Screen Content Reforms

Regulation Impact Statement

September 2020

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1. Context

Access to Australian content, including drama, documentary and children's content, has been traditionally provided through a framework of regulatory intervention and funding support. This framework includes funding of the national broadcasters, broadcast quotas, expenditure obligations, direct funding and platform-specific tax rebates.

Audiences, however, are increasingly using online services, specifically streaming video services, as a primary way of accessing narrative content. Streaming services are affordable relative to subscription broadcasting, and offer consumers complete freedom to choose programs and viewing times that suit their taste and schedule. As audiences migrate to different, unregulated platforms, the impact of regulation has reduced, and the strain on the regulated domestic sector has increased.

As part of its response to the recommendations of the Australian Competition and Consumer Commission's (ACCC) Digital Platforms Inquiry, the Government determined that there should be an immediate focus on Australian content obligations on free-to-air television broadcasters (including drama and children's content). In April, the Government released an Options Paper prepared by the Australian Communications and Media Authority (ACMA) and Screen Australia – *Supporting Australian Stories on our Screens*. The Screen Options Paper considered Government intervention and support for Australian screen content and stories, particularly drama, documentary and children's programming.

This Regulation Impact Statement examines the options for reform of the existing Australian content obligations, drawing on the views and evidence presented by interested parties through the Screen Options Paper consultation process.

2. Why is Australian content important?

Australian screen content promotes a collective sense of identity, in turn helping to support cultural sovereignty and identity. Screen Australia's report 'Screen Currency: Valuing our screen industry' notes that:[1]

> *Screen content regularly defines and embodies national pride, cultural identity, social cohesion and points of connection between Australian citizens, to the extent where lines from The Castle, Kath and Kim and Muriel's Wedding have become part of our national lexicon.*

Australians have strong demand for Australian content. In 2019, all of the top 100 programs on commercial television were Australian, with many of these drama and documentary programs.[2]

Australian screen content provides cultural, social and educational benefits. A qualitative study by Ipsos on Australian screen stories found that participants value Australian content, particularly Australian drama, for a number of reasons[3]:

- The 'teaching' aspect of Australian screen stories are highly valued, particularly when it came to stories about Indigenous Australia. For example participants discussed how films

[1] Screen Australia (2016), Screen currency: valuing our screen industry. Pg. 9.
[2] OzTam data, Analysis of top 1500 shows 2019.
[3] Ipsos (2013), Hearts & Minds: How local screen stories capture the hearts & minds of Australians.

like Rabbit Proof Fence opened their eyes to parts of Australia's history that are not well understood.

- Participants enjoyed the sense of 'home' and familiarity they experienced when watching Australian screen stories full of characters, humour, locations and a way of life they recognised and could relate to.
- Stories that captured the Australian way of life were discussed as being particularly easy to relate to, be they drama/comedy on commercial TV or iconic Australian films. For example one participant noted that the film *The Castle* was iconic and relatable.
- Participants also felt that Australian film and television had matured and 'come of age'. With one participant stating "It's the stories not the actors that are important".

In line with this, a survey commissioned by Screen Australia in 2011 suggests that Australians place high value on Australia content. Of those surveyed, 79 per cent agreed (32 per cent strongly) that Australian stories are vital for contributing to our sense of Australian national identity, while 75 per cent agreed (35 per cent strongly) that they would miss the Australian film and television industry if it ceased to exist.[4]

The Australian Children's Television Fund emphasised the importance of Australian Children's content in their submission to the Screen Options Paper. They argue that Australian children's content can have a significant impact – building a sense of community and citizenship, firing imaginations, providing positive role models and shared childhood memories.[5] Vital social, cultural and educational objectives are achieved with quality locally produced children's content.

Australian content plays a key role in educating children about where they come from. For example Little J and Big Cuz is an Australian animation for pre-schoolers that is set in the dusty outback and follows five-year old Little J and his cousin as they explore the world around them. This show has supported the transition to primary school for Indigenous children and their families and is a Logie-award winning series.[6]

Quality Australian content is just as important for older children and teens, helping them to rehearse strategies for coping with life's challenges and disappointments. In the series Lockie Leonard, 12 year old Lockie struggles with his transition to a new town, a new school, and his mum's hospitalisation due to depression. The series' sensitive depiction of depression helps its tween and teen viewers to process personal experiences with mental illness, just as Paper Planes teaches them about perseverance, and Mustangs FC forefronts leadership and teamwork. These age-appropriate portrayals model social and emotional skills for children of all ages, and give parents and teachers a springboard for discussion and learning.

Australian content also has a range of economic benefits. It is estimated that than 230,000 international tourists visit or extend their stay in Australia each year as a result of viewing Australian screen content, generating an estimated $725 million in tourism expenditure.[7] The total economic contribution of Australian screen content (under Australian creative control) is over $2.6 billion.[8] The

[4] Screen Australia (2011), Australian screen stories are important to Australians.
[5] Australian Children's Television Foundation (2020), public submission to Screen Options Paper. Pg. 6.
[6] Australian Children's Television Foundation (2019), Why is Australian children's content so important?
[7] Screen Australia (2016), Screen currency: valuing our screen industry. Pg. 5.
[8] Screen Australia (2016), Screen currency: valuing our screen industry. Pg. 8.

sector as a whole directly contributes $3.3 billion annually in value-add to the economy, employing more than 25,000 people (FTE).[9]

1986 film *Crocodile Dundee* remains the highest film in Australian box office history when adjusted for inflation, beating high budget American films like *Avatar*.[10] The success of the film overseas created a boom for Australian tourism, with overseas tourist arrivals doubling from 1 million annually in 1984 to 2 million in 1989.[11] [12]

3. What are the current regulations?

Current regulatory settings are no longer creating the conditions necessary to maximise the many cultural and economic benefits of Australian content. The settings are outdated and burdensome, and no longer result in the protection and promotion of quality Australian screen content. Current regulatory settings impose burdens that risk damaging the industry permanently, leading to a reduction in Australian content.

The Government's policy objective of reflecting Australian perspectives and identity is identified in the *Broadcasting Services Act 1992* (BSA), which includes – among a number of objects – 'to promote the role of broadcasting services in developing and reflecting a sense of Australian identity, character and cultural diversity.'[13] The Government also places a priority on supporting a strong and vibrant screen production sector.

In line with these objectives, the current legislative and regulatory settings require free-to-air commercial television broadcasters to transmit a set amount of Australian content (including sub quotas for drama programs and documentary programs), and require licensed subscription television broadcasters to meet minimum spend requirements for Australian drama. A summary of these requirements is provided in Table 1.

The aim of these Australian content regulations is to guarantee that Australians have access to a variety of recognisably-Australian screen content that would not otherwise be provided by the market. The quotas acknowledge that without regulation Australian content, particularly drama, documentary and children's content, would be under-produced as the viewing audiences and markets for Australian content are small; Australian content is expensive to produce; and broadcasters have access to cheaper international content in English.[14]

While Australian content is popular with Australians, it is commercially more risky as the production costs generally have to be recouped against a small domestic market. In contrast, popular foreign content such as syndicated programs from the US or UK, can be sold into the Australian market at a fraction of the cost of commissioning a domestic production. A 2015 report found that on average, an hour of Australian drama costs broadcasters a minimum of $450,000, while a 'safe bet' American program can be purchased for $200,000.[15]

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[9] Australia New Zealand Screen Association (2019), Study on the economic contribution of the motion picture and television industry in Australia.
[10] Media Week (2020), Box Office Greats: Top Australian films of all time.
[11] Australian Bureau of Statistics (1990), Overseas Arrivals and Departures.
[12] The Sydney Morning Herald Traveller (2014), Hogan hero: why this is our best tourism ad ever.
[13] Broadcasting Services Act 1992, s3(1)(e).
[14] Australian Parliament House (2017), Report on the Inquiry into the Australian Film and Television Industry.
[15] Australian Government Office for the Arts (2015), Australian-made original television dramas prove a new sensation for local audiences.

Table 1: Minimum annual and triennial content quota requirements

Type of content	Minimum requirements	Average Annual compliance by broadcasters in 2019
Commercial television		
Australian programming	**55 per cent** of all programming broadcast between 6am and midnight on primary channels each year.	**69 to 79 per cent**
	1460 hours between 6am and midnight on multi-channels each year. (s 121G BSA)	**2488 to 4927 hours**
First release Australian drama	**250 points** each year. **860 points** each set triennial period. (s 10 ACS)	**270 to 332 points** **445 hours**
First release Australian C rated drama	**25 hours** each year. **96 hours** each set triennial period. (s 12 ACS)	**32 to 33 hours** **96.3 hours** (2017 triennial figure)
First release Australian documentary	**20 hours** each year. (s 16 ACS)	**40 to 81 hours**
First release Australian C rated programs	**130 hours** (s 14 ACS)	**130 hours**
All C rated programming	**260 hours** each year. (CTS 8)	**261 to 270 hours**
All P rated programming	**130 hours** each year. (CTS 8)	**130 hours**
Repeat Australian C rated drama	**8 hours** each year. (s 13 ACS)	**34 to 106 hours**
Subscription Television Licensees		
Australian drama	**10 per cent** of a channel provider's total program expenditure must be on new eligible drama programming. (s 103N BSA).	**$24.7 million**

Note: Lines shaded in red demonstrate where broadcasters are only just meeting their obligations, indicating that regulation is a determining factor in providing the content.

Source: ACMA Comparison of Compliance Results - Metropolitan Commercial Television Networks

These content requirements are complemented by a number of other measures to support the provision of Australian content, including funding of the national broadcasters, direct funding to Screen Australia and a range of platform-specific tax rebates.

- Tax rebates offered for Australian content (via the Producer Offset), post, digital and visual effects work (via the Post, Digital and Visual Effects (PDV) Offset), and international footloose productions shot in Australia (via the Location Offset). In 2018–19, total certified rebates were worth $383.7 million. The Government announced in 2018–19 that it would provide $140 million over four years from 2019–20 through the Location Incentive Program to attract large budget international footloose productions to Australia.

- One-off grants to attract production into Australia. The Government provided $22 million in 2018–19 in a one-off grant to attract the production Aquaman to locate in Australia.
- Direct funding to Screen Australia. Screen Australia received $81.8 million in 2018–19 to support quality Australian content with cultural value.
- Funding to key institutions such as the Australian Film, Television and Radio School ($22.6 million in 2018–19), Australian Children's Television Foundation ($2.8 million in 2018–19), Ausfilm ($1.7 million in 2018–19) which provide targeted support to the sector.

Government interventions work in tandem. Indirect funding (tax rebates) provides incentives to produce a broad range of Australian programs, direct funding (provided for specific programs) makes available additional support for drama and documentary content, and regulation (quotas) guarantees that Australian programs are broadcast on commercial television.

4. What is the policy problem?

The effectiveness of this framework of support has been declining in recent years as audiences are shifting to watch programs on online services which have no obligation to make or source Australian content. In contrast, commercial and subscription broadcasters are facing declining audience numbers and subscribers, and have to comply with content obligations which do not apply to their online competitors.

Viewing preferences are shifting towards online services

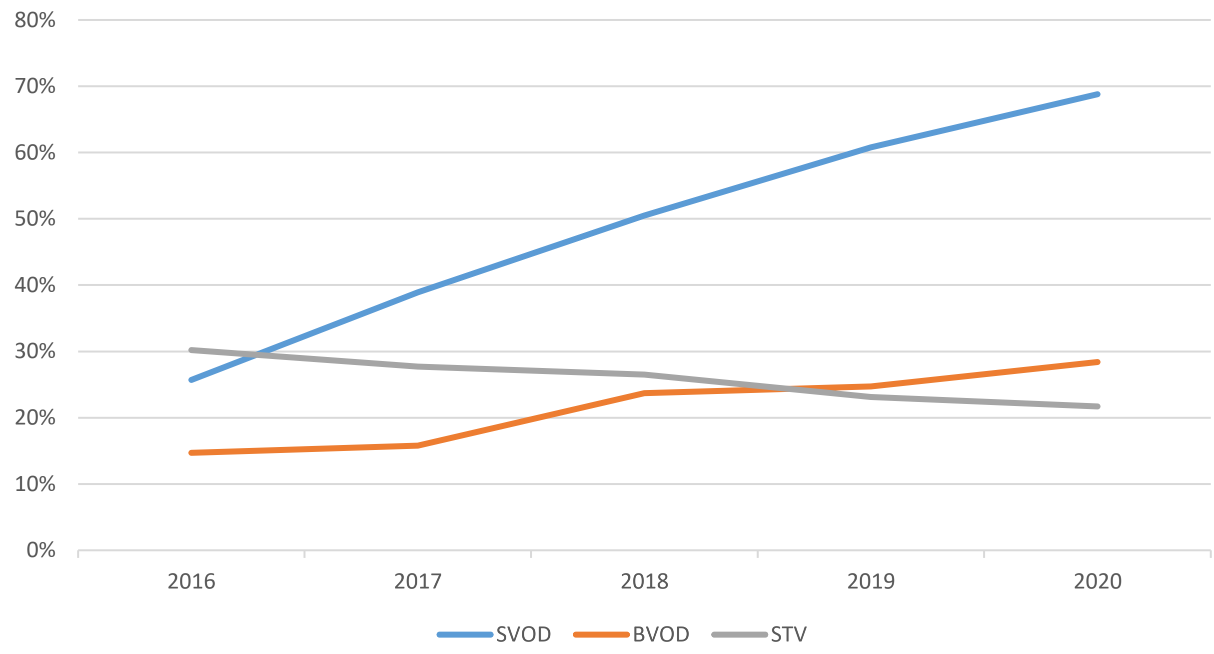
Over the past two decades there has been a fundamental shift in the way media content is produced, distributed and consumed. A plethora of online services have entered the Australian market and take-up by Australian consumers of these services has been rapid.

In the past four years, the percentage of Australians using a subscription video on demand services has risen significantly from around 25 per cent in 2016, to nearly 70 per cent in 2020[16] (see Figure 2). Streaming video services have been a highly appealing innovation, allowing consumers to choose what to watch at a time that suits them.

ACMA reported that 12.9 million Australian adults (around 65 per cent) watched professionally produced online content in 2019, compared with 9.63 million Australian adults the previous year[17]. Australian streaming video services subscriptions totalled 12.3 million at the end of June 2019, representing a 29 per cent increase from 9.5 million at June 2018.[18]

[16] Roy Morgan (2019), 14.5 million Australians already have Pay TV / Subscription TV as Disney+ enters the market.
[17] ACMA (2020), Communications report 2018-2019. Pg. 11 and pg. 95.
[18] Telsyte (2019), 12.3m subscriptions: Australians swarm to SVOD services.

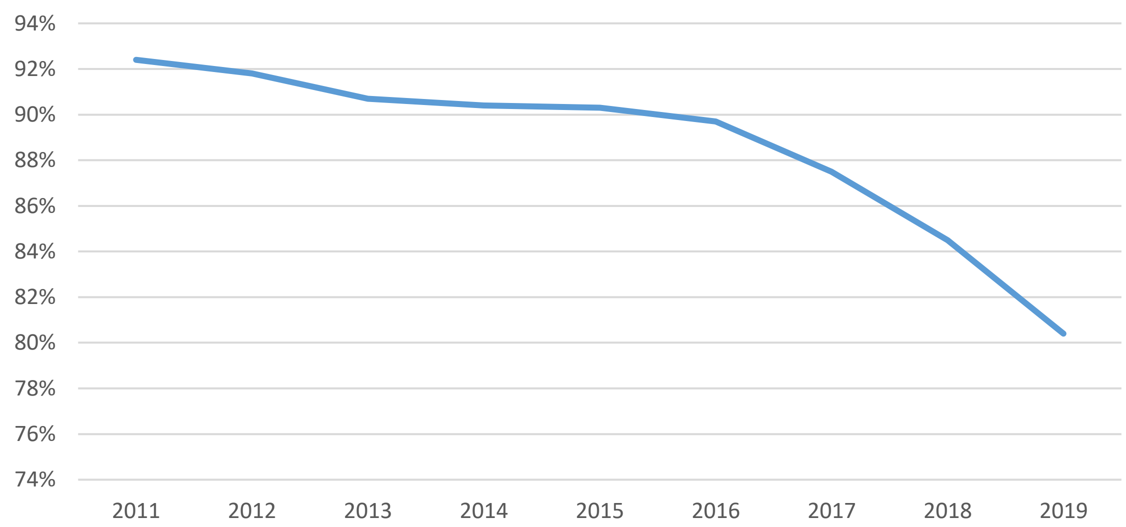
Figure 1: Number of Australians aged 14+ that used a content platform over a four week period



Source: Roy Morgan Media Survey.

In contrast, audience numbers for free-to-air broadcasters have declined over the past decade, though still remain a significant share of the population. The percentage of Australians that viewed free-to-air television (over a seven day period) has declined from 92 per cent in 2011, to 80 per cent in 2019 (Figure 3). In line with this, the audiences for the highest rating Australian television dramas on free-to-air networks have decreased dramatically over recent years. In 2016, the highest rating program had an audience of 2.92 million, whereas the top spot in 2019 had only 1.24 million viewers.[19]

Figure 2: Number of Australians aged 14+ that viewed free-to-air television over a seven day period

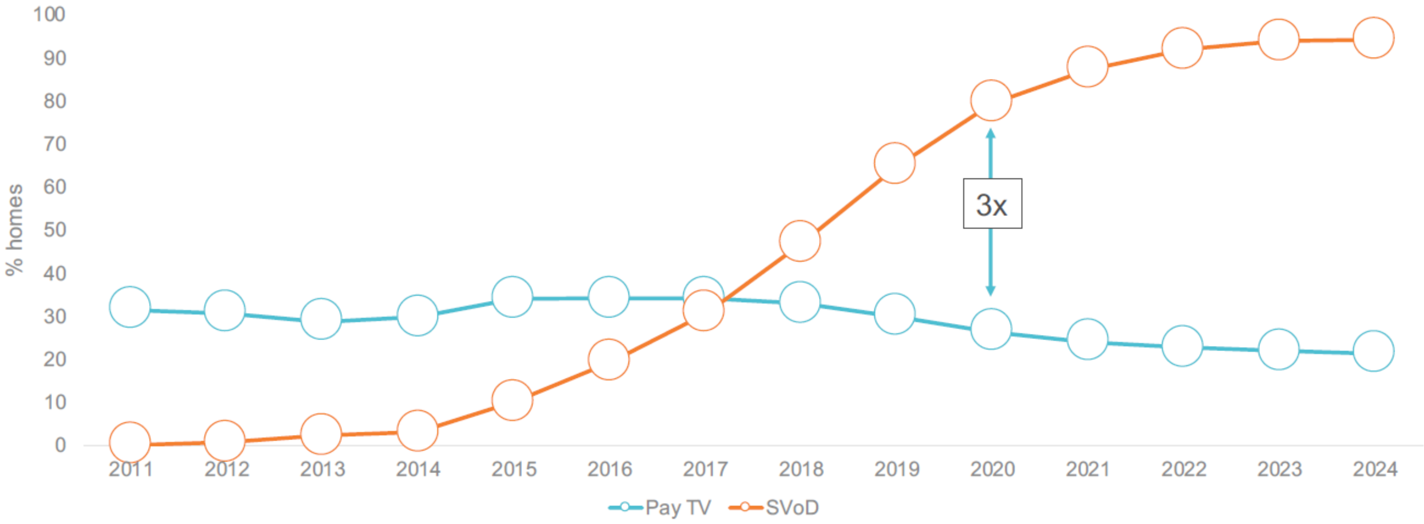


[19] Screen Australia (2019), Top-Rating Australian TV Drama – Metro & Regional.

Source: Roy Morgan Media Survey.

Subscription television broadcasters, such as Foxtel, have experienced a decrease in the number of subscribers. Meanwhile, the Australian streaming video service user base has increased rapidly, and is now three times the size of 'traditional' pay television (Figure 4). Telsyte estimates that the total subscription broadcasting market 'maintained just over three million subscriptions at the end of June 2019', accounting for about a fifth of the total subscription (streaming video service and subscription broadcasting) market.[20]

Figure 3: Australian subscription television penetration



Penetration is unique (overlap of multiple streaming services removed)

Source: Ampere Analysis webinar – Australia television 2.0: strategies for entertainment and sport, August 2020

The type of content that Australians prefer to watch via broadcast television is also changing. Time-sensitive content such as live news, sport and reality television are still popular on television and consistently rate well.[21] Audiences for drama, documentary and children's content on commercial free-to-air television have declined significantly, though this content is still popular with many Australians. This is particularly the case for older Australians, lower income families and people in regional and remote areas.

Drama is proving to be particularly well-suited to online, on-demand consumption which facilitates the viewing of multiple episodes in succession. Although top-performing Australian dramas still attract significant audiences on free-to-air television, broadcast drama audiences overall have declined.[22] A decade ago, top Australian free-to-air dramas such as *Packed to the Rafters* could reasonably expect around two million viewers on terrestrial television, but now any show with more than a million viewers would be considered a hit.[23]

Documentary audiences on free-to-air television have also declined, though analysis of the top 50 documentary titles for each year suggests this decline is more gradual. Titles such as *Australian Story*

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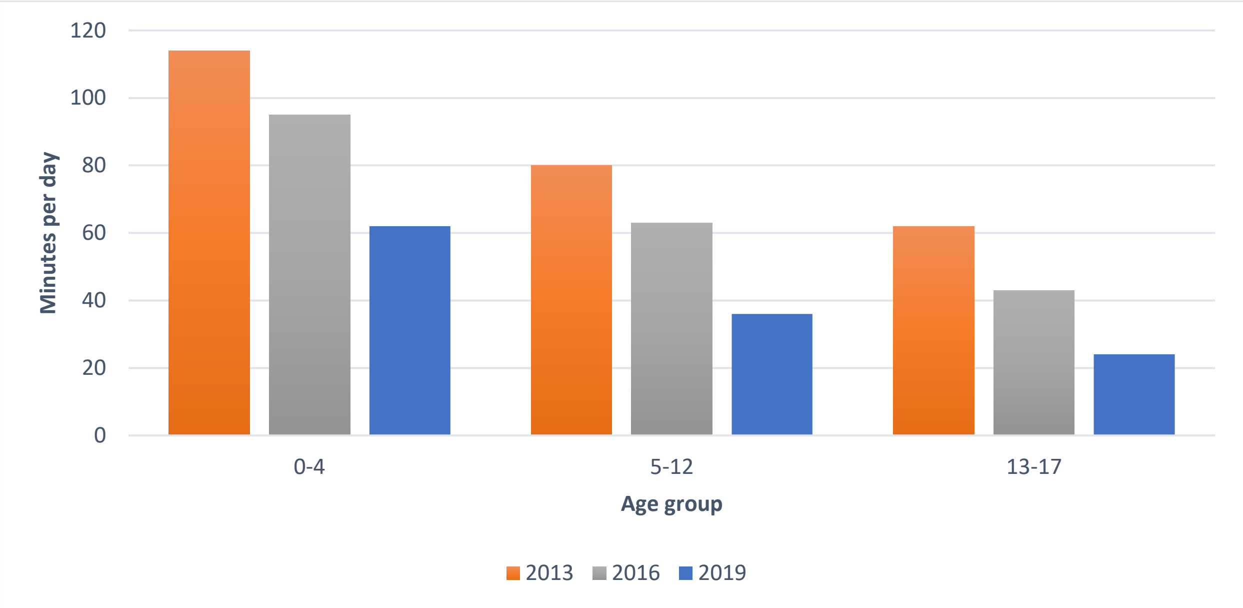
[20] Telsyte (2019), Australians turn to multiple subscriptions for entertainment.
[21] IBIS World (2019), Against the stream: Competition from streaming video services has negatively affected revenue. Pg. 7.
[22] OzTAM and RegionalTAM data.
[23] ACMA and Screen Australia (2020), Supporting Australian Stories on our Screens Options Paper.

and *Back Roads* often exceed one million viewers, while feature films *Jimmy Barnes: Working Class Boy* and *Mystify* enjoyed strong free-to-air audiences after grossing more than $1 million at the Australian box office. Feature film *The Final Quarter* averaged 700,000 viewers on Ten[24], while series such as *Australia In Colour* and *War on Waste* have also reached wide audiences for the ABC and SBS.[25]

Children's viewing habits and preferences have seen significant shifts in recent years, with child audiences increasingly shifting away from television to online platforms such as subscription streaming and user-generated services.[26] Children in all age groups; 0-4, 5-12 and 13-17, have reduced their average time spent viewing free-to-air television between 2013 and 2019 (Figure 5).

Children's viewing preferences on free-to-air television have also shifted towards dedicated ad-free destination services, such as those on the ABC, which attract significantly higher ratings than those on commercial television. Reflecting this, all of the top 75 Children's programs watched by 0-14 year olds in 2019 were broadcast on ABC channels.[27]

Figure 4: Average time spent viewing free-to-air television, 2013 to 2019.



Source: OzTAM Report – Children's Viewing

Research undertaken by ACMA in 2017 about the viewing habits of Australian children (aged 0 to 14 years) found that in a typical week, 47 per cent of children watched free-to-air television broadcasts and the same proportion watched online subscription services; well behind on-demand internet services such as YouTube which were watched by 68 per cent of children.[28]

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[24] Source: OzTAM and RegionalTAM data, 5-city-metro, combined markets, total people, average audience, consolidated 28.
[25] OzTAM and RegionalTAM data, compiled by Screen Australia. See historical data and 2019 in review.
[26] ACMA (2020), Communications report 2018-2019. Pg. 90.
[27] OzTAM data.
[28] ACMA (2020), Communications report 2018-2019. Pg. 20.

Existing regulatory arrangements aim to provide access to Australian content such as children's programming, documentary and drama, but with declining audience numbers the effectiveness of this policy measure is declining.

Commercial free-to-air broadcasters are under pressure

Declining audiences have led to decreasing revenues for the advertising-reliant business models of the commercial free-to-air broadcasters.

- Total television advertising revenue in the second half of 2019 (including free-to-air, subscription and broadcasting video on demand (BVOD), which includes catch-up television) totalled $1.95 billion, a decline of 5.9 per cent compared to the prior corresponding period, despite an approximate 43 per cent increase in BVOD revenue.[29]
- Between 2014 and 2019, the broadcast revenues of the three metro commercial broadcasters decreased at an annual compound rate of 0.6 per cent (Ten), 0.7 per cent (Seven) and 2.9 per cent (Nine).[30]

As the revenues of commercial free-to-air broadcasters have declined, they have still been required to meet Australian content obligations. While broadcasters are comfortably meeting the overall 55 per cent transmission quota – which requires that 55 per cent of all programming broadcast between 6am and midnight on primary channels each year to be Australian – they have argued that they are struggling to meet the sub-quota requirements for drama, documentaries and children's content.

These sub-quota obligations are costly for broadcasters, and in some cases can be difficult to monetise. It can be significantly more profitable for broadcasters to broadcast other genres that aren't regulated, such as light entertainment and news, as these have both lower production costs and higher audience numbers.

It is expensive to create Australian screen content. ABS data shows that drama is the most costly genre to produce, with an average cost of $645,700 per hour, with children's drama not far behind at $476,100 per hour (see more in Table 2). These are significantly higher than the average costs per hour for light entertainment or news, which also typically bring in significantly more ratings and advertising revenues.

Australian content is also significantly more expensive to create when compared to the cost of importing overseas drama, documentary and children's content which can attract similar ratings.[31] While the cost of purchasing content can vary, an Australian network can generally import a high-quality program for $100,000 to $300,000 per hour.[32] Commissioning an equivalent Australian program may cost a broadcaster anywhere from $500,000 to more than $1 million per hour.[33] Older foreign content can be imported for as little as $1,000 per hour. Australian content, therefore, can be a less attractive option for broadcasters to broadcast than foreign programming.[34]

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[29] ThinkTV (2020), Total TV market records $1.95 billion in advertising revenue for first half of FY2020.
[30] ACMA and Screen Australia (2020), Supporting Australian Stories on our Screens Options Paper. Pg. 28.
[31] ACMA and Screen Australia (2020), Supporting Australian Stories on our Screens Options Paper. Pg. 5.
[32] ACMA and Screen Australia (2020), Supporting Australian Stories on our Screens Options Paper. Pg. 5.
[33] ACMA and Screen Australia (2020), Supporting Australian Stories on our Screens Options Paper. Pg. 5.
[34] ACMA and Screen Australia (2020), Supporting Australian Stories on our Screens Options Paper. Pg. 5.

Table 2: Production costs of television programs (2015-16)

	Commercial broadcast hours	Production costs ($m)	Average cost per hour ($'000)
Drama	497	320.8	645.7
Children's programs			
Children's drama	120	57.2	476.1
Other children's programs	745	24.0	32.2
Total	*865*	*81.2*	*93.9*
Television documentaries	444	102.0	230.0
Light entertainment and variety	5,433	499.1	91.9
News and current affairs	50,160	594.4	11.9
Sport		909.9	
Other television programs		15.5	
Total programs	**87,466**	**2,522.8**	**28.8**

Source: Australian Bureau of Statistics, 8679.0 - Film, Television and Digital Games, Australia, 2015-16

Audience ratings drive advertising revenues for the commercial free-to-air broadcasters. OzTAM data (Table 3) shows that Australian drama and documentary were the two least common genres present in the top 1500 rated shows in 2019, with 1 per cent and 3 per cent of programs in the top 1500 respectively. The genres with the highest maximum viewership are light entertainment and sports events, which are not required by specific genre quotas under existing regulations.

Table 3: Top 1500 programs 2019; genre, number of programs and viewers

	Total number of programs in top 1500	Average Viewers	Maximum viewers
News/Current Affairs	83	440,253	993,000
Light Entertainment	104	641,077	1,734,000
Sports Event	660	423,870	2,214,000
Australian Drama	17	490,059	692,000
Foreign Drama	83	387,807	812,000
Foreign Documentary	88	293,580	703,000
Australian Documentary	52	431,885	1,112,000

Source: OzTAM data – Analysis of top 1500 television shows.

It is clear that Australian drama, documentary and children's content are less profitable for broadcasters than other genres. A PricewaterhouseCoopers economic study estimated that if quotas were eliminated on commercial television, children's programs would cease to be produced, drama programs would reduce by 90 per cent and documentary programs would be halved.[35] Rather than business decisions determined by the market, quotas have become the driver for production of Australian content.

For children's content, the current system of quotas is disproportionately burdensome on commercial broadcasters, requiring that they show large volumes of Children's (C) and Preschool (P) programs that are expensive to produce, difficult to monetise due to strict advertising restrictions, and are largely not watched by child audiences when compared to G-rated programming.

- In the 2015-2016 financial year, children's programming cost an average of $32,000 per hour, while children's drama cost $476,000.[36]

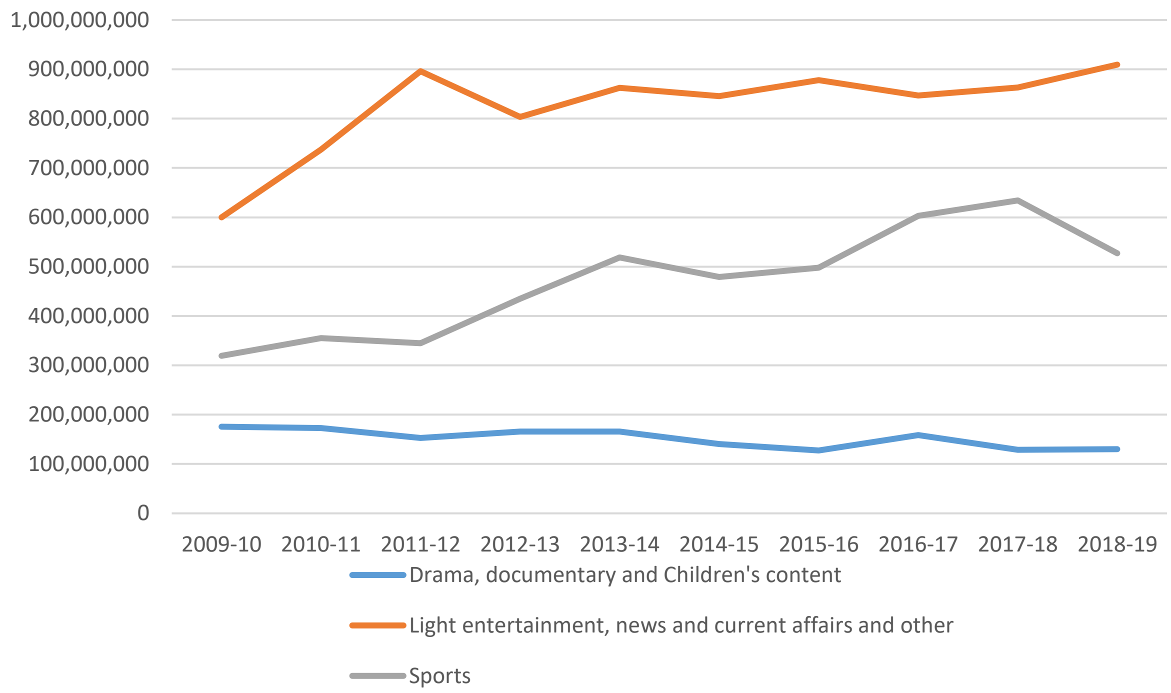
In contrast, children's programs on free-to-air channels are attracting very few viewers and as a result earn very little advertising revenue, if any.

- In February 2020, Channel Seven stated that producing 400 hours of children's programming had cost $8 million, equivalent to $20,000 per hour, with the vast majority attracting less than 1,000 viewers.[37]
- In 2019, the average child audience (age 0-13) on commercial free-to-air channels in metropolitan areas was 1000 for C and P qualifying programs, with many of these shows being watched by fewer than 1,000 children.[38]

Current regulatory arrangements mean that commercial broadcasters are meeting their quotas with the most cost-efficient content that the market can generate. The amount that broadcasters have spent on Australia drama, documentary and children's content has declined significantly in the past decade, whilst spending on sports and light entertainment, news and current affairs and other have increased (Figure 6). This decrease in expenditure is despite the number of hours they have broadcast remaining broadly stable or decreasing (Figure 7).

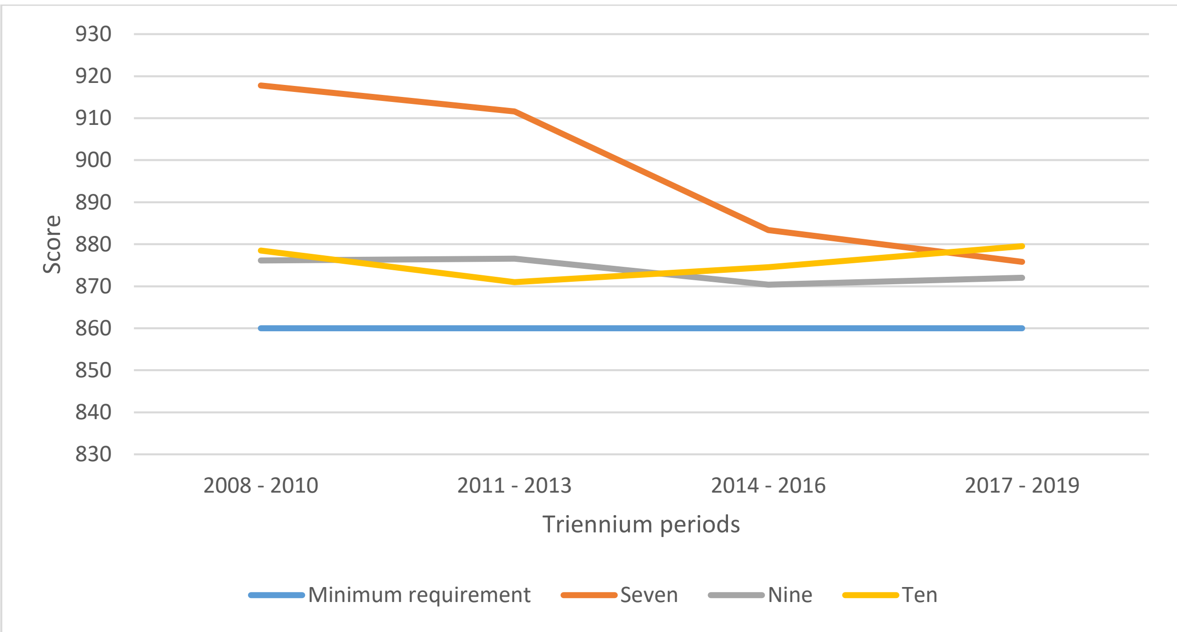
[35] PwC (2011), How Do Local Content Requirements Impact Australian Productions? Review and Analysis of Broadcast Sector Minimum Content Requirements. (report prepared for the Department of Broadband, Communications and the Digital Economy) Pg. 49.
[36] ABS data.
[37] Sydney Morning Herald (2020). Seven halts children's production in Australian content quota protest.
[38] FreeTV (2020), Free TV Submission to the Australian Content Options Paper.

Figure 5: Expenditure by the commercial free-to-air broadcasters by genre, 2009-2019



Source: ACMA Program Expenditure data

Figure 6: Compliance with first release Australian drama obligations



Source: ACMA summary of compliance 2010 to 2019

In the first half of 2020, COVID-19 halted the production of Australian screen content making it difficult for free-to-air and subscription television broadcasters to meet Australian content obligations. As part of the Government's immediate COVID-19 relief for Australian media, content obligations were suspended until the end of 2020. This included Australian drama, children's and documentary quotas on free-to-air, and drama expenditure requirements on subscription television.

5. Why is Government action needed?

There is public value in screen content that speaks directly to Australians through its depiction of Australian themes, language and social values that can enhance understanding and experience of our national culture.

Australian content reflects who we are as a nation, to ourselves and to the world. These stories make sense of our past (*First Australians*, *Gallipoli*, *The Sapphires*), defines ourselves in the present (*The Castle*, *Home and Away*, *Mystery Road*, *Offspring*, *Bluey*) and promotes our people, our creativity and our country to the world (*Crocodile Dundee*, *Australia*, *Mad Max*, *Lion*, *Wentworth*, *McLeod's Daughters*, *Cleverman*, *Miss Fisher's Murder Mysteries*). Australian stories help define us as a nation and make us recognisable on the international stage. The cultural significance of Australian content is not easily quantifiable, but it is highly recognisable, and supported by the vast majority (76 per cent) of surveyed Australians who are in favour of government support to the sector.[3]

Current regulation is aimed at guaranteeing that Australians have access to a variety of recognisably-Australian screen content that would not otherwise be provided by the market, as well as supporting a vibrant and strong production sector. This includes regulation of 'at-risk' Australian content, particularly drama, documentary and children's content that in the absence of regulation would be under-produced as the audiences and markets for Australian content are small; Australian content is expensive to produce; and broadcasters have access to cheaper international content in English.

While audiences for Australian content, particularly drama, documentary and children's content have declined on free-to-air television, there is still a significant number of Australians watching this content (around 80 per cent). Free-to-air television still remains the primary source of screen content for many Australians, particularly those who do not have access to/or cannot afford subscription video on demand services. This includes older Australians, lower income families and people in regional and remote areas.

Some form of regulation of Australian content of Australian Content on free to air television is likely to be necessary to meet public policy outcomes and public expectations. However, current regulations are no longer fit for purpose. Regulation is fit for purpose if it is appropriate, effective and efficient.[39]

The regulation faced by commercial and subscription television broadcasters can be complex, overly prescriptive and burdensome. This is jeopardising the ability of these businesses to continue to operate and produce quality Australian content.

The current regulatory environment is impacting on the long-term sustainability of Australia's production sector as it is preventing innovative or lower cost approaches to meet the intended outcomes of the regulation. Regulation needs to create an environment that provides certainty and stability to businesses, while supporting Australian screen content. Regulation also needs to support a minimum level of Australian content on free to air television. The reform proposals canvassed in this RIS seek to address this situation and provide simpler and more effective regulation.

[39] Productivity Commission (2011), Identifying and Evaluating Regulation Reforms.

6. What policy options is the Government considering?

A number of policy options have been identified to address the problem noted in Section 4. These options have been informed by the Screen Options Paper and the feedback provided by stakeholders and the public in relation to the proposals canvassed in that paper. The Options Paper canvassed the full range of possibilities from no action to full deregulation. Over 340 submissions were received and this feedback has been taken into account in developing the policy options below.

Option 1 – retain existing regulatory framework

Under this option, the existing regulatory framework would be retained in its current form, with its sole focus on traditional media platforms. Under this option, significant regulation of commercial and subscription broadcasters would remain, while streaming services would face no specific obligations. The national broadcasters would not be subject to any specific requirements to provide Australian content.

Obligations under proposed Option 1

- **Commercial free-to-air broadcasters:** the transmission quotas, including sub-quotas for drama, children's and documentary content set out in the ACS and CTS, would be retained in their current form.

- **Subscription broadcasters:** the New Eligible Drama Expenditure (NEDE) scheme, which requires subscription broadcasting licensees and channel providers to spend at least 10 per cent of total program expenditure for each drama channel on new Australian drama programs, would continue to apply.

- **Streaming video services:** no change to current arrangements, and no Australian content obligations would be imposed.

Option 2 – modify and reduce existing regulation, extend regulation to streaming video services

Option 2 would provide a more flexible and balanced approach for supporting the provision of 'at risk' genres of Australian content. It would involve the imposition of a modified content obligation which could be met with any mix of Australian drama, children's and documentary content. This would provide broadcasters with the flexibility to determine which content they broadcast to meet the overall quota and would replace the current sub-quotas for Australian drama, children's and documentary content. Existing children's (C) and preschool (P) content obligations on free-to-air commercial broadcasters would be removed as part of this option and the NEDE obligation on subscription television licensees would be lowered from 10 per cent to 5 per cent.

Obligations under proposed Option 2

- **Commercial free-to-air broadcasters:** the overall 55 per cent transmission quota would remain in place, while sub-quota requirements, including the C and P classifications, would be removed. A modified points system encompassing drama, documentary and children's content would enable broadcasters to flexibly meet a requirement for at-risk content through any combination of genres (Box 1).

- The modified points system would:
    - Be set at a level that represents a lower regulatory burden than existing sub-quota requirements
    - Incentivise higher value drama due to its cultural value, international distribution appeal and longevity, by assigning higher points values to drama over expenditure thresholds
    - Retain the protections for children's television content that are currently covered through the C and P classifications

- **Subscription broadcasters:** the expenditure obligation in the NEDE scheme would be reduced from 10 per cent to five per cent.

Box 1: How would the modified content quota work in practice?

The modified content quota would require each broadcaster to reach 250 points of Australian genre content in a calendar year which could be met by broadcasting commissioned Australian drama and documentaries, including children's drama and documentaries, and acquired Australian films. Each hour of content would receive different points depending on its hourly production budget.

This would mean that a broadcaster could meet their annual quota of 250 points with any combination of genres. However, a maximum of 50 points would be able to be acquitted on commissioned documentaries. To qualify as commissioned content, the broadcaster would need to have made a financial contribution to the production budget before the production has been completed.

In-house productions would be treated equivalently to commissioned programming for the purposes of the new quota. To qualify for the new quota, Australian films would need to have been produced in the last two years and to have not been televised before in the relevant commercial television licence area.

Genre	Points per hour
Commissioned documentary	1
Commissioned children's content (non-drama)	1.5
Commissioned drama (<$450,000 production budget per hour)	1.5
Commissioned drama ($450,000 - $700,000 production budget per hour)	4
Conditioned drama ($700,000 - $1 million production budget per hour)	5
Commissioned drama ($1 million to $1.4 million production budget per hour)	6
Commissioned drama (>$1.4 million production budget per hour)	7
Acquired Australian film (licence fee less than $50,000)	1
Acquired Australian film (licence fee more than $50,000)	2

Option 3 – remove all regulation

Option 3 would remove all content regulation, and remove or revise existing incentives to produce Australian programs. In essence, the market would determine the amount and composition of Australian content on broadcast channels and online platforms.

Obligations under proposed Option 3

- **Commercial free-to-air broadcasters:** Removal of transmission quotas and sub quotas for Australian drama, children's and documentary programming.
- **Subscription broadcasters:** Removal of NEDE Scheme.
- **Subscription streaming services:** No Australian content regulation would apply (status quo).
- **National broadcasters:** No Australian content regulation would apply (status quo).

7. What is the likely net benefit of each option?

A qualitative assessment of each option has been undertaken, including the costs and benefits to particular stakeholder groups. Where available, impacts on the screen production sector and broadcasters have been quantified with data from ACMA and Screen Australia. The Options Paper consultation process has been used to support the assessment of the net benefit of each option.

Option 1 – retain existing regulatory framework

The retention of existing regulatory settings was canvassed as a proposal in the Screen Options Paper. There was little support for retaining the status quo from submitters, with most acknowledging that the current regulatory approach is no longer targeted towards the platforms which most Australians are using to access screen content.

Maintaining the status quo is likely to lead to a decline in quality Australian programming as broadcasters struggle to reach quotas, which would in turn negatively impact the local production sector.

The potential impacts of this option on stakeholders and the public are canvassed below.

Screen production sector – modest impact

Demand for content by commercial free-to-air broadcasters for existing types of sub-quota content would be expected to be maintained under this option. In 2018-19, commercial broadcasters spent $95.7 million on Australian drama, $24.8 million on Australian children's content and $9.6 million on Australian documentary content. While the amount of expenditure by broadcasters is likely to remain static or reduce, the current content sub-quotas provide guaranteed demand for children's, drama and documentary content. As broadcaster revenues continue to decline it is likely that the production sector will face increased pressure to find alternative or international funding to make up the shortfall in production costs or otherwise create lower quality content. This may impact on exportability of Australian content.

While providing some guarantee of annual demand, maintaining the status quo provides little incentive for innovation and longer-term growth as commercial broadcasters are constrained by obligations and unable to run their business with full flexibility.

Commercial and subscription broadcasters – high impact

The direct costs to commercial broadcasters of complying with sub-quota obligations was $130.1 million in 2018-19. Direct costs do not include the foregone profits to broadcasters from broadcasting quota content instead of non sub-quota Australian content (for example light entertainment) or international content that tends to be more profitable. The amount of foregone profits is anticipated to be significant as the cost of content subject to quotas – Australian drama, documentary and children's content – is higher than non-quota and international content.

- In 2015-16, the average cost of producing an hour of adult drama and children's drama was $645,700 and $476,100 respectively, compared $11,900 for news and current affairs and $91,900 light entertainment and variety on average per hour.
- While the cost of international content can vary, an Australian network can generally import a high-quality program for $100,000 to $300,000 per hour. Commissioning an equivalent Australian program may cost a broadcaster anywhere from $500,000 to more than $1 million per hour. Older foreign content can be imported for as little as $1,000 per hour.[40]

Revenue for commercial and subscription television broadcasters will likely continue to decline as audiences increasingly shift to unregulated online platforms. As broadcasters face rising financial pressures, their ability to invest in Australian content will lessen, with a likely impact on the quality of Australian content produced. This, in turn, may impact on ratings and advertising revenue during broadcast of sub-quota content.

Regional networks would be particularly impacted, noting that regional revenue has already significantly declined in recent years. Regional broadcasters pay up to 50 per cent of revenue to metropolitan broadcasters as a fee for content, and are losing viewers to metropolitan broadcasters' BVOD platforms accessed through internet (e.g. 7plus, 9now and 10play).

As broadcasters struggle to meet sub-quota requirements, particularly for genres that do not attract significant audiences, non-compliance may start to occur. For example, prior to the forbearance announcement earlier in 2020, Channel 7 announced that it would no longer be able to meet C and P quota requirements.[41]

The subscription television sector spent $24.67 million on Australian drama programs in the 2018/19 financial year to comply with its obligations under the NEDE scheme. Unlike commercial broadcasters, subscription broadcasters have no obligation to broadcast Australian content, just to invest in the production of Australian drama, which makes the scheme less impactful on programming decisions of subscription broadcasters.

Like commercial broadcasters, subscription broadcasters have also been facing declines in profitability and this is likely to continue under the status quo. Direct competition from online streaming services is heavily impacting on subscription broadcasters' ability to attract subscribers. In 2020, the Australian streaming user base is three times the size of 'traditional' subscription television. Meanwhile, Foxtel's revenue decreased at an annual compound rate of 3.5 per cent over the period 2014 to 2019,[42] as declining ad revenue has exacerbated the loss of subscribers and falling revenue per subscriber.

Consumers – modest impact

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[40] Australian Communications and Media Authority and Screen Australia, Supporting Australian Stories on our Screens p5

[41] https://www.smh.com.au/business/companies/seven-halts-children-s-production-in-australian-content-quota-protest-20200225-p5445r.html

[42] Venture Consulting, *The effects of COVID-19 on the Australian media industry,* report to the Australian Government Department of Infrastructure, Transport, Regional Development and Communications, 2020.

For consumers, the quality of Australian content available would be expected to decline and the amount of content available to consumers may fall if broadcasts are unable to continue to meet the existing Australian content obligations. As audiences from metropolitan and larger regional areas increasingly move to online platforms to consume content, the amount of Australian content available to them may decrease.

Option 2 – simplify regulation, enhance incentives

Option 2 seeks to balance the benefits and costs of providing Australian content across all sectors, while accounting for the different business models of commercial broadcasters, subscription broadcasters and streaming services.

Screen production sector – moderate impact

This option would have a moderate impact on the production sector. The reduced and flexible sub-quota obligation may negatively impact the producers of sub-quota content that work exclusively with commercial broadcasters. Screen Producers Australia have suggested that a more simplified and reduced quota system could result in a decline in the production of Australian content and result in potential job losses.[43]

To mitigate the decrease in demand from the removal and simplification of quotas, and support the production of at-risk genres, the Government will provide a total of $53 million in additional funding to Screen Australia and the Australian Children's Television Foundation (ACTF).

- The ACTF will receive $10 million per annum over two years (a total of $20 million) to boost the development, production and distribution of high quality Australian children's content.
- Screen Australian will receive $10 million per annum over three years (total $30 million) to support the production of Australian drama, documentary and children's screen content across film and television.
- Screen Australia will also receive a further $1 million per annum over three years (a total of $3 million) to establish a competitive grants program to support quality Australian screenwriting and script development.

This additional funding will assist the sector to adjust and respond to the new regulations.

Commercial and subscription broadcasters – moderate impact

This option would positively affect commercial free-to-air broadcasters by reducing the current sub-quota obligations. The combined points system for at-risk genres (drama, documentary and children's) will give broadcasters greater flexibility in how to acquit their obligations. This will allow them to focus on the genres that perform best for their audience, and better align their programming with their business model. For example, while Channel 7 has stated it is unable to continue to produce children's content at current rates, Channel Ten recently announced plans to launch a children's multi-channel.[44] The modified system will reduce the regulatory and associated financial burden on the commercial broadcasters, making for a more sustainable and effective arrangement.

[43] Screen Producers Australia (2020), Supplementary submission to the Supporting Australian Stories on our Screens options paper.

[44] Channel Ten (2020), New channel alert: introducing 10 Shake.

Option 2 would also provide benefits to subscription broadcasters by halving the yearly expenditure requirement under the NEDE scheme. For 2018-19, this would have reduced the expenditure obligation by $12.3 million. As discussed above, Foxtel, like the commercial channels, is experiencing declining audiences and profits as it faces direct competition with streaming video services. Option 2 would release the regulatory burden imposed on this sector of the industry.

Consumers – moderate impact

Removing the 'one size fits all' approach of prescribed genres may result in higher quality Australian content being produced that is better targeted to audience demands and preferences. This is particularly relevant in the case of the removal of children and preschool quotas from the commercial channels. At present, broadcasters respond to the obligation for children's content with primarily lower quality content, as these programs attract few viewers and consistently screen at a financial loss.

It is possible that commercial broadcasters may withdraw from the children's content market after deregulation, and will apply that expenditure to more popular and viable content, including other at-risk Australian content covered by the modified model. Funding to the ACTF is intended to support the children's content sector in absence of commercial broadcaster investment and help to encourage a market for children's content. The ACTF provides services including development support, attracting finance, brokering local and international distribution deals, creation of educational materials and business and professional development opportunities. The ACTF negotiates with various distribution platforms, including streaming services, to secure broadcast for Australian children's content.

Providing additional support to the ACTF will enable it to fill the potential gap left by the withdrawal of the commercial broadcasters and make sure that quality Australian children's content continues to be made and is available to Australian audiences. Similarly, funding for Screen Australia will support the production of Australian drama, documentary and children's film and television content, including through funding to establish a competitive grants program to cultivate quality Australian screenwriting and script development.

Option 3 – remove all regulation

Under Option 3 all regulation of Australian content would be removed and market forces would determine which content is shown across the various platforms. This would provide a net benefit for broadcasters and streaming video services to the detriment of the screen production sector and consumers.

Screen production sector – high impact

During the Screen Options Paper consultation process, the production sector argued that quotas are crucial to the sustainability of the sector and that the Government's decision to suspend the sub-quotas in 2020 as part of its response to the COVID-19 pandemic, has had significant adverse effects. Given that the cost of sourcing internationally produced content is often lower than funding domestic production, and taking into account the financial situation of commercial free-to-air broadcasters, it is likely that deregulation would lead to less Australian content being commissioned, and also to lower quality production being favoured.

While the production sector is open to modernising the quota system, there is widespread concern in the sector that removal of quotas altogether would have a significant detrimental effect on the production sector beyond that identified in relation to option 2. It is unclear the extent to which broadcasters would continue to commission Australian content. Although it is likely that they would continue to produce profitable genres such as news, sport and light entertainment but reduce less profitable genres such as drama, children's and documentary.

Commercial and subscription broadcasters – high impact

Removing all regulation on commercial and subscription broadcasters would benefit broadcasters by allowing them to make content decisions that maximise profits, although this would be to detriment of consumer outcomes (see below).

Commercial broadcasters contend that the existing content sub-quotas are unsustainable due to declining audience numbers and should be removed, and would be in favour of deregulation. For example, Seven West Media argue that the existing regulatory settings focus the content production industry on servicing an inflated demand for regulated genres that do not match audience tastes for content, and do not position Australia to take advantage of the opportunities of a growing global content market. Peak body FreeTV has suggested that deregulation of sub-quota obligations, alongside strong production support and incentive based policies, would be the best way to future-proof the industry.

Subscription television broadcasters would also be in favour of deregulation. Were the 10 per cent new drama expenditure obligation removed, subscription television providers would have the option to reallocate these funds, and invest in genres other than drama.

Consumers – high impact

Under this Option, broadcasters would be likely to focus on content that offers the highest return, and genres of Australian content with low commercial value would likely cease to be produced at scale. A PricewaterhouseCoopers (PwC) economic study estimated that if quotas were eliminated on commercial television, children's programs would cease to be produced, drama programs would reduce by 90 per cent and documentary programs would be halved. In the absence of supporting regulatory mechanisms culturally significant Australian content would struggle to make it on screen at all. [45]

As a result, Australians access to Australian access to Australian content on free-to-air television would decline and this be detrimental to Australian's who derive benefit from this content, in terms of cultural, social and educational benefits. Around 80 per cent of Australians watch free-to-air television and many of these don't have access to subscription video on demand services.

Deregulation would not achieve the policy objectives as set out in the BSA, particularly (1)(e) 'to promote the role of broadcasting services in developing and reflecting a sense of Australian identity, character and cultural diversity'.

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[45] PwC (2011), How Do Local Content Requirements Impact Australian Productions? Review and Analysis of Broadcast Sector Minimum Content Requirements. (report prepared for the Department of Broadband, Communications and the Digital Economy) Pg. 49.

8. Who did you consult and how did you incorporate their feedback?

The Government has conducted extensive consultation on Australian content regulation over the last ten years, most recently in 2020 with the *Supporting Australian stories on our Screens – Options Paper*. Other notable consultations include the 2017 *Australian and Children's Screen Content Review*, and the 2012 *Convergence Review*.

Supporting Australian Stories on our Screens – Options Paper

The Screen Options Paper was released for consultation between 15 April 2020 and 3 July 2020. As outlined earlier in this document, the paper presented a number of options for reform:

- status quo - retain existing regulations and incentives, focussing on traditional platforms;
- minimal change – fine-tuning and modernising existing regulatory and funding arrangements;
- significant change – establishing platform-neutral, future facing obligations and incentives which reflect the business models; and deregulation – removing all regulation and removing or revising incentives.

The Minister for Communications, Cyber Safety and the Arts also conducted a number of roundtable discussions and meetings with a wide range of stakeholders.

The majority of submissions provided strong support for the continued production of Australian content and for Government support for the sector through incentives and offsets. The bulk of submissions also indicated support for the retention of some form of quota or investment obligation to produce Australian content, and for the extension of these demand-side obligations to streaming services.

The majority of submitters (two thirds) who commented on the options supported Option 3 – Significant change, which proposed platform-neutral, future facing obligations and incentives that take into account individual platform offerings and audience engagement.

While the production sector was broadly supportive of retaining obligations to produce Australian content (with modifications to modernise the system to implement a flexible approach suitable for different distribution services), the commercial broadcasters consider the current obligations are unsustainable and should be removed. Over half the submissions supported retaining the children's content sub-quota in some form, and many expressed concern about calls from free-to-air commercial broadcasters for the scrapping of the current requirements.

An expenditure obligation on streaming services was supported in a large number of submissions to the Options Paper, with many stakeholders arguing that regulation should be harmonised across all platforms that provide screen content. The streaming services themselves indicated support for voluntary measures and recognition of their existing investments instead of the introduction of quotas.

Both Foxtel and the Australian Subscription Television and Radio Association (ASTRA) supported Option four (deregulation), and the removal of the NEDE scheme, on the basis that this will allow subscription television broadcasters and channel providers the opportunity to adapt and direct funding and investment based on existing environmental factors.

Other stakeholders, including the Media, Entertainment and Arts Alliance supported the retention of the NEDE Scheme. They state the requirement is already flexible in so far as Australian content drama spending is linked to overall company performance.

2017 Review of Australian and Children's Screen Content

The 2017 Review was conducted by the Department of Communications and the Arts, ACMA and Screen Australia. The Review undertook an extensive consultation process, including the release of a consultation paper which received 70 submissions from a wide range of stakeholders, commissioning a qualitative market research report, and undertaking more than 70 face-to-face meetings and workshops with key members of the screen production industry.

The Review also took into consideration consultations that were undertaken as part of the House Standing Committee on Communications and the Arts inquiry into factors contributing to the growth and sustainability of the Australian film and television industry. The Inquiry received over 150 submissions and undertook eight public hearings. Consultation was held with key broadcasting and screen development stakeholders, including Free TV Australia, the national broadcasters, Screen Australia, Screen Producers Australia, and the Australian Children's Television Foundation (ACTF).

2012 Convergence Review

The 2012 Convergence Review was conducted by the Convergence Review Committee; Mr Glen Boreham AM, Mr Malcolm Long and Ms Louise McElvogue. The review looked at the operation of media and communications regulation in Australia and assess its effectiveness. The report recommended a new principles-based policy framework that provides the media and communications sector with reduced compliance costs, increased certainty and flexibility while ensuring that services continue to meet the expectations of Australians.

This review gathered input from over 340 detailed submissions and over 28,000 comments and undertook an in-person consultation programme across Australia.

9. What is the best option from those you have considered?

A summary of the impact of the three options considered is at Table 6.

Option 2 is expected to provide the greatest net benefit as it will support the objective of providing quality Australian content, while not stifling the market. Simplifying obligations on commercial broadcasters and subscription television providers will reduce the regulatory burden on these businesses and enable them to produce higher quality consumer content.

In contrast, the current regulation of Australian content is not achieving its policy objectives and is distortionary. Maintaining the status quo (option 1) is likely to lead to a decline in quality Australian programming as broadcasters struggle to reach quotas, which would in turn negatively impact the local production sector.

Option 1 would deliver benefits to the Australian production sector, as it prioritises the production of Australian drama, children's and documentary content, irrespective of audience appetite for that content on commercial or subscription television. However, it would negatively impact commercial and subscription broadcasters who would continue to bear the burden of producing Australian content, even where the audience for that content is insufficient to ensure that revenue outstrips the expense of acquiring or producing content.

Option 3 – deregulation – would fail to achieve the stated policy objectives as it is likely to lead to a significant decline in Australian content broadcast, including at-risk genres with negative flow on impacts for the production sector. Commercial broadcasters are likely to source international content and low-cost Australian content that is much cheaper to produce than Australian drama, documentary and children's content. This would be detrimental to Australian's who derive benefit from this content, in terms of cultural, social and educational benefits. Around 80 per cent of Australians watch free-to-air television and many of these don't have access to subscription video on demand services.

Table 4: Impact Assessment Matrix

	Option 1 (retain existing regulatory framework)	**Option 2 (simplify regulation, enhance incentives)**	**Option 3 (deregulation)**
Impact on sectors			
Commercial free-to-air broadcasters	Direct cost of $130M to comply with regulations, while indirect opportunity costs worsen as broadcasters follow projected -3 per cent revenue annually	Positive impact with the removal of children's quotas and a modified quota system that is more flexible. A more 'level' playing field with online streaming services.	Strong positive impact for broadcasters who would maximise return by maximising lower cost programs.
Subscription broadcasters	Direct cost of around $25 million to comply with the 10 % NEDE requirement, impacting their ability to compete with streaming platforms.	Modest positive impact from a reduction in the NEDE scheme to 5%. A more 'level' playing field with online streaming services.	Strong positive impact of maximising return through offering lower cost programs.
Production sector	Minimal impact with status quo maintained. Little incentive for innovation in the sector.	Moderate negative impact on the production sector. The reduced and flexible sub-quota obligation will impact producers that work exclusively with commercial broadcasters producing sub-quota content.	Significant negative impact, it is likely commercial free-to-air broadcasters will source internationally produced content as it is often cheaper than funding domestic production.
Assessment against policy outcomes			
Hours of Australian content produced	While broadcasters are currently meeting content minimum content obligations, there is a risk that they would fail to comply in the medium-term as their business models continue to come under pressure.	The decrease in demand from the removal and simplification of quotas would, in part, be offset by funding to the Australian Television Children's Foundation and Screen Australia for the production of Australian content.	Children's programs may cease to be produced, drama programs would reduce by 90 per cent and documentary programs would be halved (PwC report)
Quality of Australian content produced	Quality of content would decline due to financial difficulties of commercial broadcasters. For subscription broadcasters, expenditure on drama	Higher quality content is encouraged under the modified points system which stipulates points by expenditure level.	Removal of incentive to produce low quality content to meet quotas, without an incentive to produce high quality content at scale. Likely

	would reduce in line with reduced revenue, leading to lower quality drama content.		a very small amount of high quality content annually.

10. How will you implement and evaluate your chosen option?

Implementation

Implementing the modified content quota would be implemented by a Ministerial direction to ACMA to revoke and remake the *Broadcasting Services (Australian Content) Standard 2016* (ACS) and the *Children's Television Standards 2009* (CTS). ACMA would be directed to maintain appropriate safeguards for child audiences on commercial free-to-air television, which exist in the CTS alongside C and P quotas. Reducing the expenditure obligation on subscription television licensees will be achieved through amendment to the BSA.

Evaluation

It is be important for each of the measures to be carefully evaluated. It is proposed that the measures are subject to review after two years, in 2022.