Submission by
Free TV Australia

House of Representatives Inquiry into the Australian film and television industry

Factors contributing to the growth and sustainability of the Australian film and television industry

12 April 2017

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EXECUTIVE SUMMARY

- The House of Representatives Standing Committee Inquiry is a timely opportunity to consider the key factors impacting on the growth and sustainability of the commercial free-to-air television broadcasting industry.
- Commercial free-to-air broadcasters are the largest investors in the Australian screen production sector, employing over 15,000 people directly and indirectly and investing $2.8 billion into the Australian economy.
- Commercial free-to-air broadcasters are the largest investors in Australian content, investing $1.5 billion annually.
- Commercial free-to-air television is highly valued by the Australian public:
    - It delivers high quality Australian programs including news, current affairs, sports and cultural programs to all Australians.
    - It is watched by 13 million Australians on average every day.
- The services provided by commercial free-to-air television are delivered for free and fulfil important public policy outcomes for all Australians.
- This is a critical time for commercial free-to-air television broadcasters:
    - Giant global media technology companies are taking a rapidly growing share of advertising dollars, do not pay their fair share of tax, have no Australian content obligations and in some cases, do not employ anyone in Australia.
    - At the same time, commercial free-to-air broadcasters' advertising revenue is decreasing, they are subject to the most onerous and rigid Australian content obligations of any platform which are heavier than anywhere else in the world, and the costs of producing Australian content are increasing 6% year on year.
- The status quo is not sustainable and is jeopardising the continued delivery of free-to-air services to the public. It is also putting at risk our ability to commission Australian content and to invest in the Australian screen production sector. The regulatory framework must be updated to enable commercial free-to-air broadcasters to compete with global media technology companies on equal terms.
- As a priority, the out-dated licence fees that far exceed similar fees in any other country and are not required to be paid by any of our competitors must be brought in line with international best practice levels.
- In addition, the following aspects of the regulatory framework must be updated to reflect the realities of the new media landscape:
    - The out-dated children's quota requirements should be abolished.
    - There should be a broader review of the Australian content rules to determine whether they are still effective and whether they enable broadcasters to deliver the content that Australian audiences want to watch now and into the future.
    - The producer offset for television should be brought into line with the current rate for feature films. The 65 episode cap on eligibility for the offset should be scrapped.

    - Broadcasters should not be excluded from eligibility for Screen Australia funding.
    - The role of the national broadcasters should be examined - that role should not include showing programming outside the scope of their charter obligations and in direct competition with commercial broadcasters.
- With the right policy settings, the commercial free-to-air television sector will be able to invest in their businesses for the future, continue to make high-quality local content and underpin the Australian production sector.

Introduction

Free TV Australia (Free TV) represents Australia's commercial free-to-air television broadcasters. At no cost to the public, members provide eighteen channels of content across a broad range of genres, as well as rich online and mobile offerings. The value of commercial free-to-air television to the Australian public remains high. Commercial free-to-air television reaches 13 million Australians on average every day.

A strong commercial free-to-air broadcasting industry delivers important public policy outcomes for all Australians and underpins the existence of the Australian production sector. A strong local production eco-system sustains Australian storytelling and local voices and is critical to maintaining and developing our national identity.

This Inquiry comes at a critical time for commercial free-to-air television broadcasters who are now operating in a highly competitive multi-media environment. The media market today is rapidly evolving. New entrants are flooding into the market driven by new technology, business models and changing consumer behaviour. This is generating significant competition in the broadcast market and broadcasters' advertising revenues are declining.

At the same time, the costs of producing Australian content are increasing and commercial free-to-air broadcasters' continue to comply with a range of costly regulatory obligations that were put in place when broadcasting was the only source of content for most Australians.

Commercial free-to-air networks are continuing to invest in valuable Australian content to meet audience demands and in transforming their businesses to compete in the new environment, however the status quo is not sustainable. Our competitors, including global media technology companies, are taking a rapidly growing share of advertising dollars, do not make any substantial investment in Australian content or jobs and do not have anywhere near the same level of regulatory obligations.

This is putting commercial free-to-air broadcasters' investment in Australian content at risk. The existing regulatory framework is onerous and rigid and needs to be updated to allow broadcasters to deliver the content that audiences want to watch when they want to watch it.

This submission will set out the key challenges to the growth and sustainability of the commercial free-to-air television industry and what needs to be done to address them.

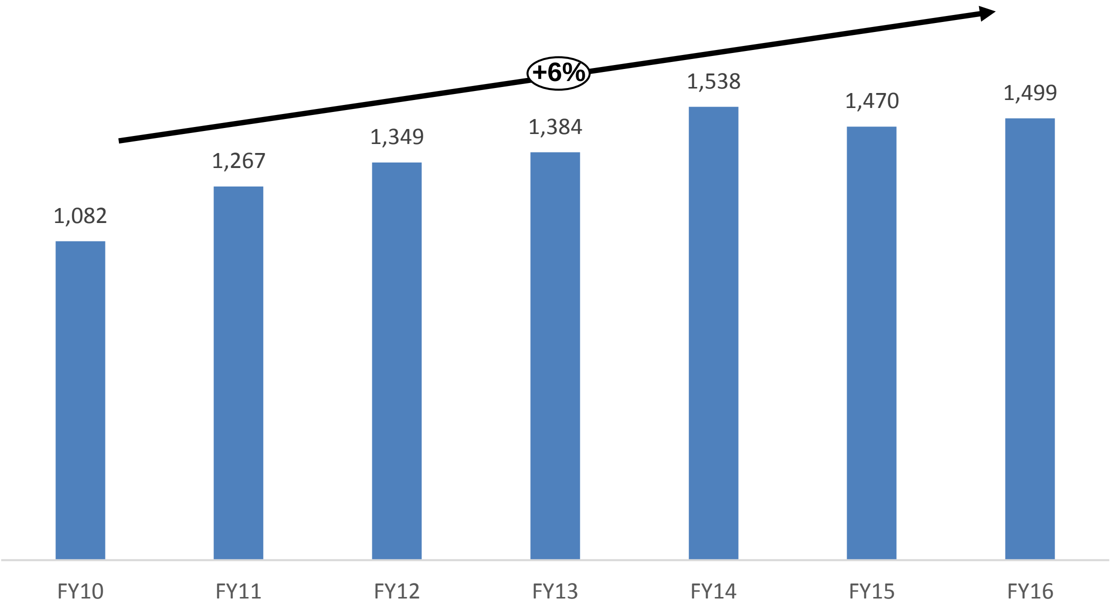
The value of a sustainable commercial free-to-air television industry to the Australian public

Commercial free-to-air television is highly valued by the Australian public. Free-to-air television delivers high-quality Australian programmes including news, current affairs, sports and culture to all Australians for free. 97% of Australian households receive digital terrestrial television,[1] and on average 13 million Australians watch commercial free-to-air television every day.[2] Nearly 70% of Australian households rely exclusively on free-to-air television.[3]

Free TV's investment in Australian content

Commercial free-to-air broadcasters invest around $1.5 billion in Australian content every year and have invested over $7.24 billion over the last 5 years. Figure 1 shows broadcasters' domestic content spend from FY 10 – FY 16.

FIGURE 1: DOMESTIC CONTENT SPEND BY COMMERCIAL FREE-TO-AIR TV[4]



Australian content represented 78 per cent of commercial free-to-air networks' total content spend in 2015/16. The latest figures from ACMA show each network averaged above the required 55 per cent of Australian content on their main channels and the required 1460 hours on their multi-channels.[5]

Free-to-air broadcasters are continually the largest investors in Australian drama production, again contributing more than any other sector in 2015/16.[6]

[1] Australian Multi-Screen Report, Quarter 4, 2016.

[2] Source: OzTAM and RegionalTAM, 5 capital cities, 6 aggregated regional markets, 1 January - 31 July 2016,all day, metro and regional average daily reach figures are combined to form a national estimate, excludes spill, based on Free TV channels, consolidated 28 day data.

[3] OzTam Universe Estimates Quarter 1, 2017 – Individuals; 30.2% of homes have subscription TV.

4 Prepared for Free TV Australia by Venture Consulting, April 2017.

[5] ACMA, Comparison of Compliance Results – Metropolitan Commercial Television Networks, 22 April 2016, 2-3.

[6] Screen Australia Drama Report 2015/16, 15.

This investment reflects the impact of the Australian content quotas combined with audience demand. Australian commercial television programs are the most watched shows on television. Eight of the top 10 most watched dramas in 2015/16 were on commercial free-to-air television and every one of the top 50 programs on commercial free-to-air television in 2015/16 was Australian. [7]

Free TV's investment in the screen production industry

Commercial free-to-air broadcasters continue to be the largest investors in the screen production industry in Australia. Free TV networks employ over 15,000 people directly and indirectly.[8]

They also provide a valuable training ground for actors and content production professionals including cast and crew. For example, programs like *Neighbours* and *Home & Away* have each employed thousands of cast members, production crew and writers over three decades. Broadcasters also provide an invaluable training ground for journalists, editors and camera operators, including in remote and regional Australia where many young graduates learn their trade.

Free TV's investment in the economy

A report by Venture Consulting, *The Value of Free TV*, released in May 2015 found that the commercial free-to-air television industry:

- generates $3.2 billion per annum of economic surplus across viewers, advertisers and broadcasters;
- pumps $2.8 billion per annum of economic investment back into the Australian economy through production, payroll, technology, advertising, taxation and supporting jobs in broadcasting and the independent production sector;
- contributes $6 out of every $10 spent on Australian content;
- directly employs people across technical, operational, financial and management roles; and
- pays significant taxes in Australia.[9]

Figure 2 demonstrates the value we provide to the community through our investment in content, the production sector and the economy.

[7] Ratings data sourced OzTAM and RegionalTAM, 5 cap cities, 6 aggregated regional markets, 1 July 2015 – 30 June 2016, all day, metro and regional figures are combined to form a national estimate, based on FTA channels, consolidated 7 day data.

[8] Venture Consulting, The Value of Free TV, the contribution of commercial free-to-air television to the Australian economy, May 2015.

[9] Ibid.

FIGURE 2


BREAKING NEWS
Trusted news source
6 in 10 Australians believe commercial free-to-air TV is the most trusted source for news and current affairs
Source: The research was conducted on behalf of Free TV Australia by independent researchers Crosby|Textor, February 2015
15,000 jobs
Free TV supports more than 15,000 jobs in Australia
Source: The Value Of Free TV: The Contribution Of Commercial Free-To-Air Television To The Australian Economy, prepared by Venture Consulting for Free TV Australia, 2015
Popular Australian stories
All of the top 40 programs on commercial free-to-air TV in 2015 were Australian made
Source: OzTAM and RegionalTAM, 5 capital cities, 6 aggregated regional markets, 1 January - 31 December 2015
We invest over $1.5 billion
every year in creating Australian programs
Source: The Value Of Free TV: The Contribution Of Commercial Free-To-Air Television To The Australian Economy, prepared by Venture Consulting for Free TV Australia, 2015
Australia needs Free TV
Valuable to the community
88% of Australians (or almost 9 in 10) believe commercial free-to-air TV is valuable to the community
Source: The research was conducted on behalf of Free TV Australia by independent researchers Crosby|Textor, February 2015
13 million viewers
tune into Free TV every day
Source: OzTAM and RegionalTAM, 5 capital cities, 6 aggregated regional markets, 1 January - 31 July 2016
We fund a strong Australian voice
$6 out of every $10 spent on Australian content comes from Free TV
Source: The Value Of Free TV: The Contribution Of Commercial Free-To-Air Television To The Australian Economy, prepared by Venture Consulting for Free TV Australia, 2015
We contribute $2.8 billion
per year back into the Australian economy
Source: The Value Of Free TV: The Contribution Of Commercial Free-To-Air Television To The Australian Economy, prepared by Venture Consulting for Free TV Australia, 2015
60 YEARS OF
FreeTV Australia
October 2016

Investment not sustainable in current environment

To be able to continue this investment in Australian content and to continue underpinning the local screen production industry, commercial free-to-air television broadcasters need the regulatory framework to keep pace with the realities of the new and evolving media landscape.

As can be seen from the graphs below, the costs of Australian content are increasing year on year while at the same time, advertising revenue (broadcasters' primary revenue source) is decreasing. This is not sustainable.

Figure 3 shows the % change in free-to-air advertising revenues during Jan-Jun 2015 and Jan-Jun 2016.

Figure 4 shows the decline in commercial free-to-air broadcasters' profit margins over twenty years.[10]

FIGURE 3: % CHANGE IN FREE-TO-AIR ADVERTISING REVENUES

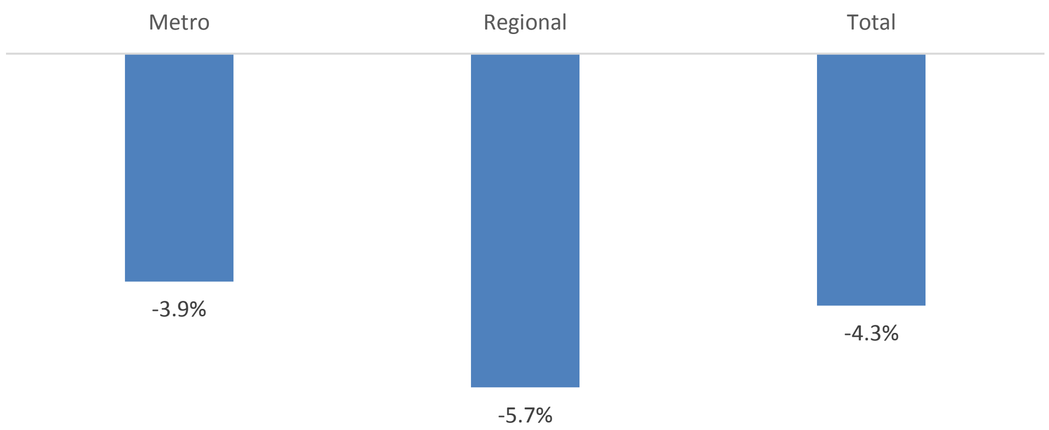
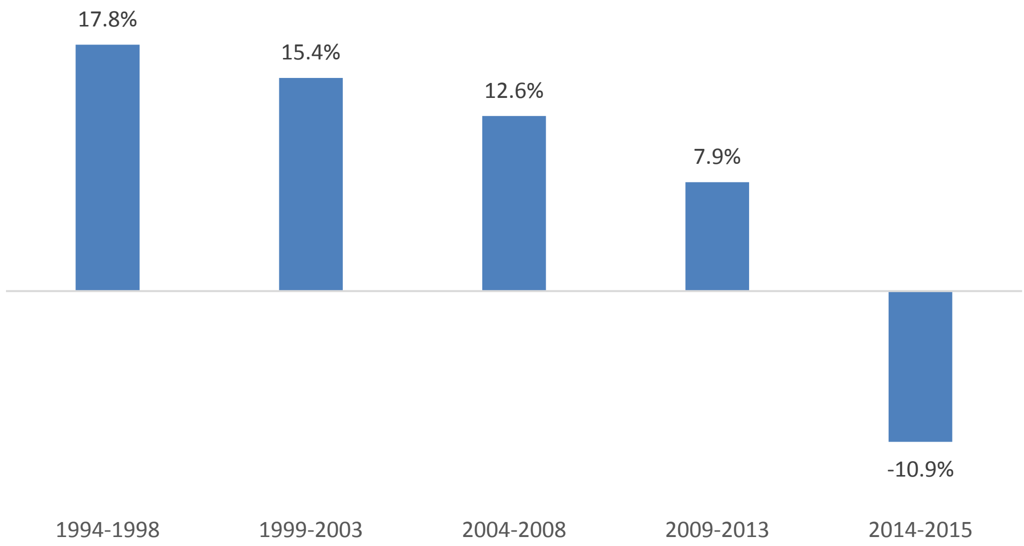


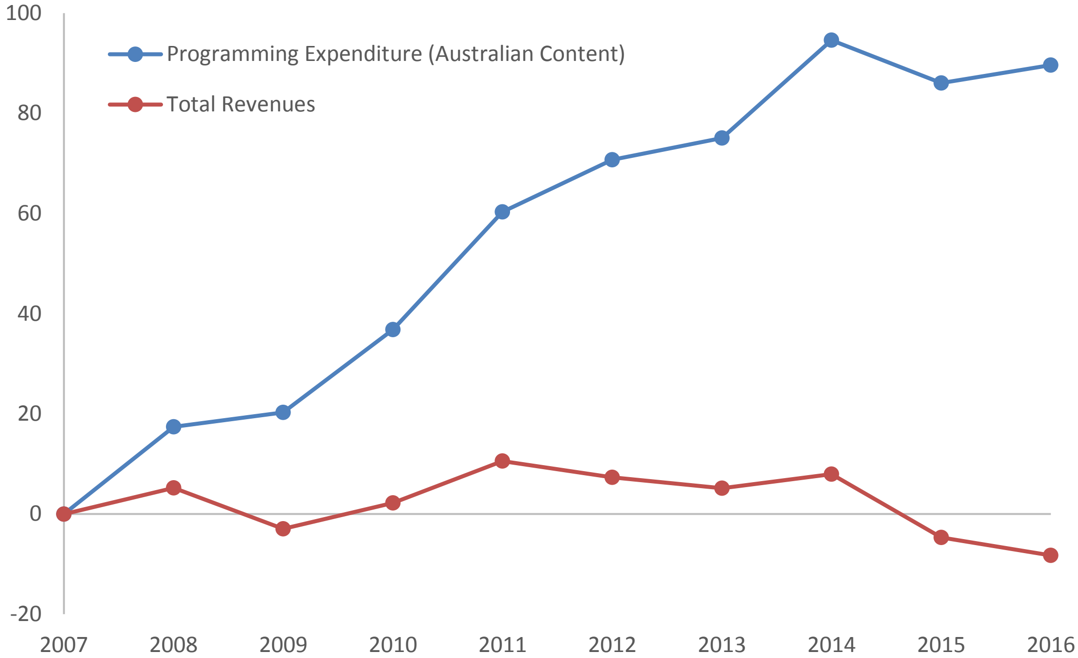
FIGURE 4: PROFIT MARGINS OF COMMERCIAL FREE-TO-AIR TV, 5-YEAR AVERAGE



[10] Prepared for Free TV Australia by Venture Consulting, April 2017.

Figure 5 shows Free TV members' revenues and their spend on Australian content, indexed. It highlights why the current environment is not sustainable for commercial free-to-air television broadcasters and why it is critical for the key factors threatening commercial broadcasters' sustainability to be addressed.

FIGURE 5: FREE-TO-AIR REVENUES AND SPEND ON AUSTRALIAN CONTENT[11]



Key factors that challenge the growth and sustainability of the commercial free-to-air television industry

In the context outlined above, there are a range of regulatory and policy factors that challenge the commercial free-to-air television industry's sustainability. We address the key regulatory threats to the industry below, including licence fees, Australian content quotas, tax offsets, the role of the national broadcasters and other matters.

1. Licence fees

Australian broadcast licence fees are the highest in the world and directly threaten the growth and sustainability of the TV industry. Without urgent action to substantially reduce or abolish the licence fees — as occurred in most other countries many years ago — our investment in the content production sector and the Australian jobs it supports will be at risk.

Commencing in 1964, the licence fee regime belongs to an era when content could only be delivered over broadcast spectrum. As the single pathway of delivering content, the licence fee provided the taxpayer with an additional return on the valuable broadcast spectrum.

Today, the old policy rationale for broadcast licence fees is no longer applicable. Broadcast spectrum is no longer the only way of distributing video content, with many giant multinational companies now competing for eyeballs. Over 40 per cent of the

[11] Prepared for Free TV Australia by Venture Consulting, April 2017.

spectrum previously allocated to broadcasters has been sold and is being used to provide competing services.

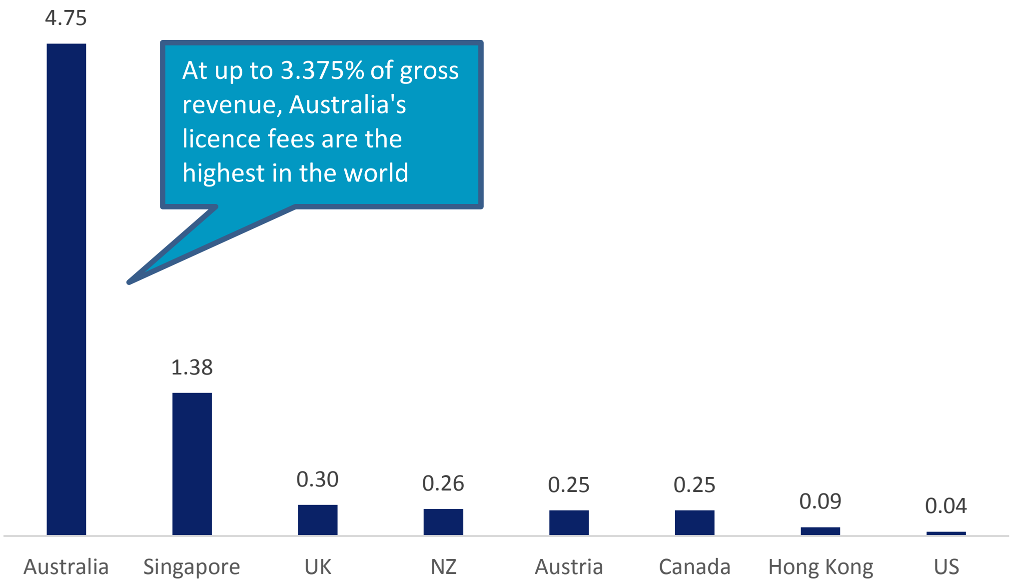
Commercial free-to-air broadcasters now face an entirely different competitive landscape to the one that existed when licence fees were introduced, as highlighted in Figure 6.

FIGURE 6: THE NEW MEDIA LANDSCAPE

These new entrants, including many giant multinational media companies, do not pay licence fees. Not only do they not pay licence fees, but the Australian Parliament has been forced to continually update tax legislation — the Diverted Profits Tax and the Multinational Anti-Avoidance Law — to ensure they pay even a moderate level of tax. In comparison, all commercial free-to-air broadcasters are subject to the corporate rate of taxation as well as an additional broadcast licence fee that applies even when a broadcaster is making a loss.

In this changing media landscape, Australia's licence fee regime remains wildly out of step with comparable countries. As shown in Figure 7, taking into consideration the amount of broadcast spectrum available and the population, Australia is a global outlier.

FIGURE 7: LICENCE FEES AUSTRALIA'S UNCOMPETITIVE POSITION (A$ CENTS /MHZ / POP BY COUNTRY)[12]



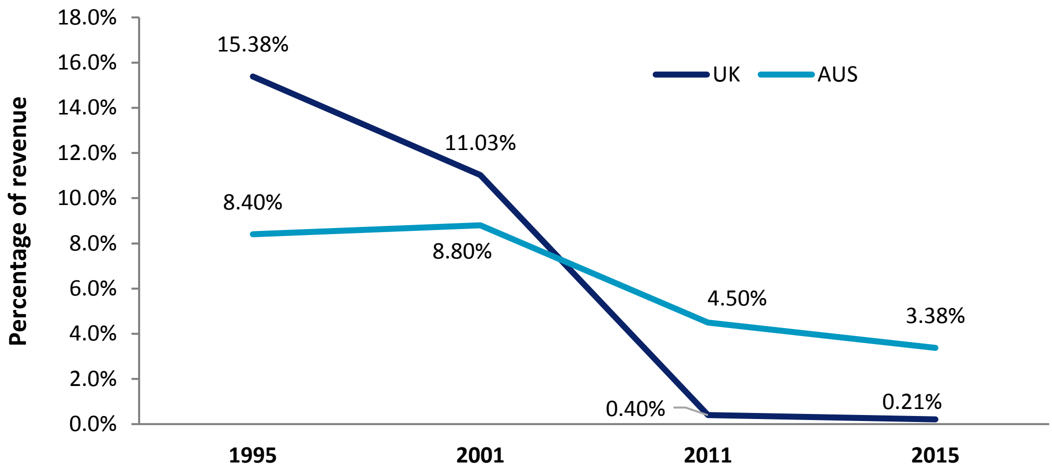
Bringing broadcasting licence fees in line with international best practice is critical to the industry's ability to continue to invest in high quality local content, and regional and local news.

Removing broadcast licence fees would help create a level financial playing field. This would enable Australian broadcasters to make the significant investments in digital platforms and assets needed to compete with global players, continue to provide Australian content, including local news services, and support local jobs.

As shown in

Figure 8, the UK proactively reduced its licence fees in recognition of the changing video content environment and the need to protect local content ecosystems.

FIGURE 8: LAGGING BEHIND: SLOW TO REACT TO NEW REALITY[13]



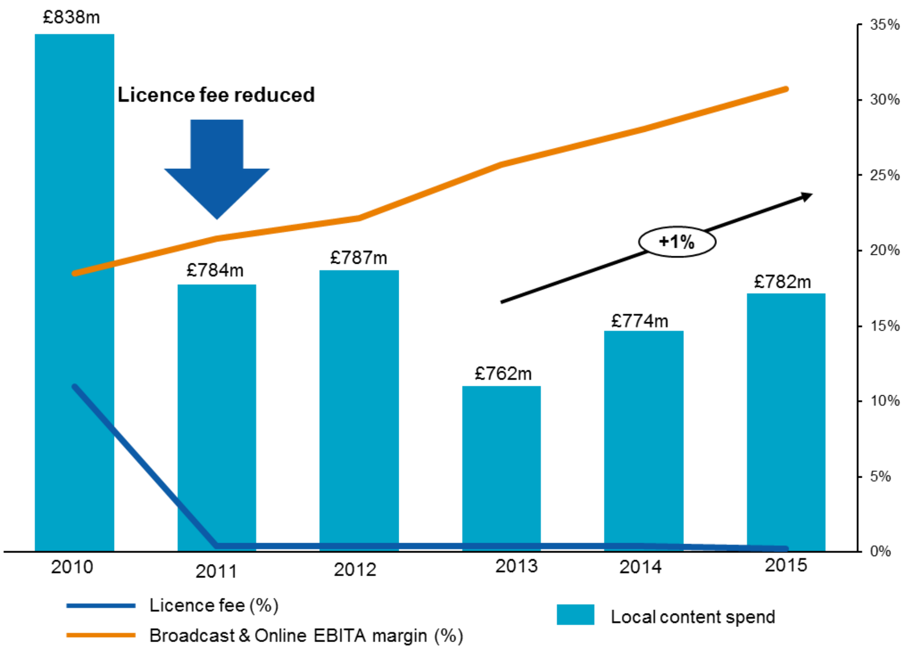
As a result, broadcasters in markets such as the UK were able to continue investing, innovating, producing local content and supporting local jobs. Figure 9 demonstrates

[12] Prepared for Free TV Australia by Venture Consulting, April 2017.

[13] Prepared for Free TV Australia by Venture Consulting, 2016.

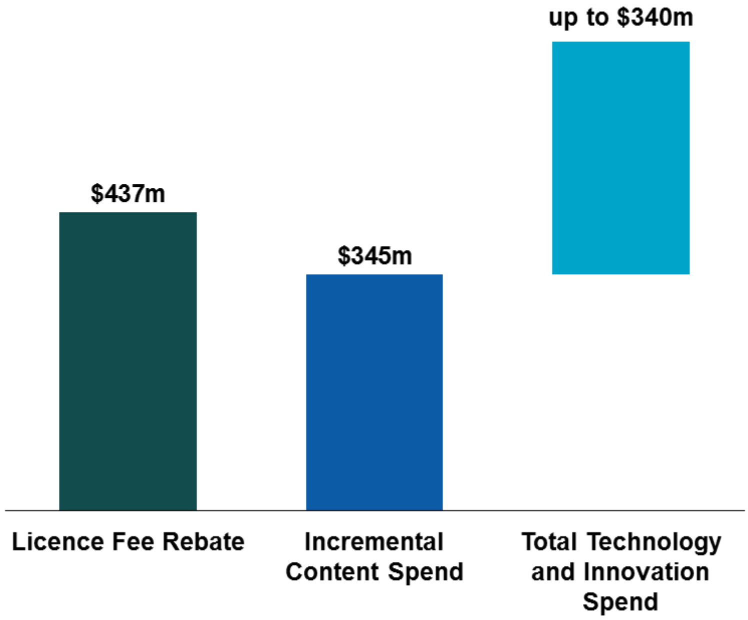
the UK example, where the cut in licence fees stabilised the local content spend and enabled ITV to invest in new technology and services.

FIGURE 9: IMPACT OF REDUCING BROADCAST LICENCE FEE



We know that the same would happen in Australia if licence fees are reduced further because that is what has happened following previous cuts. In between financial years 2013-2015, broadcasters continuously re-invested licence fee rebates into the economy, through an additional $345 million spend on local content. In addition, metropolitan broadcasters have spent $345 million on innovation and technology – bringing a range of free catch up and live streaming services to the Australian public as well as innovations such as HbbTV and investments in local SVOD streaming services Stan and Presto (Figure 10).

FIGURE 10: AGGREGATE LICENCE FEE REBATE AND FREE TV SPEND ($M, FY13-15)[14]



The abolition of the licence fee would enable broadcasters to divert the licence fee money currently going to the government's consolidated revenue to the domestic production industry through spend on local content and new platforms and innovation.

Without reform of the licence fees, this spend will be at risk, with a material threat to jobs and wider economic, and cultural and fiscal impacts for the Government and viewers.

2. Delivery of Australian content

A review of the Australian content quotas is required

An in-depth review of the Australian content regime is required. The review should investigate whether the objectives of the existing Australian content rules are sustainable and whether there are more effective means by which they could achieve these policy goals. The review should also focus on whether the existing quota structure delivers the content that Australian audiences want to watch, now and into the future.[15]

Commercial free-to-air television broadcasters are subject to the most onerous content obligations of any platform. These include:

- Quota requirements that 55% of all programming on broadcasters' main channels and 1460 hours per year on broadcasters' multi-channels between 6 am and midnight must be Australian content

- Complex sub quota obligations in relation to adult drama, children's drama and documentary programs

- Additional obligations under the *Children's Television Standards 2009* in relation to C and P programs (see below)

[14] Prepared for Free TV Australia by Venture Consulting, April 2017.

[15] Broadcasting Services (Australian Content) Standard 2016, Explanatory Memorandum.

- Additional obligations on regional commercial television licensees in certain aggregated licence areas in relation to minimum levels of material of local significance (news bulletins, and news and weather updates and other programming such as local fishing shows, regional AFL programs and current affairs specials)

- The *Television Program Standard for Australian Content in Advertising* which requires a minimum of 80 per cent of the advertising content broadcast on commercial television between 6am and midnight to be Australian sourced/locally produced

Despite the fact that there has been a proliferation of platforms and options for accessing content since the time these rules were introduced, they only apply to commercial free-to-air television.

The current sub quotas for drama, children's drama and documentary programs were introduced in 1992 by the *Broadcasting Services Act 1992* (BSA) and have not been reviewed since the Australian Broadcasting Authority undertook its review in 2001-2002. The 55% transmission quota was introduced by the Australian Content Standard in 1996,[16] and has not been reviewed since that time. The Children's Television Standards (CTS) have not been reviewed since 2007.

Other jurisdictions including the UK and Canada have recently reviewed their content obligations on commercial broadcasters in light of the new media landscape.[17] A similar review is needed in Australia.

Children's quotas should be abolished

Free TV members make substantial investments in high-quality children's programming. Despite this investment, there is a decline of child viewing of C and P programs. In light of this, we consider that the children's quota obligations in relation to C and P programming are failing to meet their objectives and should be abolished.

Free TV makes high quality C and P programming

Free-to-air networks and their production partners are proud of the quality of children's programming we make. The quality of that programming is evident from programs such as *Beat Bugs* (Seven), *Hi-5* (Nine), *Dennis the Menace & Gnasher* (Nine), *Scope* (Ten), and *Get Ace* (Ten).

Beat Bugs won best children's series at the 2016 AACTA awards and has also been nominated for a Logie award and a number of daytime Emmy Awards in the US. *Dennis the Menace & Gnasher* won a BAFTA Nomination for Best Children's Series in 2014. *Scope* was produced in association with the CSIRO and was named best children's television program at the 2013 IPAF ATOM awards, and also won the 2008 Japan Prize: The Maeda Prize for 'Best Production, TV Series Division'. *Get Ace* won first prize for best animation at the 2014 Australian Writers Guild Awards, best music for Children's Television at the 2014 Screen Music Awards and was nominated for Best Children's Television Series at the 2014 AACTAs. It has also been sold internationally to various markets.

Despite this, demand for C and P programming on Free TV is low

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[16] Explanatory Notes, Australian Content Standard, Sydney, ABA, December 1995.

[17] For example, the '2015 Let's Talk TV' policy review in Canada, see http://www.crtc.gc.ca/eng/talktv-parlonstele.htm

Despite the high quality of C and P programming made available, the commercial reality is that child audiences for these programs on commercial free-to-air television are very low and declining,[18] as indicated in the ACMA's report, *Children's television viewing – Research overview*.[19]

While the top rating C program in 2005 attracted an average audience aged 0-14 of 185,000,[20] by 2013 the highest rating C program attracted an average 0-14 audience of 30,000, with the highest rating P program attracting an average audience aged 0-14 of 6,000 (with an average of 4000 for the 0-4 pre-school audience).[21]

Although the ACMA found that block programming of C and P content on commercial free-to-air broadcasters' multi-channels has been successful, these numbers show that child viewing numbers of C and P programs have significantly declined. This trend is consistent with the fact that Australian children now also have access to two government funded, ad-free channels (ABC2 and 3), dedicated pay TV channels, thousands of children's content apps, as well as DVDs and catch-up, online or on-demand services such as iView, all of which has changed children's viewing habits when it comes to children's programming.

At the same time, the regulatory rules around C and P content remain onerous and rigid

Under the CTS commercial free-to-air television broadcasters are subject to the most onerous obligations in relation to the amount of children's content they are required to show as well as how and when they are required to show it. They include:

- Quota obligations:
    - A minimum of 260 hours of children's C programs annually
    - A minimum of 130 hours of Australian preschool P programs annually

- Australian content obligations:
    - 50% of C programs in C periods must be first release Australian C programs
    - All P programs must be Australian programs

- Time zone requirements
    - All P and C programs must be shown within designated time bands
        - For C programs, between 7am-8.30am and 4pm-8.30pm Monday to Friday and between 7am – 8.30pm Saturday, Sunday and School holidays
        - For P programs, between 7am – 4.30pm Monday to Friday

- Requirements to broadcast minimum amounts on weekdays
    - A minimum of 30 minutes of P material in P periods every weekday and a minimum of 30 minutes of C material every weekday between certain times

- Advertising restrictions
    - No advertisements can be shown during P programs

[18] ACMA, Children's Television viewing, Research overview, March 2015, Analysis of audience data 2001-13 (Attachment B)

[19] Ibid, 11.

[20] Ibid, 74 (Blinky Bill's White Christmas).

[21] Ibid, 46.

- Time limits on advertising in C periods which restrict the amount of advertising beyond the amounts ordinarily permitted in other programming
- Stringent classification requirements for advertisements suitable for broadcast during C programs. For example, advertisements must not be designed to put undue pressure on children to ask their parents or another person to purchase an advertised product or service and no advertisement can be broadcast more than twice during any 30 minute period.

- ACMA classification requirements
  - All C and P programming must be classified by the ACMA before broadcast in accordance with criteria contained in the CTS,[22] and the Australian Content Standard 2016. Classification is granted for 5 years.[23] In classifying programs for broadcast, the ACMA needs to be satisfied that that the program is made specifically for children (in the case of C programs) or preschool children (in the case of P programs), that it is entertaining, well produced, enhances the understanding of children (or preschool children) and is appropriate for children (or preschool children).

These obligations do not apply to any other platform and no other platform has children's content quotas. The objective of these obligations is to provide children with access 'to a range of quality television programs made specifically for them, including Australian drama and non-drama programs'.[24] However in the context outlined above, where children are moving away from C and P programming on free-to-air television towards other platforms, the existing obligations are no longer fulfilling this purpose.

Monetising this content has always been extremely difficult for broadcasters due to the very stringent restrictions that apply to advertising during C and P programming. The sharp decline in audiences exacerbates that difficulty.

Reform is urgently required to ensure that the framework that applies to commercial free-to-air broadcasters' serves their audiences, including child audiences, and allows them to deliver content in a sustainable way. Abolition of the outdated C and P quotas would facilitate this. It would also be consistent with the Government's Deregulation Roadmap in 2014, which identified this as an area for reform.[25]

3. Tax offsets and funding

Level of Producer Offset

The Producer Offset is a refundable tax offset aimed at assisting Australian producers to build stable and sustainable production companies.[26] For television, the offset is only 20% while for feature films (produced for exhibition to the public in cinemas), the available offset is 40%.

[22] Children's Television Standards 2009, CTS 6.

[23] Children's Television Standards 2009, CTS 15(1).

[24] Revised explanatory memorandum, Broadcasting Services Bill 1992, pp. 61-2.

[25] Department of Communications, 'Communications portfolio: Deregulation Roadmap 2014'.

[26] Screen Australia Report, Getting Down to Business – The Producer Offset five years on, 2012.

The Producer Offset Guidelines state that the higher offset applies for feature films because they can have higher production costs and because it can be hard to finance feature films.[27] However, there is no reason for this regulatory disparity given that:

- Successive Screen Australia Drama Reports indicate that the costs of production for television drama are increasing;[28]
- The premium Australian television content produced for television is equally valuable to viewers, and contributes to a vibrant and successful production sector in the same measure as content produced for feature films; and
- Broadcasters employ large numbers of Australians on in-house productions, in many cases providing valuable training that is used later throughout the industry and importantly providing permanent employment opportunities (which are otherwise rare in the arts/media sector).

The final report of the Convergence Review noted that there was significant support for raising the offset level for television so that it is consistent with the rate for feature films and recommended that;

> *"Premium television content exceeding a qualifying threshold should attract the 40% offset available under the producer Offset Scheme. This will bring premium television content in line with the current rate of the offset available for feature film production."*[29]

The impact of bringing the offset level for television in line with feature films will be to:

- encourage investment in the Australian production industry;
- provide an additional incentives for investment in Australian content; and
- likely increase the volume and quality of Australian content available on free-to-air television.

65 hour cap

Under current legislation, once a series has been in production for 65 commercial hours (which equates to about 5 seasons), it is deemed completed and is no longer eligible for the Producer Offset. This cap should be removed.

There is not a lot of detail documented on why the cap was introduced – the Explanatory Memoranda and other documents only say that at 65 episodes the drama should be 'self-sufficient' and should no longer require the offset. However, the challenges of funding a drama series do not change or ease in any way at year 5 even if the drama is successful. As a result, there are very few examples of dramas that have continued beyond the 65 episode cap.

Without the Producer Offset funding a series becomes extremely challenging as it can almost double the financial contribution required of the broadcast partner. Launching a new Australian drama is difficult, expensive, and risky. It requires a major commitment to publicity and marketing in order to establish new talent, characters, and storylines. It also takes time to build an audience. Broadcasters, content partners, and funding bodies should be able to capitalise on this risk and investment if a drama is embraced by audiences and continues to have a long run.

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[27] Producer Offset Guidelines, 2015.

[28] Screen Australia Drama Reports 2013/14, 2014/15, 2015/16.

[29] Department of Broadband Communications and the Digital Economy, Recommendation 16, Convergence Review Final Report, March 2012.

Removal of the cap is supported by the production industry. The longer a drama remains in production the higher the likelihood that investors and equity partners (like Screen Australia) will get a return.

This change could be made through a simple amendment to the Income Tax Assessment Act.

Free TV also supports a broader review of the categories of programming that qualify for the production offset.

Other Tax Offsets

In addition to the Producer Offset, Free TV also supports the continuation of the location offset and the post, digital and visual effects (PDV) offset as additional support mechanisms that have successfully maintained production and post-production jobs and facilities in Australia.

Screen Australia funding

Other than tax offsets, Screen Australia is the Federal Government's primary agency for supporting the Australian film and television industry, by way of grant, loan or recoupable investment in Australian content. Broadcasters are the only Australian business currently excluded from eligibility for Screen Australia funding.

Free TV supports the view that all applications for funding should be assessed on their merit, and broadcasters should not be singled out as a distribution platform that is not eligible for Screen Australia funding.

4. Role of the national broadcasters

The national broadcasters, the ABC and SBS, play unique and important roles in Australian life. They have separate and distinct charters:

- ABC—provide services which contribute to a sense of national identity, inform, educate, entertain and reflect Australian cultural diversity; to promote the arts; and to broadcast to other countries programs that will encourage awareness and understanding of Australia;[30]
- SBS—respond to the needs of Australia's culturally and linguistically diverse population and provide multicultural and multilingual broadcasting services.[31]

In recent times however, the national broadcasters have moved away from these obligations. Channels such as the Food Network and Viceland – on SBS, which takes content from a US affiliate, have been criticised for showing mainstream content in direct competition with commercial broadcasters. As indicated in the Nine Network's submission, there are a number of examples that show that SBS is now competing with commercial free-to-air television for commercially significant content which is now showing on SBS.[32] There have also been examples of the SBS and ABC using tax payers' money to compete with each other for sports broadcasting rights, further encroaching on the sphere of commercial broadcasters.[33]

[30] Australian Broadcasting Corporation Act 1983, s 6.

[31] Special Broadcasting Service Act 1991, s 6.

[32] Nine Entertainment Co., Submission to House of Representatives Inquiry into the Australian Film and Television Industry.

[33] For example see http://www.theaustralian.com.au/national-affairs/abcsbs-asian-soccer-war-costs-public-extra-700000/news-story/85da9873a2181e493389b37319b3077d

Last year at Senate Estimates, outgoing ABC managing director Mark Scott said in response to a question whether there is overlap between the charters of the ABC and SBS:[34]

> *"…the core tenets of SBS when it was established, was to provide multicultural broadcasting. I suspect the SBS of today, which is more general interest broadcasting, means the difference between the two broadcasters is not as distinct as it once was."*

This move away from legislative charter obligations means that the important role SBS plays in meeting the needs of culturally and linguistically diverse communities is not being fulfilled, with some of this multicultural programming now moving to community television.[35] The ABC has also been criticised for 'capitalising on SBS's self-abandonment of their Charter in favour of wider appeal to advertisers', and moving away from its own charter towards showing programming more suited to SBS.[36]

The national broadcasters should be focused on their respective charter obligations and they should not show programming in direct competition with the commercial free-to-air industry on a subsidised basis. Any move away from their existing charter obligations will result in the bidding up of costs of local content and will challenge Free TV members' ability to deliver that content. As outlined in the Nine Network's submission, if public broadcasters continue to encroach on the already well-serviced space of commercial TV, it undermines the commercial FTA model and directly threatens the growth of commercial FTA networks who must compete for audience and revenue against a government subsidised broadcaster.

Free TV would also support a review of the national broadcasters' compliance with and obligations under their charters to ensure they remain focussed and relevant.

5. Other issues

Free TV notes that there are a number of other areas where the existing regulatory framework that applies to commercial free-to-air broadcasters either currently challenges or has the potential to challenge the growth and sustainability of the industry. These include:

Retransmission

The current retransmission exception contained in section 212 of the BSA allows competing platforms to benefit commercially from retransmitting commercial free-to-air broadcasts without the consent of the owner of the broadcast. This is not in line with the intended purpose of the exception when it was initially introduced, which was to facilitate reception and self-help facilities in areas with poor terrestrial television reception.37 It is an unwarranted exception to broadcast copyright protection in the Copyright Act and should be repealed in line with the recommendation of the Australian Law Reform Commission (ALRC).[38]

Spectrum licensing framework

For broadcasters to continue to provide high quality and competitive free-to-air services to all Australians, it is critical that:

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[34] Senate Estimates, 2016.

[35] For example, Salam Cafe on Melbourne's Channel 31.

[36] For example see https://saveoursbs.org/

[37] For example, see Australian Law Reform Commission, Copyright and the Digital Economy (ALRC Report 122), 18.8 – 18.16.

[38] Australian Law Reform Commission, Copyright and the Digital Economy, Recommendation 18.

- the existing certainty of access to spectrum that broadcasters currently have under the BSA and the *Radiocommunications Act 1992*, continue under any new legislative framework; and
- that Government support broadcasters' development of a DTT technology pathway that will allow broadcasters to:
  - continue to meet viewer demands in terms of quality of content and viewing experience within their existing spectrum allocations; and
  - transition to new technologies at a rate consistent with consumer adoption.

Copyright

Copyright is an essential mechanism for ensuring the viability and success of creative industries by incentivising and rewarding creators. Australian copyright law provides the fundamental framework that incentivises the production of local content and enables broadcasters and content creators to realise a return and continue to invest in the industry.

The Productivity Commission has recently made a number of recommendations for change to the current copyright system which, if implemented, would undermine commercial free-to-air broadcasters' ability to invest in Australian content. In particular, Free TV opposes:

- Any amendments that would undermine geoblocking or territorial price discrimination
- Any amendments that would expand the existing safe harbour scheme for carriage service providers in the absence of a proper review of the operation of the authorisation infringement provisions in the online environment
- The replacement of the existing fair dealing provisions which provide legal certainty of access to copyright material, with a US style fair use provision

Any changes to the copyright system to implement the Productivity Commission's recommendations regarding geoblocking, safe harbours or fair use, would undermine this ability to invest.

Conclusion

Free TV thanks the Committee for the opportunity to make a submission in relation to the key factors impacting on the growth and sustainability of the commercial free-to-air broadcasting industry.

This Inquiry comes at a critical time for the commercial free-to-air television industry. The status quo, where the costs of investing in Australian content are increasing while revenues are declining, is not sustainable.

To be able to continue to invest in Australian content and underpin the local screen production industry, the regulatory framework that applies to the industry must be updated to enable it to compete with global technology companies that are taking a rapidly growing share of advertising dollars and to continue to deliver the high quality services it currently provides for the benefit of all Australians for free.