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Screen Producers Australia's 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

Executive summary

Screen Producers Australia (SPA) was formed by the screen industry to represent large and small enterprises across a diverse production slate of feature film, television and interactive content. Our members make Australian stories and sell them to the world. Our members employ hundreds of producers, thousands of related practitioners and drive more than $1.7 billion worth of annual production activity from the independent sector.

It has been almost ten years since the last major reforms to the industry: the offsets in 2007 (producer, location, PDV) and the creation of Screen Australia in 2008. Through these reforms, the Australian Government made a significant effort to provide incentives to grow local production levels. The reforms are welcome and set the industry up for success. However, while the reforms brought about an immediate spike in production, since that time, industry employment growth hasn't outpaced jobs growth in the overall economy, production levels have remained static, new market entrants have increased the amount of foreign content on our screens, and budgets have increased - labour costs are a significant proportion of this increase.

The static level of production and employment since the reforms demonstrate there are barriers to growth in the industry that need addressing to get proper results out of the reforms that have already been made. In short, the policy is right, but the settings need some adjustments.

These barriers include:

- cuts to funding of screen agencies and public broadcasters
- uncertainty in dealing with screen agencies and government red tape
- the "brain drain" and uncertainty in immigration processes
- variable rates of producer offsets and outdated legislation, and
- the paucity of Australia's co-production agreements.

For SPA, the potential for growing our industry through trade is significant, but these and other barriers need addressing.

To this end, SPA recommends the Government:

1) Adopt a trade-focused agenda for the industry, negotiate more co-production agreements and remove barriers in existing agreements.
2) Harmonise the producer offsets at 40% and modernise their administration.
3) Evolve and expand the regulatory environment to include new market entrants, while maintaining robust commitments to Australian and children's content to ensure the Government's cultural objectives are met in the digital era.
4) Provide certainty in government funding for screen agencies, public broadcasters, immigration processes and property rights.

Introduction

Screen Producers Australia (SPA) welcomes the opportunity to provide a submission to the Standing Committee on Communications and the Arts' *Inquiry into the Australian Film and Television Industry*.

SPA was formed by the screen industry to represent large and small enterprises across a diverse production slate of feature film, television and interactive content. Our members make Australian stories and sell them to the world.

As the peak industry and trade body, SPA consults with a membership of more than 400 production businesses in the preparation of our submissions. This consultation is augmented by ongoing discussions with our elected Council and appointed Policy Reference Group representatives. SPA's members employ hundreds of producers, thousands of related practitioners and drive more than $1.7 billion worth of annual production activity from the independent sector. Independent producers account for 49% of all screen content produced annually in Australia. More information about SPA is at **Attachment A**.

On behalf of these businesses, SPA is 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. 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.

In preparing this submission, SPA consulted with its membership, Policy Reference Groups and conducted the 2017 Screen Industry Business Survey, the results of which are referenced throughout this submission.

In summary, there are four factors that will contribute to the growth and sustainability of the Australian film and television sector:

1. Increasing trade.
2. Ensuring taxation incentives are modern and fit for purpose.
3. Evolving and expanding the regime for content regulation.
4. Guaranteeing certainty in:
    - public funding for screen agencies and public broadcasters
    - immigration and screen agency processes and decision making, and
    - property rights.

In mid-March 2017, SPA brought together industry leaders to discuss threats to the sustainability of the Australian film and television industry, as well as the opportunities for growth.[1]

The Committee has chosen a pertinent time to conduct its inquiry. The last time a parliamentary committee conducted an inquiry into our industry was 2004, when the House of Representatives Standing Committee on Communications, Information Technology and the Arts released *From Reel to Unreal: Future opportunities for Australia's film, animation, special effects and electronic games industries.* Since that

[1] To view the video, click this link: https://www.youtube.com/watch?v=rxyRHSNdLKU

inquiry, factors including audience fragmentation, disruptive new market entrants and an outdated regulatory environment have brought about a period of great uncertainty, yet there are great opportunities for the Australian film and television industry.

The size and scope of the Australian film and television industry

The size and scope of the Australian film and television industry is determined by several factors.

Domestic markets for film and television and "shelf space"

The size of the Australian commercial television market is determined in large measure by the value afforded by advertisers on programming decisions. A proportion of these programming decisions are regulated to ensure Australian drama, documentary and children's programs shelf space.

The size of the Australian public television market is determined in large measure by programming decisions made by reference to their budgets and their charters. These programming decisions by public broadcasters are not specifically regulated to ensure Australian content shelf space.

The size of the Australian subscription television market is determined in large measure by subscriptions and the value afforded by advertisers on programming decisions. These programming decisions by subscription television broadcasters are not specifically regulated to ensure Australian content shelf space. However, there is a minimum expenditure requirement on drama channels to produce Australian content.

The size of the Australian film market is partially determined by Screen Australia's funding levels and distribution agreements between distributors and exhibitors that afford a theatrical window and shelf space to Australian films.

As outlined in Part Three, these markets have been static or declining for the past decade.[2] The opportunities for growing the industry lies in increasing trade, as outlined in Part Five.

Screen Currency Report

In 2016, Screen Australia engaged Deloitte Access Economics Olsberg SPI to comprehensively measure the economic and cultural value of the Australian screen industry.

The *Screen Currency* report outlines that in 2014-15, the Australian screen production industry contributed over $3 billion in value add to the economy and over 25,000 full time equivalent jobs. Specifically, the report noted that screen content under Australian creative control generated $2.6 billion and 20,158 FTE jobs. Production, post, digital and visual effects (PDV) services provided by Australian businesses added another $382 million and 4093 FTE jobs. Australian screen

[2] Perversely, static or declining production in the industry provides Government with a level of certainty in the budgetary impact of the taxation incentives through the producer offset, which is an uncapped expenditure.

content attracts around 230,000 international tourists to Australia each year, driving an estimated $725 million in tourism expenditure.

This report provides a snapshot of the Australian film and television at a moment in time. However, as noted in Part Three of this submission, production levels and employment in the industry have been static or in decline for the past decade. To ensure the growth and sustainability of the Australian film and television industry, the Government should commit to a series of reforms, as set out in Part Seven of this submission.

Production activity across Australia

Members of the committee should note that significant productions have taken place in their electorates, bringing jobs and economic activity to local towns and communities.

In the electorate of **Petrie**, the 2013 feature film *Mystery Road* (Bunya Productions) and the feature documentary *Australian Skies* (Dojo Media) were shot.

In the electorate of **Gellibrand**, the following features were shot: *Animal Kingdom* (2010, Porchlight Films), *Matching jack* (2010, Cascade Films), *Cut Snake* (2014, Matchbox Pictures), *The Dressmaker* (2015, Film Art Media) and *Pawno* (2015, *Roar Digital*). Television series shot in Gellibrand include series 1-5 of the *Doctor Blake Mysteries* (2012-17, December Media), the mini-series *Childhood's End* (2015, SyFy Channel)

In the electorate of **Maranoa**, the documentaries *Return of the Catalina* (2015, Bunker Media), an episode of *Big Birds Don't Fly* (2015, PBS, National Geographic) and *Keeping Australia Alive* (2016, ITV Studios Australia) were shot.

In the electorate of **Corangamite**, the television series Angry Boys (2011, Princess Pictures), *Tomorrow When the War Began* (2015, Ambience Entertainment) were shot; as were the features *Blinder* (2013, Revival Film Company), *Virtual Dogs and Loaded Guns* (2016, Cats Productions) and the documentary *Demolition Man* (2016, CJZ)

In the electorate of **Mallee**, the feature films *Summer Coda* (2010, Revival Film Co), *The Cup* (2011, Horizon Films) and *The Dressmaker* (2015, Film Art Media) were all shot.

In the electorate of **Macquarie**, the feature films *A Few Best Men* (2011, Parabolic Pictures/Antonia Barnard), *Hacksaw Ridge* (2015, Cross Creek Pictures) and *One Less God* (2017, New Realms Films) as well as the television series *Wild Boys* (2011, FremantleMedia Australia), *Banished* (2015, RSJ Films) and *This is Me* (2016, Air Pig Productions) were shot.

In the electorate of **O'Connor**, the feature films *Son of a Gun* (2014, Altitude Film), *Indefinite* (2015, Contempovision Films), *Breath* (2017, See Picture/Simon Baker) and *Jasper Jones* (2017, Porchlight Films) were shot, as were the documentaries *Railroad Australia* (2015, Prospero Productions) and *Outback Truckers* (2015-16, Prospero Productions).

How this submission is structured

This submission is structured in seven parts.

- Part One outlines the role of SPA in the Australian film and television industry.
- Part Two outlines the role of the Australian Government in the Australian film and television industry.
- Part Three provides an overview of the ten years since the last major reforms to the Australian film and television industry.
- Part Four sets out some barriers to the growth and sustainability of the Australian film and television industry.
- Part Five identifies opportunities for growth and sustainability of the Australian film and television industry.
- Part Six provides principles for reform of the Australian film and television industry.
- Part Seven outlines specific recommendations for reform of the Australian film and television industry.

PART ONE – SPA's role in the Australian film and television industry

SPA is an industry body that represents the interests of independent Australian film and television producers on issues affecting the business and creative aspects of screen production.

SPA was formed by the screen industry 60 years ago to represent small-to-medium sized enterprises across various industries including feature films, television, games and interactive content. Independent in this context means producers independent of television broadcasters.

The production sector in Australia includes a variety of producers including in-house television networks, SPA members and non-SPA members. SPA does not represent all independent producers in Australia. SPA's members include around 400 production businesses, who employ hundreds of producers and thousands of other practitioners.

SPA offers the following levels of membership:

- *producer*: for established producers or production companies with at least one producer credit (credits must have received a broadcast, theatrical or online release);
- *associate*: for people who have recently embarked on a career as a producer, but have not yet earned a producer credit;
- *affiliate*: for businesses seeking to participate in the wider screen industry; and
- *service and facility business*: for businesses that provide services that directly contribute to the production of screen content (for example lawyers, accountants, insurance companies and film distributors).

The industrial landscape

Production companies may engage film and television writers, actors, directors and technical crew on an employment or contractor basis. Although it varies on a case-by-case basis, production companies generally engage writers, actors and directors as independent contractors.

The vast majority of film and television industry employers are small to medium enterprises without the resources to continually negotiate their own agreements for each production. In this context, collective participation in model term agreements is important for the sustainability of the industry. Without the capacity to contribute as a group to model term agreements, the industry would likely be dominated by a small number of large businesses, which would result in less competition and less diversity in program content. Moreover, in commercial negotiations with buyers of content, without the ability to set collective terms, smaller producers would be at a disadvantage due to a lack of resources and experience in negotiating complicated deals. To this end, the ACCC has authorised SPA to collectively bargain on behalf of its members.

A list of SPA's negotiated agreements is at **Attachment B**.

Historically, there has been little publicly available information regarding what constitutes minimum standards of remuneration and working conditions for writers, actors, directors and technical crew in the industry. The model terms of engagement negotiated between SPA, the Australian Writers Guild (the AWG), and the Media Entertainment and Arts Alliance (MEAA) have therefore provided a valuable benchmark. Similarly, the model terms of engagement to be negotiated between SPA and the Australian Directors Guild (ADG) will also provide an important benchmark. These benchmarks are important not only on an individual level to ensure that SPA, AWG, MEAA and ADG members are aware of minimum standards when they negotiate further terms of their own agreements, but on a broader industry-wide level, to ensure that minimum conditions of pay and employment are maintained.

Influence of SPA's negotiated agreements

As part of its service to members, SPA provides industrial advice, at no cost above membership fees and levies. This includes SPA negotiating model terms of engagement with AWG, MEAA and the ADG for use by SPA members. When Fair Work Australia (formerly the Industrial Relations Commission) developed the Broadcasting and Recorded Entertainment Award in 2010 covering performers and technical crew in the film and television industry the terms and conditions of the Award were substantially based on the benchmark agreements negotiated by SPA.

Producers who apply for funding from Screen Australia must comply with the Screen Australia Terms of Trade. These Terms of Trade require producers to act fairly and reasonably in relation to third parties involved in the funded projects. The Terms of Trade state that fairness and reasonableness includes paying at least the award minimum rates or any minimum rate agreed between SPA and the relevant guilds, and respecting the intellectual property rights of third parties. Third parties include writers, actors, directors and technical crew.

How SPA conducts its negotiations

When conducting negotiations, SPA forms a committee which generally includes two SPA employees and several SPA members. The process of negotiation is inclusive of all SPA members and on average each agreement takes between 9 and 12 months to negotiate. Production companies not directly involved in the committee are given opportunities, both at the start and towards the end of the process, to provide their input into the negotiations. In addition, SPA holds regular member meetings in each State at which industrial relations issues, among other things, are discussed and members can provide comments on the negotiations and model terms at these meetings.

The model terms of engagement are not binding under industrial law and are in principle minimum term in nature but do not preclude negotiations between the parties for variations on the model terms. The model terms do not in any way prevent non-member producers from negotiating their own agreements with the same organisations or with employees and contractors.

In the 2017 Screen Industry Business Survey, approximately 70% of respondents agreed or strongly agreed that labour costs were a barrier to growth.

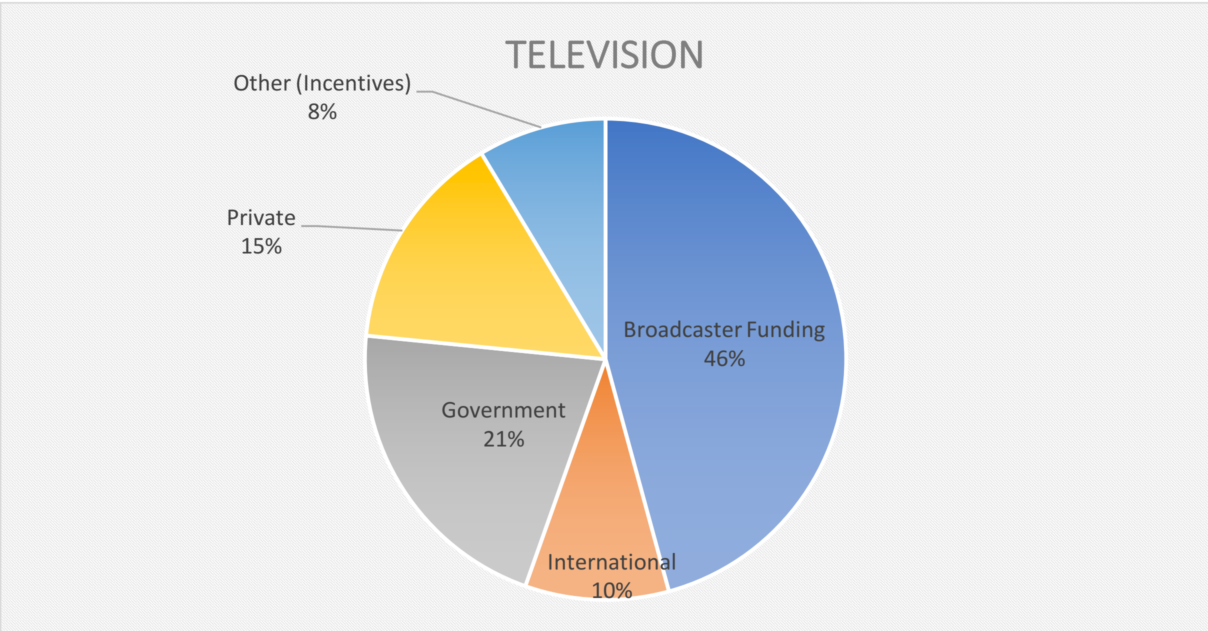
SCREEN FOREVER

SPA convenes an annual conference, SCREEN FOREVER.[3] At this conference, SPA connects members with potential business partners. As explained later in this submission, forging international partnerships is important in growing and sustaining successful Australian screen production businesses and the Australian film and television industry. The International Partnership Market (IPM) at SCREEN FOREVER is a key driver, with numerous productions being created and or advanced directly from meetings that take place at the IPM.

How deals are structured

In the 2017 Screen Industry Business Survey, SPA asked the industry how they are putting together their deals. In Australia, a producer must source contributions from multiple sources, domestic and international to raise finances to meet the budget. In a climate of budget cuts to domestic screen agencies, tightening distribution channels and broader economic uncertainty, it is increasingly difficult for producers to source funding for their projects.

Television – sources of finance



This chart represents responses from those surveyed of a typical deal for a television program in 2016. The government contribution is likely to include the producer offset of 20% together with an additional contribution from a screen agency.

This year SPA asked the industry to compare how the deals they are doing with broadcasters today compare to deals from five and ten years ago. When compared to a representative deal from five years ago, three-quarters of respondents said that a 2016 deal has more private investment, half said there was a greater contribution from international sources and that they gave the broadcaster more backend rights. When compared to a representative deal from ten years ago, three quarters of

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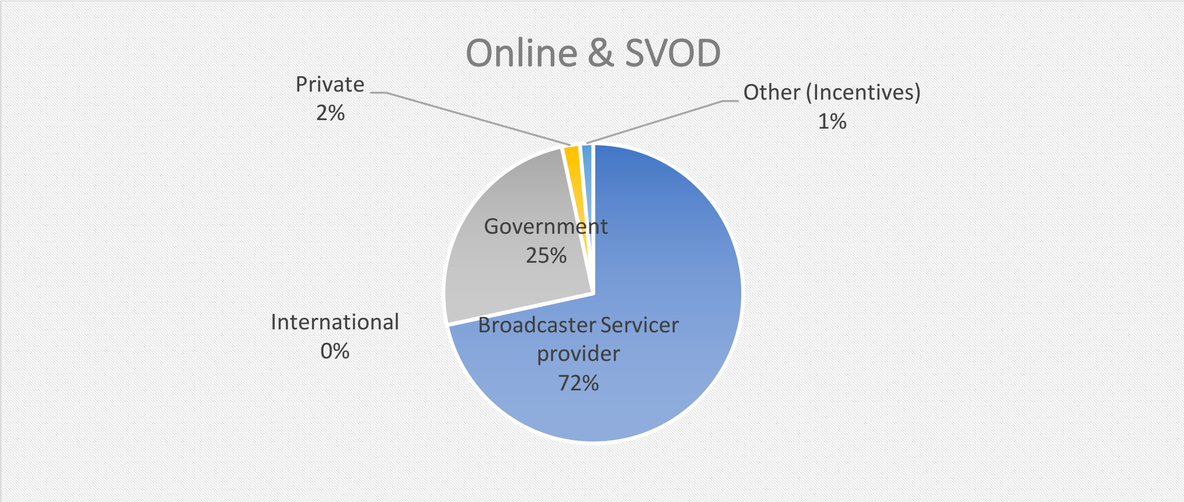
[3] See delegates' views on SCREEN FOREVER at this link: https://www.youtube.com/watch?v=jC70E2LGHXg

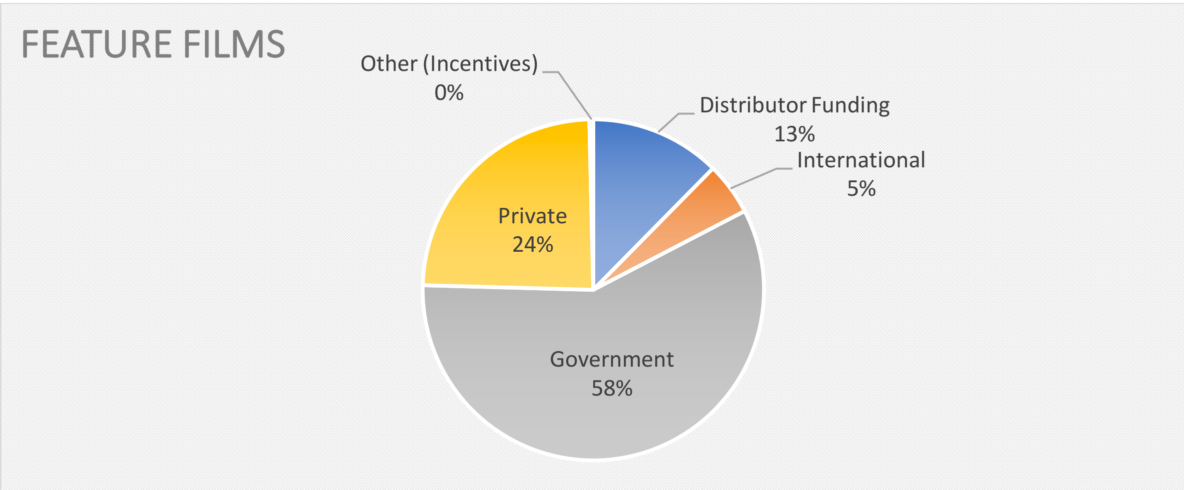
respondents said in 2016, broadcasters contributed more and all respondents said they received more from international sources. In short, compared to five and ten years ago, producers are now getting less and giving more.

Online & Subscription Video on Demand – sources of finance



As with television, online commissions are eligible for the 20% producer offset. Online commissions are not eligible for the PDV offset. A significant proportion of online and SVOD budgets comes from the broadcaster or service provider itself.

Feature Films – sources of finance



Feature films are eligible for the 40% offset and often receive direct funding from screen agencies. Feature films attract a large contribution of finance from private investors.

PART TWO – The Australian Government's role in the Australian Film and Television Industry

The Australian Government's role in the Australian film and television industry may be described as having four core elements:

1. Taxation incentives
2. Funding
3. Regulation
4. Property rights

Each of these extant policies have issues that may be recalibrated to ensure the growth and sustainability of the Australian film and television sector.

1. Taxation incentives

On 1 July 2007, the Australian Government introduced three incentives for screen production activity in Australia. The producer, location and PDV offsets are mutually exclusive, if a production receives a final certificate for one Offset, it may not receive a final certificate for another.

Producer offset

The producer offset provides a refundable tax offset of 40% of Qualifying Australian Production Expenditure (QAPE) on a feature film and 20% of QAPE on a production that is not a feature film (e.g. a television program).

The QAPE must meet a minimum threshold depending on the format of the production:

- For a feature film and a single-episode drama, the total minimum QAPE threshold is $500,000.
- For a Series/Season of a series drama the total minimum QAPE threshold is $1,000,000 and an additional QAPE per hour of production of $500,000.
- For a documentary (single-episode or series) the total minimum QAPE threshold is $500,000 and an additional QAPE per hour of production of $250,000.
- For a short-form animation the total minimum QAPE threshold is $250,000 and an additional QAPE per hour of production of $1,000,000.

The QAPE is the expenditure incurred, or reasonably attributed to, in the production.

Only production companies that are permanently resident or foreign companies with a permanent establishment in Australia, and have an ABN, are eligible for the producer offset.

The process for obtaining the producer offset is a production must obtain a Final Certificate from Screen Australia which outlines the basis for the calculation of the payment from the Australian Tax Office. A production may choose to obtain a Provisional Certificate at an earlier stage. A Provisional Certificate provides guidance on whether a production is likely to qualify for the offset and is ordinarily used by productions to leverage finance. Screen Australia has advised that the target timeline for obtaining a Final Certificate is 12 weeks and will not be assessing QAPE for Provisional Certificate applications from 1 April 2017.

To be eligible for the offset, the project must obtain a certification from Screen Australia that the project has "Significant Australian Content" or the project is made under a coproduction arrangement (whereby the project is deemed to meet the significant Australian content test).

The test for determining whether a project has "Significant Australian Content" is set out in the legislation. In determining whether a production has "Significant Australian Content", matters to which Screen Australia must have regard are:

(a) the subject matter of the film;

(b) the place where the film was made;

(c) the nationalities and places of residence of the persons who took part in the making of the film;

(d) the details of the production expenditure incurred in respect of the film;

(e) any other matters that the film authority considers to be relevant.

The test goes beyond the content of the production and requires investigation into to the place of production, the nationalities of the people who work on the film and the finance plan relating to expenditure. Screen Australia has issued guidelines (reproduced below) that set out how it applies the "significant Australian content" test. These guidelines provide significant latitude for a subjective determination by Screen Australia on whether a production meets the significant Australian content test or not. Importantly, Screen Australia interprets the test as a "cultural" test. The Explanatory Memorandum to the Tax Laws Amendment (2007 Measures No.5) that introduced the producer offset notes that the matters detailed in the significant Australian content test:

> "are intended to be interpreted in the same way as the Division 10BA test, which was previously under the authority of the Arts Minister, and delegated to the Department of Communications, Information Technology and the Arts."[4]

However, in a submission to the Australian Government's 2010 Review of the Independent Screen Production Sector, Screen Australia noted that "it is not privy to the decision or decision-making process of the Arts Minister under Division 10BA"[5] and further the language of the SAC test "suggests that it could be open to interpretation and result in uncertainty".[6]

Other countries, including co-production treaty partners the United Kingdom, France, Germany, Italy, and New Zealand and key trading partners Spain, the Netherlands and Norway have a points-based system in determining the economic and cultural value of a production to that country. Under these systems, a production must meet a certain number of points to qualify as a local production. Points are accrued for elements of the production such as the provenance of the story, the setting, the

[4] Explanatory Memorandum, Tax Laws Amendment (2007 Measures No.5), p 221.

[5] Screen Australia, *Submission to the Australian Government's 2010 Review of the Independent Screen Production Sector*, p 69.

[6] Screen Australia, *Submission to the Australian Government's 2010 Review of the Independent Screen Production Sector*, p 7.

language, locations, the nationality of the director, writer, lead roles and crew. A points-based system provides a great level of transparency and certainty for producers in developing productions.

In 2015, Screen Australia introduced new Producer Offset Guidelines and replaced the 2008 guidelines. In 2016, Screen Australia amended the Producer Offset Guidelines three times (on 12 February, 21 March and 29 August).

Location and PDV offsets

The Location offset provides a rebate for the production of large-scale film and television productions in Australia. The current rate of the location offset was set at 16.5% (raised from 15%) as part of the 2011-12 amendments to the offsets. The location offset is provided against principal photography or predominantly an animated production. The key criterion for accessing the location offset is that the minimum QAPE level must be $15 million.

The PDV offset provides a 30% rebate on post, digital and visual-effects work done in Australia, but not principal photography, regardless of where a production was shot. The 30% level was raised from 15% in 2011-12 and the minimum threshold was lowered to $500,000 on the PDV-element of the QAPE. The PDV offset offers a refund on "qualifying PDV expenditure" for work on projects being feature films, direct-to-DVD, mini-series, telemovies and television series, including animation. The offset is not provided to projects that are commissioned for streaming services.

The location and PDV offsets are administered by the Department of Communications and the Arts.

The below chart sets out the number of applications and cost to the Australian Government of the location and PDV offsets for the past five years.

Location and PDV tax offset	**2010–11**	**2011–12**	**2012–13**	**2013–14**	**2014–15**
Location and PDV Offset provisional applications	1	9	14	16	32
Location and PDV Offset final applications	5	10	12	19	56
Estimated Location and PDV Offset rebate payable to productions certified in financial year ($)	16.8m	23.4m	12.9m	43.6m	69.4m

Source: Attorney-General's Department

KPMG provides a comprehensive comparative analysis of the taxation incentives provided by Australia's main international competitors.[7]

[7] KPMG, *Film Financing and TV Programming: A Taxation Guide*: https://home.kpmg.com/us/en/home/insights/2016/02/film-financing-tv-programming-taxation-guide.html

2. Direct funding

The Australian Government, together with state and territory governments also provide direct funding to the film and television industry. At the federal level, the dedicated funding body is Screen Australia. Screen Australia's direct funding is capped at $2 million.

The Australian Government also provides ad hoc direct funding to inbound productions who access the location offset. Most recently, in addition to the 16.5% location offset, the Australian Government provided $22 million to Warner Brothers for *Aquaman*.

3. Regulation

The Broadcasting Services Act, the Australian Content Standard and the Children's Content Standard regulate broadcast content. This regulatory matrix places conditions on organisations that have broadcast licences. These conditions include obligations to show Australian, regional and children's content, advertising and classification requirements, and minimum expenditure on Australian drama by subscription television broadcasters.

How Australians watch film and television content

Australians on average watch 21 hours of broadcast TV a week and watch 3.42 hours a week of catch up TV.[8] Foxtel has 27 per cent market share.[9] SVOD services have a 28 per cent market share and Netflix has 2.23 million Australian subscriptions.[10]

Audience, advertising fragmentation

Market fragmentation has resulted in migration of audience and advertising spend away from traditional broadcasting towards digital players. Traditional broadcasters operate in a highly regulated, yet highly protected, commercial environment: there is a limit on new broadcast licences[11] and existing licensees enjoy a prioritised access to sports rights through the anti-siphoning list.[12] New market entrants online operate within, and exploit, a grey zone regulation.

New market entrants in the content supply market (most notably Amazon, Netflix and YouTube) are not regulated to the same extent as the commercial television broadcasters who have Australian content obligations. These companies supply content produced internationally into the Australian market, in direct competition with content produced locally by Australian independent production companies which is distributed through broadcasters and cinemas. This competition will intensify in the coming years as these new market entrants increasingly sequester content onto their own services; Netflix developed its subscriber base in Australia, in part, by offering

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[8] Source: Think TV http://www.thinktv.com.au/SiteMedia/w3svc1530/Uploads/Documents/How_Australians_Watch_TV-1.pdf
[9] Roy Morgan Research, Finding 6957, 8 September 2016.
[10] Roy Morgan Research, Finding 7077, 1 December 2016.
[11] Section 37A, *Broadcasting Services Act 1992*.
[12] https://www.communications.gov.au/policy/policy-listing/anti-siphoning

content not available in Australia through broadcasters and not enforcing contractual obligations to impose geo-blocking technology.

New market entrants in the media advertising market (most notably Google and Facebook) are not regulated to the same extent as traditional broadcasters who are limited in the nature, quantity and quality of the advertising they can run. Moreover, the displacement of the advertising market spend from "traditional" media into "digital" has had a deleterious effect on broadcaster's bottom lines and share prices. Broadcasters are at the apex of the value chain and when they feel pressure, this pressure is felt in a compound fashion down the value chain. It is the producer that often feels this pressure most acutely as the "meat in the sandwich" between reduced broadcaster budgets and rising labour costs.

Relieving pressure at one end of the value chain

On 9 November 2016, the Government passed a bill to relieve pressure at one end of the value chain for Australian content, by permanently reducing the amount paid by commercial television and radio broadcasters for access to the spectrum by 25 per cent. The Government says this will cost the Government $163.6 million over the forward estimates.[13] The Government said the reduction in licence fee will increase regulatory certainty for the broadcasters and enable them to more effectively meet their challenges and invest in Australian content. The bill did not contain any conditions on how this money is to be spent by the broadcasters. This licence fee reduction was in addition to a 50% reduction in licence fees provided in 2013.[14]

On 15 November 2016, the Australian Communications and Media Authority (ACMA) released the Broadcasting Financial Results which displays the aggregated expenditure, revenue, profitability, assets, liability and net assets of the commercial television broadcasters. The BFR shows that commercial television broadcasters reduced their expenditure in 2014-15 on Australian adult drama by approximately 20 per cent while increasing their expenditure on overseas adult drama by approximately 13 per cent. Expenditure on Australian documentaries dropped by approximately 45%. Part Three of this submission provides further detail on broadcaster's level of spend over the past five years.

New Zealand content substitutes for Australian content

Trade agreements generally provide a "cultural exception" to allow countries to provide for regulations to protect local content from international pressure. However, there is no "cultural exception" in the *Protocol on Trade in Services to the Australia New Zealand Closer Economic Relations Trade Agreement* ("the Protocol"). The result is that for the purposes of the Australian Content Standard, New Zealand programs qualify as Australian for the purposes of the quotas. The Protocol was concluded in 1988 and as such, it is a very early example of a trade in services agreement. Subsequent trade deals (such as the Australia-United States Free Trade

[13] For comparison, in 2014-15 the commercial television broadcasters spent $166.2 million on Australian adult and children's drama (source: ACMA BFR).

[14] In 2013, the *Television Licence Fees Amendment Act 2013* made permanent a temporary 50% rebate on the licence fees commercial television broadcasters paid for access to spectrum. The Television Licence Fees Amendment Act brought the effective rate down from 9% to 4.5%.

Agreement[15]) have cultural exceptions that preserve Australia's ability to make regulations for the benefit of Australian culture and Australian culture industries.

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.

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. At the very minimum, this loophole means a loss of at least $1.9 million in 2015 for Australian producers of drama programs[16] and a loss of at least $630,000 for Australian producers of documentary programs[17]. This figure of $2.5m is the very minimum and does not take into account substantial equity investments in Australian drama and documentary programs.

This proposition is increasingly attractive to commercial television broadcasters as audiences fragment and attendant advertising revenues decline. It is also an attractive proposition for production companies to shift their productions to New Zealand, which has competitive taxation incentives, immigration systems and labour costs.

Children's content

Children's programming is the most vulnerable genre of production made for the most impressionable audience members. A reason the Government introduced a requirement to produce and broadcast Australian children's television programs is that these programs capture, portray, and reflect Australian culture, stories and people to Australian children. This is particularly important in the face of increasing global influences that threaten the capacity for the film and television industry to show Australian stories on screen.

Commercial television broadcasters have obligations under the Broadcasting Services Act to broadcast a minimum amount of children's content. Commercial broadcasters also have advertising restrictions on children's content.

At the time the Broadcasting Services Act was passed in 1992, the Parliament noted it intended commercial television broadcasters to broadcast children's content. Across all the content providers, some of this content should be age appropriate and provided specifically for children to help their development, learning and entertainment.

ABC and SBS do not have content quotas and their budgets have been cut by the government. The ABC has been reducing its expenditure on children's content[18] and there is no guarantee that the ABC will maintain their commitment to children's content in the future. Recently, the United Kingdom government, through its

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[15] Importantly, the Australia-United States Free Trade Agreement effectively freezes Australia's level of content quotas at a maximum level, if Australia were to lower the levels, it cannot subsequently raise them.

[16] This is 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.

[17] This is 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

[18] Question asked by Senator Milne, taken on notice and answered 11 March 2014.

regulator (Ofcom) imposed a minimum children's content quota on the BBC. From 3 April 2017, CBBC is to show at least 400 hours – and CBeebies at least 100 hours – of brand new UK commissioned programming each year.[19]

Subscription television broadcasters do not have children's content requirements but do have dedicated children's channels (such as Nickelodeon and Disney). These channels broadcast a substantial level of foreign content.

The children's content obligations on commercial broadcasters worked reasonably well when there was a single linear channel. However, when commercial broadcasters were provided access to more spectrum and allowed to acquit their content obligations across their multi-channels in 2013, without delay, the broadcasters shifted their children's content to their multi-channels. As children's content became isolated on a multi-channel, and with little, if any, promotion and marketing invested by the networks, audience and advertising declined. Commercial broadcasters have questioned their obligations to commission and broadcast children's content.

However, while first run numbers may be in decline, children's content has a lengthy currency with strong second and third run audiences and international appeal. SPA hold fears that this Government will tilt the balance too far in favour of the commercial content platforms to the detriment of our children and local production. Indeed, the commercial networks have said as much recently.[20] If the current obligations are removed or reduced they cannot be re-introduced because of Australia's free trade agreement with the United States.

If there is limited involvement in children's content by commercial platforms, it will rob children of the opportunity to be educated and entertained and see children like themselves on these key services. It will diminish the diversity of content available for children and devastate the local production industry for children's content.

To ensure there is a diverse range of content available in the market there needs to be support from government agencies and obligations on commercial platforms. The problem is wicked; keeping the quotas for commercial broadcasters is preferable to any removal of the quotas without any careful and considered alternative reform.

Fixing the problem could be as easy as keeping the current quotas and requiring greater promotion and marketing and flexibility of children's programming across a range of a content platforms including broadcast. Obligations should also be extended to SVOD services or other digital platforms, as well as the ABC and SBS to invest in local children's content. Other options include a children's television fund, which could be set up to which all the broadcasters might contribute. There might also be an app for children's content.

The current regulatory environment needs to be evolved to better fit the current media landscape. Current regulations should be extended to new market entrants so that our children have access to a diversity of Australian-made children's content and a vibrant local production industry.

[19] "Ofcom outlines plans for regulating the BBC's performance", 29 March 2017.
[20] Mitchell Bingemann, "Kids TV content under federal government review", *The Australian*, 27 February 2017.

A level playing field or a race to the bottom?

Any policy response to this confluence of market circumstances must consider, and be guided by, the longstanding and successful public policy objectives of successive governments in broadcasting and content policy. The policy response must not be a race to the bottom deregulatory frenzy that removes all obligations on the market to invest in, and show, local content. This reflexive policy response, promoted in some parts of the industry that may be described as content nihilists, would devastate the local film and television industry, remove the point of difference for local content delivery platforms, and give up on the longstanding cultural imperative of investing in the production of Australian stories and voices, as well as having ourselves and our society reflected to us on our screens. In providing a level playing field, the government should not give a free kick to the new market entrants.

When the Broadcasting Services Bill was introduced in 1992, the Government at the time said the purpose of the legislation was to implement:

> "reforms to the broadcasting regulatory regime to establish general rules for the industry which are clear, stable and predictable; to establish minimum requirements expected of industry participants; to introduce flexibility into the regime to enable responsiveness to changing circumstances; to monitor outcomes and trends against policy objectives; and to provide a range of redressive measures to the regulatory authority to deal with breaches or adverse trends."

Further, it was said the legislation "provides a simple regulatory regime for broadcasting services that applies irrespective of the technical means of delivery".

The soundness of these principles has not changed since the early 1990s, but the marketplace for production and consumption of content of has changed dramatically. Our current regulatory environment is too focussed on the method of content delivery: broadcasters are highly regulated, new market entrants are not and get to choose when they will be regulated and when they won't. For example, Netflix recently agreed to a self-regulatory model for classification of content.[21] The 2012 Convergence Review found "there should be a flexible and technology-neutral approach to content regulation that reflects community standards".[22] The Convergence Review then proposed a technology-neutral regulatory model that would treat television broadcasters and these new market entrants similarly.

The public broadcasters

There are no specific Australian or children's content regulations on the public broadcasters, the ABC and SBS. The public broadcasters are subject to their charters and are not regulated by the ACMA. There are also no transparency requirements on the public broadcasters to report their commissioning of local and children's content.

By way of comparison, the United Kingdom has recently moved to bring the BBC within the regulatory powers of Ofcom. The BBC has existing obligations to ensure

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21 http://www.minister.communications.gov.au/mitch_fifield/news/faster_classification_of_netflix_content_for_australian_audiences#.WM8JBGXwxZh

22 http://www.abc.net.au/mediawatch/transcripts/1339_convergence.pdf

significant proportions of its channels' total program hours are original productions, commissioned by the BBC and shown in the UK.[23] In late March 2017, Ofcom announced it proposed to raise these minimum proportions.[24] The Ofcom also proposes to have significant oversight on the BBC's impact on competition, noting:

> As a large publicly-funded organisation, the BBC inevitably has an impact on competition in the wider media market. It may have a positive effect by stimulating demand or encouraging sector wide innovation, for example. But in fulfilling its objectives, the BBC may also harm the ability of others to compete effectively.[25]

4. Property rights

The value of a film or television production is the value of its copyright. The value of copyright is informed by the capacity for the content owner to control authorised use of their content through licensing. The capacity for content owners to control how their content is used online is being diminished through piracy and online intermediaries that seek to avoid paying for the content on their systems.

In 2015, the Australian Government provided copyright owners with injunctive relief against internet service providers to block overseas websites that infringe copyright. To date, injunctions have been awarded against websites such as the Pirate Bay. This is a welcome move from the government, but more can be done to lower piracy rates, both by government and by industry.

In recent years, the Copyright Act has been reviewed by the Australian Law Reform Commission and the Productivity Commission. Both reviews made a series of recommendations that, if adopted, would weaken a content owner's capacity to control their work and give online intermediaries even less responsibility for removing infringing content from their systems.

A key factor contributing to the growth and sustainability of the Australian film and television industry will be:

- maintaining Australia's robust copyright system, and
- continuing to reject proposals to weaken copyright protection that stand to benefit Silicon Valley to the detriment of the Australian film and television industry.

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[23] The BBC's local content obligations fluctuate between 70 and 90% of hours.

[24] https://www.ofcom.org.uk/consultations-and-statements/ofcom-and-the-bbc

[25] https://www.ofcom.org.uk/__data/assets/pdf_file/0026/99503/BBC-competition-framework.pdf

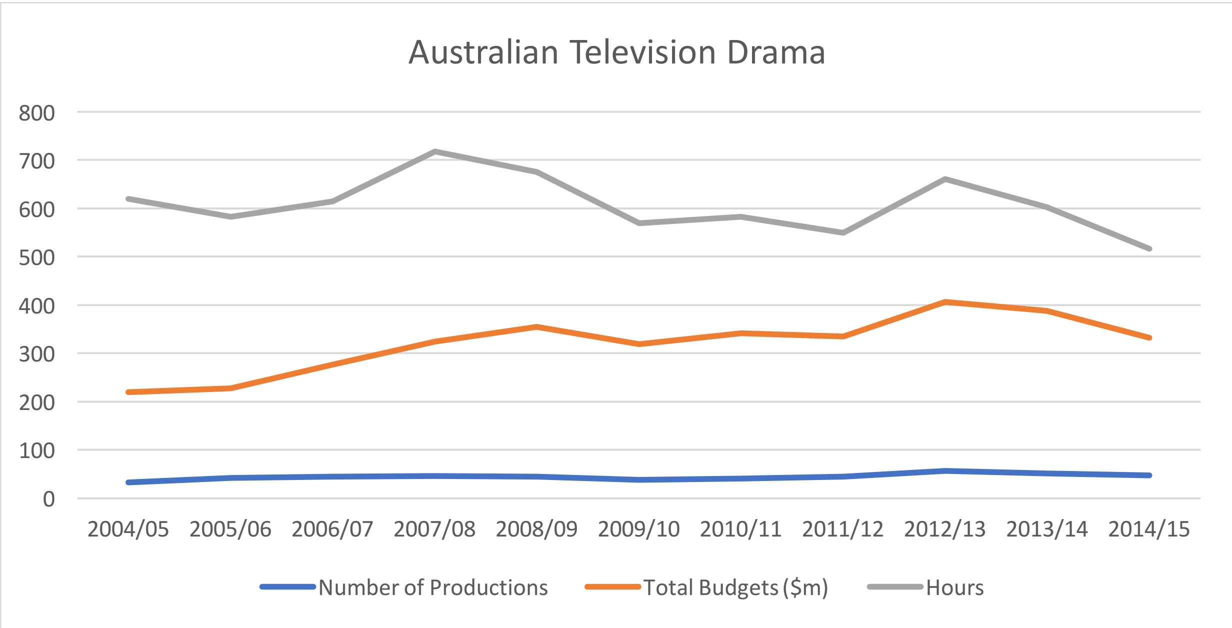
PART THREE - Evaluating the Last Decade

It is nearly ten years since the Australian Government introduced a sweeping set of reforms to strengthen Australia's film and television industry. In 2007, the Government phased out the division 10B and division 10BA tax incentives and introduced the screen production incentives (producer, location and PDV offsets). In 2008, the Australian Film Commission, Film Finance Corporation Australia and Film Australia were amalgamated to form a new government agency, Screen Australia.

This inquiry provides an apposite time to evaluate the success of these reforms in identifying factors that contribute to the growth and sustainability of our industry.

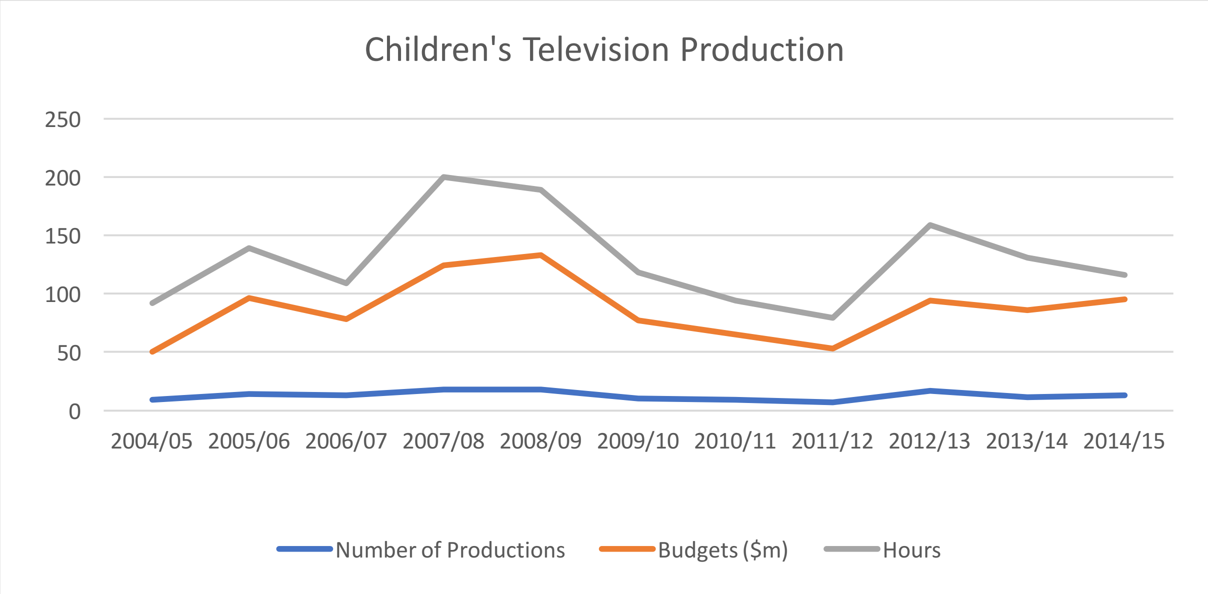
Production levels have been static or declining for many genres

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



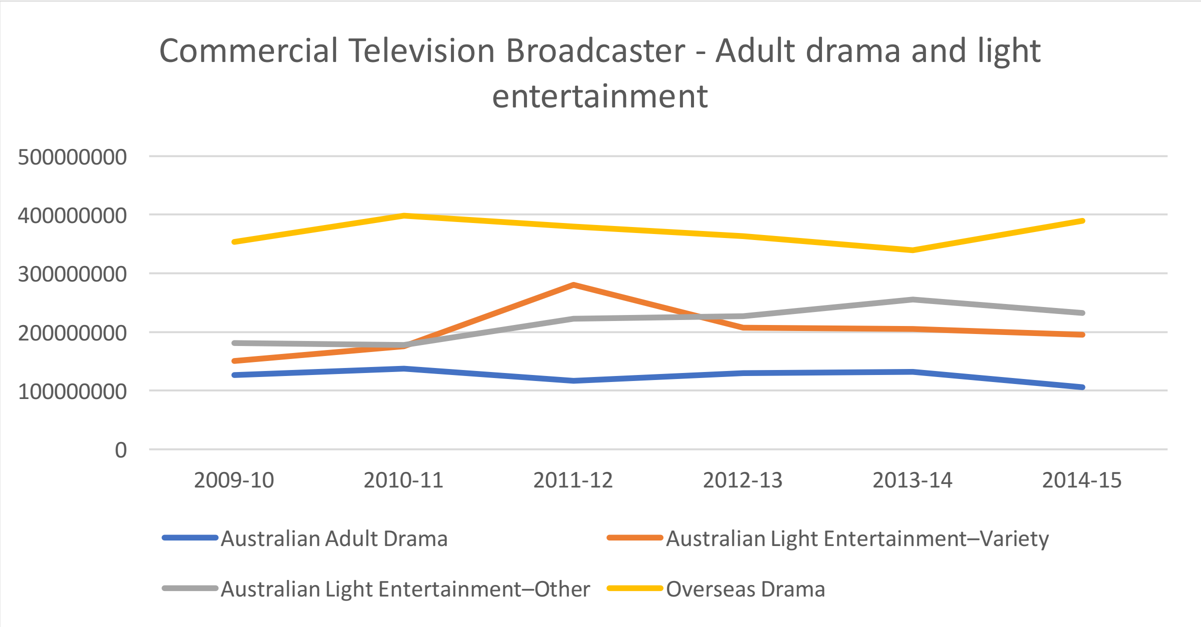
Source: Screen Australia

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 correlates with permissible content acquittal across multi-channels. However, hours have been on a downward trend over the decade.



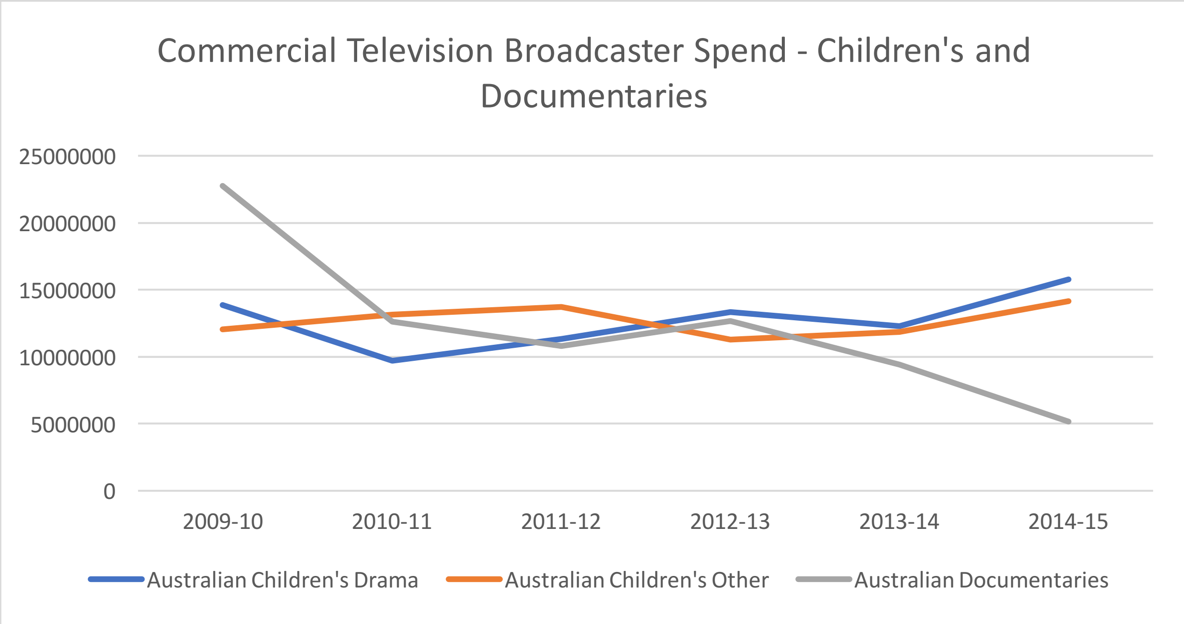
Source: Screen Australia

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

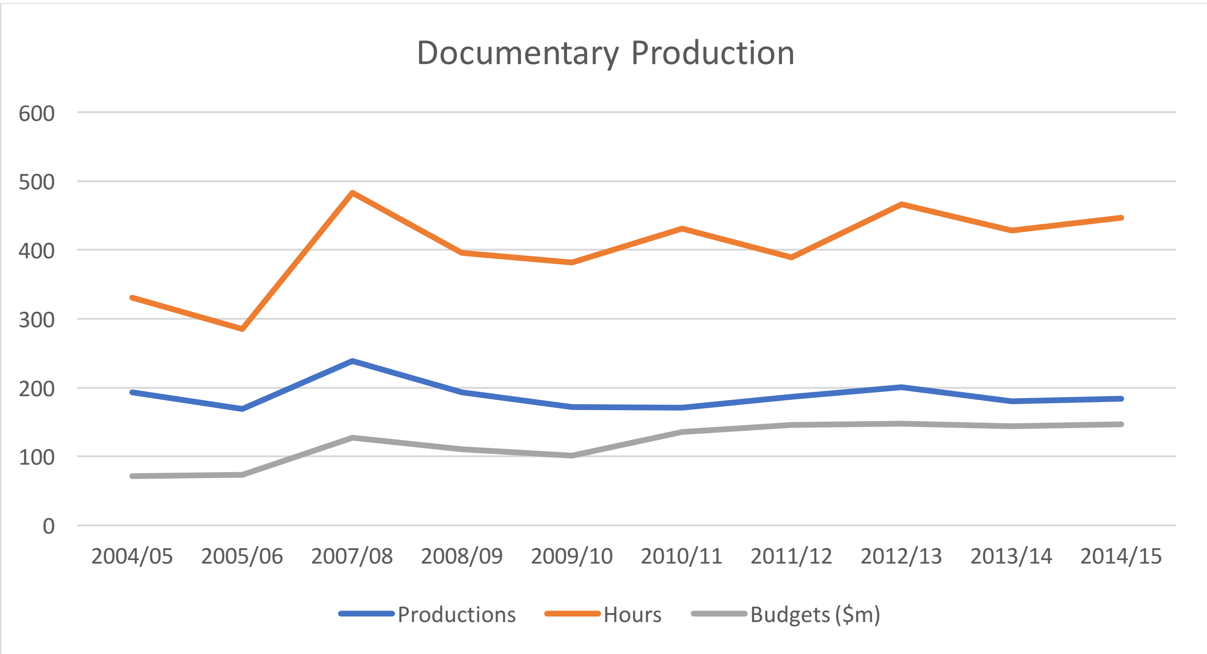
The above graph shows the reported spend by commercial television broadcasters on drama and light entertainment since 2009-10. The graph shows a growth in spend on light entertainment and since 2012-13 a marked increase in spend on foreign drama with a correlative decreasing spend on adult drama.



Source: ACMA

This graph shows a significant drop in reported spend on documentaries and slight increase in reported spend on children's drama by the commercial television broadcasters. 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.[26]

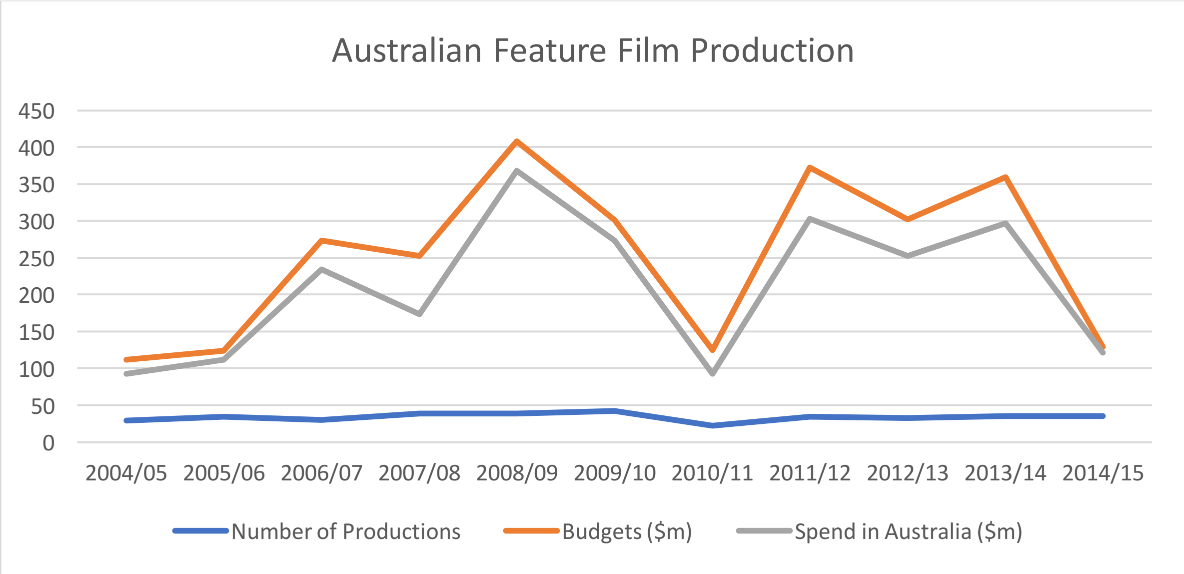
The next series of graphs relates to documentary and feature film production.



Source: Screen Australia

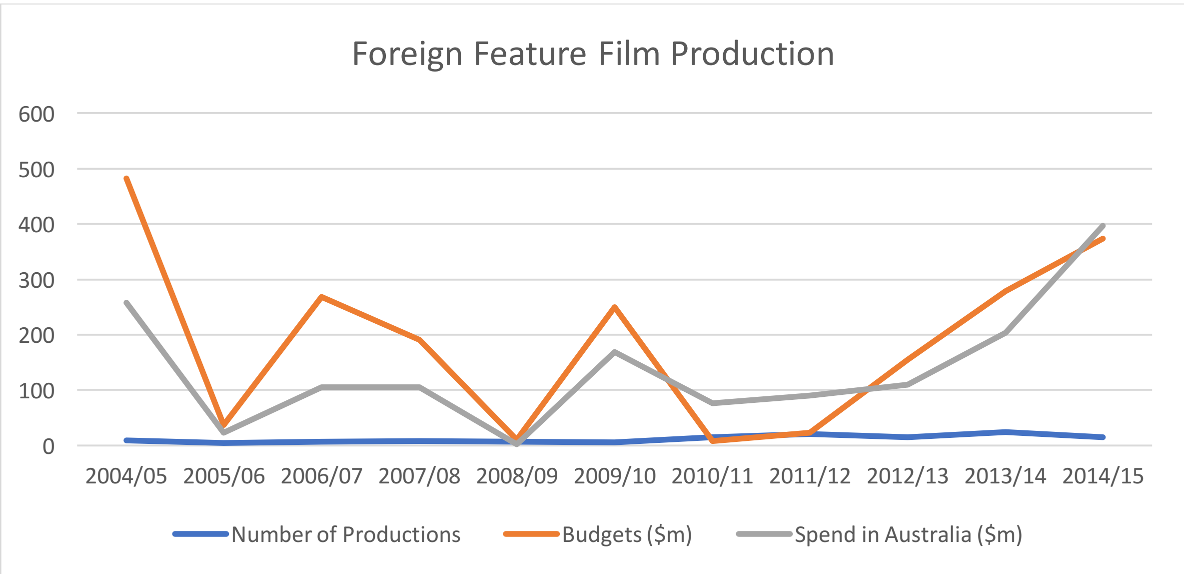
[26] Mitchell Bingemann, "Kids TV content under federal government review", *The Australian*, 27 February 2017.

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.



Source: Screen Australia

Australian features budgets increased in 2007-08 when the producer offset took effect, with a dip in production in 2010-11, in part, due to the global financial crisis. The numbers of domestic feature film productions have remained at similar levels for decades. For example, in 2013, 26 feature films were released into Australian theatres, one more than 29 years previously. In 1984, 11% or 25 of the total number of 223 films released were Australian. In 2013, 6% or 26 of the total number of 421 films released were Australian. In that time, Australia's population increased from 17 million to 23 million, the number of screens increased 150%, and the number of theatre admissions increased 184%. Australia's market share has decreased in the last 30 years.



Source: Screen Australia

Since 2011-12, a handful of big-budget foreign films (for example, *Wolverine, San Andreas, Thor: Ragnarok*) have contributed to a spectacular increase in spend in Australia.

Employment has not kept pace with the broader economy

In the last ten years (August 2007 to August 2016), full time employment in film and television production sector grew from 14400 to 16100, a growth of full time employment of approximately 10.5%.[27] This compares generally to a growth in full time employment in the broader economy during the same period of 12.28%.[28]

Conclusion

While the Australian Government made a significant effort to provide incentives to grow local production in 2008, industry employment growth hasn't outpaced jobs growth in the overall economy. The number of locally produced films in 2014-15 reverted to 2004-05 pre-offset levels. The number of documentary, drama and children's hours has remained static since 2007-08, all the while, budgets have increased. Labour costs are a significant proportion of this increase.

While the 2007-08 changes were welcome, important and show a contemporaneous increase in production levels, the static level of production since those reforms demonstrate there are other bottlenecks and barriers to growth in the industry that need addressing to get proper results out of the reforms that have already been made.

[27] Source: Australian Bureau of Statistics, Employed persons by Industry group of main job (ANZSIC), Sex, State and Territory, November 1984 onwards, 551 sub-quota Motion Picture and Video Activities (6291.0.55.003 - EQ06).

[28] Source: Australian Bureau of Statistics, Labour Force, Australia (6202.0).

PART FOUR - Factors that Constrain Growth

There are some significant barriers to the growth and sustainability of the Australian film and television industry.

Cuts to screen agencies and public broadcasters

Successive government decisions to cut screen agencies has had a significant effect on the eligible pool of funding available to the Australian film and television industry. Nearly 90% of respondents to the 2017 Screen Industry Business Survey agreed that limitations in federal and state government incentives are a barrier to growth.

Date	Decision	Effect on Screen Industry
May 2014	First cut to Screen Australia	**Loss** of **$38m** over four years
	First cut to ABC	**Loss** of **$35.5m** over four years
	Australia network cancelled	**Loss** of **$197m** over nine years
November 2014	Second cut to ABC	**Loss** of **$254m** over five years
	Second cut to SBS	**Loss** of **$54m** over five years
May 2015	Second Cut to Screen Australia	**Loss** of **$3.6m** over four years
December 2015	Third cut to Screen Australia	**Loss** of **$10.3m** over four years

These cuts are in addition to efficiency dividends that have been applied to Screen Australia since it was created in 2008.

Uncertainty in dealing with Screen Agencies and government

Businesses seek greater certainty and transparency in their dealings with government, funding agencies. Over 80% of respondents to the 2017 Screen Industry Business survey agreed that uncertainty in dealing with screen agencies is a barrier to growth. The current level of uncertainty does not create an attractive investment proposition for future growth of the industry. While some screen agencies provide certainty for the industry in policy and funding decision making, other agencies create uncertainty for the industry. Australia’s federal model underscores this uncertainty.

Issues with government and funding agencies include changing funding and policy guidelines with little or no consultation with industry, together with retrospective application, that cumulatively have the effect of jeopardising existing and future investment decisions. Moreover, slow delivery of government services comes at a cost to the industry. For example, the interest a producer pays on lender finance while the government or a screen agency delays delivery of final certification of an offset. Also, inconsistent approaches to assessing QAPE create uncertainty for producers in determining budgets.

While screen agencies are statutory authorities set up to be arm's length from government to provide a level of dynamism in their business practices, nevertheless they are public agencies spending public money and also intervening in markets and businesses. SPA remains concerned by a series of unilateral policy decisions that have become significant interventions into the market without warning or consultation.

Offsets don't reflect current market realities

The "television" offset is set at 20% of QAPE while the feature film offset is capped at 40%. This variable rate of offset should be addressed and harmonised to generate greater production levels in the film and television industry. Adopting a 40% rate for Australian productions would greatly contribute to the growth and sustainability of the industry.

The producer offset contains a 65-hour cap for series accessing the producer offset. This arbitrary limit is a perverse disincentive for success. A sustainable industry relies on long-running productions that provide certainty in employment, skills development and investment. To grow a sustainable television industry, this cap should be removed.

The minimum threshold of $500,000 per hour threshold for "drama" means that many low-budget scripted programs do not qualify for the producer offset. Ordinarily, half hour fully scripted programs (particularly comedy) have a budget of around $200,000. These types of programs give entry-level opportunities to new producers, performers and writers. This helps to grow and sustain the Australian film and television industry by providing a steady source of high-skilled labour. In a risk averse commercial environment, more can be done to support these low-budget, innovative productions through lowering the minimum threshold.

The PDV offset is restricted to projects that are produced for exhibition in a cinema or by television broadcasting.[29] The offsets were introduced when television broadcasting and theatrical release through cinemas were the dominant distribution channels for film and television productions. In the past two years, new market entrants have disrupted this distribution model. Streaming services have quickly entered and established a significant position in the market. Increasingly, these services are commissioning content and will continue to do so. Netflix has announced it is has a $6 billion war chest for content acquisitions and commissions. Amazon has also established a presence in Australia with a large acquisitions and commissioning budget. The technology-specific, outdated restriction limits the growth of the PDV sector by closing off streaming content from qualification.

The "brain drain" and immigration rigidity

Australia develops world-class cast and crew through AFTRS, NIDA and other educational institutions, as well as on-the-job training on productions. Unfortunately, the domestic industry does not develop the volume and quality of productions to keep our world-class actors, directors, writers, technicians and crew in Australia. Often, as much as they want to tell Australian stories, as budgets tighten and schedules shorten, they leave to pursue commercially lucrative and career

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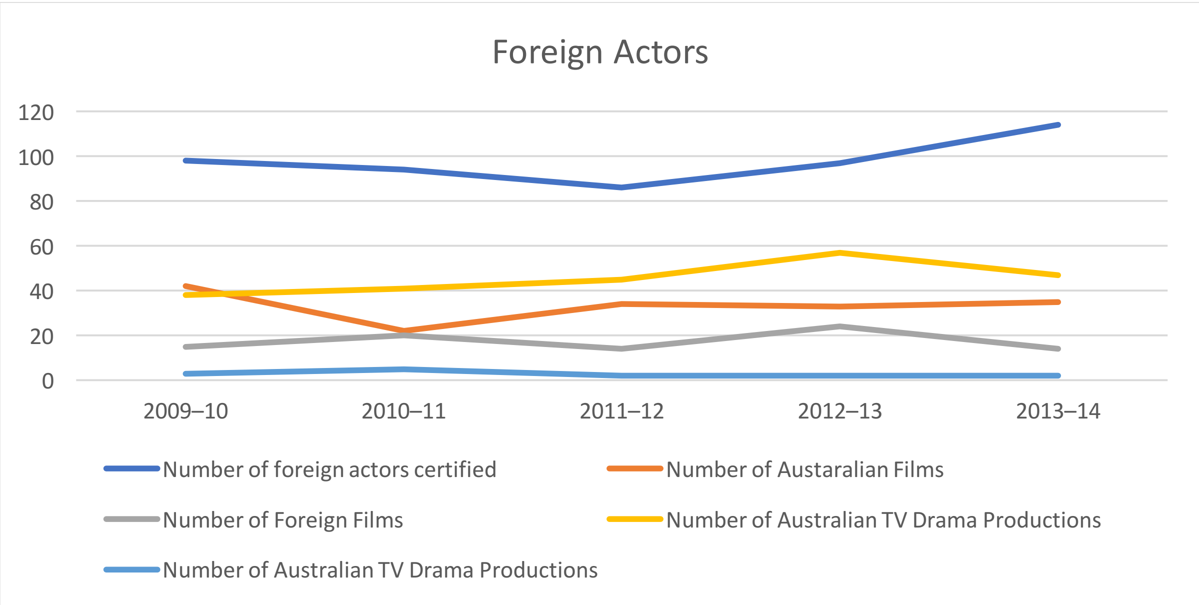
[29] *Income Tax Assessment Act 1997,* Section 376.45(2)

advancing opportunities overseas. Australia's loss is Hollywood's gain. Australia will continue to lose our best and brightest directors, writers and actors unless there is a viable, growing and sustainable domestic production industry.

For producers, talent must be sought from overseas or the production will "fall over" or relocate overseas. Producers must be able to act with confidence when financing their projects in the global marketplace. Moreover, high-profile internationally-recognised actors and directors are usually important for financing a project, particularly in foreign markets. Access to foreign investment and sales increases the volume of productions as well as production budgets. In a highly competitive international market, this is increasingly important in a climate of static domestic tax incentives. The offsets alone cannot fund current levels of highly creative and culturally relevant Australian content that can compete in a global market. There is often a "gap" in a finance plan for a production after the offsets, direct funding, broadcaster or distributor contributions are being negotiated. A bankable actor or director can help secure further investment to fill that "gap".

The Temporary Employment (Entertainment) Visa (Subclass 408) allows foreign citizens to work in television or live productions as either a performer or in a behind-the- scenes capacity, such as directing, producing and other technician roles. To obtain this visa there are criteria set out by the Department of Immigration and Boarder Protection and the Ministry for the Arts. The criteria assess the experience, skills, finances, health and character of the visa applicant and set out the obligations of the employer to consult with the relevant union and meet any relevant thresholds of the Foreign Actors Certification Scheme.



Source Attorney-General's Department and Screen Australia

Around 100 foreign actors are certified each year. The Foreign Actor Certification Scheme does not distinguish between local and foreign productions. However, as a rule foreign productions are likely to engage significantly more foreign actors than local actors.

The 408 visa requirements have not been substantially updated since the 1990s and are out of touch with the current commercial and regulatory environment. Delays in decision-making due to lengthy and uncertain assessment and consultation processes are seeing projects collapse or move to friendlier regulatory environments, such as New Zealand. This is reducing inward investment, hurting job creation and damaging career development opportunities.

Bringing in a foreign actor is not a decision a producer will consider lightly. Over and above the uncertainty in process, there is a significant financial impost in bringing in a foreign actor to work on a film production. Under the *Actors Feature Film Agreement 2012*, if a foreign actor is engaged for a film production, a producer must pay an additional 25% loading to the Australian cast, for each additional foreign actor engaged the production, the Australian cast receives an additional 12.5% loading to the 25% loading (in effect a 37.5% loading on the basic negotiated fee). If the Australian Government decides to create more flexibility in immigration processes, then these loadings, together with the Significant Australian Content test and screen agency guidelines that ensure the "Australian-ness" of a production will provide protection for local cast.

In 2015 SPA conducted a survey of its membership regarding the then 420 visa. Approximately 95% of respondents said they used that visa in financing and every respondent said they use it when the creative elements of a project requires it. Approximately 75% of respondents said that they were dissatisfied with the uncertainty of the consultation process and outcome. Just over 75% of respondents to the 2017 Screen Industry Business Survey said that greater flexibility in immigration processes would benefit their business to develop and produce more projects.

Greater flexibility and speed in decision-making (including by removing the requirement for union consultation and ministerial certification) in bringing in high-profile, internationally recognised actors will increase the number of Australian productions, budgets and employment opportunities for actors and crew.

Issues with co-productions

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. 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.[30]

[30] 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.

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 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* and *Beat Bugs*.

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.[31]

The treaties narrow the pool of eligible co-production partners

The policy objective of co-production treaties is to stimulate production activity in treaty countries. However, the Australian Government has negotiated several agreements that limit the pool of eligible co-production partners. Annexes to the agreements with the United Kingdom,[32] Canada,[33] China,[34] Ireland,[35] Israel,[36] Italy,[37] limit common management, ownership or control between co-production partners. This restriction is in the treaty text of the agreements between Korea,[38] Singapore,[39] South Africa[40] and the Memorandum of Understanding with New Zealand[41]. There are no such restrictions in Australia's agreements with Germany and France. Similarly, under the United Kingdom's agreements with India, Jamaica and South Africa, the competent authorities may jointly agree to allow common management or control between co-producers.[42]

Screen Australia emphasises that the purpose of the co-production program is facilitating new partnerships over established or continuing partnerships. By way of comparison, the guidelines published by Telefilm – the Canadian Government's

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[31] Source: Screen Australia.
[32] Clause 4(d), *Annex to the Films Co-Production Agreement Between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland*.
[33] Clause 4(d), *Annex to the Films Co-Production Agreement Between the Government of Australia and the Government of Canada*.
[34] Clause 3, *Annex to the Films Co-Production Agreement Between the Government of Australia and the Government of the People's Republic of China.*
[35] Clause 9, *Annex to the Films Co-Production Agreement Between the Government of Australia and the Government of Ireland.*
[36] Clause 9, *Annex to the Films Co-Production Agreement Between the Government of Australia and the Government of the State of Israel.*
[37] Clause 3(d) *Annex to the Films Co-Production Agreement Between the Government of Australia and the Government of Italy.*
[38] Article 3(d), *Annex 7-B, Australia-Korea Free Trade Agreement*
[39] Article 3(2)(a), *Agreement between the Government of Australia and the Government of the Republic of Singapore Concerning the Co-Production of Films*.
[40] Article 4(c), *Agreement between the Government of Australia and the Government of the Republic of South Africa Concerning the Co-Production of Films*
[41] Paragraph 1(6), *Memorandum of Understanding Regarding the Co-Production of Films*.
[42] *British Film Certification Co-production Guidance Notes* p 17.

competent authority for the administration of co-production treaties – does not restrict the eligible partners in the same manner as Screen Australia.

The result of this narrowing of eligible partners is to punish companies that have attracted foreign direct investment and exclude them from the benefits enjoyed by other companies. Further, it is contrary to Australian Government policy, which welcomes foreign investment.[43] As the market consolidates and restructures, this situation will become exacerbated; IBISWorld predicts that over the next five years, more and more local companies will seek strategic alliances with larger international companies.[44]

The Australian Government should explore renegotiating the annexes (which are less than treaty status) to provide Screen Australia with the power to approve co-productions with partners with common management.

Other barriers in the co-production treaties and their administration

Many of the co-production treaties were concluded before the internet, the rise of Asia as an economic power, and the emergence of Google, Facebook, Netflix and Amazon. As such, there are many anachronisms within the treaty texts that require updating to make them fit for purpose.

There are restrictions in the co-production treaties and their administration on:

- non-party involvement
- limits on the location of the provision of services, and
- multi-party co-productions.

Together, these barriers limit a producer's ability to source labour and other services efficiently and cost effectively, make co-productions less attractive and limit trade opportunities for the industry.

Brexit must be considered

With the United Kingdom triggering article 50 and formally beginning the process for withdrawal from the European Union, the Australian Government must consider the effect of this on its co-production treaty with the United Kingdom.

Two key effects of Brexit for the Australian film and television industry are:

1) co-produced films and television programs made under the United Kingdom agreement will no longer qualify as European content, limiting access to European markets
2) Australia-United Kingdom co-productions will no longer be able to access European cast and crew as qualifying nationals.

To this end, the Australian Government should seek to negotiate a co-production agreement with the European Union, potentially as part of the Australia-EU Free Trade Agreement.

[43] *Australia's Foreign Investment Policy*, p 1.

[44] IBISWorld Industry Report J5511: Motion Picture and Video Production in Australia, June 2016, p 8.

Loading discourages television co-productions

SPA and MEAA have negotiated the *Actors Television Repeats and Residuals Agreement* (ATRRA). The ATRRA sets out the agreed industry terms under which a producer can commercially exploit a television program. The ATRRA was first agreed by Actors Equity (now MEAA) and SPA in 1982. It was renegotiated in 1997, 2000, 2004 and 2016.

A legacy from the original ATRRA is a loading for performers that discourages co-productions. The “co-pro” loading is triggered by the clause governing the sharing of “key creative decisions” with overseas companies. The loading is 90% of the Basic Negotiated Fee (e.g. the weekly rate).

This loading first appeared in the ATRRA in the 1980s in response to the proliferation of US network lead TV production in Australia. At that time, US networks were setting up temporary Australian companies to access the Division 10BA tax scheme. SPA and MEAA agreed that, given the deep pockets of the US networks and loss of opportunity to Australian performers on these taxpayer supported programs, a loading should be paid to the Australian performers.

Over time the original reasoning for the loading has been lost and because of the broad scope of “sharing key creative decisions” MEAA and the agents have successfully insisted on co-productions being covered. This runs contrary to the original intent of the loading because co-productions are in part designed to encourage greater levels of production and international cooperation by pooling the limited production resources of two or more countries together. It is antithetical to policy objectives of coproduction treaties to punish a co-production by paying the Australian performers a loading of 90% of the Basic Negotiated Fee.

PART FIVE - Opportunities for Growth

For Australian film and television producers, the opportunities for growth lie in increased trade and access to new markets. However, the challenge is to ensure that intellectual property is generated and retained in Australia by Australian businesses and exported globally. This means greater engagement in international markets, both in exports and foreign direct investment in Australian businesses.

Australia's television exports have increased in the past three financial years from $118 million in 2013-14 to $138 million in 2015-16 and has seen an increase of 16.7% growth over the past five years.[45] Film exports have doubled from $3 million to $6 million over the same period and seen 18.4% growth over the past five years.[46] This growth is welcome but there is much work to be done to further stimulate the industry. For reference, Australia's exports of film and television for the financial year 2015-16 is largely comparable to New Zealand's exports of film and television for the 2015 calendar year.[47]

Australian Industry Report 2016

In January, the Office of the Chief Economist of the Department of Industry, Innovation and Science released the *Australian Industry Report 2016*. The Australian Industry Report contains findings derived from sophisticated microdata analysis from the Business Longitudinal Analysis Data Environment.

Key findings include:

- exporting businesses employ 23.8% more than non-exporting businesses
- average wages for an employee of an exporting business is 11.5% more than an employee of a non-exporting business, and
- exporting businesses value-add is 40.2% more than non-exporting businesses.

Australian children's content is a trade success story

Australian children's content is popular locally, but also internationally. Australian children's television programs reach all corners of the globe, with some having been licensed in 190 territories. *Child's Play*, a 2013 Screen Australia report, found that as a proportion of total finance, domestic and co-produced children's content sourced 35% from foreign sources, compared to 7% for adults' content.[48] This trade success is set up by domestic regulation that requires commercial television broadcasters to commission children's content.

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[45] DFAT, *Trade in Services 2015-16* p 31
[46] DFAT, *Trade in Services 2015-16* p 31
[47] Statistics NZ, *International Trade in Services by Services Type: Year ended September 2013-16*.
[48] Screen Australia, *Child's Play: Issues in Australian Children's Television*, 2013 p 9.

SPA's role

SPA has taken a leadership role to take in leading international business to business exchange and trade opportunities for the industry. In so doing, SPA encourages and stimulates domestic and international government, broadcaster and distributor engagement with Australia and Australian businesses. In recent years, SPA has led trade delegations to Canada, Denmark[49], Hong Kong, Korea, the United Kingdom and the United States. SPA is planning to host trade delegations to France, Germany and the United Kingdom. At SCREEN FOREVER, SPA has welcomed trade delegations from Canada, Korea, New Zealand and the United Kingdom.

While SPA assists Australian businesses to succeed within the current market there are barriers that exist to frustrate further growth. These barriers may only be removed through government leadership.

The Australian Government's role

The Australian Government can provide leadership, assistance and support in growing the industry.

More and better co-production agreements

Australia has 12 coproduction agreements. Canada has close to 60. The Government must expand the number of co-production agreements. Indeed, the last time a House of Representatives committee conducted an inquiry into the Australian film and television industry in June 2004, that committee recommended negotiating more co-production agreements, including with Asian countries.[50] Since then, Australia has negotiated agreements with China (2006), Singapore (2007), Korea (2014) and South Africa (2010). Just over 75% of respondents to the 2017 Screen Industry Business Survey agreed that their business would benefit from greater options to develop and produce projects under co-productions.

As discussed above, Australia should also renegotiate existing co-productions to reflect new market realities and negotiate new co-production agreements. As markets restructure, consolidate and emerge, the current restrictions on co-production partners will become a greater barrier to growth.

Interagency coordination is just beginning

SPA is a member of a Screen Industry Roundtable, led by Austrade. This roundtable is exploring trade opportunities for the Australian film and television industry with an initial focus on China. The Department of Foreign Affairs and Trade, the Department of Communications and the Arts, the Australian Film Television and Radio School, Screen Australia and Ausfilm are involved in the roundtable.

This roundtable is a welcome step forward in greater coordination at a federal level to promote trade opportunities for the industry. Much more can be done to greater

[49] While Australia has a coproduction agreement with Korea, and the Danish coproduction agreement has not been progressed by the Australian Government.

[50] House of Representatives Standing Committee on Communications, Information Technology and the Arts, *From Reel to Unreal: Future opportunities for Australia's film, animation, special effects and electronic games industries*, Recommendation 34.

integrate other Federal Government agencies and initiatives, as well as state and territory government agencies and local governments. The Meeting of Cultural Ministers is the appropriate forum for a unified trade agenda across all levels of federal, state and territory government.

Part Six - Principles for Regulatory Reform

The Australian Government guide to regulation defines regulation as "any rule endorsed by government where there is an expectation of compliance". There is a high degree of regulatory intervention in the Australian film and television industry. Some of this regulation may be justified, yet some of the government's intervention into the market cannot be justified and interferes in markets and creates uncertainty for investment. SPA suggests that any reform of the government regulation in the industry should be guided by the following principles.

Certainty

Like any other industry, investors in the Australian film and television industry want certainty. Sourcing finance, pre-production, production and post-production can take years Changes to government and screen agency policies and guidelines, funding models and priorities, industrial uncertainty as well as regulatory uncertainty can create an unattractive environment for long-term investment decisions, international finance and partners.

Simplicity

Regulation is best if it is simple and able to be understood. The offsets and their administration is needlessly complicated. Content regulation is archaic and the Broadcasting Services Act byzantine. In any reform, regard should be had to the Convergence Review's recommendations in simplifying media regulation.

Transparency

Decision making and reporting is best if it is transparent. Recent Government decisions to relax reporting requirements for subscription television broadcasters about their expenditure requirements removes transparency and oversight. Further, public broadcasters do not have any specific obligations to commission Australian content (they are subject to their charters) and concomitantly, no public reporting obligations.

Balance

Within the Australian film and television industry there are competing yet complementary interests. These interests must be balanced, including government incentives for domestic and foreign productions, between market players who have unequal bargaining positions, and that the copyright balance is not skewed too far in favour of Silicon Valley to the detriment of Australian stories

Currency

The currency of regulation needs to not only reflect current market realities but look forward to the future. The current regulatory model for content is inadequate and not fit for purpose. Unregulated new market entrants compete with regulated legacy businesses. The regulatory model must be evolved and expanded to include the entire market. The offset legislation also reflects a point in time. The market has moved on from a theatrical release model for feature films and the restrictions on projects with an initial streaming distribution for the PDV offset.

PART SEVEN - Measures that would Contribute to the Growth and Sustainability of the Industry

While there are significant challenges for all in the new environment, as the organisation that represents the businesses that make and sell Australian screen stories, SPA is cautiously optimistic about the future of Australian content and Australian stories. New market entrants expand the pool of eligible buyers of content, providing more competition for content and greater opportunities for film and television producers. Indeed, the 2017 Screen Industry Business Survey reflects this confidence. While 52% of respondents said their business is better off than it was 12 months ago and 48% said they are worse off, looking forward, 72% said their business would be better off in 12 months' time and 80% said the next twelve months will be a good time to invest in growing their business.

However, this optimism is cautioned by the necessity for both government and industry to address systemic industry issues that if left unaddressed, will frustrate the production of Australian stories in the future and thwart a growing and sustainable Australian film and television industry.

To stimulate a growing and sustainable Australian film and television industry that is geared towards trade, SPA recommends the government commit to the following specific reforms.

Recommendation 1 – Trade reform

The Government should commit a suite of reforms that will boost trade in the Australian film and television industry.

Specifically, the Government should:

- submit a proposal to the Cultural Ministers Council to develop a national trade strategy for the film and television industry
- conclude current negotiations for current co-production agreements with India, Denmark, Malaysia and the United Kingdom
- enter into new coproduction agreements with key markets, potentially on the margins of bilateral negotiations such as with Indonesia and plurilateral negotiations such as the Regional Comprehensive Economic Partnerships. In these negotiations, the Government should refrain from including the restrictions on co-production partners' common management, and
- seek to renegotiate existing agreements to remove the restrictions on common management
- develop a trade support scheme for the Australian film and television industry through Austrade.

Recommendation 2 – Offset reform

As evidenced above, the offsets have provided a welcome stimulation to the film and television's levels of productivity. However, there are two main areas where the offsets can be realigned to further stimulate production - harmonisation and modernisation.

Harmonise the producer offsets at 40%

According to PwC modelling, harmonising the producer offsets to 40% for all eligible productions (film and television) will stimulate greater levels of production and have a net benefit to the economy of $103.9 million annually. Harmonising the offsets at 40% for independent productions will remove outdated, technologically specific barriers (e.g. theatrical release requirements) and make the offsets fit for purpose.

Modernise the offsets

The producer offsets were introduced in 2007/08 before the emergence and consolidation of streaming services into the market. For example, projects that have a primary distribution agreement through a streaming service are unable to access the PDV offset, or the 40% producer offset. Access to the PDV offset is linked to a broadcaster commission and access to the 40% producer offset is linked to a theatrical release. The 20% offset is capped at 65 hours for series. Lowering the minimum threshold from $500,000 will support new, innovative content. Making the producer offsets fit for purpose in the current market would further stimulate growth in the industry through trade and by providing access to online distribution channels.

Recommendation 3 – Content reform

The Government should commit to evolving and expanding the current regulatory environment for content. The current regulatory regime for content in Australia is woefully out of date and recent proposals for reform have been piecemeal and incoherent. Taking into consideration the recommendations of the Convergence Review, it is time for a regulatory regime that evolves and expands current requirements to:

- allow legacy businesses to compete on a fair playing field with new market entrants
- maintain obligations to commission local film and television content from independent producers, while
- ensuring Australians have greater access to Australian-produced drama, documentary and children’s content.

Recommendation 4 – Provide certainty for the industry

To create an attractive environment for long-term investment in the film and television industry, the Government should:

- restore public funding levels for Screen Australia, ABC and SBS back to pre-May 2014 levels
- impose content obligations on public broadcasters together with oversight responsibilities for the ACMA
- remove the requirement for union consultation and provide flexibility in immigration processes for the Temporary Employment (Entertainment) Visa (Subclass 408), and

- maintain the current level of copyright protection and resist calls to water down property rights.

Attachment A - About SPA

SCREEN PRODUCERS AUSTRALIA


Gogglebox, Endemol Shine Australia

develops opportunities and strengthens partnerships that create and take great Australian stories to the world.

We are a national organisation that unites the screen industry to campaign for a healthy commercial environment.


Jasper Jones, Porchlight Films

We are the home of the skilled and accomplished, the imaginative and passionate, the tireless and determined.


Here Come The Habibs!, Jungle

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SCREEN PRODUCERS AUSTRALIA

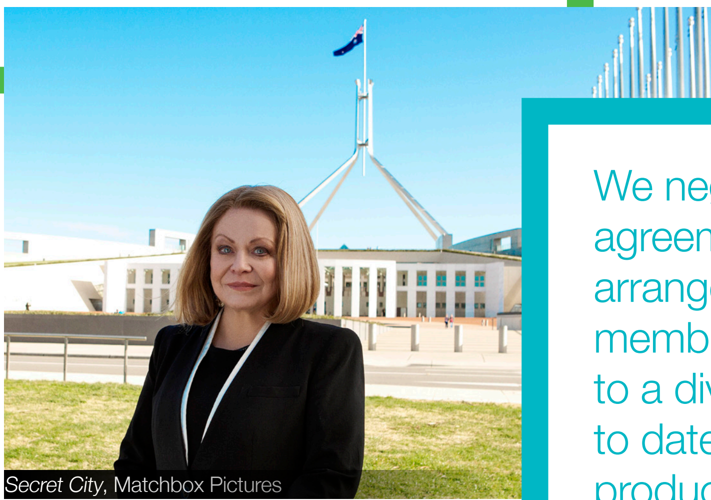
WHAT WE DO

Membership of Screen Producers Australia provides businesses with a number of professional advantages that fall into three core areas:

ADVOCACY

We provide leadership in building strategic alliances and supporting government frameworks. Our working groups assist us in the development of campaigns and submissions.

Julia Zemiro's Home Delivery, CJZ



Secret City, Matchbox Pictures

INDUSTRY

We negotiate industrial agreements and commercial arrangements, offering members exclusive access to a diverse range of up to date resources and production advice.

EVENTS

We host a wide variety of events annually including industry briefings, business classes, mentoring opportunities and the country's leading screen conference, SCREEN FOREVER.

Q&A at SCREEN FORVER 2015 Conference

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ABOUT OUR MEMBERS

We welcome production businesses, emerging producers, service providers and screen industry supporters. We encourage all screen businesses to join and team with Australia's leading screen content creators as we work to shape the future of our industry.

TESTIMONIALS

"Being a Producer is lonely. Screen Producers Australia is our version of the 12-step program. They're also great at defending our interests, being on the end of the phone in times of conflict and providing invaluable resources. Very important."

Laura Waters, Princess Pictures
Open Slather, The Divorce, 8MMM Aboriginal Radio, Jonah From Tonga, Ja'mie: Private School Girl, It's A Date, Angry Boys, Summer Heights High, We Can Be Heroes

"I've been extremely impressed with the pro-active way in which Screen Producers Australia researched member priorities and acted on these. Producers need to come together to improve the state of the industry and Screen Producers Australia is the ideal vehicle for this."

Jason Burrows, Jungle
Here Come The Habibs!, No Activity, The Moodys, Review With Miles Barlow

"It's important to have access to other producers to share information and ideas. It's great that Screen Producers are able to provide the opportunity for this."

Jan Chapman, Jan Chapman Films
Bright Star, Lantana, The Piano, The Daughter

"By being a member, I am able to focus on my job as a producer knowing that Screen Producers Australia is campaigning for the best possible conditions for my productions."

Emile Sherman, See-Saw Films
Lion, Macbeth, Life, Tracks, The King's Speech, Shame, Oranges & Sunshine, Dead Europe, Mr Holmes, Banished, Top Of The Lake

"In a fast moving environment Screen Producers provides essential services for our business: an interface with government decision makers, a coordinated approach to television networks, and an experienced and well researched voice in the industrial matters."

Bob Campbell, Screentime
The Secret Daughter, Janet King, How Not To Behave, ANZAC Girls, Underbelly

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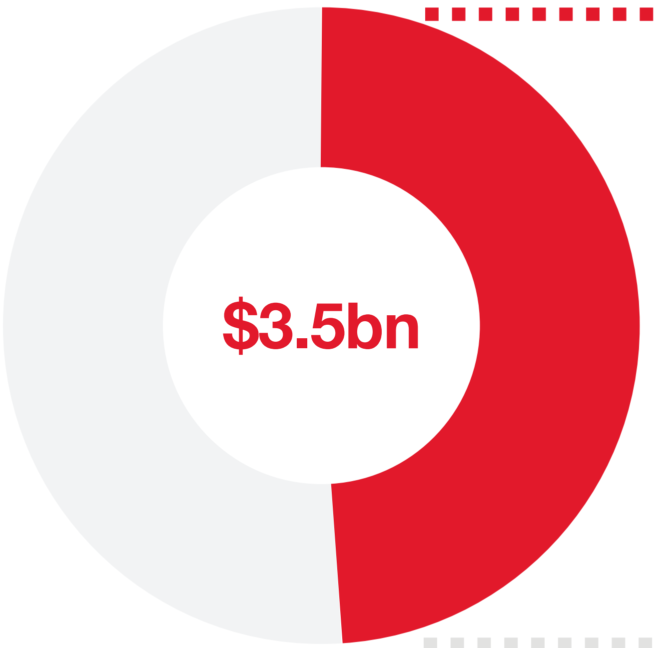
SCREEN PRODUCERS AUSTRALIA

ABOUT OUR MEMBERS

Our members employ hundreds of producers, thousands of related practitioners 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 production industry that balances cultural and commercial diversity.

PRODUCTION INDUSTRY SNAPSHOT



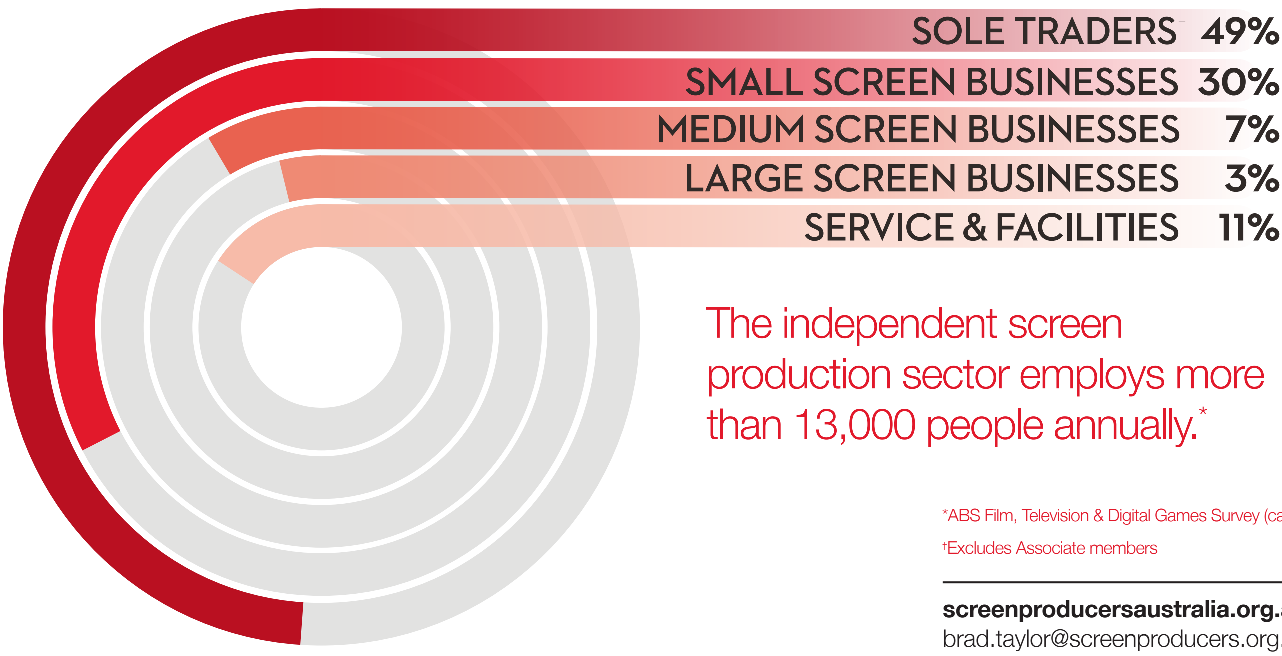
49%

Independent producers account for 49% of screen content produced annually in Australia.*

51%

Broadcasters

MEMBER BUSINESS PROFILE



The independent screen production sector employs more than 13,000 people annually.*

*ABS Film, Television & Digital Games Survey (cat.no. 8679.0)

†Excludes Associate members

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SCREEN PRODUCERS AUSTRALIA

OUR EXTENSIVE RANGE OF INDUSTRY EVENTS ARE DESIGNED TO ENGAGE ALL INVOLVED IN THE INDUSTRY AND INCLUDES:

THE NATIONAL ROADSHOW:

Provides an opportunity to engage each state with our industry, to sit down with local screen agencies to discuss local issues and shed some light on the policy agenda.

They also provide updates on Screen Producers Australia's current industrial negotiations.

PROFESSIONAL DEVELOPMENT:

Designed to educate and train producers on key aspects of the business of screen production, our **Master Classes** and **Business Essentials** program includes:

International Sale of Tape and Formats Master Class

Top Offset Issues and What To Do About Them Master Class

Top Tips on Employment and Industrial Matters Master Class

Crowdfunding: The Wisdom of The Crowds Seminar

Preparing for Market: Developing Market Strategy Business Class

Low Budget Film Making in The UK Case Study

Distribution and Marketing: How Does The Money Flow? Business Class

Format Licensing Business Class

Are You Employing People in the Screen Industry? Master Class

BUSINESS NETWORKING:

Our **Breakfast Briefing** series provides an informal forum for the industry to meet, network, stay connected and be inspired. Recent briefings include:

ABC, Managing Director, Mark Scott AO

BBC Worldwide, Global Editorial Director, George Dixon

Game of Thrones, Director, Jeremy Podeswa

HOYTS Group, CEO, Damian Keogh

OzTAM, CEO, Doug Peiffer

Pirates of the Caribbean: Dead Men Tell No Tales, Executive Producer, Joseph Caracciolo Jr

SBS, Director TV & Online Content, Marshall Heald

The Shadow Attorney-General and **Shadow Minister for Arts**, Mark Dreyfus QC MP

Stan, Director of Content and Product, Nick Forward

UM Australia, Chief Executive Officer, Mat Baxter

Live streams and downloads are regularly available to members and industry.

The Katering Show, Katering Productions

Our events, meetings and business classes are popular with members and non-members alike. In 2016 the number of industry professionals attending our informative and educational events continues to build significantly on previous years.

Family Feud, FremantleMedia Australia

The Daughter, Jan Chapman Films

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ATTACHMENT B – LIST OF NEGOTIATED AGREEMENTS

SPA has negotiated model terms of engagement with AWG which set out recommended terms of engagement of AWG members by SPA members. The model terms relate to services provided in relation to:

- Television series and serials: *Series and Serials Agreement 2008*.
- Miniseries and telemovies: *Miniseries and Telemovie Agreement 2010*.
- Children's television: *Children's Television Agreement 2011*.

These agreements contain model terms of engagement that include the following contractual terms:

- minimum rates and terms of pay;
- terms in relation to copyright and moral rights;
- terms in relation to rights of termination;
- terms in relation to dispute resolution;
- terms in relation to credits;
- terms in relation to travel, accommodation and per diems;

SPA has also negotiated model terms of engagement with MEAA which set out recommended terms of engagement of MEAA members by SPA members. Two of the model terms of engagement relate to actors' services provided in relation to:

- Australian feature films: *Actors Feature Film Agreement 2012*.
- television programs: *Actors Television Programs Agreement 2013*.

These two agreements have model terms of engagement that include the following contractual terms:

- minimum rates and terms of pay (including of residual fees);
- conditions of employment, such as hours of work, breaks between work periods, leave, provision of studio and location facilities;
- terms in relation to travel, accommodation and transport;
- terms in relation to safety and insurance compensation;
- terms in relation to superannuation;
- terms in relation to rights of termination;
- terms in relation to dispute resolution; and
- terms in relation to credits.

There are also model terms between SPA and MEAA which set out the time and salary unit method calculation for pro rata residual calculations for actors (*Australian Television Repeats and Residuals Agreement 2016*).

Finally, there are model terms of engagement between SPA and MEAA that relate to technical crew services provided in relation to motion pictures (*Motion Pictures*

Production Collective Agreement 2010). The MEAA Crew model terms of engagement includes the following contractual terms:

- minimum rates of pay depending on the role being performed (eg, brush hand, casting assistant, clapper loader, art director, camera operator);
- conditions of employment, such as hours of work, penalty rates, overtime, breaks between work periods, leave and cancellation fees;
- terms in relation to superannuation;
- terms in relation to travel, accommodation and transport;
- terms in relation to safety; and
- terms in relation to dispute resolution.