SPA is concerned by reports that broadcasters are seeking to access Screen Australia program funding.

> *producers to retain control over rights and to build their own portfolio of products that can be marketed elsewhere*."[17]

This simple intervention has created in the United Kingdom, arguably, the most successful independent production industry in the world. As Chalaby writes, with this intervention, "the British government operated a strategic shift in favour of content producers and created a new intellectual property regime. This regime has enabled producers to keep hold of their rights and become asset-owning businesses, eventually giving rise to a new breed of production companies: the super-indies [which] have acquired the scale to compete in an international TV market and drive … British TV exports."[18]

Other Australian markets have similar interventions. Relationships between buyers and suppliers in the food and grocery market, dominated by just two buyers – Coles and Woolworths – is mediated by The Food and Grocery Code of Conduct, a voluntary code prescribed under the Competition and Consumer Act 2010 and administered by the Australian Competition and Consumer Commission. The horticulture market has a mandatory code of conduct that sets contractual conditions in relationships between growers and buyers.[19]

Recommendation 1: Government intervene in the market to address competition issues

Unregulated buyers

Subscription video on demand services deliver television programs and films over the internet, rather than through traditional broadcasting means. As such, they are not regulated like broadcasting organisations and operate in a regulatory "grey area".

In September 2000, the then Minister for Communications, Information, Technology and the Arts, Senator the Hon Richard Alston, made a ministerial declaration specifying that the following class of service does not fall within the definition of "broadcasting service":

> ...a service that makes available television programs or radio programs using the internet, other than a service that delivers television programs or radio programs using the broadcasting services bands.

The minister explained that the purpose of the definition is to ensure that a service that "provides television or radio programs through the internet—other than a service that delivers television programs and radio programs using the broadcasting services bands—does not fall within the definition of a broadcasting service". What was perhaps a minor regulatory intervention to address a lower order issue in 2000, has had a host of unintended consequences that persist decades later.

Because SVOD services make television programs and films available through the internet and not the spectrum, these services are not regulated like television

[17] David Fernández-Quijada (2012) Quoting television: a cross-national analysis of regulatory intervention in the independent television production industry in the UK and Spain, *International Journal of Cultural Policy*, 18:4, 378-397 – emphasis added.
[18] Chalaby, J. (2010). The rise of britain's super-indies: Policy-making in the age of the global media market. *International Communication Gazette*, 72(8), pp. 675-693.
[19] https://www.accc.gov.au/business/industry-codes/food-and-grocery-code-of-conduct

broadcasters. These unregulated do not have requirements to show Australian, regional and children's content, restrictions on advertising and classification requirements, or minimum expenditure on Australian drama.

To show how lacking these SVOD services are in regulation, Netflix recently agreed to a self-regulatory model for classification of content. The outcry over the availability of *13 Reasons Why*,[20] a US drama dealing with the suicide of a teenage girl, to Australian children on Netflix, highlights the limits of self-regulation and the need for government intervention.

The media landscape has changed dramatically since Senator Alston made his declaration in 2000, with new market entrants taking a greater audience share. At 30 June 2017, Foxtel had 2.8 million subscribers and obligations to Australian content.[21]

Stan has 800,000 subscribers. Netflix has 2.71 million Australian subscriptions.[22] Amazon Prime has entered the market, Facebook is commissioning long-form content,[23] YouTube Red has just announced its first commission,[24] and niche streaming services continue to emerge. While these services bring added competition to legacy businesses, they also do not compete on a level playing field - none of these services have obligations to Australian content.

The European Union model

By way of comparison, Netflix has two million subscribers in France[25] and the EU is bringing SVOD services into its regulatory environment. The proposed revision to the EU Audiovisual Media Services Directive[26] will include modifications to the existing Directive with aim of enhancing the promotion of European film and television content by:

- allowing media services to impose financial contributions to providers of on-demand services established in other media services (but only on the turnover generated in the imposing country),
- putting on-demand players under the obligation to promote European content to a limited level by imposing minimum quota obligations (20% share of the audiovisual offer of their catalogues) and an obligation to give prominence to European works in their catalogues,
- low turnover companies, thematic services and small and micro enterprises are exempted from these requirements.

The 20 per cent library quota has since been revised upwards to 30 per cent.[27]

Standing Committee on Communications and the Arts recommendation

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20 http://www.dailytelegraph.com.au/news/nsw/13-reasons-why-netflix-show-most-dangerous-program-on-tv/news-story/2055b0d7cea12766392ca47a986691d3
21 http://www.mediaweek.com.au/news-corp-2017-results/
22 http://www.roymorgan.com/findings/7242-netflix-subscriptions-march-2017-201706080957
23 https://www.ft.com/content/2047563c-4bd6-11e7-a3f4-c742b9791d43
24 https://www.rts.org.uk/article/youtube-red-commissions-first-uk-drama-crown-creators
25 https://www.broadbandtvnews.com/2017/01/09/france-televisions-top-launch-netflix-rival-producers/
26 https://ec.europa.eu/digital-single-market/en/revision-audiovisual-media-services-directive-avmsd
27 https://www.theregister.co.uk/2017/05/25/eu_pegs_homegrown_netflix_quota_at_30pc/

In late 2017, the Standing Committee on Communications and the Arts Inquiry into factors contributing to the growth and sustainability of the Australian film and television industry recommended:

> "any future reforms to Australia's content quota system ensure that commercial and subscription television companies continue to invest in and broadcast Australian programs for general audiences at current levels. In addition, the new quota system should provide that subscription video on demand services invest a percentage of the revenues they earn in Australia, for example 10 per cent, in new Australian content."

Recommendation 2: The Government should extend local content obligations to new market entrants.

Tax issues

The introduction of the offsets in 2007 was a game changer for the production industry. The offsets are working well and the policy settings are right. However, some reform is required.

The “television” offset is set at 20 per cent of QAPE while the feature film offset is capped at 40 per cent. The policy case for the differential offsets was made that as feature films are more difficult to finance, they should attract a greater level of support from the government. This case remains relevant, as does the continuing need for Screen Australia investment in film.

SPA submits that this variable rate of offset should be addressed and harmonised to generate greater production levels in the film and television industry. Adopting a 40 per cent rate for Australian productions would greatly contribute to the growth and sustainability of the industry. It would also remove the antiquated requirement for a theatrical release for films, which is a barrier to growth in the new streaming market. SPA maintains this position, however with a significant qualification – that the producer offset is limited to the producer, not a broadcaster.

When the producer offset was introduced, the then Minister for the Arts, the Hon Senator Brandis QC made it clear that the benefits of the Government’s new policy were to accrue to the independent production sector, not broadcasters.

In his Second Reading Speech introducing the producer offset legislation, Senator Brandis said:

> “I take this opportunity to affirm on the part of the government its intention that the independent sector should be beneficiaries of the producer rebate … Were it to be the case that in the early months of the operation of the scheme independent producers were missing out, it would be the intention of the government to re-look at the matter. In that regard, might I adopt the language of paragraph 11.47 of the report of the Senate Standing Committee on Economics, which says:
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> > It would be the committee’s expectation that were the availability of the scheme for in-house production to have a detrimental effect on the independent sector then the Government on the basis of that evidence should legislate to restrict the producer offset scheme to independent producers.”

Unfortunately, broadcasters have access to the offset for in-house production and SPA has seen contracts where broadcasters have demanded the producer pay the offset to the broadcaster.

A flat 30 offset?

Noting current budgetary circumstances and that the offsets as they exist are effective, a strong case would need to be made by the Government to change the rates. A flat 30 offset (producer, location, PDV) has been raised in the Content Review process. There are several issues related to a flat 30 offset.

Feature films

Reducing feature films from 40 per cent to 30 per cent would increase the difficulty in financing feature films in Australia, including the films listed in the consultation paper, with the result that without other interventions, fewer Australian films get made. Recent award-winning Australian feature films that simply would not have been made with an offset at 30 per cent include *Lion*, *Dance Academy*, *The Dressmaker*, *The Death and Life of Otto Bloom*, *The Sapphires*, and *Holding the Man*.

If the Producer Offset were to be lowered to 30 per cent, the Government would need to increase equity funding to Screen Australia to ensure its cultural objectives are met.

Television

Lifting the television offset from 20 to 30 per cent would not necessarily bring about a commensurate increase in production activity for Australian television drama, documentaries and children's content for commercial broadcasters, as the volume of output for those genres is determined by broadcasters by quotas. However, for public and subscription broadcasters as well as streaming services, Australian production levels are likely to rise. However, without any conditions placed on broadcasters accessing the producer offset, a lift from 20 to 30 per cent will increase the incentive for in-house production. Without any other intervention to ensure a diversity of supply (e.g. an independent production quota as in the UK), further vertical integration is to the detriment of the independent production sector, diversity of programming and ultimately, Australian audiences.

Foreign productions

Lifting the location offset from 16.5 per cent to 30 would provide certainty for international productions and the local services industry in attracting footloose productions to Australia. Certainty is preferable to the *ad hoc* and opaque process for top ups that currently exists.

However, in light of this, the Government must maintain, and indeed enhance, the critical ballast provided by Australian productions in developing our country's narratives, which are generated by local businesses. To weight our industry too heavily towards an offshore fee for service sector, driven in significant parts by currency rates and changeable comparable international incentives, would be an incredibly risky strategy, destabilising and ultimately damaging to the sector.

Australian industry that produces Australian content make up the vast majority of production activity in Australia. The primary investment from Government should always be made available for Australian productions and the relative balance of investment between local and foreign production must remain focused on local industry and bear in mind the benefits provided by international productions clearly focused on building local capacity and global brand appeal for local productions.

Enhanced support for Australian productions through policy measures such as the producer offset is an important signal of the value they provide to Australian stories, Australian audiences and local Australian businesses.

Recommendation 3: The Government should harmonise and modernise offset legislation while returning the policy framework to its original intention that the producer is the beneficiary of the offset.

Trade issues

Australia has co-production treaties in force with the United Kingdom, Canada, Italy, Ireland, Israel, Germany, Korea, South Africa, Singapore and China, and Memoranda of Understanding with France and New Zealand. The Department of Communications and the Arts negotiates treaties on behalf of the Australian Government and the treaties are administered by Screen Australia, as the "competent authority".

A longstanding stated purpose for co-production agreements is:

- to foster cultural and technical development and exchange by facilitating international co-productions
- open up new markets for Australian film and television productions
- enable a creative and technical interchange between film personnel, and
- increase the output of high quality production through the sharing of equity investment.[28]

These treaties allow Australian producers to partner with producers from treaty-countries to access the benefits of each country's regulatory and taxation environments. For example, a film co-produced in Australia and the United Kingdom could get access to the producer offset in Australia, the United Kingdom's taxation incentives and the film would qualify as an Australian film as well as a UK/European film (until Brexit occurs) for the purposes of content regulation. The real effect of combining resources is to make film and television content that can more readily compete in a global distribution environment, for example, the television series *Cleverman.*

As at 31 December 2016, since Australia's first co-production in 1986-86 with the United Kingdom (a telemovie - *The First Kangaroos*), 171 official co-production titles with total budgets of $1.6 billion have either been completed or have commenced production.[29]

Co-production treaties are a tried and tested mechanism to deliver Australian content to Australian and international audiences.

However, a significant issue is the low number of co-production treaties. Australia has twelve co-production treaties. Canada has close to 60. Earlier this year, SPA made enquiries with over 20 embassies to gauge the level support for a co-production treaty between Australia and that country. There is interest among these countries, however the Australian Government's policy towards co-production treaties does not generate confidence in our trading partners.

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[28] National Interest Analyses: *Films Co-production Agreement Between the Government of Australia and the Government of Italy, done at Rome on 28 June 1993*, tabled in both Houses of Parliament on 23 November 1993 and *Films Co-Production Agreement between the Government of Australia and the Government of the State of Israel, done at Canberra on 25 June 1997*, tabled in both Houses of Parliament on 21 October 1997.
[29] Source: Screen Australia.

For example, negotiations for a Danish agreement have concluded, but the agreement has not been ratified. SPA's understanding is that the issue is at the Australian end, rather than the Danish. SPA recommends the Government commit funds to finalising the Danish treaty.

Recommendation 4: The Government conclude more, and renegotiate better, co-production treaties to facilitate increased film and television exports.

Attachment A

SCREEN PRODUCERS AUSTRALIA

SCREEN PRODUCTION INDUSTRY POLICY LEDGER

2014-17 Policy Decisions and their impact on the Australian Screen Production Industry.

Date / Decision	BENEFICIARY	EFFECT ON THE AUSTRALIAN SCREEN PRODUCTION INDUSTRY	Impact
MAY 2014 ✘ First cut to Screen Australia Loss – $38m over four years ✘ First cut to ABC Loss of $35.5m over four years ✘ First cut to SBS Loss of $8m over four years	No one	Reduces eligible funding pool for independent local productions	Loss of $81.5m over four years
NOVEMBER 2014 ✘ Second cut to ABC Loss of $254m over five years ✘ Second cut to SBS Loss of $25.2m over five years			Loss of $308m over five years
FEBRUARY 2015 ✘ Removal of independent audit requirement for New Eligible Drama Expenditure Scheme Loss – yet unable to quantify	Subscription television services	Reduces ability for industry to examine compliance with the new eligible drama expenditure scheme (10% on local content)	Loss yet able to quantify
MAY 2015 ✘ Second Cut to Screen Australia Loss – $3.6m over four years	No one	Reduces eligible funding pool for independent local productions	Loss of $3.6m over four years
JUNE 2015 ✓ Site Blocking Gain – yet unable to quantify	Media Platforms and Content Creators	Reduces piracy, providing greater control of licenced film and television online	Gain too early to tell
OCTOBER 2015 • Subsidising *Thor* and *Alien* for $47.25m	US studios, local service businesses and crew	Gain for US studios and local service businesses as well as crew skill development.	Gain of $47.25m[1] for the screen service industry
NOVEMBER 2016 • Broadcast Licence Fee Reduction $168m over four years	Commercial Television Broadcast Licence Holders, professional sport	Reductions in licence fees that could have been channelled into supporting commercial television screen production will likely go to operational costs and inflated sports rights.	Gain of $168m[2] over four years
DECEMBER 2015 ✘ Third cut to Screen Australia Loss – $10.3m over four years	No one	Reduces eligible funding pool for independent local productions	Loss of $10.3m over four years
DECEMBER 2016 • Subsidising *Aquaman* for $22m	US studios, local service businesses and crew	Gain for US studios and some local service businesses as well as crew skill development.	Gain of $22m[1] for the screen service industry
MAY 2017 • One-off Payment to SBS of $8.8m	SBS	Additional funds for SBS, however with no specific obligations to the Australian screen production industry.	Gain of $8.8m for SBS
MAY 2017 • Broadcast Licence Fee refund $127m	Commercial Television Broadcast Licence Holders, professional sport	Reductions in licence fees that could have been channelled into supporting commercial television screen production will likely go to operational costs and inflated sports rights.	Gain of $127m[2]

[1] This figure represents total payment to the two studios, which is funding that could have been allotted to invest in Australian-produced content.
[2] Includes radio broadcasters

screenproducersaustralia.org.au
james.cheatley@screenproducers.org.au

SCREEN PRODUCERS AUSTRALIA

STATUS QUO COSTS THE SCREEN INDUSTRY

Screen Producers Australia has made submissions to the government on issues relating to New Zealand content, the Danish Co-Production Agreement, Foreign Actors, lifting production offsets, and investment by subscription video on demand in local content. No action on these issues costs the industry.

NO ACTION	BENEFICIARY	EFFECT ON THE AUSTRALIAN SCREEN PRODUCTION INDUSTRY	
✘ No action on New Zealand content At the very minimum, a loss of $2.5m in 2015[3]	New Zealand Producers, Commercial Television Broadcasters	Reduces the incentive for commercial television broadcasters to invest in the production of Australian content	Loss of $2.5m at very minimum[3]
✘ No action on Producer Offset competitiveness Loss to economy of $103m[6]	Foreign producers in other countries	Producers decide against making films and television locally, moving to more friendly employment environments (e.g. New Zealand).	Loss to economy of $103m
✘ No action on Danish, Brazilian, China TV and Indian Co-Production Agreements Loss – yet unable to quantify	No one	No access to international co-partners and international tax subsidies, reducing scope for greater access to international markets	Loss yet unable to quantify
✘ No action on removing red tape for allowing involvement of Foreign Actors Loss – yet unable to quantify	No one	Producers decide against making films and television locally, moving to more friendly employment environments (e.g. New Zealand).	
✘ No action on modernising the PDV Offset and making the Location Offset competitive Loss – yet unable to quantify	Foreign producers in other countries	Producers decide against making films and television locally, moving to more friendly taxation environments (e.g. New Zealand).	
✘ No action on extending content obligations to SVOD services Loss – yet unable to quantify	Netflix, etc	No requirements to contribute to local content	
✘ No action on Terms of Trade Loss – yet unable to quantify	Television broadcasters or other purchasers of Australian content	Buyers of Australian content often have disproportionate market power when dealing with the businesses who create it, the result of which can limit audiences access to the content and reduce the potential for economic returns.	

KEY

✓ Gain for the Australian Screen Production Industry

✘ Loss to the Australian Screen Production Industry

• Gain for specific businesses not broader local production industry

3 Drama – at the very minimum, a loss of at least $1.9m in 2015 (calculated by applying the per-hour minimum licence fee for Australian drama to the hours claimed by commercial television broadcasters for New Zealand drama to meet the Australian drama quota). Documentary – at the very minimum, a loss of at least $630,000 in 2015 (calculated by applying Screen Australia's minimum licence fee for Australian documentaries for Commissioned Programs to the hours claimed by commercial television broadcasters for New Zealand drama to meet the Australian drama quota). This figure of $2.5m is the very minimum and does not take into account substantial equity investments in Australian drama and documentary programs. These equity investments are commercial-in-confidence.

4 For example, Netflix does not disclose its investments and audience ratings.

5 New Zealand content qualifies as Australian content for the purposes of the Australian Content Standard.

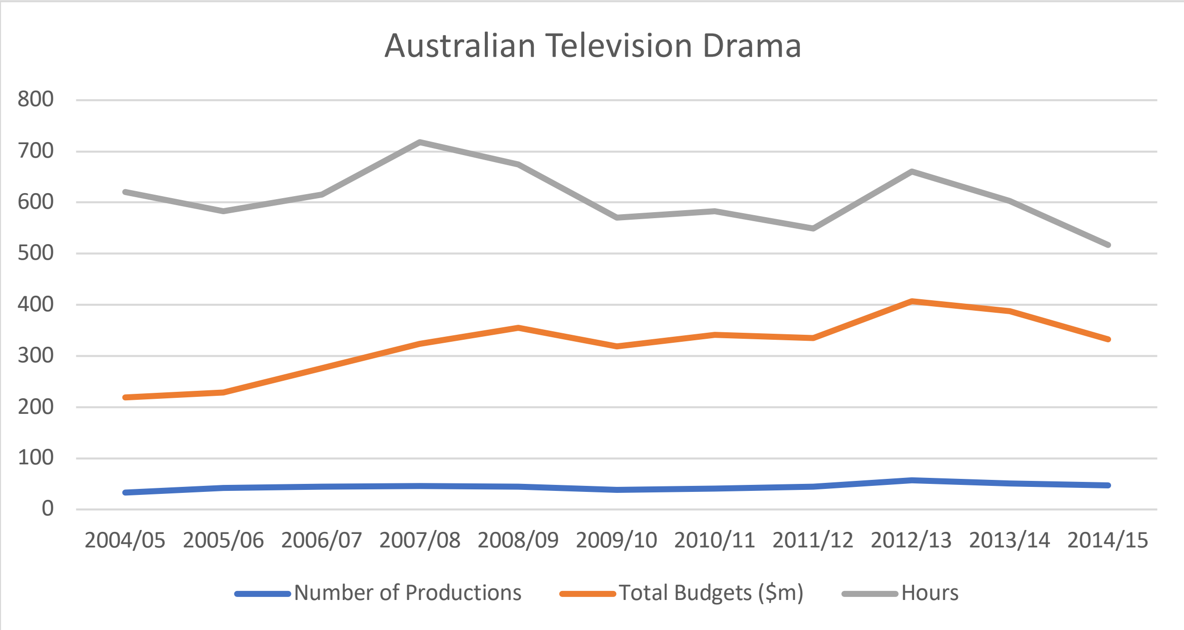
6 PWC modelling https://www.screenproducers.org.au/news/new-tv-tax-offset-boost

screenproducersaustralia.org.au
james.cheatley@screenproducers.org.au

Attachment B

The past ten years

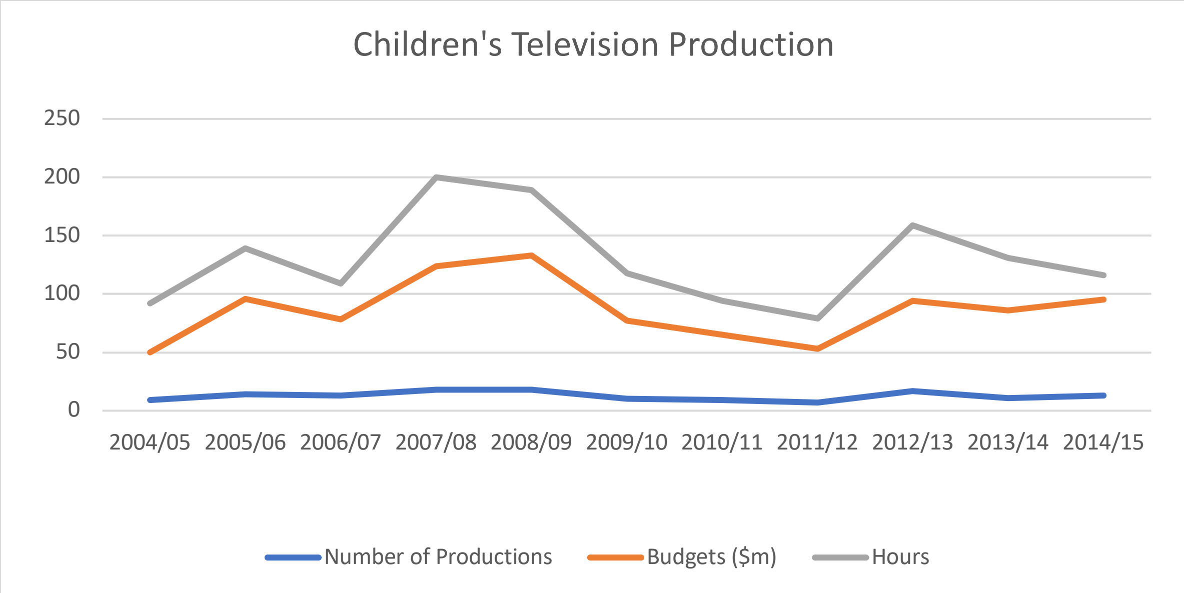
Data sourced from Screen Australia and the Australian Communications and Media Authority shows that levels of production have been inert or slowing for some years.



Source: Screen Australia

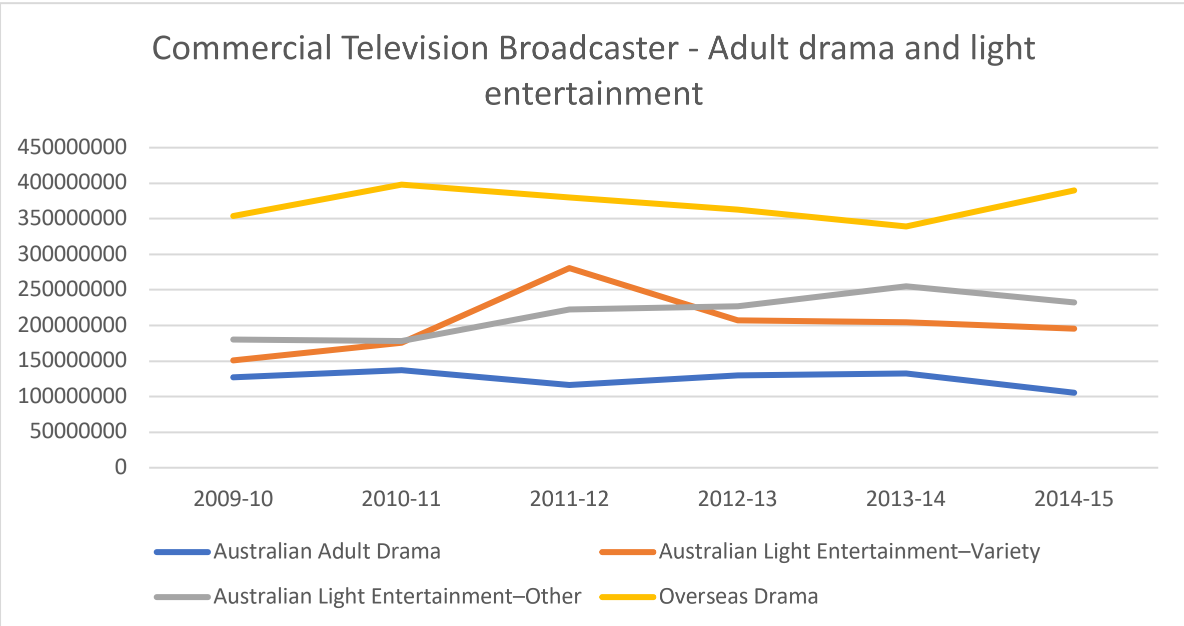
The above graph shows the number of productions has remained static over the term. Budgets have risen from over the term, but have been on downward trend since 2012-13. The spike in hours in 2007-08 corresponds with the introduction of the offsets and the second spike in 2012-13 follows reforms to the offsets introduced in 2011-12 and corresponds with multi-channeling. However, hours have been on a downward trend over the decade.

The number of television drama productions has not increased in ten years. This is an effect of the quotas and the commercial broadcasters' programming decisions. If it is assumed that the commercial broadcasters will not do more Australian drama than they are obliged, then the number of productions will not increase beyond the obliged level.



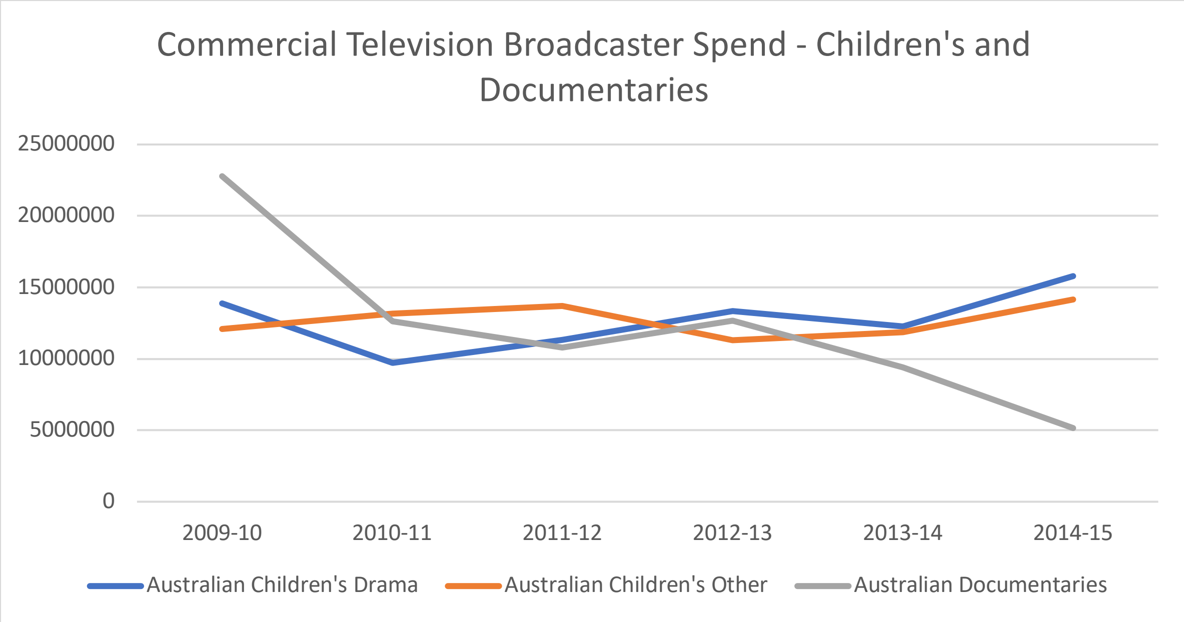
Source: Screen Australia

Again, the above graph shows a spike in hours in 2007-08 and in 2012-13, but the number of productions has remained constant across the decade.



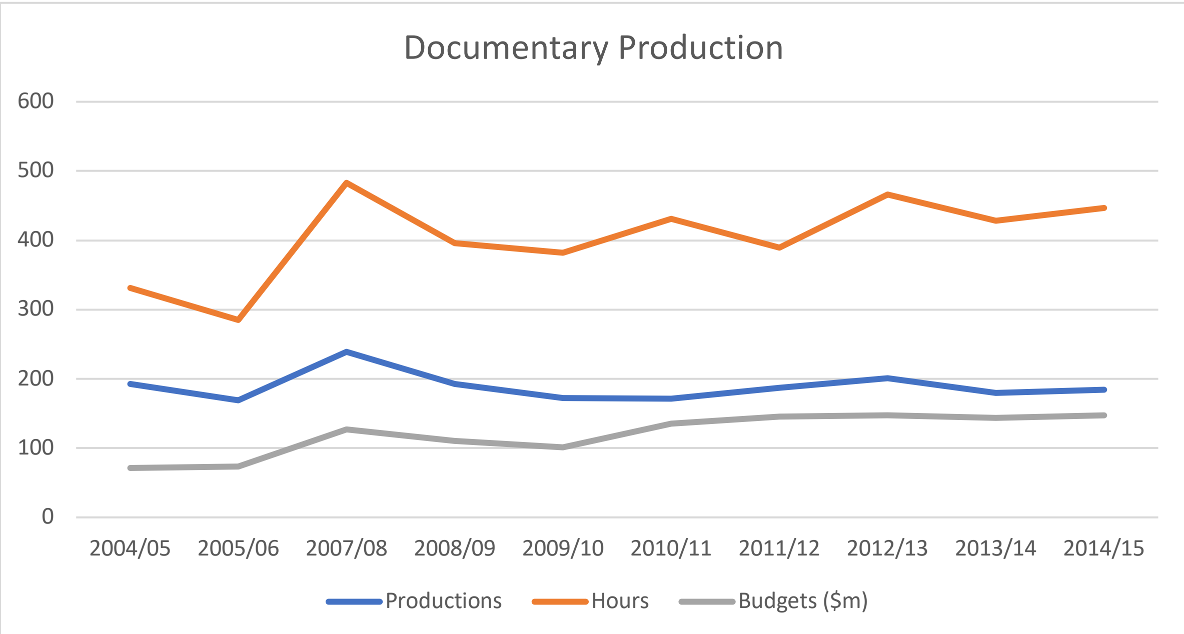
Source: ACMA

The above graph shows the reported spend by commercial television broadcasters on drama and light entertainment since 2009-10. We see a growth in spend on light entertainment and since 2012-13 a marked increase in spend on foreign drama and a correlative decreasing spend on adult drama.



Source: ACMA

This graph shows a significant drop in reported spend on documentaries and an increase in reported spend on children's drama by the commercial television broadcasters, which may reflect the spending cycle that is informed by the three-year quota obligations. Children's content is under significant pressure, with all the commercial broadcasters commenting that they would like to see their obligations to commission and broadcast children's content reassessed or removed.[30]



Source: Screen Australia

Again, the above graph shows the spike in production and hours for documentaries in 2007/08 has levelled out in the subsequent years, while budgets rising.

[30] Mitchell Bingemann, "Kids TV content under federal government review", *The Australian*, 27 February 2017.