

Senate Environment and Communications Legislation Committee

Answers to Questions on Notice

Communications Portfolio

Department of Infrastructure, Transport, Regional Development and Communications

Topic: Broadcasting Legislation Amendment (2021 Measures No. 1) Bill 2021

Written Question on Notice 1:

Senator URQUHART asked:

1. How does Schedule 1 of the Bill, to halve the annual expenditure requirement on subscription television broadcasters for Australian drama programming from 10 per cent to 5 per cent on an ongoing basis, interact with the Australia-US Free Trade Agreement?
2. What are the implications under the Australia-US Free Trade Agreement of halving the annual expenditure requirement on subscription television broadcasters for Australian drama programming from 10 per cent to 5 per cent?
3. Does the Australia-US Free Trade Agreement mean that any reduction in the New Eligible Drama Expenditure Scheme would be permanent?
4. Does the Australia-US Free Trade Agreement mean that any reduction in the expenditure requirement under the New Eligible Drama Expenditure Scheme would preclude the Australian Parliament/Government from ever raising it again in future?
5. Does the Australia-US Free Trade Agreement fetter the discretion of the Australian Parliament/Government to regulate subscription television broadcasters in any way? If so, how?

Answer:

1. The proposed changes to the NEDE Scheme are permitted under the audiovisual exception in Annex II of the Australia-US Free Trade Agreement.

The exception allows for an Australian production expenditure obligation to be applied to subscription broadcasting television services, provided it does not exceed 10 per cent of total program expenditure.

2. See response to point 1.
3. No, the relevant exceptions in Annex II are not subject to a ratchet mechanism, which would make the proposed changes permanent.
4. No, see response to point 3.
5. The obligations imposed by the Australia-US Free Trade Agreement apply to all services, including subscription television broadcasting services, except those that have been expressly excluded as 'non-conforming measures'.

Annex II to the AUSFTA lists non-conforming measures in relation to broadcasting and audio-visual services, including a specific exception for expenditure obligations for the subscription television broadcasting industry.

Annex II also provides an exception for spectrum management and licensing of broadcasting services (including subscription television broadcasting services).