The Senate

Environment and Communications References Committee

Economic and cultural value of Australian content on broadcast, radio and streaming services

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Committee contact details

PO Box 6100
Parliament House
Canberra ACT 2600

Tel: 02 6277 3526
Fax: 02 6277 5818
Email: ec.sen@aph.gov.au
Internet: www.aph.gov.au/senate_ec

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Committee membership

Committee members

Senator Hanson-Young, Chair	AG, South Australia
Senator Jonathon Duniam, Deputy Chair	LP, Tasmania
Senator Anthony Chisholm	ALP, Queensland
Senator the Hon Kristina Keneally, from 15 February 2018	ALP, New South Wales
Senator Steve Martin	NATS, Tasmania
Senator Anne Urquhart	ALP, Tasmania

Substitute members for this inquiry

Senator Sarah Hanson-Young (AG, SA) for Senator Janet Rice from 19 October 2017

Senator Glenn Sterle (ALP, WA) for Senator Anne Urquhart on 16 November 2018

Participating member for this inquiry

Senator Glenn Sterle	ALP, Western Australia

Committee secretariat

Ms Christine McDonald, Committee Secretary

Ms Fattimah Imtoual, Senior Research Officer

Ms Georgia Fletcher, Administration Officer

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Chapter 1

Introduction

Referral and terms of reference

1.1 On 18 October 2017, the Senate referred the following matter to the Environment and Communications References Committee for inquiry and report by 9 May 2018:

> The economic and cultural value of Australian content on broadcast, radio and streaming services, with particular reference to:
>
> (a) the current state and operation of the market for Australian television and music industry, including competition issues relating to the relative market power of producers and broadcasters for traditional, streaming and catch up viewing;
>
> (b) the contribution the Australian television and music industries make to the economy;
>
> (c) the value and importance of:
>
> (i) local content requirements for television, radio and streaming services in Australia, and
>
> (ii) Australian children's television and children's content;
>
> (d) related inquiries including:
>
> (i) recent international reviews and reports, in particular, from the United Kingdom and Canada, and
>
> (ii) submissions made to:
>
> A. the House of Representatives Standing Committee on Communications and the Arts inquiry into factors contributing to the growth and sustainability of the Australian film and television industry, and
>
> B. the Australian and Children's Content Review, undertaken by the Department of Communications and the Arts, the Australian Communications and Media Authority and Screen Australia; and
>
> (e) any other related matters.[1]

1 *Journals of the Senate*, No. 66, 18 October 2017, pp. 2120–2121.

1.2 The Senate granted a number of extensions of time to report[2] until it determined to report on 26 March 2019.[3]

Conduct of the inquiry

1.3 In accordance with its usual practice, the committee advertised the inquiry on its website and wrote to relevant individuals and organisations inviting submissions. The date for receipt of submissions was 31 January 2018. The committee received 43 submissions, which are listed at Appendix 1.

1.4 The committee held four public hearings, as follows:

- Canberra on 11 April 2018;
- Sydney on 1 August 2018;
- Adelaide on 4 September 2018; and
- Canberra on 16 November 2018.

1.5 The list of witnesses who participated in public hearings is at Appendix 2.

1.6 The public submissions, additional information received and *Hansard* transcript are available on the committee's website at: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/AustralianContent.

Acknowledgment

1.7 The committee would like to thank the organisations and individuals who provided evidence to the inquiry.

Structure of the report

1.8 This inquiry is wide-ranging, canvassing evidence in relation to the film and television industry, and the music industry. As such, the report examines these industries separately. It comprises 6 chapters as follows:

- Chapter 1 — provides an introduction to the report;
- Chapter 2 — explores the current operating environment of the Australian screen industry, including some of the challenges it is facing;
- Chapter 3 — details government incentives available for the screen industry; and evidence received in relation to changes which may improve the operation of such incentives;

2 *Journals of the Senate*, No. 93, 27 March 2018, p. 2948; *Journals of the Senate*, No. 102, 25 June 2018, p. 3271; *Journals of the Senate*, No. 134, 3 December 2018, p. 4363; *Journals of the Senate*, No. 118, 17 September 2018, p. 3766.

3 *Journals of the Senate*, No. 140, 14 February 2019, p. 4672.

- Chapter 4 — canvasses evidence received in relation to content quotas for television broadcasters and the effects of these quotas;
- Chapter 5 — explores the evidence received in relation to the music industry, its current operating environment, and its regulatory framework including content quotas; and
- Chapter 6 — contains the committee view.

Other inquiries

1.9 As noted in the terms of reference, a number of other inquiries into the Australian film and television industry have been conducted. These inquiries include:

- *The Gonski Review of Commonwealth Assistance to the Film Industry* (1997);
- *The Review of Divisions 10B and 10BA* (2005), *Review of Division 376 of the Income Tax Assessment Act 1997: Refundable Film Tax Offset Scheme* (2006) and the *Review of Australian Government Film Funding Support* (2006);
- The *Review of the Independent Screen Production Sector* (2010); and
- The *Convergence Review* (2012).

1.10 Most recently, inquiries include those conducted by the House of Representatives Standing Committee on Communications and the Arts, and by the Department of Communications and the Arts in conjunction with the Australian Communications Media Authority and Screen Australia.

House of Representatives Standing Committee on Communications and the Arts

1.11 On 31 January 2017, the Minister for Communications and Minister for the Arts, Senator the Hon Mitch Fifield referred an inquiry into the sustainability of Australia's film and television industry to the House of Representatives Standing Committee on Communications and the Arts.

1.12 The committee made 13 recommendations, broadly grouped under the following categories: tax incentives for screen production; Australian content quotas; and other issues.

1.13 The recommendations in relation to tax incentives available for screen production included:

- introducing a single Producer Offset of 30 per cent for all qualifying productions, including film and television;
- removing the 65 hour cap on television series accessing the Producer Offset;
- increasing the Location Offset to 30 per cent;
- reducing the minimum qualifying Australian production expenditure (QAPE) for pilot features;

- decoupling the Location, and Post, Digital and Visual Effects (PDV) offsets; and
- making the Location and PDV offsets platform neutral to allow any production to be eligible if QAPE requirements are met.[4]

1.14 The committee also made a number of recommendations in relation to Australian content quotas including:

- the implementation of reforms to the children's content sub-quotas;
- the redefinition of 'first-release' to mean first broadcast anywhere in the world;
- establishing a requirement for subscription video on demand (SVOD) services to invest a percentage of Australian earned revenues in new Australian content; and
- replacing some or all of the first release children's screen content quota with a contestable fund to support the creation of Australian's children's programs.[5]

1.15 In relation to the Australian Broadcasting Corporation (ABC) and the Special Broadcasting Service (SBS), the committee made a number of recommendations, including:

- that the ABC Charter should be amended to require a minimum hours-based quota for first release children's screen content; and
- the SBS Charter be amended to require additional multicultural programming to be sourced domestically so that a minimum of 50 per cent Australian content in shown across all its channels. This would also include a commitment to more content from regional areas.[6]

1.16 The committee also examined other issues in Australia's screen industry and recommended that:

- 10 per cent of Screen Australia's funding be earmarked for productions outside of metropolitan Sydney or Melbourne;
- the *Interactive Games Fund* be reinstated; and
- the Australian Government expand the current co-production program by negotiating with additional countries in Asia.[7]

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4 House of Representatives Standing Committee on Communications and the Arts, *Report on the inquiry into the Australian film and television industry*, p. xv.

5 House of Representatives Standing Committee on Communications and the Arts, *Report on the inquiry into the Australian film and television industry*, p. xvi.

6 House of Representatives Standing Committee on Communications and the Arts, *Report on the inquiry into the Australian film and television industry*, p. xvi.

7 House of Representatives Standing Committee on Communications and the Arts, *Report on the inquiry into the Australian film and television industry*, p. xvii.

Australian and Children's Screen Content Review

1.17 In May 2017, the Australian Government announced the Australian and Children's Screen Content Review (the Review) which would be conducted by the Department of Communications and the Arts in conjunction with the Australian Communications and Media Authority (ACMA) and Screen Australia.

1.18 The Review was commissioned in recognition of the changes in audience consumption habits, the introduction of new distribution platforms and increasing competitive pressure on Australian content producers and distributors.[8]

1.19 The Review's objective was to provide policy options to Government on the most efficient and effective support mechanisms to ensure the ongoing availability of Australian screen content to domestic and international audiences regardless of platform. Specifically, mechanisms to foster and support Australian drama, documentary and children's content and the Australian Screen Production Incentive will be reviewed. The Review considered:

- the economic and social value of Australian screen content to the Australian community;
- the current and likely future market for Australian screen content production and distribution; and
- whether the Australian Government's current policy settings:
    - are relevant to current industry practice;
    - appropriately target content that requires intervention;
    - ensure an approach that works across a diversity of platforms;
    - promote a sustainable production and distribution sector; and
    - are able to support Australian content on any platform into the future.[9]

1.20 At the time of reporting, the findings of the Review have not been made public by the Australian Government.

8 Australian and Children's Screen Content Review Terms of Reference, https://www.communications.gov.au/documents/australian-and-childrens-content-review-terms-reference.

9 Australian and Children's Screen Content Review Terms of Reference, https://www.communications.gov.au/documents/australian-and-childrens-content-review-terms-reference.

Chapter 2

Current operating environment of the Australian screen industry

2.1 Many of the submitters that provided evidence to the committee made suggestions for changes to the regulatory framework governing the broadcast, radio and streaming service industries in Australia.

2.2 It is important to understand the context in which these suggestions are made, namely, the economic and cultural value of the screen industry, and the aspects of the current operating environment which are affecting the success of these industries. In particular, the impact of changing consumer behaviour, and technological developments.

2.3 Traditionally, the Australian broadcasting landscape has been dominated by a combination of privately owned, commercial broadcasters, and public sector broadcasting services. However, the internet has significantly changed both consumer behaviour, and seen the rapid expansion and uptake of subscription video on demand (SVOD) services, and online content platforms such as YouTube.

2.4 The television industry was described as being at a 'critical point in its history' as it has 'changed more in the past decade than at any time since its creation'. Of particular note, consumers are now able to 'access television-style content on multiple digital devices and through a plethora of platforms and services'. This includes access to free-to-air TV, pay TV services, SVOD services including Netflix and Stan, and a wide array of online content through websites such as YouTube.[1]

2.5 The following sections outline the evidence received in relation to these issues.

Economic and cultural value of the screen industry

2.6 The following sections outline the evidence received in relation to the current economic and cultural value of the Australian screen industry. Central to this evidence are the findings of *What are our stories worth? Measuring the economic and cultural value of Australia's screen sector* (the Deloitte Report) and the *Measuring the Cultural Value of Australia's Screen Sector* (the Olsberg Report).

Economic value

2.7 In 2016, Deloitte Access Economics was engaged by Screen Australia to measure and quantify the economic value of the Australian screen sector. The Deloitte

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1 Free TV Australia, *Submission 6*, p. 3.

Report considered the Australian local screen industry and its impact on the economy through market activity, exports, tourism, and jobs. The report also examined audience value and cultural value. It examined all screen production activity in Australia, including local production with Australian creative control (so-called 'core screen content'), overseas production filmed or edited in Australia ('footloose production'), and other types of screen content produced in Australian including digital games production.[2]

2.8 The Deloitte Report found that in 2014–15 the Australian screen industry contributed:

- $3072 million in value add to the Australian economy; and
- 25,304 full time equivalent (FTE) jobs.[3]

2.9 The Deloitte Report found that of those broad figures:

- core screen content contributed $847 million in value add, and 7650 FTE jobs;
- footloose productions contributed $382 million in value add, and 4093 FTE jobs; and
- digital games production contributed $123 million in value add, and 1053 FTE jobs.[4]

2.10 The Deloitte Report found that core Australian content generated $252 million in export earnings in 2014–15, and the screen industry as a whole generated $725 million in tourism expenditure in Australia.[5] This compares to the estimated $640 million of tourism expenditure in Sydney which can be associated with the Sydney Opera House.[6] The Deloitte Report found that approximately 230,000 international tourists either visit or extend their stay in Australia every year as a result of viewing Australian film and television content.[7]

2 Deloitte Access Economics, *What are our stories worth? Measuring the economic and cultural value of Australia's screen sector*, 2016, pp. 1–2.

3 Deloitte Access Economics, *What are our stories worth? Measuring the economic and cultural value of Australia's screen sector*, 2016, p. v.

4 Deloitte Access Economics, *What are our stories worth? Measuring the economic and cultural value of Australia's screen sector*, 2016, p. v.

5 Deloitte Access Economics, *What are our stories worth? Measuring the economic and cultural value of Australia's screen sector*, 2016, p. v.

6 Screen Australia, *Submission 7*, Attachment 1, p. 6.

7 Deloitte Access Economics, *What are our stories worth? Measuring the economic and cultural value of Australia's screen sector*, 2016, p. 3. See also Northern Territory Government, *Submission 32*, p. 5.

Evidence from witnesses

2.11 In addition to the findings of the Deloitte Report, the committee received evidence from a range of witnesses detailing the economic value of the screen industry. Screen Australia submitted that 'the screen production and distribution industries generate a significant amount of activity and employment across the economy in delivering both local and foreign content to Australians—from ticket and popcorn sellers to television schedulers to publicity managers and distributors'.[8]

2.12 Screen content also returns revenue to the economy through exports. For example, money flows into the Australian economy from sources such as a share of the international box office earnings, broadcast licenses, and international DVD or Blu-ray sales. Screen Australia noted that in 2014–15, total export earnings from scripted narrative content alone (feature films, TV dramas, and documentaries) were at least $252 million.[9]

2.13 State and territory governments provided evidence of the economic benefits of screen production occurring in their jurisdictions. For example, the Queensland Government submitted that it recognises the economic value of the screen industry, and has provided $30 million over four years via the *Production Attraction Strategy*. This strategy 'continues to produce results, with Queensland a clear destination of choice by producers and studios looking for the best location to film'.[10]

2.14 The Queensland Government submitted that in 2016–17, Screen Queensland (SQ) funded 33 domestic productions and four international productions that delivered a direct production expenditure of $214 million, and created an estimated 2,340 jobs. Of the 33 domestic productions, 28 were Queensland based screen entities and five were interstate screen entities working in Queensland on domestic projects.[11]

2.15 The Queensland Government told the committee that in December 2017, it provided an additional $20 million in funding to SQ in order to attract more movie blockbusters and television series to Queensland. It submitted that this would continue generating jobs for the screen workforce whilst also boosting the state's economy.[12]

2.16 Similarly, the Northern Territory Government submitted that the screen industry generates direct economic benefits to the Northern Territory in the form of employment and economic activity. It stated that 'for every dollar the NTG [Northern Territory Government] spends supporting and attracting production, there is a direct expenditure increase on average of around $10'. The Northern Terriroty Government

8 Screen Australia, *Submission 7,* Attachment 1, p. 5.

9 Screen Australia, *Submission 7*, Attachment 1, p. 5.

10 Queensland Government, *Submission 29*, p. 6.

11 Queensland Government, *Submission 29*, p. 6.

12 Queensland Government, *Submission 29*, p. 7.

explained that this led, for example, to the creation of 55 jobs for the production of Mr Warwick Thornton's internationally awarded feature *Sweet Country* in 2016–17. It detailed:

> For a total NTG expenditure of $200,000 in production attraction, $1.2 million was spent in the local economy. This represents cost-effective job creation and compares favourably to other industries.[13]

2.17 Witnesses noted the diversity of the sectors involved in film production, and the 'flow on' benefits of production in Australia. For example, Mr Borg, Managing Director, Fox Studios Australia stated:

> The industry is incredibly diverse, from financial accountants who understand how to finance and structure a production, through to copyright lawyers, right through to some of the more technical areas, through to hairdressers, seamstresses, carpenters and electricians, as well as those in the digital field now, with visual effects.[14]

2.18 Similarly, the Queensland Government noted the findings of the Deloitte Report that the economic benefits associated with a strong Australian screen industry have 'flow on effects observable in other industries', such as tourism. It submitted that though the peak of interest appears during and after the release of a production, benefits related to tourism can accrue to places long after filming has ended. For example, the Bowen community in north Queensland reported benefits flowing to the town due to its association with the Baz Luhrmann film *Australia*, three years after the completion of filming in 2008. Similarly, the Gold Coast Film Festival has implemented a tour of regional locations where productions have been filmed, and these tours provide benefits to regional and local communities.[15]

2.19 Australian screen content was acknowledged by Screen Australia as a 'powerful driver of tourism', and it submitted that 'films and programs strengthen Australia's brand and provide compelling portraits of the country as a destination'. Beyond tourism to filming locations as described above by the Queensland Government, screen content can also 'more generally drive visitation to the country through the portrayal of its features and characteristics, such as landscapes, attractions and people'.[16]

2.20 Ms Courtney Gibson, Chief Executive Officer, South Australian Film Corporation (SAFC) also noted the financial benefits to local communities from production. Ms Gibson stated that during the filming of the *Pirates of the Caribbean* films in Queensland, an estimated $4 million were spent at Bunnings for the purchase of materials to build sets. Ms Gibson also noted that film production results in money

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13 Northern Territory Government, *Submission 32*, p. 3.

14 Mr Wayne Borg, Fox Studios Australia, *Committee Hansard*, 4 September 2018, p. 24.

15 Queensland Government, *Submission 29*, p. 7.

16 Screen Australia, *Submission 7*, Attachment 1, p. 5.

being spent on 'hospitality and retail'. Companies which are employed on productions are also able to invest their profits to 'continue to keep pace with technological upgrades so that they maintain a standard of excellence in what they can deliver that keeps them, and Australian more broadly, competitive'.[17]

2.21 The post-production industry also provides economic and employment opportunities for local staff. Ms Courtney Gibson, SAFC, noted that international feature films such as *Thor*, *Gravity*, *X-Men* and *Wolverine*, and the *Pirates of the Caribbean* film franchise were all post-produced in Australia. Ms Gibson highlighted that the South Australian Government provides an exclusive 10 per cent state rebate for all post-production that occurs in the state in order to attract business. Ms Gibson described the post-production industry as 'very, very big business with the capacity to grow even bigger'.[18]

Cultural and audience value

2.22 Despite screen content regularly defining and embodying national pride, cultural identity, and social cohesion, evaluating the cultural and audience value of Australian screen content is complex.[19] In the Deloitte Report, Deloitte Access Economics measured audience value in two ways:

- As a combination of revenue from consumers to the screen sector, such as ticket sales, combined with any 'consumer surplus' benefit above what people paid; and
- By the value of time spent watching Australian screen content, which is particularly useful in instances where the content is free to watch.[20]

2.23 It found that the total audience value of Australia's film and television viewing in 2014–15 was approximately $17.4 billion in 'consumer welfare benefit'.[21]

2.24 Olsberg SPI, commissioned by Screen Australia in 2016 to measure the cultural value of Australian screen content, surveyed over a thousand people about their viewing habits and the way in which they value Australian content. It found that Australians value Australian screen content highly, with 64 per cent reporting that local content accounted for half of their media consumption, and 22 per cent reporting that most or all of their viewing was Australian.[22]

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17 Ms Courtney Gibson, South Australian Film Corporation (SAFC), *Committee Hansard*, 4 September 2018, p. 30.

18 Ms Courtney Gibson, SAFC, *Committee Hansard*, 4 September 2018, p. 28.

19 Screen Australia, *Submission 7*, Attachment 1, p. 9.

20 Deloitte Access Economics, *What are our stories worth? Measuring the economic and cultural value of Australia's screen sector*, 2016, p. 4.

21 Deloitte Access Economics, *What are our stories worth? Measuring the economic and cultural value of Australia's screen sector*, 2016, p. 4

22 Olsberg SPI, *Measuring the Cultural Value of Australia's Screen Sector*, 2016, p. 1.

2.25 The Olsberg Report considered three ways in which screen productions generate cultural impact including: instrumental value; institutional value; and intrinsic value.

- Instrumental value describes where screen content has direct social or economic impacts. For example, *Gallipoli* helped to define Australian self-identity, and launched the international careers of Peter Weir and Mel Gibson;
- Institutional value describes where an organisation, government or country are able to gain the trust and esteem of the public though screen content. For example *Gallipoli* re-established respect for the ANZAC, and Australia's contribution to the Gallipoli campaign; and
- Intrinsic value describes screen content which allows individuals in a society to engage with ideas and aesthetic excellence. Intrinsic value is highly subjective, and therefore difficult to evaluate.[23]

2.26 The Olsberg Report highlighted productions such as *Rabbit-Proof Fence*, *The Sapphires*, and *First Australians* as producing instrumental value through exploring the treatment of Indigenous Australians and generating 'long-term cultural value'. The Olsberg Report concluded that Australian screen productions play a role in changing the way in which 'Australia sees and runs itself, and the way the rest of the world sees Australia'.[24]

2.27 The Olsberg Report also highlighted the cultural impact of children's television. It argued that children's television content has 'a particular ability to educate its viewership about the world around them'. The Olsberg Report also noted a strong preference for Australian children's content amongst viewers.[25]

Evidence from witnesses

2.28 In addition to the findings of the Olsberg Report, the committee received evidence from a range of witnesses detailing the social and cultural value of the screen industry. Screen Australia submitted that 'Australian screen stories are valued for their diversity and distinctiveness'[26] and the Queensland Government stated that:

> …screen mediums promote social inclusion and connectedness, which in turn form the foundation of social capital, from which benefits originate and contribute to social welfare.[27]

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23 Olsberg SPI, *Measuring the Cultural Value of Australia's Screen Sector*, 2016, p. 2.

24 Olsberg SPI, *Measuring the Cultural Value of Australia's Screen Sector*, 2016, p. 2.

25 Olsberg SPI, *Measuring the Cultural Value of Australia's Screen Sector*, 2016, p. 4. The cultural impact of children's and Australian television is explored further in Chapter 4.

26 Screen Australia, *Submission 7*, Attachment 1, p. 7.

27 Queensland Government, *Submission 29*, p. 7.

2.29 Screen Australia noted that many pieces of Australian screen content demonstrate various combinations of instrumental, institutional, and intrinsic value.

- Films such as *Rabbit-Proof Fence* and *The Sapphires* brought true stories of Australia's people and history to wide audiences in a strongly engaging and entertaining format. In addition to critical acclaim and strong box office success, these films helped to achieve understanding of, and change attitudes to, Australia's Stolen Generations.[28]
- Television series such as *Number 96*, *A Country Practice*, and *Offspring* have informed and challenged audiences whilst entertaining them. Popular Australian dramas have presented confronting issues such as sexuality, racism, disability, and grief in an accessible commercial format. This has provided opportunities for shared conversations and connection to characters and situations beyond viewers' lived experiences.[29]
- Programs made by Indigenous Australians such as *First Australians*, *Redfern Now*, and *Songlines* preserve language and culture and bring a wide range of Indigenous Australian stories to both Indigenous and non-Indigenous Australian viewers. Indigenous talent, on 'both sides of the camera' has also been met with global critical acclaim, which builds esteem for Australia globally.[30]
- Australian documentaries, such as the filming of the 1896 Melbourne Cup and *Howard on Menzies* (2016), have recorded and preserved the diversity and changing face of the Australian nation and people. Documentaries also have a long history of leading and fostering change in attitudes, practices and laws. For example, *Manslaughter* (1957) examined the impact of the Maralinga nuclear test range on local communities.[31]
- Children in particular benefit from seeing and hearing their own country and culture reflected in screen content. Programs such as *Play School* contribute to learning, language acquisition and school readiness. Programs for older children such as *Little Lunch*, *Round the Twist*, and *Dance Academy* help children to understand the world and their place in it, whilst also providing age-appropriate guidance around complex issues such as birth, death, and bullying. A number of Australian children's programs are also used as learning tools in the classroom. Children's programs such as *Skippy*, and *H2O: Just Add Water* have been hugely popular internationally, showcasing Australia to children worldwide, and launching the careers of young actors.[32]

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28 Screen Australia, *Submission 7*, Attachment 1, p. 10.

29 Screen Australia, *Submission 7*, Attachment 1, p. 10.

30 Screen Australia, *Submission 7*, Attachment 1, pp. 10–11.

31 Screen Australia, *Submission 7*, Attachment 1, p. 11.

32 Screen Australia, *Submission 7*, Attachment 1, p. 11. Children's content is discussed further in Chapter 4.

2.30 State and territory governments also provided evidence of the value of producing content which showcases uniquely regional stories and voices. For example, the Queensland Government submitted that it places a strong focus on showcasing Queensland and Australian perspectives and narratives. It stated that through investment, incentives focused on producing and developing content, building capacity in the sector, and broadcasting, the Queensland Government ensures that locally produced content with distinct and diverse Queensland and Australian voices is available.[33]

2.31 This was echoed by the NT Government which submitted that the NT screen industry is diverse in its makeup, and highly values the development and production of unique Territory stories.[34]

Challenges

2.32 The committee heard that the screen industry, in particular the television sector, is facing a range of new challenges. These include:

- intensifying competition from new entrants not bound by the same regulation as existing service providers, and which are able to invest to grow at much greater rates than local broadcasters; and
- the growth of subscription video on demand (SVOD) and mobile viewing through which consumers are increasingly self-aggregating content through SVOD and 'over the top' (OTT) apps.[35]

2.33 Locally, intensifying competition in the television broadcast industry has manifested in four key ways, as detailed below.

- The widespread and rapid uptake of 'direct to customer' and SVOD services such as Netflix, Amazon Prime and Hayu (NBC).
  - In 2016, 7.1 million Australians used SVOD services, with Netflix subscribers or users making up 2.8 million of that total.[36]
  - Streamed programming in Australia now accounts for 22 per cent of total TV viewing time, an increase from 18 per cent in 2015.[37]
- Internet Provider (IP) based aggregation platforms such as Apple TV, Chromecast and Amazon allow consumers to self-aggregate content of their own choosing from multiple platforms, circumventing local broadcasters.[38]

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33 Queensland Government, *Submission 29,* p. 8.

34 Northern Territory Government, *Submission 32,* p. 3.

35 Foxtel, *Submission 2,* Attachment 1, p. 4.

36 Foxtel, *Submission 2,* Attachment 1, p. 4.

37 Foxtel, *Submission 2,* Attachment 1, p. 5.

38 Foxtel, *Submission 2,* Attachment 1, p. 5.

- Streaming and content bundling offerings from traditional telecommunications companies.
  - An increasing number of telecommunications companies are offering additional services such as Optus' cricket and English Premier League streaming services.[39]
- Free to air multi-channels such as 7Mate and SBS Food are providing a diverse range of niche content, traditionally the domain of subscription television services.[40]

Consumer behaviour

2.34 The so-called 'digital disruption' of the broadcasting landscape challenges traditional revenue streams, and creates fierce competition for viewers. Screen Australia explained that:

> Audiences now watch what they want, when they want, on whichever screen they want - and many viewers are disinclined to pay. It is harder for content makers to 'cut through' fierce global competition and reach an audience, and the industry's traditional practices and revenue streams have been, and continue to be, disrupted.[41]

2.35 Free TV Australia described this 'explosion in competition for viewers' as 'delivering exceptional choice for consumers' but creating challenges for the traditional free-to-air TV sector. It submitted that 'audiences are fragmenting, the costs of making content are increasing, advertising revenues are declining and consumers are quickly forming new viewing habits'. It was noted that since 2008, online advertising revenue has grown exponentially while commercial TV revenue has been flat or declining. However, despite this structural shift in advertising revenues, Free TV Australia submitted that commercial free-to-air investment in Australian content has grown six per cent year on year. As such, commercial free-to-air broadcasters remain the largest investors in the Australian screen production sector.[42]

2.36 Audience behaviour has particularly changed as a result of the availability of SVOD services and so-called 'catch up services'[43]. Viewers across all age demographics have shifted from accessing television through broadcast services to on-

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39 Foxtel, *Submission 2,* Attachment 1, p. 5.

40 Foxtel, *Submission 2,* Attachment 1, p. 5.

41 Screen Australia, *Submission 7*, p. 2. See also Dr Anna Potter, *Submission 11*, p. 2.

42 Free TV Australia, *Submission 6*, p. 3.

43 Catch up services refer to online services provided by broadcasters which allow viewers to watch content which has been broadcast on free-to-air television.

demand services. Further, children, particularly young children, are known to 'almost entirely consume video through on-demand [services]'.[44]

2.37 The average Australian home now has 4.5 connected screens in addition to their television sets, an increase from 3.9 four years ago. In addition, consumers aged 16–34 spend almost 2.5 hours more each week watching streamed on-demand user generated content (i.e. YouTube), compared to 35–69 year olds, and almost four hours less than the older population, when it comes to watching live and linear broadcast content.[45]

2.38 Viewing via mobile devices has increased, and is expected to continue to grow as internet speeds increase which enables more options for content delivery. Netflix access via a desktop/laptop, smartphone or tabled increased by 48 per cent in 2017. Analysis of these figures indicated that the majority of this growth was driven by increased access via smartphones (+82%).[46]

2.39 Consumers have also demonstrated increasing confidence in, and preference for, self-curation and are drawing on direct-to-consumer content to self-aggregate content. Many consumers have multiple SVOD subscriptions with 18 per cent having more than one service, and 64 per cent indicated that they require more than one service to access all the content they require.[47]

2.40 Screen Australia described the challenges to Australia's screen industry as 'significant', but noted that change also brings exciting opportunities. Screen Australia told the committee that it:

> …funds new ways of thinking about content, particularly through our online and multiplatform program, which has supported extraordinarily creative and risky approaches to storytelling that have achieved billions of views. And while some traditional content sectors are struggling, high-quality Australian features and series are achieving worldwide sales and awards in record-breaking numbers.[48]

44 Mr David Anderson, Director, Entertainment and Specialist, Australian Broadcasting Corporation (ABC), *Committee Hansard*, 11 April 2018, p. 5. See also Northern Territory Government, *Submission 32*, p. 6.

45 Foxtel, *Submission 2*, Attachment 2, p. 6.

46 Foxtel, *Submission 2*, Attachment 2, p. 7.

47 Foxtel, *Submission 2*, Attachment 2, pp. 7–8.

48 Screen Australia, *Submission 7*, p. 2.

User Uploaded Content (UUC) platforms

2.41 Submitters particularly highlighted the scale and impact of User Uploaded Content (UUC) platforms in Australia with Google submitting that more than 550,000 hours of video were uploaded to Australian YouTube channels in 2016, with over 90 per cent of views coming from overseas. It noted that:

> Australia has never had such a diverse range of Australian creators achieving incredible levels of creative and financial success. There are now more than 65 Australian YouTube channels with more than 1 million subscribers, that's more than double the number in 2016. The amount of revenue YouTube drives to content creators from advertising continues to grow. Australian creators are embracing the monetisation opportunities YouTube provides, with more than 2,000 Australian YouTube channels earning between $1,000 and $100,000 from YouTube in 2016. And more than 100 Australian channels earned more than $100,000 from YouTube in 2016. The financial benefit of YouTube for Australian creators, business and consumers was estimated to be $570 million in 2017.[49]

2.42 Google submitted that the 'internet has created new opportunities' for Australian creators who are able to take 'advantage of the lower barriers of entry, niche markets and new global audiences'.[50] It submitted:

> By providing everyone with a camera phone and an internet connection and a space to upload and share their stories, YouTube has blurred the lines between users and creators, traditional and contemporary content production, and spawned a new category of creators and creative entrepreneurs. This wave of new Australian content and voices is having a flow on effect that is influencing what Australian stories are being showcased to worldwide audiences- and what we see on-screen is no longer determined by a small group of people with editorial and/or production control.[51]

2.43 Australian audiences are spending increasing amounts of time watching online content. In July 2017, 14.7 million Australian adults spent an average of 20 hours and 59 minutes per person watching videos on YouTube. Further, it is not only comedy and entertainment videos finding popularity, but Australian YouTube channels are particularly popular in the 'education' and 'How To' genres.[52]

2.44 However, other submitters highlighted that the film and television production sectors are facing 'sharply increased competition from a number of strong

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49 Google, *Submission 12*, p. 1.

50 Google, *Submission 12*, p. 1.

51 Google, *Submission 12*, p. 5.

52 Google, *Submission 12*, p. 10.

monopolistic platforms putting downward pressure on the perceived value of content by consumers'.[53]

2.45 The Australian Screen Association (ASA) noted that while UUC platforms such as YouTube and Facebook provide a 'societal benefit' by 'lowering the barrier' for content creators to share and distribute their content and to the extent that they provide a discovery function, allow new talent to be noticed. However, the ASA submitted that the terms and conditions for using these platforms are 'largely non-negotiable' and that 'content creators are price-takers, not price-setters'. As such:

> …a UUC career can only be sustained by generating an income separate from the video content (i.e. through endorsements, live shows, merchandising, etc.) or by using it as a launch-pad for a career in media platforms that value content more highly.[54]

2.46 The ASA submitted that the content on UUC platforms which attracts advertising, subsidises the content that doesn't, thereby reducing the value of a view. The ASA noted that for the 250 most successful Australian channels, the average number of views per video is 280,000 with an average estimated income for these creators of just over $550 per video. As such, UUC platforms do not directly improve the commercial sustainability of the screen industry; they primarily serve to provide new talent with a pathway to the screen industry.[55]

2.47 The ASA went on to explain that YouTube is able to unilaterally change its policies and recently increased the popularity threshold required to be eligible to receive advertising income. However, there are no viable alternative platforms for entrants to the creative industry to utilise, which can realistically compete with the existing monopolies. The ASA concluded that 'it is clear that UUC platforms are not the solution for the production of quality content'.[56]

Oligopsony

2.48 The market for television content in Australia is an oligopsony, a form of imperfect competition where buyers exert significant control over the market. Screen Producers Australia (SPA) explained that in an oligopsony:

> - Buyers can set sellers off against each other, thereby lowering the purchase price paid to all sellers.
> - Buyers can dictate costs of sellers through imposing exact specifications relating to quantity, quality, suppliers, wages, innovation, and rights.

53 Australian Screen Association, *Submission 10*, p. 4.

54 Australian Screen Association, *Submission 10*, p. 4.

55 Australian Screen Association, *Submission 10*, p. 4.

56 Australian Screen Association, *Submission 10*, p. 5.

- Buyers are able to pass on risk inherent in the product.[57]

2.49 SPA provided evidence that commercial broadcasters are able to use their market power to 'play producers off against one another to demand more, for less, all the while bringing more production in-house'.[58] SPA also expressed concern that there is ABS data demonstrating that there is a trend of 'increasing vertically-integrated broadcasters that produce more content in-house'. SPA submitted:

> According to ABS data, this trend is increasing. The worst-case long-term scenario if this trend continues is a handful of vertically-integrated broadcasters, all that have their headquarters within a couple of kilometres from the Sydney CBD, controlling the vast majority of output of Australian programming for Australian audiences.[59]

2.50 Similarly, the Australian Small Business and Family Enterprise Ombudsman (ASBFEO) submitted that an 'imbalance in power' is 'enshrined in the contracts offered to independent producers'. It submitted:

> Contracts are designed to warehouse all channels of distribution post production. However, shows produced for commercial broadcasters could instead be reproduced for subscription video on demand (SVOD)—the format required to sell to Netflix. Even though our Australian broadcasters do not currently utilise SVOD, their contract terms mean they own the rights and prevent the producer selling to Netflix. Yet. most screen producers rely on post production distribution for revenue. Contracts also include the broadcasters with a first right of refusal. If the concept of a show is developed for a broadcaster but they decide not to progress, the options for the producer are therefore extremely limited or non-existent.[60]

2.51 The ASBFEO also pointed to an unintended consequence of the Producer Offset affecting the amount of Australian content being produced. It submitted that in order to access the Producer Offset, the content must be seen by Australian audiences. As such, this 'ties independent producers to Australian broadcasters and reduces competition in the field'. ASBFEO submitted:

> This lack of competition has led to Australian broadcasters decreasing their equity contribution by the value of the PO (i.e. effectively shifting the PO from the producers to the broadcasters). At the same time, broadcasters have increased their demands for rights over post production distribution. This power imbalance is a primary concern of the industry.[61]

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57 Screen Producers Australia, *Submission 34*, p. 19.

58 Screen Producers Australia, *Submission 34*, p. 18.

59 Screen Producers Australia, *Submission 34*, p. 18.

60 Australian Small Business and Family Enterprise Ombudsman (ASBFEO), *Submission 42*, p. 1.

61 ASBFEO, *Submission 42*, p. 1.

2.52 SPA highlighted that the United Kingdom has taken action to address oligopsonic market conditions through:

> …regulatory intervention on the terms of trade governing agreements between broadcasters and producers that allows producers to retain control over rights and to build their own portfolio of products that can be marketed elsewhere.[62]

2.53 SPA explained that this 'simple intervention' has created the 'most successful independent production industry in the world'. It has 'enable producers to keep hold of their rights and become asset-owning businesses, eventually giving rise to a new breed of production companies: the super-indies'. Such companies have acquired the scale to compete in an international television market, and drive British exports.[63]

62 Screen Producers Australia, *Submission 34*, pp. 21–22.

63 Screen Producers Australia, *Submission 34*, p. 22.

Chapter 3

Government support for the Australian screen industry

3.1 The Australian Government offers a number of tax incentives to the screen industry. This chapter will outline the various tax offsets available, and examine the evidence received in relation to the operation of such incentives.

3.2 This chapter will also outline suggestions for improvements or changes to the tax incentives available to the screen industry.

Australian Screen Production Incentive

3.3 The Australian Screen Production Incentive provides tax incentives for film, television and other screen production in Australia. Incentives include the Producer Offset, the Post, Digital and Visual Effects Production (PDV) Offset, and the Location Offset. These offsets are mutually exclusive, that is, any project which has been deemed eligible for one will be ineligible for the others.[1]

Producer Offset

3.4 The Producer Offset is a refundable tax offset (rebate) for producers of Australian films worth:

- 40 per cent of the Qualifying Australian Production Expenditure (QAPE) incurred by the applicant company in the making of a feature film; and
- 20 per cent of QAPE incurred by the applicant company in the making of television and other eligible projects, other than feature films.[2]

3.5 Films are only eligible for the 40 per cent offset if they are feature films produced to be shown in cinemas to the public, and meet all other offset requirements. Films produced for home entertainment, television or video on demand (VOD) release are not eligible for the 40 per cent offset but are eligible for the 20 per cent offset if they meet all other offset requirements.[3]

3.6 The Producer Offset is administered by Screen Australia and is established under Division 376 of the *Income Tax Assessment Act 1997* (ITAA, as amended) and the Producer Offset Rules 2007 (Rules).

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1 Department of Communications and the Arts, Post, Digital and Visual Effects (PDV) Guidelines, p. 13.

2 Screen Australia, Producer Offset Guidelines, p. 3, https://www.screenaustralia.gov.au/getmedia/7aca56fc-d523-4cee-a336-7c6340395252/Guidelines-producer-offset.pdf, (accessed 21 February 2018).

3 Screen Australia, Producer Offset Guidelines, p. 3.

3.7 To be eligible for the Producer Offset, a project must meet the 'Significant Australian Content' (SAC) test. Under section 376–70(1) of the ITAA, Screen Australia must have regard to the following elements of a project when determining eligibility:

- the subject matter of the film;
- the place where the film was made;
- the nationalities and places of residence of the persons who took part in the making of the film;
- the details of the production expenditure incurred in respect of the film; and
- any other matters that Screen Australian considers to be relevant.[4]

3.8 Screen Australia examines the level of Australian content for each of these elements. It is a holistic assessment with no single element being determinative.[5]

3.9 Eligible projects must also meet a minimum duration criteria, and a minimum level of QAPE, depending on the format.[6]

Post, Digital and Visual Effect Offset

3.10 The PDV Offset is a 30 per cent rebate on the QAPE related to PDV production (including for productions shot overseas). It is aimed at enabling the Australian visual effects, post-production and animation industries to continue to develop their reputations as being among the best and most cost-effective in the world.[7]

3.11 The PDV is administered by the Department of Communications and the Arts and is established under Division 376 of the *Income Tax Assessment Act 1997* (ITAA, as amended) and the PDV Offset Rules 2007 (Rules).

3.12 Eligibility according to criteria are as follows:

- feature films or telemovies including direct-to-video, direct-to-DVD, video on demand, or a streaming service are eligible;
- miniseries of television drama, and television series are eligible;
- documentary television services are eligible, but documentary films are not; and

4 Screen Australia, Producer Offset Guidelines, p. 6.

5 Screen Australia, Producer Offset Guidelines, p. 6.

6 Screen Australia, Producer Offset Guidelines, p. 10.

7 Department of Communications and the Arts, Post, Digital and Visual Effects (PDV) Guidelines, p. 4, https://www.arts.gov.au/documents/post-digital-and-visual-effects-pdv-offset-guidelines, (accessed 22 February 2018).

- computer games as defined under section 5A of the *Classification (Publications, Films, and Computer Games) Act 1995* are ineligible.[8]

3.13 Projects must also spend a minimum $500,000 on PDV-QAPE to be eligible for the offset. The PVD-QAPE includes (amongst others) costs associated with audio and visual creation and manipulation, PDV staff and associated costs, expenses directly related to the enabling of PDV activity such as travel to and within Australia.[9]

3.14 The PDV Offset is only available to companies which have an Australian Business Number (ABN), that is, an Australian resident company or a foreign resident company operating through a permanent establishment in Australia.[10]

Location Offset

3.15 The Location Offset provides an incentive for large budget screen productions to film in Australia. It is designed to ensure Australia remains competitive in attracting large budget film and television productions, and is aimed at providing increased opportunities for Australian casts, crew and other screen production service providers to participate in these productions.[11]

3.16 It is applied at a fixed rate of 16.5 per cent of QAPE on eligible film and television productions that commenced principal photography on or after 10 May 2011 or is a predominantly an animated production that commenced production of the visual image on or after 10 May 2011. For productions commenced between 8 May 2007 and 10 May 2011, the Location Offset is applied at a fixed rate of 15 per cent.[12]

3.17 The Location Offset is administered by the Department of Communications and the Arts and is established under Division 376 of the *Income Tax Assessment Act 1997* (ITAA, as amended) and the Location Offset Rules 2007 (Rules).

3.18 Various state and territory governments also provide incentives in the form of tax offsets and direct financial support to encourage production in their jurisdictions. Access to this funding, or any other funding from Australian Government Programs, or Screen Australia does not make a project ineligible for the Location Offset. Most state and territory funding measures are provided as production investment and do not

8 Department of Communications and the Arts, Post, Digital and Visual Effects (PDV) Guidelines, p. 9.

9 Department of Communications and the Arts, Post, Digital and Visual Effects (PDV) Guidelines, pp. 12–13.

10 Department of Communications and the Arts, Post, Digital and Visual Effects (PDV) Guidelines, p. 7.

11 Department of Communications and the Arts, Location Offset Guidelines, p. 4, https://www.arts.gov.au/documents/location-offset-guidelines, (accessed 22 February 2018).

12 Department of Communications and the Arts, Location Offset Guidelines, p. 5.

impact on a production's QAPE. However, as QAPE only includes incurred expenditure, where a government incentive reduces production expenditure, QAPE will also be reduced.[13]

2018–2019 Budget announcement

3.19 The Australian Government announced that it would provide $140 million over four years from 2019–2020 through the Location Incentive Program to attract large budget international productions to be filmed in Australia. The Location Incentive Program is designed to complement the existing Location Offset, and will effectively provide an increase to the Location Offset rate (from 16.5 per cent to 30 per cent) for eligible large budget international productions that film in Australia from 1 July 2018.[14]

3.20 The Australian Government stated that the Location Incentive Program will 'bring in over $260 million per year in new foreign expenditure to the local economy', create more than 3000 jobs for Australian cast and crew, and support the services of approximately 6000 Australian businesses each year.[15] Senator the Hon Mitch Fifield, Minister for the Arts, stated that:

> This funding is all about supporting local jobs. It will ensure our film industry remains vibrant and competitive, and gives us the opportunity to showcase our talent both on screen and behind the scenes to the rest of the world.[16]

3.21 Similarly, the Hon Julie Bishop MP, the then Minister for Foreign Affairs, noted that the Location Incentive Program 'represents a positive policy change' which will ensure that 'Australia continues to attract high quality, large budget feature films which will grow our talent and creative industries'. The Location Incentive Program will 'also promote Australia as a dynamic, innovative economy and tourist destination'.[17]

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13 Department of Communications and the Arts, Location Offset Guidelines, p. 14.

14 https://www.arts.gov.au/departmental-news/140-million-boost-australian-screen-industry-jobs.

15 https://www.arts.gov.au/departmental-news/140-million-boost-australian-screen-industry-jobs.

16 Senator the Hon Mitch Fifield, Minister for the Arts, '$140 million boost for Australian film jobs', 4 May 2018, Media Release, http://www.minister.communications.gov.au/mitch_fifield/news/$140_million_boost_for_australian_film_jobs#.WymestUzbmF, (accessed 20 June 2018).

17 The Hon Julie Bishop MP, Minister for Foreign Affairs, '$140 million boost for Australian film jobs', 4 May 2018, Media Release, http://www.minister.communications.gov.au/mitch_fifield/news/$140_million_boost_for_australian_film_jobs#.WymestUzbmF, (accessed 20 June 2018).

State and territory tax incentives

3.22 State and territory governments offer a range of tax incentives to the screen industry, in addition to those offered by the Australian Government.

3.23 The Queensland Government offers a range of incentives[18], as detailed below.

- **Negotiable Production Attraction Incentive** – a grant provided to producers based on the anticipated Queensland Production Expenditure (QPE), the engagement of bona fide Queensland practitioners, and/or the creation of infrastructure in Queensland.
- **Location and Scouting Assistance** – provided for projects considering Queensland locations, and provided prior to commencement of pre-production or during, financing. The extent of support is based on the anticipated Queensland Production Expenditure (QPE).
- **State Payroll Tax Rebate** – available for those productions that have paid the 4.75 per cent Queensland Payroll Tax and with a spend greater than $3.5 million Queensland Production expenditure (QPE).
- **Regional Statewide Incentive Grants** – a negotiable grant up to AUD$100,000 based on regional spend and employment opportunities.
- **Post, Digital and Visual Effects Attraction Grant** – a negotiable grant capped at $250,000 for a minimum spend of $500,000 in Queensland on post-production elements.
- **The Revolving Film Financing Fund (RFFF)** – provides secured loans to cash-flow the Producer Offset, distribution guarantees and pre-sales with a 7 per cent loan fee charged on RFFF loans making it an extremely competitive option.
- **Development and Production Investment Grant** – available where a Queensland producer or writer is attached to the project.

3.24 The Victorian Government offers three tax incentives[19] to the screen industry, detailed as follows.

- **Production Incentive Attraction Fund (PIAF)** – aims to attract 'footloose' film and television projects to Victoria. Projects are considered footloose where they have genuine production or post production destination alternatives. Low budget international productions may also be eligible to for assistance towards employing up to three key Victorian production personnel to provide local knowledge and expertise while filming here; they may also be eligible for assistance towards accommodation, travel and living-away-from-

18 https://www.ausfilm.com.au/why-film-in-australia/work-with-the-best/federal-state-local-government-agencies/screen-queensland/, (accessed 19 February 2019).

19 https://www.ausfilm.com.au/why-film-in-australia/work-with-the-best/federal-state-local-government-agencies/film-victoria/, (accessed 19 February 2019).

home expenses for international directors living in Victoria during post production. The minimum qualifying threshold is a Victorian spend of $3.5 million.

- **Production Incentive Attraction Fund – Post Production, Digital and Visual Effects (PIAF PDV)** – designed to attract footloose film and television projects to use post, digital and visual effects facilities in Victoria. It provides similar benefits as the PIAF. The minimum qualifying threshold is a Victorian spend of $1 million.
- **Regional Location Assistance Fund (RLAF)** – designed to encourage Victorian, interstate and international film and television productions to locate production activity in regional Victoria. Productions must spend a minimum of $100,000 qualified Regional Victorian spend, and accommodate the crew in the regional location for at least five nights.

3.25 The New South Wales Government offers two tax incentives[20] as detailed below.

- **Location Scouts and Inbound Program** – The program offers long-form footloose production scouting assistance for location surveys for eligible projects and may include covering some of the costs associated with on-ground travel including accommodation, domestic flights, vehicle hire and location manager services. Eligible projects are feature films, telemovies, mini-series, TV series, pilots or reality programs.
- **Made in NSW – International Footloose Production** – This is a $10 million per year fund to support the attraction of significant international feature film and major international TV drama production to NSW.

3.26 The Western Australian Government offers two incentives[21] to attract production in its jurisdiction.

- **Screenwest Drama Production Investment Fund** – provides production financing for feature films and television drama to Western Australian production companies, projects developed in co-production with Western Australian companies, or productions which demonstrate a strong Western Australian economic or creative outcome.
- **Western Australian Regional Film Fund** – this is a $16 million fund to support high quality international and Australian feature films and high-end television series and documentaries to film in regional Western Australia. It is designed to encourage regional film industry, build local capacity and

20 https://www.ausfilm.com.au/why-film-in-australia/work-with-the-best/federal-state-local-government-agencies/create-nsw/, (accessed 20 February 2019).

21 https://www.ausfilm.com.au/why-film-in-australia/work-with-the-best/federal-state-local-government-agencies/screenwest/, (accessed 20 February 2019).

contribute to the liveability and vibrancy of regional Western Australian communities.

3.27 The South Australian Government offers five incentives[22] for film and television production in the state.

- **Screen Production Grant** – provides production funding for long form drama and documentary projects.
- **Post Production, Digital and Visual Effects Rebate (SA PDV Rebate)** – Provides a rebate equivalent to 10 per cent of expenditure on PDV work undertaken in South Australia.
- **Payroll Tax Exemption** – provides an up-front exemption from the payroll tax rate in South Australia of 4.95 per cent on qualifying wages.
- **Revolving Film Fund (RFF)** – this is a financing facility providing secured loans to finance long-form stand-alone projects or series that film in South Australia.
- **Recce Assistance** – provides grant funding up to $10,000 to support costs associated with on-ground travel in south Australia, and the contracting of a local Location Manager.

3.28 The Northern Territory,[23] Tasmania,[24] Australian Capital Territory,[25] and the City of the Gold Coast[26] also offer a range of funding and financial incentives to film in these locations.

Evidence received in relation to Australian Government tax incentives

3.29 The committee heard from a range of submitters that there are a number of concerns with the current federal tax incentives available. Submitters argued that:

- tax offsets need to be increased;
- tax offsets should be harmonised across the film and television industries; and
- the eligibility criteria for tax offsets should be re-examined.

3.30 This following sections outline the evidence received in relation to these issues.

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22 https://www.ausfilm.com.au/why-film-in-australia/work-with-the-best/federal-state-local-government-agencies/south-australian-film-corp/, (accessed 20 February 2019).

23 https://screenterritory.nt.gov.au/about

24 https://www.screen.tas.gov.au/

25 https://www.screencanberra.com.au/

26 https://www.ausfilm.com.au/why-film-in-australia/work-with-the-best/federal-state-local-government-agencies/film-gold-coast/

Offsets need to be increased

3.31 Tax incentives have proven to be very effective in attracting international investment in Australia's screen industry, and in supporting the development of the local industry. For example, Mr Matt Day, Actor, and Media, Arts and Entertainment Alliance (MEAA) member, told the committee that:

> When you have your tax breaks that allow big, American, Hollywood films to come in and do their thing, they're training up Australian artists and Australian technicians so that they can bring the skills that they've learned on a $200 million Hollywood film to a film that's made for $2 million in the desert about our history. It all feeds into itself. It's the same with Australian television. The vast majority of my training has been done on Australian TV sets, and I think the same could be said for most actors. We would lose that without maintaining these quotas and incentives that we have in place.[27]

3.32 However, submitters commented that Australia's offset rates are no longer competitive in comparison to overseas jurisdictions, and that is having negative consequences for the industry. For example, Mr Wayne Borg, Managing Director, Fox Studios Australia, stated that:

> Australia's film and television production incentives are not internationally competitive, which is having a detrimental impact on the economic and cultural contribution of the industry and the ongoing viability of existing infrastructure and negatively impacting job creation, talent retention and skill development and in turn reinvestment into local industry and production of the Australian industry.[28]

3.33 As such, submitters argued that the Location Offset should be increased from its current rate of 16.5 per cent to 30 per cent. Submitters stated that this would make Australia a competitive location. For example, Columbia Tristar Motion Picture Group told the committee that:

> Australia has all the assets film companies seek in a film production location: world class physical and digital production crew, skilled actors, state of the art facilities and equipment, diverse locations and safe environment…[however] the Location Offset, at its current rate of 16.5%, prevents Columbia Pictures from considering Australia for international productions without a top up grant from the Federal Government to provide a competitive rate of 30%.[29]

3.34 Columbia Tristar Motion Picture Group stated that 'at 30% the Location Offset would be sufficiently competitive and enable Australia to be considered as a

27 Mr Matt Day, MEAA, *Committee Hansard*, 1 August 2018, p. 43.

28 Mr Wayne Borg, Fox Studios Australia, *Committee Hansard*, 4 September 2018, p. 22. See also Ms Kelly Wood, MEAA, *Committee Hansard*, 1 August 2018, p. 42.

29 Columbia Tristar Motion Picture Group, *Submission 3*, p. 1.

potential location' for its productions. It noted that other jurisdictions such as the United Kingdom, Canada, South Africa, Hungary and the US states of Georgia, New York and Massachusetts offer incentives of between 25 and 40 per cent.[30]

3.35 The Australian Screen Association (ASA) commented on the impact of the UK's 25 per cent production incentive system. It stated that the increased incentive transformed the creative industries into the UK's fastest growing sector. For example:

> According to British Film Institute data, US studio film production contributed €1.35bn (84% of total film production) to the UK national economy in 2016, an 18% increase from 2015.[31]

3.36 The ASA also noted that since the UK government moved to include 'High End Television' (productions with budgets in excess of £1m per broadcast hour) as eligible content, UK television production has grown to record amounts. It doubled between 2013 and 2016 to a record €500 million, with 65 per cent coming from US companies, including Amazon and Netflix.[32]

3.37 Submitters argued that it is clear that the Australian Government accepts that the rate of 16.5 per cent is not competitive, and as such has acted to provide one-off grants which effectively raise the rate to 30 per cent. However, the lack of funding certainty has resulted in production companies choosing alternative locations where higher offsets are guaranteed. For example, Fox Studios Australia submitted:

> When Government support is not consistent, international productions will be less likely to produce in Australia. An example of this is the recent Fox film, *The Martian*, which was slated to film in Australia. Unfortunately, the film was not able to utilise the rebates and instead, the movie was shot in Budapest, Hungary.
>
> It has been widely reported that the film's star, Matt Damon, commented on this fact, "we were going to shoot *The Martian* here (Australia) but we couldn't get the rebate. We were too late to get the deal so we shot in Budapest and were even looking at houses at Bondi Beach. This was no minor film, with a production budget well exceeding US$100 million. This serves as a stark example of an opportunity lost for Australia, its creative industries and its economy.[33]

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30 Columbia Tristar Motion Picture Group, *Submission 3*, p. 1. See also Ms Kelly Wood, MEAA, *Committee Hansard*, 1 August 2018, p. 42.

31 Australian Screen Association, *Submission 10*, p. 5. See also Mr Wayne Borg, Fox Studios Australia, *Committee Hansard*, 4 September 2018, p. 22; Fox Studios Australia, *Submission 13*, p. 3.

32 Australian Screen Association, *Submission 10*, p. 5.

33 Fox Studios Australia, *Submission 13*, p. 6.

3.38 Mr Wayne Borg, Fox Studios Australia, explained:

> There's no guarantee that a production will receive it [a grant], because it is a competitive round that you have to go into to. And when producers are making decisions, many of those decisions have a time frame, and they have that certainty with all the other jurisdictions they're assessing, but they don't have that here.[34]

3.39 The lack of funding certainty, and the resulting lack of productions choosing to film in Australia has widespread impacts on the industry. Mr Borg, Fox Studios Australia, told the committee that:

> …people have families and mortgages. They need that financial certainty just to get on with their day-to-day lives. Often we'll see many people leave the sector and migrate to other sectors where they've got some certainty and then they can go to bed at night knowing they can pay the mortgage and put food on the table next month.[35]

3.40 Mr Borg, Fox Studios Australia, went on to comment that the benefits associated with regulatory certainty are well-documented. For example:

> …the state of Georgia reported production expenditure of $2 billion at the end of the 2017 financial year, with an economic impact of $7 billion. In the UK the Chancellor of the Exchequer has reported that, for every pound of tax relief that the UK offers, the UK enjoys 12 pounds 49 pence in economic value. New Zealand reported an inbound spend on film production of $3.3 billion in 2016.[36]

3.41 Ausfilm noted that the House of Representatives Standing Committee on Communications and the Arts' report for its inquiry into factors contributing to the growth and sustainability of the Australian film and television industry recommended that the Location Offset be increased.[37]

Harmonisation of offsets

3.42 The committee heard evidence that the Location and PDV Offsets are at different rates and that the differential is creating problems for projects. Ausfilm explained that:

- offset rules mean that a production can only access one offset; and

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34 Mr Wayne Borg, Fox Studios Australia, *Committee Hansard*, 4 September 2018, p. 22. See also Ausfilm, *Submission 9*, p. 2; Australian Screen Association, *Submission 10*, Attachment 1, p. 12.

35 Mr Wayne Borg, Fox Studios Australia, *Committee Hansard*, 4 September 2018, p. 23. See also Stan Entertainment Pty Ltd, *Submission 15*, pp. 3–4.

36 Mr Wayne Borg, Fox Studios Australia, *Committee Hansard*, 4 September 2018, p. 21.

37 Ausfilm, *Submission 9*, p. 2.

- that the Location Offset is intended to attract projects that will bring both physical production and PDV work to Australia while the PDV Offset is intended to attract projects that undertook physical production elsewhere but brought PDV work to Australia; however
- if a project only accesses the Location Offset at 16.5 per cent, it means that any PDV work undertaken as part of the program is only eligible for this rate rather than the PDV Offset rate of 30 per cent.[38]

3.43 Mr Borg, Fox Studios Australia, explained to the committee that:

> …the restriction that prohibits the use of both the location offset and the PDV—the post, digital and visual effects offset—by the same film needs to be removed. This will enable projects to be filmed in Australia to also have their post-production digital and visual effects completed here, and ensure that the ecosystem flourishes locally.[39]

3.44 The ASA also advocated for the Location Offset and the PDV Offset to be decoupled so that projects can be filmed and post-produced in Australia.[40]

Eligibility

3.45 Ausfilm raised concern that content made for Subscription Video on Demand (SVOD) services, is ineligible for both the Location and the PDV Offsets.[41] Similarly, the ASA submitted that the legislation should be clarified to allow such services to be eligible to access the incentives.[42]

3.46 Fox Studios Australia submitted that:

> We strongly believe online streaming content should be eligible for Government incentives. By failing to make this change, Australia risks falling behind countries such as New Zealand, Canada, the UK, and the US, who have already made production incentives available to online platforms. Also, streaming services are heavily investing in production.[43]

3.47 Mr Borg, Fox Studios Australia, described the ineligibility of streaming services to access offsets, as an 'historic anomaly' and stated:

> That's going to become a bigger issue in time as the streaming services continue to increase their investment in content, as I described. There'll be more streaming services. That's where the audiences are going—that's the reality of it. The risk is that that will significantly undermine everything

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38 Ausfilm, *Submission 9*, p. 2.

39 Mr Wayne Borg, Fox Studios Australia, *Committee Hansard*, 4 September 2018, p. 21.

40 Australian Screen Association, *Submission 10*, pp. 1–2.

41 Ausfilm, *Submission 9*, p. 3.

42 Australian Screen Association, *Submission 10*, p. 6.

43 Fox Studios Australia, *Submission 13*, p. 6.

> we've just been talking about, both in terms of infrastructure and the ability of Australians to tell and make their stories, because we will attract less and less of those productions.[44]

3.48 Submitters also argued that the Producer Offset should be a single rate of 40 per cent and be made available for both film and television production.[45] For example, Free TV Australia submitted that given:

> …the government's desire to stimulate the production of Australian content, we do not believe it makes sense to differentiate between feature films, which can access an offset of 40% of qualifying expenditure, and television and other eligible projects which are limited to 20%.[46]

3.49 Free TV Australia argued that there are a number of reasons to treat television projects in the same way as film projects including: the range of employment and training opportunities generated; the lack of technological distinction between film and television production; the cost of producing quality television is now comparable to the cost of producing film; and the 'hold back' window between the release of a film in cinemas and its release on free-to-air and subscription television is closing.[47]

3.50 Similarly, Foxtel submitted that economic analysis by PwC found:

> …that 360 new television jobs and $103.9 million in economic activity would be created if the tax offset available to qualifying television productions was doubled from 20% to 40%, the same value currently enjoyed by film…[and] that a doubling of the tax offset from 20% to 40% would cost the Commonwealth $15.5 million, yet would generate an additional $119.4 million in economic activity, making the overall economy better off by more than $100 million.[48]

3.51 Foxtel further noted that 'the cultural objectives of having Australian stories produced and viewed are equally realised via television as they are through feature film'. In addition, television audiences are far larger than those for many local films, 'therefore the benefit from Government assistance is arguably greater for television audiences'.[49]

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44 Mr Wayne Borg, Fox Studios Australia, *Committee Hansard*, 4 September 2018, p. 25.

45 Free TV Australia, *Submission 6*, p. 15. See also Special Broadcasting Service, *Submission 22*, p. 10; Save Our SBS Inc, *Submission 23*, p. 4; Australian Writers' Guild, *Submission 21*, p. 8.

46 Free TV Australia, *Submission 6*, p. 45. See also Ms Bridget Fair, Chief Executive Officer, Free TV Australia, *Committee Hansard*, 1 August 2018, p. 32.

47 Free TV Australia, *Submission 6*, p. 46.

48 Foxtel, *Submission 2*, Attachment 2, p. 5.

49 Foxtel, *Submission 2*, Attachment 2, pp. 5–6.

3.52 This was echoed by MEAA which submitted that:

> To maintain the current rebate differential would ignore the new reality in terms of the renewed role of television in producing quality content. Our members strongly support a standardised 40% rebate across screen productions regardless of platform. A uniform 40% rebate would undoubtedly boost production, leading to benefits for actors, crew, artists and Australian audiences.[50]

3.53 However, some submitters, whilst supporting making the producer offset available for television productions, stated that only independent producers should be eligible rather than commercial networks. For example, Flying Bark Productions submitted:

> While Flying Bark is happy that the offset for television (and other platforms as it will likely become platform neutral to reflect the current content consumption landscape) would increase to 30% and possibly even 40% as has been rumoured, it has significant concerns that raising the offset rebates may come at the cost of removing restrictions as to who may apply for the offset. As SPA's submission to the Content Review notes it was never the intention of government to allow broadcasters to apply for the offset. The commercial networks have tried by back door methods to get their hands on the offset intended for the independent production sector and in at least one case have set up their own production company to access the offset directly.[51]

3.54 Foxtel also noted that in 2013, amendments were made to the rules establishing eligibility for the Producer Offset which excluded from the definition of 'documentary', infotainment, lifestyle and magazine programs. Foxtel submitted that these amendments 'artificially box in creativity and innovation in the documentary production sector' and do 'not reflect the current nature of documentary production and the types of factual programming that are of value to viewers'. Foxtel argued that 'factual programming should not be excluded [from being eligible for the Producer Offset] simply for being entertaining'.[52]

3.55 Similarly, the Australian Children's Television Foundation (ACTF) submitted that Australian children's drama should receive the highest level of available offset, and should be able to access any type of direct funding available.[53]

65-hour cap

3.56 Under current arrangements, television series are no longer eligible for the Producer Offset after they have been in production for 65 hours (approximately five

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50 MEAA, *Submission 27*, p. 10.

51 Flying Bark Productions, *Submission 35*, p. 3. See also SPA, *Submission 34,* p. 7.

52 Foxtel, *Submission 2,* Attachment 2, pp. 6–7.

53 Australian Children's Television Foundation, *Submission 5*, p. 37.

seasons). Free TV Australia argued that the 65-hour limit is 'illogical and discriminatory' and must be removed. It submitted that the rationale that programs which have 'survived' to five seasons must be self-sustained does not match the reality. Free TV Australia stated that 'the challenges of funding a drama series in Australia do not change or ease after multiple seasons' and that it has been 'very rare for local dramas to continue beyond the 65-hour point'. It submitted that 'removing the cap would allow successful titles to continue being created for longer' and would therefore deliver a range of benefits to industry and would be 'a good continued investment of taxpayers' funds'.[54]

3.57 Foxtel was also critical of the 65-hour cap and stated that it is 'an arbitrary cap'. It highlighted that for subscription television (and the ABC), the longevity of a program does not significantly change the revenue it generates. Foxtel stated that popular shows such as *Wentworth* and *A Place to Call Home* 'may be at risk of discontinuation once the 65 episode threshold is reached because the economics of making them is drastically altered'.[55]

3.58 Mr Matthew Deaner, SPA, told the committee that the 65-hour cap is outdated and needs to be removed. Mr Deaner explained that without government funding through tax incentives, series are cancelled as the local market cannot sustain them. Mr Deaner pointed to shows such as *Offspring*, *A Place to Call Home* and *Wentworth* as examples of series which have been cancelled. Mr Deaner noted that the original policy objective was based on the premise that series would become sustainable over time, however evidence shows that costs actually increase over time and 'costs start becoming harder and harder at a point at a point when you've removed the offset opportunity and the game's over'.[56]

54 Free TV Australia, *Submission 6*, p. 46.

55 Foxtel, *Submission 2*, Attachment 2, p. 7. See also Stan Entertainment Pty Ltd, *Submission 15*, p. 5.

56 Mr Matthew Deaner, SPA, *Committee Hansard*, 1 August 2018, p. 26.

Chapter 4

Television content quotas

4.1 This chapter provides an overview of the regulatory framework for television services in Australia.

4.2 It outlines the role of the Australian Communications and Media Authority (the ACMA), the legislative requirements established by the *Broadcasting Services Act 1992* (BSA) and the various industry codes and standards which apply to the provision of television services. This chapter will focus particularly on legislative requirements in relation to Australian and children's content for television.

4.3 Submitters provided evidence both in support of the current quotas for children's and Australian content, and in support of changing current requirements.

Australian Communications and Media Authority

4.4 The ACMA, an independent statutory authority, was established in 2005 as a converged regulator responsible for broadcasting, radio communications, telecommunications and online.[1]

4.5 Under the BSA, the ACMA's broadcasting functions include licensing, media control rules, registration of industry codes and standards, and complaints and investigation functions. It should be noted that the BSA's definition of a 'broadcasting service' excludes services that deliver programs 'using the internet', 'on demand' or a 'point-to-point basis'. This means that the ACMA's regulatory role is currently limited to traditional broadcast services, and does not extend to newer streaming services.[2]

4.6 Both the BSA and industry standards and codes developed and administered by the ACMA contain rules regarding the broadcast of, and expenditure on, Australian and children's content. These rules apply to both commercial television and radio broadcasters, and subscription television broadcasters.

Requirements for television broadcasters

4.7 Commercial free-to-air television and subscription television broadcasters are required to comply with obligations established under the BSA and industry standards and codes. These include obligations to broadcast and invest in the development of Australian content.

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1 Australian Communications and Media Authority, *Submission 4*, p. 1.

2 Section 6, *Broadcasting Services Act 1992* and Ministerial Determination made in 2000. See Australian Communications and Media Authority, *Submission 4*, p. 1.

Australian content requirements—commercial free-to-air television

4.8 Section 121G of the BSA establishes that commercial television broadcasters must provide Australian programs for no less than 55 per cent of all programming broadcast on their primary television services in a calendar year between 6am and midnight.[3]

4.9 It also requires commercial television broadcasters to provide a total of 1460 hours of Australian programming between 6am and midnight across their non-primary services (i.e. multichannels). The BSA also encourages the broadcast of first-release Australian drama on multichannels by weighting the amount of hours that such programs contribute to the 1460 hour requirement. Such hours are effectively double counted.[4]

4.10 Commercial television broadcasters are also subject to the Australian Content Standard (ACS) and the Children's Television Standards (CTS) which were developed by the ACMA. These standards establish minimum annual sub-quotas for Australian drama, Australian documentary, and children's programs. Section 7 of the ACS defines an Australian program as one which was produced under the creative control of Australians.[5]

Australian drama

4.11 The ACS defines an Australian drama program as one which incorporates scripted elements of character, theme and plot as part of a narrative structure. This includes programs where actors delivering improvised dialogue based on a written outline and includes sketch comedies and dramatized documentaries.[6]

4.12 The ACS requires that each commercial television broadcaster achieve a score of at least 250 points for first-release Australian drama each year, and a score of 860 points for each triennium period. The ACS also allows drama programs from New Zealand to be used to complete the Australian drama quota.[7]

4.13 The drama score is calculated by multiplying the program during in hours by its format factor. The points are calculated based on the drama's format and/or the licence fee paid. Table 4.1 below details the calculation of format factors.

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3 Australian Communications and Media Authority, *Submission 4*, p. 3.

4 Australian Communications and Media Authority, *Submission 4*, p. 3.

5 Australian Communications and Media Authority, *Submission 4*, p. 3. See also https://www.acma.gov.au/Industry/Broadcast/Television/Australian-content/australian-content-television and https://www.acma.gov.au/Citizen/TV-Radio/Television/Kids-and-TV/childrens-television-standards-kids-tv-and-advertising-i-acma.

6 Australian Communications and Media Authority, *Submission 4*, p. 3.

7 Australian Communications and Media Authority, *Submission 4*, p. 3.

Table 4.1—Calculation of format factor

Program type	Format factor
Australian drama series or serial produced at the rate of more than one hour per week	1
Australian drama series or serial produced at a rate of one hour or less per week	2.5
Australian drama series or serial produced at a rate of one hour or less per week and acquired from an independent producer for a licence fee of at least $421,000 per hour (adjusted for CPI)	3
Australian feature film	2.5
Australian feature film that has been acquired for a licence fee of at least $211,000	4
Australian telemovie, mini-series or self-contained drama of less than 90 minutes duration	4

Source: Australian Communications and Media Authority, *Submission 4*, p. 4.

Australian documentary

4.14 The ACS requires each commercial television broadcaster to broadcast at least 20 hours of first-release Australian documentary programs annually, with each of at least 30 minutes duration, between 6am and midnight.[8]

Children's programs

4.15 Commercial television broadcasters are required to broadcast 260 hours of children's (C) programs each year.[9] These hours must include at least 25 hours of first-release Australian C drama[10] and eight hours of Australian C drama that is not first-release.[11] Section 15 of the ACS also requires commercial broadcasters to ensure that 50 per cent of the 260 hours is first-release Australian C programs.[12]

Australian content requirements—subscription television

4.16 The New Eligible Drama Expenditure Scheme (NEDE) established under the BSA requires subscription television license-holders that broadcast drama channels, and drama channel package providers to invest at least 10 per cent of their total program expenditure on new Australian drama.[13]

8 Australian Communications and Media Authority, *Submission 4*, p. 4.

9 Section 8(1)(b), Children's Television Standards. See Australian Communications and Media Authority, *Submission 4*, p. 4.

10 Subsection 13(1), Australian Content Standard. See Australian Communications and Media Authority, *Submission 4*, p. 4.

11 Subsection 14(1), Australian Content Standard. See Australian Communications and Media Authority, *Submission 4*, p. 4.

12 Australian Communications and Media Authority, *Submission 4*, p. 4.

13 Division 2A, Part 7, *Broadcasting Services Act 1992*. See Australian Communications and Media Authority, *Submission 4*, p. 8.

4.17 The NEDE Scheme focuses solely on expenditure and there is no requirement for the drama to be broadcast. This accommodates for specialist channels which are a common feature of subscription television services.[14]

4.18 The NEDE Scheme requires subscription television licensees and drama channel package providers to utilise an accrual expenditure model over a rolling three-year cycle. Previous-year expenditure shortfalls or surpluses are accounted for in the current year, and current-year shortfalls and surpluses are able to be carried across the next year. The minimum expenditure requirement for a compliance period is the full acquittal of the previous period's shortfall. Where a participant's expenditure exceeds 10 per cent, the excess can be nominated as 'carry-forward expenditure' and used in the following financial year.[15]

Changing quotas

4.19 The committee heard arguments in support of changes to content quotas which stated that:

- current children's content quotas are costing free-to-air broadcasters while only small numbers are watching; and
- current content quotas do not recognise that audiences now access content on multiple platforms.

4.20 The following sections outline the evidence received in relation to these issues.

Children's content quota

4.21 Free TV Australia submitted that the children's quotas should be abolished 'as they are no longer serving the original policy intent and are clearly out-of-step with the modern child audience'.[16] Ms Bridget Fair, Chief Executive Officer, Free TV Australia, told the committee:

> We actually feel that it's no longer commercially sustainable for us to do so and it's not actually delivering any cultural benefit, which was the purpose of these quotas. They are intended to be providing something to our child audiences. If they're not watching them, then clearly they can't be benefiting from them. So we just don't see a role for those quotas any further.[17]

4.22 In noting the intent of locally produced children's content quotas (i.e. the production and broadcast of uniquely Australian content that contributes to a sense of national identity), Ms Fair argued that the children's quota is not having a 'cultural

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14 Australian Communications and Media Authority, *Submission 4*, p. 8.

15 Australian Communications and Media Authority, *Submission 4,* p. 8.

16 Free TV Australia, *Submission 6*, p. 2.

17 Ms Bridget Fair, Free TV Australia, *Committee Hansard*, 1 August 2018, p. 32.

impact' as commercial broadcasters are 'basically producing hundreds of hours of programming every year that aren't being watched'.[18]

4.23 Free TV Australia explained that commercial free-to-air broadcasters deliver almost 1200 hours of children's (C) and pre-school (P) programming per year but the average audiences for these programs are now less than 8000 children.[19] An analysis of free-to-air C and P broadcasts in 2010, 2013, and 2016 showed that:

- in 2010, 14% of C and P programs attracted an average of more than 25,000 children aged 0-13 years;
- by 2016, only 7% of C and P programs had an average audience of 0-13 year olds that was higher than 25,000 and 79% of programs had an audience of below 10,000; and
- in 2016, all pre-school programs had an average audience in the 0-13 year old bracket of less than 10,000.[20]

4.24 Further, children are watching less commercial free-to-air television, and where they are, they are co-viewing family entertainment shows, movies and major events, with their family members.[21] Shows such as *MasterChef Australia*, *Australian Ninja Warriors* and *My Kitchen Rules* are popular with children, but are not counted towards C and P program quotas 'despite playing a powerful role in presenting Australian stories'.[22] Ms Fair, Free TV Australia, commented:

> ...we haven't abandoned the child audience and the family audience; it's just that we're trying to provide programming in a way that they will want to consume it…Things like *Ninja Warrior* and even *MasterChef*. Older kids and some people are watching shows like *The Bachelor*, which may not be our taste necessarily here. These programs are often the starting point for conversations in families about how relationships function or other things. So there's a whole array of programming. When I was a kid I used to watch *A Country Practice* with my mum and I loved it. That was our time together, we'd sit there and that was good. But people are not doing that with Australian drama anymore; they are doing it with these other programs, and we see them having a very strong cultural value.[23]

4.25 Submitters also argued that the dwindling audience numbers are 'due to the plethora of new channels and platforms that offer designated children's content in a commercial free or on-demand environment'.[24] Mr Ross Mitchell, Director of

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18 Ms Bridget Fair, Free TV Australia, *Committee Hansard*, 1 August 2018, p. 34.

19 Free TV Australia, *Submission 6*, p. 14.

20 Free TV Australia, *Submission 6*, p. 32.

21 Free TV Australia, *Submission 6*, p. 30.

22 Free TV Australia, *Submission 6*, p. 33. See also ACMA, *Submission 4*, pp. 12–13.

23 Ms Bridget Fair, Free TV Australia, *Committee Hansard*, 1 August 2018, p. 32.

24 Free TV Australia, *Submission 6*, p. 33. See also ACMA, *Submission 4*, pp. 12–13.

Broadcasting Policy, Free TV Australia, told the committee that 'the world has completely changed'. Mr Mitchell stated:

> Think about your own kids and whether they point and view anymore. Mine certainly don't. The ACMA research that came out last year talked about YouTube, and free services like YouTube, being the most heavily watched place that kids go to.[25]

4.26 Similarly, Foxtel commented that 'it makes no sense to mandate that this [children's] content must be created for a platform which children are migrating away from. This is not an efficient use of scarce production funding'. It further stated that:

> …there is a quality, depth and variety in children's content production outside of FTA television that was not in existence when the FTA quotas were first introduced. In terms of the industry sustainability objective, FTA quotas are not strictly still required.[26]

4.27 The ACTF also proposed changes to the children's content quota as it stated that the current requirements 'don't fit the digital "any device, any time" environment – they favour cheaper content over quality content, and the classification system has failed to keep up'. Its submission outlined an alternative content quota which would 'support high quality Australian children's drama' and which would allow broadcasters to show C and P drama they commission on any of their platforms.[27]

4.28 Free TV Australia argued that C and P classified programs are costing hundreds of thousands of dollars to produce, while only very small numbers of children are watching commercial free-to-air broadcasts. Ms Fair, Free TV Australia, told the committee that in addition to small audience numbers, the viability of children's programming is affected by advertising restrictions. Ms Fair stated:

> You cannot broadcast a show to an average audience of 2,000 people in an environment where you have significant advertising restrictions. We don't get government funding. We don't have subscriptions. We are reliant on our business model for advertising revenue. When you're trying to advertise in children's programming, and you have a whole lot of rules that, possibly quite rightly, restrict the nature of that advertising, then you have a circle that means that these things become less and less viable. If we can't attract an audience that an advertiser isn't going to want to advertise to, we can't sustain that programming.[28]

4.29 As such, Free TV Australia argued that the money currently spent on C and P programming could be invested in local content that is popular with a broad family audience. Free TV Australia noted that the UK abolished children's content quotas in

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25 Mr Ross Mitchell, Free TV Australia, *Committee Hansard*, 1 August 2018, p. 35.

26 Foxtel, *Submission 2,* Attachment 2, p. 10.

27 ACTF, *Submission 5,* p. 35.

28 Ms Bridget Fair, Free TV Australia, *Committee Hansard*, 1 August 2018, p. 35.

2003 and New Zealand removed them in 2011.[29] Similarly, Foxtel concluded that there:

> …may be merit in moving away from specific children's content quotas, with offsetting increases to overall FTA Australian content quotas or the diversion of investment into a consolidated and fully contestable children's content fund.[30]

4.30 However, the Australian Writers' Guild rejected the claim that the restrictions on advertising during children's programming are significant. It submitted:

> The claim that advertising revenue is low as a result of restrictions imposed on this demographic and timeslot can be supported but, when taken as a whole, represents an economically insignificant loss of revenue because of the timeslots and the number of hours it affects. This is far outweighed by the advertising benefits gained by the significant number of hours and advertising revenue attached to the use of the public spectrum for other content, in particular sport content supported by anti-siphoning measures.[31]

Australian drama content

4.31 The committee received evidence advocating for changes to the Australian drama content quotas from Free TV Australia. Ms Fair, Free TV Australia, told the committee that:

> …the reality of Australian drama…is that audiences have halved and costs have doubled. Essentially, that means that the cost of making and commissioning these programs and our ability to recoup money by showing them is vastly different.[32]

4.32 Free TV Australia submitted that 'Australian drama is an important part of the schedules of commercial broadcasters' however production costs have significantly increased whilst audience numbers have declined. It added that viewing trends suggest audience preferences are shifting towards greater online, on-demand consumption for scripted content and documentaries. As such, Free TV Australia suggests that the drama quota should be 'modernised' to 'allow broadcasters to align audience preferences and remain competitive'.[33] For example, Free TV Australia suggested that the popularity of shows such as *MasterChef Australia, Australian Ninja Warriors* and *My Kitchen Rules* are challenging the 'concept of what constitutes drama and

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29 Free TV Australia, *Submission 6*, p. 42.

30 Foxtel, *Submission 2,* Attachment 2, p. 10.

31 Australian Writers' Guild, *Submission 21*, pp. 1–2. See also Victorian Film and Television Industry Working Group, *Submission 8,* Attachment 1, p. 9.

32 Ms Bridget Fair, Free TV Australia, *Committee Hansard,* 1 August 2018, pp. 36–37.

33 Free TV Australia, *Submission 6,* p. 14.

storytelling in the modern era'.[34] Ms Fair described this as 'asking for some flexibility' rather than 'stepping away from our commitment to adult drama'.[35]

4.33 Free TV Australia proposed an alternative content quota model be implemented. At present, broadcasters must attain 860 points every three years, with differing points per hour based on the format of the program. Free TV Australia's proposed model would differentiate between original commissioned programs and acquired programs, and would also ascribe a slightly higher value to long-running series.[36]

4.34 However, in response to this proposal, MEAA told the committee that such a recalibration would 'potentially half the number of drama programs made each year'.[37]

4.35 In addition, Free TV Australia proposed that the definition of 'first release' be amended under the Australian Content Standard so that any program can count towards a sub-quota if it is the first time it has been broadcast on free-to-air television. This would address the current situation where:

- free-to-air broadcasters can screen Australian dramas or mini-series which have appeared on an SVOD or AVOD services such as Netflix or Stan or Australian feature films or telemovies which have been broadcast on pay TV, and have the broadcast count towards its drama sub-quota; but
- cannot count the broadcast of Australian dramas or mini-series which have been broadcast on pay TV as part of their sub-quotas.[38]

4.36 Free TV Australia submitted that the proposed amendment would enable co-productions with subscription broadcasters and could allow greater resources to be committed to a broader range of drama content.[39] Similarly, Foxtel stated that the current definition 'dramatically reduces any incentive for cooperation between subscription TV and FTA [free-to-air] television, given that it would be highly unusual for a platform like Foxtel to want a new program that had premiered on FTA'. It concluded that 'if cooperation could be fostered it may lead to higher budget productions which might be more attractive to international markets'.[40]

34 Free TV Australia, *Submission 6*, p. 37.

35 Ms Bridget Fair, Free TV Australia, *Committee Hansard*, 1 August 2018, p. 37.

36 Free TV Australia, *Submission 6*, p. 45.

37 MEAA, *Submission 27*, p. 7.

38 Free TV Australia, *Submission 6*, p. 45.

39 Free TV Australia, *Submission 6*, p. 45.

40 Foxtel, *Submission 2*, Attachment 2, p. 10.

4.37 However, MEAA told the committee that programs would be claimed by both subscription and free-to-air broadcasters as meeting their quotas for 'first release', and as result there would be less production. It explained:

> Programs already aired on pay TV or streaming platforms could be acquired by a commercial broadcaster for a second window (or ‘free-to-air first release’) and used to acquit quota points as though new. The same program could be claimed each by Foxtel and Nine, for example, in satisfaction of their content requirements, thus reducing the overall number of programs made. The acquisition is unlikely to be residuable because the broadcast licence fee would be built into the budget. The end result is less production and no financial benefit to the cast for this double window.[41]

Regional and remote areas

4.38 The committee received evidence that regional commercial broadcasters struggle to meet their full multi-channel quota requirements in smaller regional and remote areas. As such, Free TV Australia proposed that there should be flexibility for these broadcasters so that they are not expected to meet the requirement to deliver the 1460 hours per annum of Australian content on multi-channel services. It supported this proposal particularly where cost constraints or complex technical issues prevent these broadcasters from being able to deliver the full range of services available for their metro counterparts.[42]

4.39 Free TV Australia also proposed that where metropolitan networks meet their sub-quota obligations by releasing content online rather than as part of free-to-air broadcast services, then affiliated regional networks should also be able to count the content towards their sub-quota obligations.[43]

4.40 However, the Northern Territory Government submitted that quotas for regional content are one way of ensuring distinct and diverse voices are heard. It noted that the Northern Territory has a highly diverse cultural mix, which along with its strong Aboriginal identity (approximately 26.8 per cent of the population identify as Aboriginal and Torres Strait Islanders), makes the Northern Territory unique. The Northern Territory Government submitted that 'the creative voice of Territorians is distinctive and seeking to be heard both locally and internationally'. As such:

> Quotas guarantee that small production companies in regional jurisdictions are able to successfully compete with large production companies based in Sydney and Melbourne. Without Government intervention regional and remote Australians may become marginalised rather than contributing to a rich, culturally diverse content landscape.[44]

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41 MEAA, *Submission 27*, p. 7.

42 Free TV Australia, *Submission 6*, p. 45.

43 Free TV Australia, *Submission 6*, p. 45.

44 Northern Territory Government, *Submission 32*, pp. 6–7.

Inclusion of New Zealand content in quotas

4.41 As a result of a protocol to Australia's Closer Economic Relations agreement with New Zealand, and High Court Decision (*Project Blue Sky v Australian Broadcasting Authority*), New Zealand content is treated as Australian content for the purposes of Australian content quotas. A number of witnesses described this as a 'loophole' which has undermined the effectiveness of Australia's local content regime, and which is a 'significant impediment to local production industry growth'.[45]

4.42 MEAA and Screen Producers Australia (SPA) told the committee that there has been an increase in the amount of New Zealand content being broadcast on free-to-air television.[46] MEAA explained:

> In 2015, Seven aired 313 hours of NZ content; Nine aired 67 hours, while Ten aired 27 hours, much of it on non-primary channels. Although these figures are not necessarily alarming, further analysis reveals a trend towards more New Zealand productions counting towards the networks' drama scores. In 2014, NZ content accounted for 16.02% of Australian drama required under the content rules. In 2015, the figure grew to 18.16% and in 2016, to a remarkable 21.54%.[47]

4.43 Further, Mr Matthew Deaner, Chief Executive Officer, SPA, noted that 'in 2017 New Zealand content accounted for 25 per cent of the Nine Network's dramas and 25 per cent of the Ten Network's documentaries'.[48]

4.44 Mr Deaner stated that New Zealand content was used to replace the requirements for Australian content in the sub-quota system. Mr Deaner described this practice as making 'a mockery of our local content system, to the detriment of Australian audiences'. Further, 'Australian producers and the many thousands of Australian workers in the screen industry also suffer the consequences of this'.[49]

4.45 SPA submitted that the use of cheap second-run New Zealand content to acquit first-run Australian content obligations means that Australian producers are competing with New Zealand producers at a price point that is uncompetitive. This is due to content either being purchased after being aired in New Zealand, or because the cost of production in New Zealand is often cheaper due to lower labour costs or is more heavily subsidised. SPA submitted that 'Australian producers are hamstrung from competing at a level playing field, with deleterious effects over the long term sustainability of the independent production sector'. SPA noted that the Seven

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45 Screen Producers Australia (SPA), *Submission 34*, p. 11.

46 MEAA, *Submission 27*, p. 6. See also Mr Matthew Deaner, SPA, *Committee Hansard*, 1 August 2018, p. 21.

47 MEAA, *Submission 27*, p. 6. See also Mr Matthew Deaner, SPA, *Committee Hansard*, 1 August 2018, p. 24.

48 Mr Matthew Deaner, SPA, *Committee Hansard*, 1 August 2018, p. 21.

49 Mr Matthew Deaner, SPA, *Committee Hansard*, 1 August 2018, p. 21.

Network produced *800 Words* in New Zealand, where the tax rebate for production is 40 per cent, and acquits it as Australian drama.[50]

4.46 The committee heard that New Zealand's tax incentives of 40 per cent are encouraging broadcasters to look to move away from producing content in Australia. Ms Bernadette O'Mahony, ACTF, stated 'there is talk at the moment' that if producers and broadcasters are required to maintain current quotas then they are 'going to do it in New Zealand with the 40 per cent offset and the mechanisms that are there, and calling that Australian content to meet their quota in the future'.[51]

4.47 A number of submitters recommended that the New Zealand loophole be closed.[52]

4.48 However, in response to this evidence, Ms Fair, Free TV Australia, stated that Free TV Australia does not 'see it [New Zealand content] as a significant issue'. Ms Fair stated that:

> In 2017, New Zealand content made up 0.12 per cent of the transmission quota on primary channels of my members. In 2017, all of my members met their minimum drama points requirement with programming that was Australian rather than New Zealand. On multi channels, the average amount of New Zealand programming in 2017 was around one per cent. So I really don't think that this is causing major problems for our production ecosystem.[53]

Maintaining existing quotas

4.49 The committee received a significant amount of evidence supportive of maintaining existing content quotas, and in some cases, increasing content quotas. For example, the Victorian Film and Television Industry Working Party expressed support for content quotas and submitted that:

> Australian content quotas for drama/comedy, documentary and children's programs should be increased or at least maintained and enforced as a condition of the granting of spectrum usage licences. Australian/New Zealand programs should only qualify for content points in one territory not both.[54]

4.50 The Northern Territory Government recommended that the Australian Government maintain and increase the quotas for Australian children's content on both

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50 SPA, *Submission 34*, p. 12. See also Mr Matthew Deaner, SPA, *Committee Hansard*, 1 August 2018, p. 24.

51 Ms Bernadette O'Mahony, ACTF, *Committee Hansard*, 1 August 2018, p. 11.

52 SPA, *Submission 34*, p. 12. See also Mr Matthew Deaner, SPA, *Committee Hansard*, 1 August 2018, p. 24; Screen Producers Australia and APRA AMCOS, *Submission 39*, pp. 2–3.

53 Ms Bridget Fair, Free TV Australia, *Committee Hansard*, 1 August 2018, p. 36.

54 Victorian Film and Television Industry Working Party, *Submission 8*, Attachment 1, p. 3.

commercial and public broadcasting channels. It also recommended the introduction of a quota for Aboriginal content for children, some of which should be in language.[55] It submitted:

> Screen content contributes to the cognitive, emotional and creative development of young people. It is important that children in the NT grow up with a strong sense of identity that reflects our culture and values, and is inclusive of Aboriginal and Torres Strait Islander culture, language and history.[56]

4.51 The ABC expressed concern in relation to calls for content quotas to be removed. It noted that in 2003 the United Kingdom abolished the requirement for commercial networks to mandatorily carry children's programmes, and as a result, spending on children's programming fell. The ABC submitted:

> OfCom [UK communications regulator] reported that the abolition of commercial children's content quotas was an abject failure in the UK and resulted in the total spend on children's programming falling in real terms by 22 per cent and the number of hours of first-run content halving. OfCom also found that as a result of the decision, ninety per cent of children's content across the affected broadcasters was repeat programming.[57]

4.52 Submitters such as APRA AMCOS also highlighted that television production in Australia is also important to the Australian music industry. It submitted that 'in the absence of or reductions to the Australian content quotas on commercial television, there would be less content produced and broadcast on Australian television'. This would 'have a significant and detrimental impact on Australian composers and songwriters'.[58]

4.53 Foxtel submitted that the underlying policy rationale for Australian content quotas on free-to-air television may have shifted slightly, but largely remains the same. In particular, free-to-air 'broadcasters occupy a privileged position as regards access to public spectrum, and are protected from new competition'. Foxtel concluded that:

> It remains appropriate for the Australian public to expect a dividend from the FTA broadcasters' privileged access to public spectrum, in the form of existing local content requirements. Despite the proliferation of alternative entertainment choices, FTA broadcasters also continue to attract mass audiences, making the platform well suited as a destination for mandated local content.[59]

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55 Northern Territory Government, *Submission 32*, p. 2.

56 Northern Territory Government, *Submission 32*, p. 6.

57 ABC, *Submission 25*, p. 16.

58 APRA AMCOS, *Submission 28*, p. 7,

59 Foxtel, *Submission 2*, Attachment 2, pp. 10–11.

4.54 Similarly, the Australian Directors Guild (ADG) and Australian Screen Directors Authorship Collecting Society (ASDACS) submitted that the system of content quotas 'costs the government nothing and ensures that an industry that is now getting valuable spectrum for no cost provides Australians with the content they want to watch'. Further:

> It is clear the quota system that the commercial networks have been operating under has been effective and successful…If no obligation from commercial broadcasters were in place, and none for the new streaming services, we can guarantee that the production of Australian content would drop dramatically and may even go back to the 1960's when only 1% of total content on commercial networks was Australian.[60]

4.55 MEAA expressed its strong support for the need for content quotas, and rejected calls by commercial television broadcasters to remove any obligations. However, it also advocated for the urgent modernisation of content laws that lock in content obligations which apply evenly to all content providers. MEAA stated that it is 'agnostic about the regulatory tools used to ensure these standards are maintained'.[61]

Cultural value of locally produced content

4.56 A number of witnesses responded to calls by commercial broadcasters to alter or reduce existing content quotas by emphasising the important cultural value of locally produced children's content, and locally produced drama content.

4.57 In expressing support for the existing content quotas, submitters highlighted the importance of Australian content that tells uniquely Australian stories, and is reflective of the diversity of Australia's population. For example, the Federation of Ethnic Communities' Councils (FECCA) stated that there is:

> …an appetite for diversity in Australian scripts developed for television. With increased diversity in the Australian population together with increased access to digital and streaming services, the Australian media sector must broaden the content of its storytelling in order to maintain and increase its audience.[62]

4.58 Similarly, Ms Helen Dallimore, actor, and MEAA member, told the committee that she is alarmed that commercial broadcasters 'want to walk away from any commitment to create children's content'. Ms Dallimore highlighted the importance of ensuring that children 'see their own culture reflected on screen through Australian stories'. Ms Dallimore stated:

> The last thing we want is for our kids in their developmental years to be exposed to a uniform diet of British and American accents. Additionally,

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60 The Australian Directors Guild (ADG) and the Australian Screen Directors Authorship Collecting Society (ASDACS), *Submission 17*, p. 11.

61 MEAA, *Submission 27*, p. 8.

62 FECCA, *Submission 1*, p. 1.

> I'm constantly thanked by Lebanese Australians who are so excited to see their community reflected on commercial television in *Here Come the Habibs*. That program would never have been made without the drama subquota. Until we had quotas, only one per cent of content was Australian. We cannot return to that situation. Our economy, our culture and our identity depend on it.[63]

4.59 The ADG and ASDACS highlighted the appetite for Australian children's content as demonstrated by the success of the ABC's dedicated children's channel ABCME. It stated that the launch of this channel 'transformed the children's television landscape'. Further, 65 per cent of children surveyed by ACMA nominated ABC channels as their favourite, with subscription television coming a distant second at 22 per cent, and commercial channel 'Go' at 4 per cent. The survey also found that 70 per cent of children under 5 years of age, preferred ABC2. The ADG and ASDAC concluded:

> It is clear from these figures that Australian children want to watch television that is specifically created for them and is Australian.[64]

4.60 As noted above, commercial broadcasters argue that *Masterchef*, *Ninja Warrior* or *The Bachelor* are popular with viewers of all ages, including children. However, some witnesses expressed concern that such shows are not appropriate for children, and should not be classified as children's television. For example, Ms Fiona Donovan, MEAA member, stated:

> What about a two year old or a four year old? *MasterChef* isn't an appropriate television show for them. How do you speak to teenage girls? Are shows like *The Bachelor* appropriate for teenage girls? Is that modelling good behaviour? When people make a children's show or a young adults show they think about what's appropriate and what message they are trying to tell. I don't know that *The Bachelor*, *MasterChef* or *Ninja Warrior* are modelling good behaviour for children.[65]

4.61 Beyond Australian children's programming, witnesses also emphasised the importance of Australian drama content. For example, Mr Matt Day, actor, and MEAA member, told the committee that 'there's a special place for Australian culture on Australian screens' and that he would 'hate to see our culture become a niche product pushed into the backwaters'. Mr Day stated:

> I think it needs to be up front and centre. I think quotas have worked extremely well in ensuring that Australian stories are told and will continue to be told. I think it's vitally important for our nation and for our culture.[66]

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63 Ms Helen Dallimore, MEAA, *Committee Hansard*, 1 August 2018, p. 40.

64 ADG and ASDACS, *Submission 17*, p. 12.

65 Ms Fiona Donovan, MEAA, *Committee Hansard*, 1 August 2018, p. 43.

66 Mr Matt Day, MEAA, *Committee Hansard*, 1 August 2018, p. 40.

4.62 Witnesses also argued that reality shows are not an adequate substitute for locally produced drama telling uniquely Australian stories. Ms Dallimore stated that 'it's a real shame that there's not enough value put on Australian stories being told on those commercial networks above and beyond reality stuff'.[67]

Economic benefits of locally produced content

4.63 The committee heard that quotas 'have had a demonstrable effect in growing the market for Australian content and creative employment'. Further, quotas not only provide economic and cultural benefits to the television production industry, but to symbiotic sectors including marketing, technical, and music. Where television quotas or commitments exist (i.e. in the commercial free to air sector and government broadcasters) there is 'commensurate use of Australian composers' and artists' music.[68]

4.64 It was highlighted that locally produced dramas and children's content provide a range of opportunities for Australia's screen industry that reality shows do not. For example, Ms Dallimore, MEAA, told the committee that reality shows do not employ actors or scriptwriters though they employ technicians.[69] Similarly, Mr Day, MEAA, expressed a wish for actors and filmmakers to have the opportunities he was afforded as young actor through locally produced content. Mr Day stated:

> I'd also like to see the opportunities for actors and filmmakers that I've been given. I started off on children's TV when I was 14 years old, 30-something years ago. I'd hate to see people denied those same opportunities to learn, really—which is what I did on the job; I wasn't trained professionally—to have a career and to be able to do so in Australia without leaving the country, which so many people seem to have to do these days just to get by.[70]

4.65 Television drama was described as 'one of the bread-and-butter areas that sustains' the screen industry in Australia. Any reduction in the level of production would 'see a lot of people leaving the industry' and the capacity of Australia's screen industry would fall. Ms Kelly Wood, MEAA, told the committee that the screen industry is 'a very hard industry to stay in, because it is freelance'. As such:

> When people are not working on a drama, or whatever work they happen to have picked up, they're unemployed. We need there to be enough work in the industry to sustain people to actually stay in it; otherwise, we lose a tremendous amount of skill.[71]

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67 Ms Helen Dallimore, MEAA, *Committee Hansard*, 1 August 2018, p. 43.

68 Screen Producers Australia and APRA AMCOS, *Submission 39*, p. 1.

69 Ms Helen Dallimore, MEAA, *Committee Hansard*, 1 August 2018, p. 43.

70 Mr Matt Day, MEAA, *Committee Hansard*, 1 August 2018, p. 40.

71 Ms Kelly Wood, MEAA, *Committee Hansard*, 1 August 2018, p. 41. See also Mr Matt Day, MEAA, *Committee Hansard*, 1 August 2018, p. 41.

4.66 Similarly, the ADG and ASDACS submitted that television content quotas have 'produced a stable industry producing enough local content that audiences can enjoy and an industry can be built upon'.[72] The Walt Disney Company (Australia) Pty Ltd, explained that:

> …policies that incentivise the production of local content lead to a "virtuous cycle" that ultimately grows local creative industries—including creating more jobs for local talent—while simultaneously increasing the quality of locally produced content.[73]

4.67 The ADG and ASDACS went on to explain that the majority of screen directors represented by the ADG are television directors, and that television is the screen industry that sustains the most full time professionals in Australia. The television industry has enabled the growth of Australia's feature film and offshore industry, and without the production of Australian content for television, 'we would…not have a major industry that employs tens of thousands of technicians and creatives as well as generating billions of dollars for the economy'.[74]

4.68 The committee heard that locally produced content also makes significant economic contributions to local communities through local purchasing and employment opportunities. For example, Ms Fiona Donovan, a production designer and director, and MEAA member, told the committee that:

> *A Place to Call Home* is a great example—a period production where we had to source everything from the period. Everything was set in 1959 when we finished. We shot down in Camden. The Camden local community benefited so much from us going down there. We would stay down there. We would use local labour. We went to Bunnings all the time, and we used Camden High. So, when a production comes to town, there are a lot of benefits to the local community. I talked about hiring people. We had a couple of people who've ended up working in art departments now; we found them in Camden. I'm just talking about the art department.[75]

Obligations for subscription video on demand (SVOD) service providers

4.69 A number of witnesses and submitters advocated for regulatory equality between existing television broadcasters and subscription video on demand (SVOD) service providers such as Netflix, Stan and Amazon. For example, Mr Matt Day, actor and MEAA member, stated that content quotas 'need to extend to the brave new worlds of digital streaming as well'.[76] Similarly, the Northern Territory Government

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72 ADG and ASDAC, *Submission 17*, p. 5.

73 The Walt Disney Company (Australia) Pty Ltd, *Submission 14*, pp. 1–2.

74 ADG and ASDAC, *Submission 17*, p. 4.

75 Ms Fiona Donovan, MEAA, *Committee Hansard*, 1 August 2018, p. 40.

76 Mr Matt Day, MEAA, *Committee Hansard*, 1 August 2018, p. 41. See also Dr Anna Potter, *Submission 11*, p. 2.

stated that 'content requirements must be consistent across platforms in order to ensure a sustainable Australian screen industry'.[77]

4.70 The ADG and ASDACS submitted that without regulatory equality, traditional broadcasters are at a disadvantage. Their joint submission stated:

> …times have changed and the advent of streaming services has created a major shift in the economics of the industry. We are at a crossroads in terms of content on our screens. Currently there are no obligations on streaming services to Australian audiences even though they are making hundreds of millions of dollars from these audiences. This has created a disadvantage for our broadcasters both free to air and cable. These services have obligations to the Australian public to create and broadcast Australian content. We think the new streaming services should have the same obligations.[78]

4.71 The commercial pressures brought to bear by streaming services have already seen a reduction in the commitment to long form drama by commercial networks. For example, the traditional 12+ episode drama series has been replaced with series which have a maximum of six episodes. There has also been a slight decline in television hours produced, from 502 hours in 2012 to 457 in 2014, though there has been a spend increase from $305 million in 2012 to $321 million in 2017.[79]

4.72 The committee heard that 'without regulatory equality between streaming services and commercial and subscription broadcasters, 'the working lives of thousands of actors and crew professionals will be reduced'.[80] Ms Dallimore, actor and MEAA member, also noted that:

> The majority of the SVOD stuff that's consumed by our kids at the moment is not Australian and it's not current. There are no quotas in place for it. So, yes, there's a need for more content, but there are no regulations around that to ensure that the content is being made by Australians for Australians.[81]

4.73 SPA submitted that 'the level of Australian content on Australian SVOD services is in a dire state'. It noted that quantitative analysis of the Australian Netflix library found:

- Australian Netflix catalogue presently features around 2–2.5 per cent Australian content;
- there is more Australian content in the United States Netflix catalogue than there is in the Australian Netflix catalogue; and

77 Northern Territory Government, *Submission 32*, p. 6.

78 ADG and ASDACS, *Submission 17*, p. 3.

79 ADG and ASDACS, *Submission 17*, p. 5.

80 MEAA, *Submission 27*, p. 8.

81 Ms Helen Dallimore, MEAA, *Committee Hansard*, 1 August 2018, p. 42.

- in the absence of regulation, the SVOD market is unlikely to generate significant investment in new Australian content, though it adds some value to existing content rights.[82]

4.74 Witnesses told the committee that SVOD services providers are currently purchasing Australian produced children's content, but are not commissioning material. For example, Ms Bernadette O'Mahony, ACTF, stated that 'the Australian taxpayers' paid for it [children's content purchased by SVOD service providers] and someone else has commissioned it, so they're not generating anything new'. Ms O'Mahony expressed the view that SVOD services providers 'should contribute to our culture' in exchange for access to Australian audiences.[83]

4.75 However, it was acknowledged that applying conventional Australian content quotas would not work as SVOD providers, unlike commercial broadcasters, do not determine what is watched by consumers. Instead, MEAA proposed that SVOD providers 'should contribute a percentage of their total Australian revenues into a statutory content fund. This in turn, will build their Australian libraries that consumers are now turning to in greater numbers'.[84] MEAA submitted:

> SVOD (streaming video on demand) providers should be required to invest a fixed proportion of Australian revenues – say 10% - into local content production due to the unsuitability of imposing fixed quotas.[85]

4.76 Ms Wood, Organiser, MEAA, argued that 'new original content' commissioned by SVOD service providers under such a scheme should be 'directed towards the kind of content that we want to produce as a society, the same way that the broadcasters' content quotas are structured'. Ms Wood highlighted that MEAA does not 'have strong views' on which regulatory model should be adopted, however, the model should ensure that 'Australians are getting original drama and Australian kids are getting original content made for them'.[86]

4.77 Witnesses noted that international jurisdictions such as the European Union (EU) have introduced quotas for SVOD service providers to ensure that local content is available.[87] Ms O'Mahony, ACTF, added, that jurisdictions such as France, Canada and the United Kingdom are exploring options for the regulation of SVOD services. Ms O'Mahony stated:

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82 SPA, *Submission 34*, p. 9. See also Dr Anna Potter, *Submission 11*, p. 6.

83 Ms Bernadette O'Mahony, ACTF, *Committee Hansard*, 1 August 2018, p. 11. See also ACTF, *Submission 5*, p. 35.

84 MEAA, *Submission 27*, p. 8.

85 MEAA, *Submission 27*, p. 3. See also Mr Matthew Deaner, SPA, *Committee Hansard*, 1 August 2018, p. 22.

86 Ms Kelly Wood, MEAA, *Committee Hansard*, 1 August 2018, p. 44.

87 Ms Kelly Wood, MEAA, *Committee Hansard*, 1 August 2018, p. 42.

> There should be some requirement on them [SVOD service providers], whether it's a spend requirement or a quota requirement. The world is struggling with how to regulate the streaming services, but the French are going to do it, Canada is looking at it and the UK is looking at it. Everybody believes the same thing, I think, the world over.[88]

4.78 The committee heard that internationally, there have been a variety of ways to approach the regulatory model of quotas for SVOD service providers, and that each model operates differently. These models include: an expenditure obligation; a content percentage obligation (a percentage of the content library); and a promotion obligation.[89] For example, the revision to the EU *Audiovisual Media Services Directive* will include modifications to the existing Directive with aim of enhancing the promotion of European film and television content by imposing obligations on SVOD service providers to have at least a 30 per cent share of European content in their catalogue, and to ensure the prominence of this content.[90]

4.79 Mr Matthew Deaner, SPA, told the committee that SPA has been campaigning for the implementation of an expenditure obligation in Australia because this 'maintains…a focus on working with and nurturing creative talent across our nation'.[91] SPA explained in its submission that:

> The benefit of an expenditure model (as opposed to a volumetric quota level) is that it provides flexibility for the VOD provider to invest in quality, rather than quantity, of production. Furthermore, the nature of VOD services is different to linear broadcast, where quotas are a more appropriate and proven policy measure in ensuring Australian audiences are delivered Australian content. That said, to ensure that Australian audiences have access to Australian content on VOD services, a quota, together with a display and promotion obligation must come with an expenditure obligation.[92]

Response from SVOD service providers

4.80 Netflix submitted that its investments in Australia are already significant, and that streaming services increase 'organic demand for Australian content'. Netflix highlighted that the competitive environment 'pushes distributors to find the very best content to win the attention of…members'. As such, this demand is 'not driven by artificial demand generators such as quotas, funds, or minimum investment requirements'.[93]

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88 Ms Bernadette O'Mahony, ACTF, *Committee Hansard*, 1 August 2018, p. 11.

89 Mr Matthew Deaner, SPA, *Committee Hansard*, 1 August 2018, p. 23.

90 Screen Producers Australia and APRA AMCOS, *Submission 39*, p. 5.

91 Mr Matthew Deaner, SPA, *Committee Hansard*, 1 August 2018, p. 23.

92 SPA, *Submission 34*, p. 9.

93 Netflix, *Submission 16*, pp. 2–3.

4.81 Netflix noted that original movies, documentaries, series and co-productions such as *Tidelands*, *White Rabbit Project*, *Tales by Light*, *Wanted*, *Pacific Heat*, *The Letdown*, *Cargo* and *Pine Gap* have been produced by Australian creators for Netflix, and distributed to members around the world. Further, Netflix licenses second-run Australian titles such as *Lion*, *Rake*, *Ms Fisher's Murder Mysteries*, *Barbecue*, *Outback Truckers*, *The Code* and *The Moodys*. Netflix explained that second-run distribution provides an additional way for Australian producers to monetise content and creates opportunities for viewers around the world to access Australian content.[94]

4.82 Netflix originals have been filmed all over Australia, including in Queensland, South Australia, the Northern Territory, Victoria and New South Wales. In addition, Netflix feature films and series such as *Casting JonBenet*, *First They Killed My Father*, *72 Dangerous Animals*, and *Bright* have used Australian post-production services. Indeed, Sydney-based Silver Trak and Delux are Netflix preferred vendors and are used to process thousands of hours of original and licenced content for Netflix.[95]

4.83 The committee also received evidence that Netflix, along with the ABC, is a leader in professionally produced children's content. Netflix noted that because of commercial television broadcasters' reliance on advertising, they may find the production of children's content challenging. Further, children's content does not generally target an audience that advertisers seek to reach (i.e. adults with spending power), and parents often have concerns regarding children being exposed to advertising. Netflix described this as 'a mismatch in incentive' which has traditionally led to less organic production of high quality children's content.[96]

4.84 Netflix submitted that this mismatch does not exist it its business model as it does not rely on advertising, and there is no requirement to purchase content to satisfy advertisers. Instead, Netflix provides children content because subscribers demand it. Netflix stated, 'put simply: people love quality kids' content on Netflix, so we love to provide it'.[97]

4.85 Netflix told the committee that Australian children's content is popular with its global service and is seen in over 190 countries. It stated that it has invested in original Australian children's content including *Beat Bugs*, *Bottersnikes & Gumbles*, *Kazoops*, *Mako Mermaids: An H20 Adventure*, *Legend of Monkey* and *Motown Project*. Netflix submitted that any findings about 'the lack of popularity of children's television on free-to-air and Pay TV do not apply to streaming services'.[98]

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94 Netflix, *Submission 16*, p. 3.

95 Netflix, *Submission 16*, p. 6.

96 Netflix, *Submission 16*, p. 3.

97 Netflix, *Submission 16*, p. 4.

98 Netflix, *Submission 16*, p. 5.

4.86 Similarly, Stan Entertainment Pty Ltd, Australia's leading local SVOD service explained that SVOD services derive value from the entire period that a piece of content is licenced and available on a platform. This is significantly different to free-to-air television where the cost of production is sought to be recouped by the time it premieres, either through advertising sponsorship or the spot market. Stan explained that because SVOD services do not rely on advertising revenue, which generally requires mass audiences at particular timeslots, content creators are given greater flexibility to:

> …explore subject matter more deeply and to deliver innovative programming. This sort of edgy content, such as Stan's *Wolf Creek*, *No Activity* and *Romper Stomper*, has proven highly saleable overseas.[99]

4.87 Netflix argued that applying regulatory obligations which have been applied to traditional broadcasters would not serve the interests of consumers or the industry. It submitted:

> The interests of Australians as creators, citizens and consumers will not be served if policymakers try to shoehorn online media into the traditional broadcasting category and reflexively apply the legacy policies that applied to linear TV.[100]

4.88 Netflix argued that online video distribution is not an 'evolution of traditional broadcasting' and has 'more in common with the open markets that characterise most media of cultural expression—books, newspapers, magazines, visual arts, movies, sound recording, music, dance and theatre—than regulated broadcasting'. Netflix submitted that there has been a quid pro quo in the broadcasting space where regulation was applied in exchange for exclusive use of public and scarce broadcast spectrum, however SVOD services utilise the open networks that comprise the internet. As such, policy makers should explore non-regulatory means to ensure the future of Australia's production industry. It stated that 'enabling Australians to choose what they want to watch, when and where they want to watch it will continue to drive demand for high quality Australian content'.[101]

Evidence in relation to ABC and SBS

4.89 The following sections canvass evidence received in relation to the role of the public broadcasters, the Australian Broadcasting Corporation (ABC) and the Special Broadcasting Service (SBS).

4.90 This evidence includes evidence which argues that public broadcasters are unfairly competing with commercial broadcasters, and which argues that public broadcasters should be subject to content quotas.

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99 Stan Entertainment Pty Ltd, *Submission 15*, p. 2.

100 Netflix, *Submission 16*, p. 6.

101 Netflix, *Submission 16*, p. 7.

Market failure broadcasters

4.91 Some witnesses argued that the ABC and SBS are 'ideally placed to deliver content that is not financially viable for commercial broadcasters, such as children's and multicultural programming'. Free TV Australia submitted that this role should be 'formalised' and that the government should ensure that national broadcasters are not competing in mainstream content areas 'where audiences are already well served'.[102]

4.92 Free TV Australia asserted that the ABC and SBS are competing with commercial free-to-air broadcasters for access to mainstream content and that this does not align with the ABC and SBS charters. It submitted:

> We would urge the government to ensure the public broadcasters are fulfilling their charters, delivering services that Australians might otherwise not receive (especially regional news, foreign language programming and children's content) and not undermining the commercial free-to-air sector by competing even more directly for advertising and driving up the cost of commercially viable programming.[103]

4.93 However, the ABC argued that its Charter clearly requires it to deliver quality programs of broad appeal and specialised interest. More specifically, the ABC's charter, enshrined in legislation, requires the broadcast of programs that 'contribute to a sense of national identity, inform and entertain, and reflect the cultural diversity of the Australian community'. As such, 'Australian storytelling is central to the ABC's purpose and its strategic goal: to be the source of Australian conversations, culture and stories'.[104] The ABC submitted that:

> The legislation establishes that the ABC isn't relegated to a 'market failure' broadcaster and is obliged to provide a diverse range of programs that cater to mass and niche audiences.[105]

4.94 ADG and ASDACS also rejected calls to make the ABC a market failure broadcaster, and stated that such a development would reduce the amount of Australian children's content broadcast. It stated:

> …it would be tempting to then say just let the ABC be responsible for all children's content on our screens. The commercial networks have clearly failed to meet the Children's Television Standards (CTS). But to take away the responsibility of delivering Australian children's content to Australians would take us back to the 1960's when there was no Australian children’s content on our commercial screens.[106]

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102 Free TV Australia, *Submission 6*, p. 15.

103 Free TV Australia, *Submission 6*, p. 51.

104 Mr David Anderson, Director, Entertainment and Specialist, ABC, *Committee Hansard*, 11 April 2018, p. 1.

105 ABC, *Submission 25*, p. 5.

106 ADG and ASDACS, *Submission 17*, p. 13.

4.95 SBS on the other hand, told the committee that it 'tells the stories that no-one else does'. Mr Marshall Heald, Director, Television and Online Content, SBS, stated that in particular, SBS would love to make more children's content, especially content focused on Indigenous audiences' for NITV. Mr Michael Coonan, Head of Regulatory Affairs, SBS, added that 'the social dividend that could arise from the particular types of Indigenous children's content that we're talking about…relates to broader government policy around things like closing the gap'. Mr Coonan went on to comment:

> As I mentioned in the opening statement, certain groups are under-represented on TV at the moment. To the extent that we can have Indigenous children seeing themselves represented on screen, there are links to self-esteem and there is the fact that, with our Indigenous children's content, we extend the reach of that through our SBS Learn platform, which means that the messages from that content can be taken into the classroom with a whole range of teacher resources. You might expect to see a series of flow-on consequences that relate to school readiness, self-esteem, educational outcomes et cetera. So I think there is a particular social dividend in what we're proposing to do more of.[107]

Content quotas and obligations

4.96 The committee heard evidence in relation to whether or not public broadcasters should be subject to content quotas.

4.97 For example, the ACTF submitted that the ABC Charter should explicitly state that the provision of Australian children's content is a core obligation of the ABC. The ACTF submitted that the ABC should receive tied funding for the comprehensive service of locally produced children's content across a range of genres, and for all age groups. The ACTF suggested that this funding be quarantined from the rest of the organisation and that it should be linked to minimum content quotas which it calls Key Performance Indicators. The ACTF submitted that:

> Transparent KPIs will hold the ABC to account for the levels of locally produced children's content it transmits and assist the ABC and Government to engage productively to ensure the area is adequately funded. The ABC and producers of children's drama will need to be able to leverage other funding (the Producer Offset, direct funding from agencies, pre-sales, etc) to finance its drama slate, but it should have adequate funding to fully fund other kinds of content and be able to invest at a sufficient level in a high volume of drama.[108]

4.98 However, Mr David Anderson, then Director, Entertainment and Specialist, ABC, told the committee that the ABC typically meets or exceeds the commercial broadcasting quota targets across both television and radio. Mr Anderson argued that

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107 Mr Michael Coonan, SBS, *Committee Hansard*, 11 April 2018, p. 14.

108 Australian Children's Television Foundation, *Submission 5*, p. 33.

'any proposed application of commercial quotas to the ABC would impinge on the corporation's independence and ability to respond to evolving audience behaviours and expectations'. Further, 'the ABC's significant investment in Australian content is not driven by quotas but by the availability of funding'.[109] Mr Anderson stated:

> …a quota will reduce the ability to follow the best stories. I think it reduces the ability to maintain high-quality Australian content. If you're focused on a quota and you're not focused on the content itself, what it's doing, your investment in telling those stories and the Australian people, and you're worried about volume, I think that's the wrong focus.[110]

4.99 ABC Friends (ABCF) noted that 'the ABC has been resistant to discussions of quotas for measuring its Australian content and in principle ABCF can understand that such a proposal is at odds with the independence of the national broadcaster'. However, ABCF went on to state that 'without increased Australian content, criticism of the ABC will be ongoing'. ABCF concluded that the ABC should: prioritise Australian content in prime time; upgrade regional news and current affairs to maximise Australian content; develop an Australian documentary strategy to showcase readily available Australian content; and screen the work of young film makers on a regular basis.[111]

Investment and funding

4.100 The committee received evidence regarding the need for both the ABC and SBS to be adequately funded to ensure the commission and broadcast of locally produced material. For example, APRA AMCOS recommended that:

> Australia's public broadcasters must continue to be provided with adequate public funding such that they can continue to develop, produce, distribute and promote high levels of Australian content, including high levels of Australian music content.[112]

4.101 MEAA noted that direct public funding through Screen Australia, the ABC and the SBS provides 'opportunities to develop Australia's creative voices and provides a path to production for less obviously commercial content'. As such, any budget cuts to these agencies means 'fewer opportunities and less diversity in the content Australia produces'.[113] Film Victoria stated that:

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109 Mr David Anderson, Director, Entertainment and Specialist, ABC, *Committee Hansard*, 11 April 2018, p. 2.

110 Mr David Anderson, Director, Entertainment and Specialist, ABC, *Committee Hansard*, 11 April 2018, p. 2.

111 ABC Friends, *Submission 19*, p. 1.

112 APRA AMCOS, *Submission 28*, p. 7.

113 Ms Kelly Wood, Media, Entertainment and Arts Alliance (MEAA), *Committee Hansard*, 1 August 2018, p. 39.

> …reduced funding for any of these investors in, and commissioners of, Australian content ultimately translates to less Australian television production as the financing pool for Australian television production is primarily limited to the broadcasters, SVOD and other services, Commonwealth and State government, and Australian production companies. Reduced funding may also risk the quality of content produced if the development and production processes are squeezed with shorter timeframes and lower budgets.[114]

4.102 A number of submitters noted that the ABC, SBS and Screen Australia have suffered funding cuts since 2014/15. For example, Film Victoria submitted:

> Screen Australia, the ABC and SBS have suffered significant funding cuts since 2014/15. All three organisations have reduced staff and implemented other operational efficiencies to minimise the impact of funding cuts on production.[115]

4.103 Similarly, Ms Helen Dallimore, MEAA, highlighted the impact of budget cuts on the ABC. Ms Dallimore stated:

> I am gravely concerned about the future of children's content from both our public broadcasters and free-to-air channels. Our public broadcasters play a vital cultural role and need to be properly funded. However, since 2014 I'm aware that some $350 million has been cut from the ABC. As a result, their commissioning budgets for adult drama and children's content have dropped by 20 per cent each. It's time to set minimum Australian content levels and make sure there is sufficient funding to support those requirements.[116]

4.104 The reduction in funding to the ABC was also noted by Dr Anna Potter who submitted that in the absence of quotas and minimum funding levels, as well as a lack of budget detail, the ABC 'simply cannot be relied on as the sole source of children's content that situates Australian children in their own cultural context'.[117]

4.105 Submitters argued that funding to these agencies should be restored to 2014 levels. For example, Ms Kelly Wood, Organiser, MEAA, told the committee that 'increases to funding for the creation of drama and children's content are a simple and obvious fix'. Ms Wood stated that MEAA recommends that 'funding should be restored to 2013-14 levels'.[118] Similarly, Film Victoria submitted:

> Funding for Screen Australia and the ABC and SBS should be restored to pre-2014/15 levels. If this is achieved the funding should be specifically tied to the production of adult and children's drama, narrative comedy and

114 Film Victoria, *Submission 24*, p. 4.

115 Film Victoria, *Submission 24*, p. 4.

116 Ms Helen Dallimore, MEAA, *Committee Hansard*, 1 August 2018, p. 40.

117 Dr Anna Potter, *Submission 11*, p. 5.

118 Ms Kelly Wood, MEAA, *Committee Hansard*, 1 August 2018, p. 39.

> documentary content for digital and linear transmission, all of which should be commissioned from the independent production sector.[119]

4.106 The Australian Writers Guild noted that funding to the ABC and SBS has been 'drastically reduced each year which has led to decreased investments in new Australian content'. The Australian Writers' Guild recommended:

> …an increase in direct funding to ABC and SBS, specifically for new Australian scripted content, expenditure and reporting requirements on the investment in these areas, and the incorporation of content quotas in relation to their production of scripted content.[120]

4.107 The ABC told the committee that it increased its investment in Australian content by over $30 million, year on year. Mr Anderson noted that the ABC has managed the challenge of the high costs associated with producing Australian drama through the finding of 'efficiencies'. However, Mr Anderson stated that there is 'only so far that we can go, and we think we've reached that cap, frankly'.[121] Mr Anderson concluded:

> Continued and sustained government support, including a well-funded public broadcaster, is essential to maintaining that Australian content, including children's drama and factual content. It's the very essence of what we do at the ABC, and our aspirations for the future are to continue to be the leading and independent source of Australian conversations, stories and culture.[122]

4.108 Unlike the ABC, SBS told the committee that it would welcome an Australian content quota on its primary channel, on the proviso that it is fully funded. Mr Marshall Heald, SBS, explained further that this would require an estimated minimum $25 million per year, but this could vary depending on the genre of content. Mr Heald stated that 'the costs vary widely' and that 'you might find that an entertainment show shot in a studio could be produced for as little as $100,000 an hour, whilst a high-end drama is likely to cost $1.5 million to $2 million an hour'.[123]

4.109 Witnesses such as FECCA offered support for the implementation of a fully-funded Australian content quota for SBS so that more SBS Charter-aligned content can be delivered to the community. FECCA submitted that 'SBS has demonstrated over many years that it is deeply committed to representing Australia's diverse

119 Film Victoria, *Submission 24*, p. 4.

120 Australian Writers' Guild, *Submission 21*, p. 10. See also Victorian Film and Television Industry Working Group, *Submission 8*, Attachment 1, p. 3.

121 Mr David Anderson, ABC, *Committee Hansard*, 11 April 2018, p. 3.

122 Mr David Anderson, ABC, *Committee Hansard*, 11 April 2018, p. 2.

123 Mr Michael Heald, SBS, *Committee Hansard*, 11 April 2018, p. 11.

communities in high quality, locally made content which is reflective of our nation's population'.[124]

4.110 FECCA highlighted that SBS provides:

> …migrant and CALD Australians with information and entertainment in their preferred language, as well as provide language and cultural development and maintenance, links to their countries of origin as well as cultural understanding which assists with social cohesion and settlement.[125]

4.111 SBS funds its programs through four means: direct investment from SBS; Screen Australia funding; state-based agencies; and international investment. In relation to Screen Australia, Mr Heald noted that Screen Australia has its own budgetary constraints and that 'their funding is under more pressure than ever before'. Mr Heald also noted that there is a 'natural cap' (of approximately 15 per cent) on international investment in local content as 'international players are looking for international stories they can distribute internationally'.[126]

4.112 The committee heard that current levels of funding for SBS would not be sufficient to support a local content quota (i.e. a mandatory increase in local content). Mr Heald explained that currently SBS produces between 100 and 150 hours of local content every year with nearly 70 per cent of its current total budget allocated to funding content. Mr Heald concluded that 'it's not possible for us to increase the amount of local content without additional support'.[127]

4.113 It was also noted that SBS has never received funding specifically to produce children's television, however it submitted that specific funding and support should be provided to develop Aboriginal and Torres Strait Islander children's content for NITV. Mr Heald noted that while NITV currently has a very small budget overall, it has produced a number of series in conjunction with the ABC and Disney.[128]

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124 FECCA, *Submission 1*, p. 3. See also Save Ours SBS Inc, *Submission 23*, pp. 5–6.

125 FECCA, *Submission 1*, p. 3.

126 Mr Michael Heald, SBS, *Committee Hansard*, 11 April 2018, p. 11.

127 Mr Michael Heald, SBS, *Committee Hansard*, 11 April 2018, p. 11.

128 Mr Michael Heald, SBS, *Committee Hansard*, 11 April 2018, p. 11.

4.114 Mr Heald explained:

> NITV has a very small budget overall. All of the projects that NITV make—I'm not sure if you know: with the creative teams, two out of three of the key creatives need to be Indigenous. In respect to kids' content, last year we funded *Little J & Big Cuz*, which was a really fantastic animated series about preparing Indigenous kids for school. This year we've got *Grace Beside Me*, which is the first live action tween series for Indigenous kids. But, with a small budget, those shows are few and far between. With both of those shows we have partnered with both the ABC locally and Disney so that they get some international money coming into them. With a very small funding base, we're always actively looking for partners to try to tell more stories that matter.[129]

Public funding and accessibility

4.115 The following sections outline the evidence received in relation to the need for public funding eligibility criteria, to ensure that all publicly funded screen content is accessible.

4.116 The Australian Communications Consumer Action Network (ACCAN) submitted that Article 30 of the Convention on the Rights of Persons with Disabilities (the CRDP) outlines that people with disability have the right to equal access to participation in cultural life, including equal access to television shows, films, theatre and other cultural activities. Not only must people with disability must have access to cultural materials, and this material must be made available in accessible formats.[130]

4.117 ACCAN highlighted the importance of children and young people with disability having access to Australian content in fostering a sense of inclusion, community and national identification. As such, Australian broadcast, radio and streaming services must be available as broadly and as inclusively as possible, taking into account the range of accessibility requirements that people with disability have. This range of requirements includes, for example, content captioning, accessible venues, and audio described content.[131]

4.118 It was noted that since 2011, Screen Australia has implemented a funding condition that requires the programming in which it invests to be both captioned and audio described. ACCAN told the committee that this commitment to accessibility features resulted in many people with disability being able to view Screen Australia films in caption and audio description compliant cinemas. However, ACCAN noted that these accessibility measures do not carry across to other media. For example, audio description of this content is not currently available on television.[132]

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129 Mr Michael Heald, SBS, *Committee Hansard*, 11 April 2018, p. 11.

130 Australian Communications Consumer Action Network (ACCAN), *Submission 41*, p. 1.

131 ACCAN, *Submission 41*, p. 2.

132 ACCAN, *Submission 41*, p. 2.

4.119 ACCAN recommended the introduction of legislative requirements which stipulate that access features for video content must follow the content – that is, if content is captioned on one platform (e.g. television), the captions must follow the content across other platforms such as SVOD services. ACCAN stated that:

> Such clear legislative requirements would help to ensure access features exist across all platforms (including Australian and international streaming services), to support the cultural inclusion of all Australians with disability.[133]

133 ACCAN, *Submission 41*, p. 2.

Chapter 5

Australian music industry

5.1 This chapter will examine the evidence received in relation to the Australian music including:

- the current state and operation of the market for Australian music;
- the importance and impact of content quotas; and
- international perspectives.

Current state and operation of the market for Australian music

5.2 The committee received evidence that over the past 20 years, the global music industry has been 'on a tumultuous ride' as a result of technology evolving 'faster than any music rights holder could have anticipated'.[1] As such, the music industry continues to grapple with the ongoing challenges arising from the digital disruption of traditional media platforms.[2]

5.3 Like the screen industry, the music industry is now seeing widespread music curation by individual users. Further, consumer streaming services such as Spotify are being used in businesses despite an absence of public performance licence agreements with such services. The absence of a direct relationship between consumer streaming services and collecting societies such as APRA AMCOS for public performance has resulted in an absence of play data. This in turn has a negative impact on revenue calculation and repatriation accuracy, to the detriment of artistic communities.[3]

5.4 The Australian music industry (including theatrical production) makes a significant contribution to the Australian economy with $10.554 billion generated in 2016, along with 92,379 people employed. It should be noted that Australia is the seventh largest recorded music market in the world in absolute value, and even higher on a per-capita basis.[4]

5.5 Music is enjoyed in a variety of formats and across platforms including live performances, recorded formats such as CD, DVD, and vinyl, and digital streaming, through radio and television broadcast, and in film. The music industry was also described by the Australian Recording Industry Association (ARIA) as enabling 'a

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1 Mr David O'Rourke, Chief Executive Officer, Nightlife Music, *Committee Hansard*, 4 September 2018, p. 12.

2 APRA AMCOS, *Submission 28*, p. 2.

3 Nightlife Music, *Submission 40*, pp. 3–4.

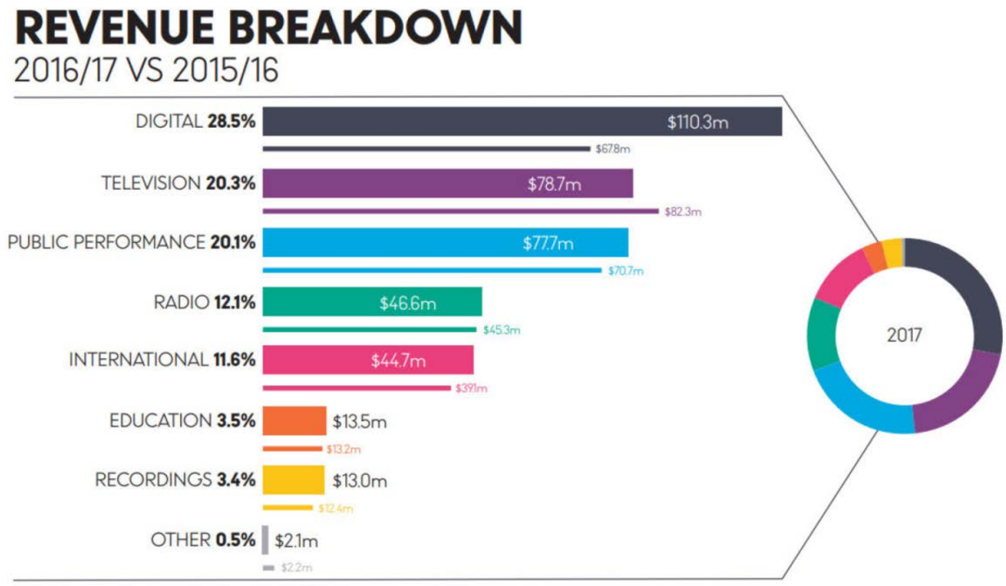
4 Australian Recording Industry Association (ARIA), *Submission 33*, p. 2.

broad ecosystem to flourish in both the cities and the regions – in the form of tours, festivals, live music venues, and local businesses'.[5]

5.6 APRA AMCOS[6] is responsible for licensing all radio and television broadcasters and legal streaming services in Australia submitted that in total it has 618 traditional broadcast clients and 54 digital new media clients. This includes commercial radio and television broadcasters, community radio and television broadcasters, video on demand services, and music download and streaming services.[7] It also represents over 95,000 songwriters and music publishers with 145,000 businesses licensed across Australia and New Zealand.[8]

5.7 In the financial year ending 30 June 2017, $386 million were collected in gross revenue by APRA AMCOS, an increase of 16 per cent on the previous year.[9]

Figure 5.1 – APRA AMCOS revenue comparison



Source: APRA AMCOS, *Submission 5*, p. 12.

5 ARIA, *Submission 33*, p. 2.

6 APRA is the collecting society in Australia in respect of the public performance and communication rights of composers and music publishers. AMCOS is the collecting society in Australia in respect of reproduction of music in certain formats, including on CD, DVD, online, for use as production music and for radio/TV programs. Together, APRA and AMCOS control the copyright for such purposes in almost all commercially available musical works, by virtue of assignments from their local members and affiliations with similar overseas societies. Since 1997, the two organisations have been administered in tandem. See APRA AMCOS, *Submission 28*.

7 APRA AMCOS, *Submission 28*, p. 2.

8 APRA AMCOS, *Submission 28*, p. 1

9 APRA AMCOS, *Submission 28*, p. 2.

5.8 In 2017, broadcast licence fees collected from broadcasters (radio and television, free and subscription) were the principal source of revenue for APRA AMCOS with $125.3 million collected, down slightly from the previous year's revenue of $127.6 million.[10]

5.9 Growth in revenue was largely driven by the rise in the number of consumer subscriptions to music and video streaming services with revenue rising from $67.8 million in 2016 to $110.30 million, a 127 per cent growth. Digital revenue includes licence fee collections from music streaming, paid music downloads, video on demand and user-generated content.[11] Mr Dean Ormston, Chief Executive Officer, APRA AMCOS, told the committee that although digital piracy previously had a significant impact on the music industry over many years, the widespread adoption of streaming services such as Apple Music and Spotify have been central in assisting changing consumer behaviour. Mr Ormston stated:

> Certainly, moving to streaming services and the widespread adoption of streaming services like Apple Music and Spotify, for example, have been wonderful in terms of assisting the change in consumer behaviour—people becoming familiar with the concept of paying a regular amount of money on a monthly basis for access to music. Whilst there have been other strategies around mitigating piracy—through site blocking, for example—on the proactive side in terms of content provision subscription services in particular have been a wonderful way of us channelling the general consumer market into a paid music service.[12]

5.10 Similarly, Mr Andrew Van Dorsselaer, Director, Vicious Recordings, commented that streaming services were initially 'discussed as being the death of the music industry' however, they are now described as being 'unbelievably great'. Mr Van Dorsselaer explained:

> Any record shop, when you were growing up, would have only had a couple of thousand titles in the shop. Now we have every single title you could ever want immediately there. Streaming services have enabled older songs to create a lot more income…Streaming is absolutely fantastic. Without that, it would be very dire straits for Australian record labels.[13]

5.11 In the pre-digital era, the music market was relatively simple, with comparatively few artists making it into mainstream channels, and record labels playing a key role in the discovery and promotion of artists. Record shops and radio were the primary mechanisms for music discovery, and rights holders were able to easily manage distribution, with small datasets and relatively simple end-user licence

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10 APRA AMCOS, *Submission 28*, p. 2.

11 APRA AMCOS, *Submission 28*, p. 2.

12 Mr Dean Ormston, Chief Executive Officer, APRA AMCOS, *Committee Hansard*, 1 August 2018, p. 2.

13 Mr Andrew Van Dorsselaer, *Committee Hansard*, 16 November 2018, p. 3.

agreements. In addition, public performance revenues were significant, and the sector played a role in artist discovery and promotion. Of particular importance, in all sectors, piracy was almost non-existent.[14]

5.12 In the post-digital era, 'the landscape is very different'. In particular, 'there are millions of tracks made accessible to every customer via streaming providers', and artists are increasingly struggling to be heard. In addition, challenges now exist for rights holders in achieving 'accurate and transparent distributions' and managing 'ever-changing rights chains'. As such, 'access to music has been democratised'.[15]

5.13 The digital consumption of music in Australia has grown rapidly since the introduction of music streaming services over the last six years. APRA AMCOS stated that 12 months after the launch of music streaming services in Australia, there were approximately 900,000 paid subscribers in Australia and New Zealand. Six years later, there are now approximately four million subscribers in Australia and New Zealand with more than one in eight people paying for a music streaming service. In addition, 'even greater numbers of Australians access those services for free under the ad funded tier of those services'.[16] Similarly, ARIA submitted:

> The key factor driving the industry's return to growth has been the adoption of online streaming services by consumers who are able to access either paid subscription or advertising supported service offerings. The proliferation and adoption by the public of these services has meant that Australians are now able to easily access the history of recorded music whenever and wherever they want at a very modest monthly subscription cost – or even for free via advertising supported services.[17]

5.14 Australians are also subscribing to video on demand services in large numbers. APRA AMCOS stated that over 1 in 3 Australians subscribed to Netflix by June 2017 with $14.1 million collected in licence fees. This represented a year on year growth of 69.9 per cent.[18]

5.15 The recent popularity of Australian music overseas (as seen in Box 1) has also seen an increase in international revenue collected by APRA AMCOS on behalf of its members. In 2013, APRA AMCOS collected $21.8 million for the use of its members' work in territories external to Australia and New Zealand. In 2017, it collected $43.5 million, effectively doubling its international revenue over five years.[19] ARIA,

14 Mr David O'Rourke, Chief Executive Officer, Nightlife Music, *Committee Hansard*, 4 September 2018, p. 12.

15 Mr David O'Rourke, Chief Executive Officer, Nightlife Music, *Committee Hansard*, 4 September 2018, p. 12.

16 APRA AMCOS, *Submission 28*, p. 2.

17 ARIA, *Submission 33*, p. 3.

18 APRA AMCOS, *Submission 28*, p. 3.

19 APRA AMCOS, *Submission 28*, p. 3.

in noting the success of Australian artists overseas submitted that 'such export success not only benefits the Australian economy, but helps to position Australia on the world stage'.[20]

> ***Box 1 – Snapshot of internationally successful Australian artists***
>
> Sia, Vance Joy and Flume enjoyed significant overseas chart success in 2017. As did Australian songwriters including: Samuel Dixon who was awarded a Grammy for his work on Adele's album *25*; Ben Abraham for his work on Kesha's *Praying*; and Kylie Sackley who writes songs for high profile US country artists such as Faith Hill, Alan Jackson and Leann Rimes. Similarly, in 2018 Brooke Ligertwood and Ben Fielding from the Australian band *Hillsong Worship* won a Grammy in the category of Best Contemporary Christian Song for their song *What A Beautiful Name*.
>
> Source: APRA AMCOS, *Submission 28*, p. 3.

5.16 APRA AMCOS submitted that it has committed to the continued growth of the export market for Australian music. Sounds Australia, an initiative co-funded by APRA AMCOS, the Australia Council and the Australian Government 'has showcased over 800 Australian artists, in 56 cities across 20 countries'. Showcase events have provided Australian artists with over 1400 performance opportunities, in addition, networking events have resulted in over 1700 'career advancing business outcomes' such as record deals and festival offers.[21]

5.17 APRA AMCOS noted that in January 2018, Sounds Australia appointed a Digital Export Music Producer to 'specifically investigate the opportunity and potential for increasing the number of Australian artists included in overseas curated digital playlists on services like Spotify and Apple Music'.[22]

5.18 Investment in development programs such as the high-school based SongMakers Program has also occurred. The SongMakers Program, co-funded by APRA AMCOS and the Australian Government, provides the opportunity for school students to work with a range of prominent Australian songwriters and producers. Over the past four years more than 2400 students have participated in the program.[23]

Content quota obligations

5.19 Commercial radio broadcasters are subject to obligations under the *Broadcasting Services Act 1992* (BSA), and industry standards and codes of practice. This includes requirements to broadcast local content and critical incident information, and meeting Australian music quotas.

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20 ARIA, *Submission 33*, p. 2.

21 APRA AMCOS, *Submission 28*, p. 3.

22 APRA AMCOS, *Submission 28*, p. 3.

23 APRA AMCOS, *Submission 28*, p. 4.

Local content obligations

5.20 Under section 43C of the BSA, and the *Broadcasting Services (Regional Commercial Radio – Material of Local Significance) Licence Condition 2014*, all regional commercial radio stations are required to broadcast specified levels of material of local significance.[24]

5.21 Small commercial radio licensees are required to broadcast 30 minutes of material of local significance each day, while all other licensees are required to broadcast three hours each day. This material must be broadcast between 5am and 8pm each business day—that is, during peak listening times—in order to reach a maximum number of listeners.[25]

5.22 Local content obligations are also imposed on commercial radio stations which have experienced a 'trigger event' which is broadly, a change in the control of the license or registrable media group. Following a trigger event licensees are required to meet minimum standards for the broadcast of local content including news, weather, community service announcements, emergency warnings, and where applicable, local content programs. Licensees are also required to maintain the existing level of local presence (i.e. staffing and facilities) for a period of 24 months after the trigger event.[26]

5.23 The minimum standards for the broadcast of local content are prescribed by section 61CE of the BSA and are as follows:

- Local news – a bulletin of 12.5 minutes duration broadcast at least 5 days per week during prime-time hours. These bulletins must not consist wholly of material broadcast in the licence area;
- Local weather – bulletins must be broadcast at least 5 days per week during prime-time hours;
- Community service announcements – licensees affected by trigger events must broadcast at least one local community service announcement per week; and
- Emergency warnings – licensees affected by trigger events must broadcast emergency service warnings when requested to do so.[27]

24 Commercial Radio Australia, *Submission 18*, p. 2.

25 Commercial Radio Australia, *Submission 18*, p. 2.

26 Commercial Radio Australia, *Submission 18*, p. 2.

27 Commercial Radio Australia, *Submission 18*, p. 2.

Obligations in times of emergency

5.24 The Commercial Radio Code of Practice establishes commercial radio broadcasters' obligations during critical events. Code 7 states that:

> A licensee will, in consultation with appropriate emergency and essential service organizations, implement a set of internal procedures to enable the timely and accurate broadcast of warnings and information supplied by such organizations relating to an existing or threatened emergency.[28]

5.25 In addition, commercial broadcasters in Victoria, New South Wales, South Australia and Queensland entered into Memoranda of Understanding (MOU) which establish processes governing the sharing of information between broadcasters and emergency service organisations. These MOU are designed to complement Code 7.

Australian music requirements

5.26 The Commercial Radio Code of Practice[29] requires the broadcast of a minimum proportion of music performed by Australians each day between 6am and midnight. This minimum amount varies according to the type of service being provided (see Table 5.1 below). The category into which a radio service falls is nominated by the licensee, and digital-only radio formats are exempt.

Table 5.1—Australian music content requirements

Category	Type of service	Minimum proportion Australian music (%)
A	Mainstream rock Album-oriented rock Contemporary hits Top 40 Alternative	25
B	Hot/mainstream adult contemporary Country Classic rock	20
C	Soft adult contemporary Hits and memories Gold—encompassing classic hits Hip hop	15
D	Oldies Easy listening Easy gold Country gold	10
E	Nostalgia Jazz NAC (smooth jazz)	5
F	All other types of service (including open-line, news, talk and sports)	N/A

Source: Australian Communication and Media Authority, *Submission 4*, p. 9.

28 Commercial Radio Australia, *Submission 18*, p. 3.

29 Section 5, Commercial Radio Code. See http://www.commercialradio.com.au/legal/regulation-codes.

5.27 In addition, radio services with formats which fall within categories A, B or C, must broadcast a proportion of music categorised as New Australian Performances[30]. Category A services must ensure that not less than 25 per cent of Australian content is New Australian Performances while Category B services must play not less than 20 per cent, and Category C services must play not less than 15 per cent.[31]

5.28 Commercial Radio Australia (CRA) reports quarterly to APRA detailing all music played (on a track by track basis). CRA also reports to ARIA on an annual basis on the percentage of Australian music played on each station. The data provided to ARIA is collected on a monthly basis from each station.[32]

Code complaint process

5.29 Section 10 of the Commercial Radio Code of Practice establishes a formal complaints process in relation to compliance with the requirements, including content obligations, of the Code. Complaints must first be raised with the station, and then if the complainant is not satisfied, the matter may be escalated to the ACMA.[33]

Issues raised in evidence

5.30 Over the course of the inquiry, the committee heard that the Australian music industry continues to face a number of issues. The following sections will outline the evidence received in relation to the following issues:

- the importance of Australian content quotas;
- the need for more stringent regulation in relation to quotas; and
- the role of various sectors of the industry including commercial radio services, streaming services, and live-performance in achieving a success.

5.31 The evidence received by the committee was resoundingly supportive of content quotas, and in fact many witnesses urged for content quotas to be both increased and more stringently enforced. The following sections will outline this evidence.

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30 New Australian Performance means a sound recording of a previously unpublished performance of a musical item performed by an Australian, which has been on sale to the Australian public for a period not exceeding 12 months, from the date which is recorded in the ARIA Report as the date of its initial release in Australia. See Commercial Radio Code of Practice, http://www.commercialradio.com.au/legal/regulation-codes.

31 Section 5, Commercial Radio Code. See http://www.commercialradio.com.au/legal/regulation-codes.

32 Commercial Radio Australia, *Submission 18*, Correction received 15 February 2018.

33 Commercial Radio Australia, *Submission 18*, p. 7.

Importance of, and support for, quotas

5.32 The relationship between the music and commercial radio industries was described as 'reciprocal' with 'the record industry using radio to promote its artists to hundreds of music listeners and in turn, radio benefitting from advertising revenue that is attracted by the millions of listeners to the airing of the music'. It is therefore widely held that radio airplay, and in turn, the promotion of music to an audience of millions will help stimulate the income of the artists, record labels, concert promoters, artist managers and many other sectors within the music and record businesses.[34]

5.33 Witnesses told the committee that despite recent changes in the media landscape, such as the development of online streaming services, commercial radio remains broadly popular. It was suggested therefore that 'the culture of listening to the radio and using it as the underlying foundation to discover new music is alive and well in the 21st century, regardless of the ability to access all types of music from internet sources in the cloud'.[35] Mr Dean Ormston, APRA AMCOS, commented that 'our feeling is that radio remains an incredibly important part of the ecosystem and that people find their music in different ways'.[36]

5.34 Mr Ormston, APRA AMCOS, acknowledged that the relationship between commercial radio and online streaming services, particularly in regards to artists being discovered, is complicated. However, Mr Ormston explained:

> There's a crossover in how the ecosystem works. No longer is it solely the domain of commercial radio to break a new artist, for instance; it's a much more complicated relationship. Community radio, commercial radio and the streaming services play an incredibly important function. We know that streaming services, through their different forms of playlists, provide an opportunity for many more Australian artists to be heard, but that is still a struggle. It's still a struggle for your average Australian artist to be heard somewhere, which is partly why we call for the space in the streaming services, but we also know that radio curation is very much related to what's happening in streaming services, so there's a crossover between all of those players.[37]

5.35 It was noted that international research 'has concluded that radio airplay directly affects not only performance revenues but also sales and copyright income for the artists lucky enough to get commercial airplay'. Ms Chrissie Vincent submitted:

> In the UK research report, 'Does Radio Airplay Matter?' by Kristin Thomas she states that it is 'well understood that consistent commercial airplay accompanies significant record sales, generates public performance royalties and burnishes a recording artists profile.' The research data also

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34 Ms Chrissie Vincent, *Submission 37*, p. 8.

35 Ms Chrissie Vincent, *Submission 37*, p. 9.

36 Mr Dean Ormston, APRA AMCOS, *Committee Hansard*, 1 August 2018, p. 4.

37 Mr Dean Ormston, APRA AMCOS, *Committee Hansard*, 1 August 2018, p. 4.

> shows that not only does 'radio airplay contribute to an artists brand, but it is just one part of the larger marketing strategy, and for some musicians, airplay is perceived a major driver of record sales and other revenue streams.'[38]

5.36 Commercial radio airplay also has a significant impact on an artist's live performance income and is a 'vital link in increasing their audience, and indeed attendance at shows, which also helps develop a larger fan base and increased sales'.[39]

Box 2 – Case study of impact of radio airplay on a local artist

Melbourne band The Tesky Brothers were virtually unknown to commercial radio before being featured on Melbourne station Triple M's Breakfast Show 'Live From Eddie's Desk' with Eddie McGuire. Following this feature, the band went from selling out smaller venues in Melbourne in early 2017 to four sold out shows at the Corner Hotel (an 800 person capacity venue) in July 2017. The Tesky Brother's manager Mr Jeremy Furze concluded that the appearance on commercial radio unquestionably made a difference to ticket sales.

Source: Ms Chrissie Vincent, *Submission 37*, p. 9.

5.37 Achieving 'breakthrough' in the global marketplace remains challenging for Australian artists. For example, ARIA explained that in the 2017 End of Year ARIA Chart, there were no Australian recording artists in the top 30 singles of the year, or in the top 10 albums of the year chart. As such, submitters stated that 'within this competitive environment it is even more vital that Australia has the right policy settings to support and encourage the creation and consumption of Australian music'.[40]

5.38 Ms Rohini Sivakumar, Corporate Counsel, Commercial, ARIA, explained that 'due to the global proliferation of online music services, traditional borders no longer apply' and 'Australian recording artists are having to compete with overseas artists with established and bigger fan bases and promotional budgets'. Ms Sivakumar highlighted for example that music is now typically released on the same day worldwide as part of the New Music Fridays initiative, under which there is now an aligned single global release day for recordings. Ms Sivakumar stated that Australian artists must now compete in this 'crowded digital marketplace' and as such, 'it is of vital importance that Australian artists are given an opportunity to be heard'.[41]

5.39 In this context, witnesses told the committee that commercial radio content quotas are 'vital to the continuing health of the Australian music industry' because

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38 Ms Chrissie Vincent, *Submission 37*, p. 7.

39 Ms Chrissie Vincent, *Submission 37*, p. 8.

40 ARIA, *Submission 33*, p. 3.

41 Ms Rohini Sivakumar, *Committee Hansard*, 1 August 2018, p. 15.

'commercial radio remains a very powerful, easily accessible and successful medium for Australians to listen to music'.[42] Mr Ormston, APRA AMCOS, put the view that:

> The existing quota levels, which are already low by comparative international standards, mean we advocate in the strongest possible terms that the Australian content requirements that currently apply to the various broadcast sectors be neither removed nor decreased. In fact, given the talent we see, they should be easily achieved.[43]

5.40 It was also argued that content quotas are vital to ensuring that Australian music is able to create and maintain a sense of Australian identity and character, both within Australia, and the world. APRA AMCOS told the committee that:

> APRA AMCOS's strong view is that local content requirements continue to remain highly relevant in the Australian broadcast media landscape. Ensuring that Australian content remains easily accessible to all Australians helps to develop and reflect a sense of Australian identity, character and cultural diversity. In particular, our local songs are a vital means of expressing our ideas, perspectives, values and identity and, equally, a means of projecting that voice to our fellow Australians and the world.[44]

5.41 Likewise, the Australasian Music Publishers Association Limited (AMPAL) described music as being 'central to our culture and our identity'. AMPAL argued that 'Australian music is not interchangeable with foreign music' and Australian music is 'more important to the national identity and cultural heritage than a fungible economic commodity'. As such, 'local content requirements remain of critical value and importance in Australia'.[45] Further:

> The Australian music content quotas should not be viewed as an additional impost for operators in Australia's media environment, or as a form of forced supply, but rather should be recognised as an obligation that is inherent in gaining access to the finite analog and digital spectrum to offer a commercial service to the Australian public. The safeguarding and extension of Australian music quotas will underpin the progress of a diverse modern Australia which provides all Australians with the opportunity to have access to Australian music – both new and old, of varying cultural backgrounds, genres and formats. It will ensure that Australian musicians will be able to benefit from the development of a strong digital economy and will ensure that Australian music continues to be heard on the airwaves.[46]

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42 ARIA, *Submission 33*, p. 5.

43 Mr Dean Ormston, APRA AMCOS, *Committee Hansard*, 1 August 2018, p. 2.

44 Mr Dean Ormston, Chief Executive, APRA AMCOS, *Committee Hansard*, 1 August 2018, p. 2. See also APRA AMCOS, *Submission 28*, p. 4.

45 Australasian Music Publishers Association Limited (AMPAL), *Submission 26*, p. 3.

46 AMPAL, *Submission 26*, p. 4.

5.42 Songwriting and composing were also described as representing 'a key medium for self-expression' which 'needs to be encouraged and nurtured as a fundamental part of Australia's cultural landscape'. In order for 'Australians to have access to a diversity of voices and views', it is imperative that such 'voices and views are given continued scope and incentives for creative manifestation'. AMPAL submitted that 'in the absence of local content requirements, Australian content would be more absent on commercial broadcast services'. It argued that government intervention in the form of local content obligations delivers outcomes in the public interest which may not be delivered in an unregulated market. AMPAL stated that 'adequate levels of Australian content across platforms are understood to be necessary for the government to deliver its social and cultural broadcasting policy objectives'.[47]

5.43 Submitters told the committee that any degradation of existing content obligations, or a failure to ensure proper compliance with these obligations, 'would have immense consequences for Australian recording artists and the Australian cultural landscape at large'.[48] AMPAL explained that 'any reduction in current quotas would have a detrimental impact on today's Australian songwriters and artists, while also discouraging future investment in new Australian artists'.[49]

Commitment and compliance

5.44 A range of evidence was received which questioned commercial radio stations' commitment to playing both Australian content, and new Australian content, with witnesses arguing that without quota obligations, commercial radio stations would not play Australian music. Some witnesses also submitted that there is evidence that commercial radio stations may not be meeting their current local content obligations. However, this was denied by representatives of the commercial radio industry.

5.45 The following sections will outline the evidence received in relation to these issues.

Lack of commitment

5.46 Witnesses told the committee that commercial radio stations do not have any interest in playing Australian music, and are simply concerned with raising revenue through advertising. For example, Mr Andrew Van Dorsselaer, Director, Vicious Recordings, stated:

> The problem is that Australian radio has absolutely no interest in playing Australian music—zero interest. All they want to do is play ads so that their radio station remains afloat. Until anyone who's trying to fix this understands that, you're in an uphill battle before you've even started trying

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47 AMPAL, *Submission 26*, p. 4.

48 ARIA, *Submission 33*, p. 4.

49 AMPAL, *Submission 26*, p. 4.

> to fix it, because they don't care about Australian music—not in a nasty way, but they simply don't care; all they want is ads.[50]

5.47 Similarly, Mr Michael Pope, Managing Director, Helium Records, described the purpose of commercial radio stations as 'sell[ing] airtime'. Mr Pope stated, 'there was a very famous English radio man who said, "Music's the thing we play between our ads". It's simply to gather an audience so that they can then sell to their tribe'.[51] Mr Pope went on to explain that while commercial radio stations 'ideally' promote 'Australian interests', pragmatically, 'they're there to sell airtime'.[52]

5.48 The lack of commitment by commercial radio stations to play local content was particularly highlighted in discussions regarding new Australian content and the challenge facing artists of being discovered. For example, Ms Chrissie Vincent submitted that commercial radio stations have 'little interest in the promotion of new Australian artists and content'. As such, community radio stations and Triple J 'do most of the work breaking new Australian acts'. Ms Vincent described this as 'constitutive censorship'.[53]

5.49 Mr Pope, Helium Records, explained that this situation has arisen because commercial radio stations 'sell the airtime based on how many people are listening, and people listen to what they know more than what they don't know'.[54] Mr Jonathan Carter, Head of Legal, Corporate and Policy, APRA AMCOS, explained:

> …commercial radio stations can be quite conservative in their choice of broadcast playlists. They will tend to lean towards pre-established hits and recognisable music. Because, by its nature, new Australian music hasn't yet been tried and tested in a market, it's a riskier proposition for a commercial broadcaster to use it, whereas, if you know that you've got a platinum record in the States or in the UK, that's a more bankable hit. So they'll lean towards the more conservative option to base their commercial model around.[55]

5.50 Mr Pope, Helium Records, did however concede that 'there are a whole bunch of people out there [at commercial radio stations] who are looking for new music'.[56] Similarly, Ms Chrissie Vincent submitted that in conducting a survey of commercial radio program directors, she found that of the:

> …program directors that responded, all claim to support the quota of Australian content and believe that commercial radio has a social and

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50 Mr Andrew Van Dorsselaer, *Committee Hansard*, 16 November 2018, p. 1.

51 Mr Mark Pope, Helium Records, *Committee Hansard*, 16 November 2018, p. 22.

52 Mr Mark Pope, Helium Records, *Committee Hansard*, 16 November 2018, p. 22.

53 Ms Chrissie Vincent, *Submission 37*, p. 2.

54 Mr Mark Pope, Helium Records, *Committee Hansard*, 16 November 2018, p. 22.

55 Mr Jonathan Carter, APRA AMCOS, *Committee Hansard*, 1 August 2018, p. 5.

56 Mr Mark Pope, Helium Records, *Committee Hansard*, 16 November 2018, p. 22.

> cultural responsibility to support Australian content and music produced by Australian artists.[57]

Compliance

5.51 Witnesses told the committee that beyond a lack of commitment to playing Australian music, commercial radio stations are failing to comply with current content quota obligations, or are playing required content late at night during so-called 'dead zones'. The South Australian Government highlighted that there is 'often conjecture' questioning the impact of quotas due to programming choices. It submitted:

> While the current quota of 25% for local content applies to Australian radio, there is often conjecture as to the impact of this given the different ways in which the quota may be met by stations that reportedly commit this requirement to 'graveyard shift' programming, rather than prime time. In addition, many stations, mostly commercial, will play 'golden oldies' in place of new and current music, reportedly to meet listener expectations. While it may be argued that this is preserving Australia's creative cultural history, it is not necessarily building new audiences for our local live music industry.[58]

5.52 Ms Chrissie Vincent provided the committee with details of research she undertook into the compliance of four Melbourne commercial radio stations with content quotas. Ms Vincent submitted:

> Research was conducted across one week in June 2017 and shows that of the three Category A and one Category C commercial radio stations examined in Melbourne, two of the three stations do not come close to the 25% Australian content quota allocation and the Category C station is also well below the 15% minimum requirement.[59]

5.53 Outlined below are the key findings submitted by Ms Vincent.

- Of the four stations surveyed, Nova Melbourne played the lowest percentage of Australian music.
- A significant percentage of local content was played between 11.00pm and midnight where the audience is significantly less than between 6.00am and 6.00pm.
- Artists from the United States of America 'get the most airplay', followed by artists from the United Kingdom, with Australian artists getting a small percentage of airplay.
- Only a small number of Australian artists received medium to high rotation which is required to produce significant results for an artist from a marketing

57 Ms Chrissie Vincent, *Submission 37*, p. 6.

58 South Australian Government, *Submission 20*, p. 3.

59 Ms Chrissie Vincent, *Submission 37*, p. 4.

perspective. For example 39 Australian artists were represented in Melbourne's Fox 101.1 data, however only three artists received medium to high rotation with 20 to 40 plays, 12 artists were played one, and 14 were played twice.

- Though Triple M played on average between 20.7 per cent and 33.3 per cent local content across the week, a significant percentage of these plays were of classic Australian music rather than new or current content. [60]

5.54 Mr Van Dorsselaer in noting the findings of Ms Vincent's research told the committee that it was found that:

> Nova from 6 am to 6 pm played eight per cent. On some days they only played three Australian songs. The number did go up over a 24-hour block, which clearly shows that they skew their Australian content to after 6 pm. In a 24-hour block Nova 100 played 14 per cent of Australian music. They played an additional six per cent in the evening. Anyone who went to school knows that eight is not near 25 and 14 is not near 25. Fox FM was the same. KIIS was almost exactly the same—nine, and 13 per cent in the evening.[61]

5.55 The playing of Australian content between 10.00pm and midnight by commercial radio stations was described as a 'huge problem'. Mr Van Dorsselaer told the committee that in his estimation, 90 per cent of Australian music is played in this so-called 'deadzone'.[62] For example, Mr Van Dorsselaer noted that since Ms Vincent conducted her study in July 2017, Austereo initiated a new music show which plays Australian music between the hours of 10pm and midnight. Mr Van Dorsselaer told the committee that while this 'is a little step in the right direction', it is remains problematic that Australian music is being played late at night as there 'would be a very low number of people listening to radio at 10pm'.[63] Mr Russell Thomas, Director, KAOS Management, explained:

> A lot of the stations—as Andy mentioned, Austereo have a show called *Collective Noun*, which is 10 to midnight Monday to Thursday, which is basically a comedy show, maybe playing six or eight Australian songs per hour for those three hours. KIIS have a show called *Planet Oz*. This is how they're getting their quota. That is six to eight Sunday morning, 10 to midnight Sunday night and 10 to midnight Wednesday night.[64]

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60 Ms Chrissie Vincent, *Submission 37,* p. 5-7. See also Ms Chrissie Vincent, *Submission 37,* Attachment 2. See also Mr Andrew Van Dorsselaer, *Committee Hansard*, 16 November 2018, p. 4.

61 Mr Andrew Van Dorsselaer, *Committee Hansard*, 16 November 2018, p. 4. See also Ms Chrissie Vincent, *Submission 37,* Attachment 2.

62 Mr Andrew Van Dorsselaer, *Committee Hansard*, 16 November 2018, pp. 1–2.

63 Mr Andrew Van Dorsselaer, *Committee Hansard*, 16 November 2018, p. 4.

64 Mr Russell Thomas, KAOS Management, *Committee Hansard*, 16 November 2018, p. 17.

5.56 Ms Joan Warner, Chief Executive Officer, CRA, categorically rejected claims that broadcasters are meeting their content obligations by playing Australian music in the so-called 'deadzones'. Ms Warner told the committee that 'we reject that [claim] entirely. It is so wrong. It should be dismissed'.[65]

5.57 CRA, the peak industry body representing 261 member stations, also rejected claims that commercial radio stations are not complying with content obligations. Ms Warner, Chief Executive Officer, informed the committee that the CRA in conjunction with APRA AMCOS and ARIA undertook independent monitoring in 2018 and found that 'monitoring actually shows extremely high levels of compliance'. Further, 'the compliance is just getting better and better across the board'.[66]

5.58 Ms Warner also told the committee that further independent monitoring is occurring as a result of claims that there is low compliance across the industry. In addition, CRA is working with content managers to ensure that they are aware of obligations, and material meets the local content definition under the Code.[67]

5.59 The committee heard that no penalties have ever been applied to commercial radio stations by the ACMA for non-compliance with local content quota obligations. Ms Warner explained that:

> …no complaints have been made under the code. Before ACMA will take any action, a formal complaint has to be made to the station. Either the station gives a reasonable answer and the person says, 'Okay, that's fair enough,' or the person says, 'I'm not satisfied with that; I'm now going to complain to the ACMA and ask them to investigate.' There have been no complaints about the code to any of our stations.[68]

Self-categorisation and differing quotas

5.60 As noted earlier, commercial radio stations are categorised according to format which then determines the content quotas which apply. However a number of submitters expressed concern that commercial radio stations are able to self-categorise, and are therefore able to choose a lower content quota. For example, if a radio station self-categorises as having a 'Hits and Memories' format, it is subject to a 15 per cent quota, if it chooses the format 'Oldies' then 10 per cent would apply, and finally if it chooses the format 'Nostalgia' then it would be subject to a 5 per cent quota.[69]

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65 Ms Joan Warner, CRA, *Committee Hansard*, 4 September 2018, p. 6.

66 Ms Joan Warner, CRA, *Committee Hansard*, 4 September 2018, p. 2.

67 Ms Joan Warner, CRA, *Committee Hansard*, 4 September 2018, pp. 6–7.

68 Ms Joan Warner, CRA, *Committee Hansard*, 4 September 2018, p. 9.

69 Mr Dean Ormston, APRA AMCOS, *Committee Hansard*, 1 August 2018, p. 2. See also ARIA, *Submission 33*, pp. 5–6; APRA AMCOS, *Submission 28*, p. 5.

5.61 ARIA expressed concern that 'radio stations are given significant latitude to self-categorise the radio station' and noted that the Code does not provide definitional clarity, nor is oversight provided of the categorisation process. ARIA recommend that:

> The format categories should be reviewed and streamlined to minimise the arbitrary nature of the station's election, and to provide more definitional clarity about the criteria for each format. Absent such improvements there is no meaningful or effective mechanism to resolve disagreements as to the appropriate applicable proportion of Australian music for each broadcaster.[70]

5.62 APRA AMCOS proposed that (in the absence of other measures) transparency and compliance would be improved if:

- the categories of format service were updated, simplified, reduced in number and defined in the Code; and
- the category of format was determined by a third party (e.g. CRA) rather than the broadcaster.[71]

5.63 Similarly, the Australian Independent Record Labels Association submitted that 'individual stations should not be able to self-select their genre category' and stated that 'quotas should be effectively supervised and enforced'.[72]

5.64 However, submitters also recommended that all categories be subject to a 25 per cent Australian content quota. APRA AMCOS stated that it is 'unsure why the format of a service ought to be determinative of the applicable Australian music quota percentage for that service'. It proposed that 'all music focussed services ought to be subject to the full 25% Australian music quota'. APRA AMCOS also proposed that compliance with a 25 per cent music quota would be more easily achieved, monitored and enforced if CRA amended the Code to include a '1 in 4' policy i.e. during the relevant broadcast period, all music stations are obliged to play one Australian track in every 4 tracks broadcast by the station.[73]

5.65 It was however highlighted that the application of a 25 per cent content quota formats may breach fair trade agreements between Australia and the United States of America.[74] However, APRA AMCOS in acknowledging the obligations established by the AUSFTA also noted counter-balancing provisions of the UNESCO Convention

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70 ARIA, *Submission 33*, p. 6.

71 APRA AMCOS, *Submission 28*, p. 5.

72 Australian Independent Record Labels Association, *Submission 31*, p. 1.

73 APRA AMCOS, *Submission 28*, p. 5.

74 Mrs Sarah Kruger, Head, Legal and Regulatory Affairs, CRA, *Committee Hansard*, 4 September 2018, p. 2.

on the Protection and Promotion of the Diversity of Cultural Expressions (UNESCO Convention).[75]

5.66 CRA rejected calls for a single content quota of 25 per cent to be applied to all format categories. Ms Warner, Chief Executive, CRA, told the committee that not all formats are suited to a 25 per cent Australian music quota, and that the application of a single quota would 'limit the freedom that commercial radio broadcasters have to meet the needs of their audiences and the format that they choose to offer to those audiences'. Ms Warner stated that the CRA would 'oppose, obviously, an across-the-board 25 per cent target for all Australian radio stations'.[76]

5.67 Further, CRA told the committee that it opposes any increase in the quotas, and more broadly, 'government intervention in our businesses'. Ms Warner, CRA, stated:

> We oppose government intervention in our businesses. We opposed the retention of staff and production facilities in regional areas because that's just government putting their fingers into our business…. Any government regulation is telling somebody how to run their business. We don't oppose giving opportunities to Australian artists—of course not. What we oppose is legislation making us do that. That being said, please don't misinterpret what I'm saying. We are not lobbying for a reduction in the current quotas or a change in the current climate.

Public broadcasters

5.68 In discussing quotas, APRA AMCOS noted that despite not having quotas set by legislation, the ABC fulfils its obligations to contribute to a sense of national identity through the provision of important initiatives that actively support and showcase local Australian content. This includes the *Unearthed* and *Ausmusic Month* projects, and 'the ABC's impressive record more generally for the delivery of Australian music across its radio and digital services'.[77] Mr Dean Ormston, Chief Executive Officer, APRA AMCOS, told the committee that:

> The ABC sets its own benchmarks and measures of what it feels should be playing on its different formats. From the information we're looking at, which we can provide, it is doubling those benchmarks. So across the ABC you're looking at around the 50 per cent mark in local music content. On triple j it exceeds 50 per cent, and it's 40 to 50 per cent on some of their other formats. We look at that and go: 'That's great. That's fantastic.' If we were being a little pushy, it would be nice to have that benchmark publicly stated. At the moment it's an internal benchmark. The investment and

75 APRA AMCOS, *Submission 28*, p. 1.

76 Ms Joan Warner, CRA, *Committee Hansard*, 4 September 2018, p. 2.

77 APRA AMCOS, *Submission 28*, p. 6.

> support of Australian content on the ABC is, I think you'd have to say, fantastic.[78]

5.69 APRA AMCOS acknowledged that the imposition of a content quota on public broadcasters may be seen as unnecessary. However, it also submitted that in the absence of a quota, it is imperative that:

- public broadcasters continue to support Australian songwriters, performers, filmmakers, artists, and technicians by developing, making available and actively promoting high levels of Australian audio and audio-visual content;
- ABC management continues to fulfil its Charter obligations by actively maintaining an 'industry best practice' level of Australian music content on its broadcast radio and digital services. This may be boosted by a public pledge to deliver a minimum percentage of Australian music across all its music channels, both via broadcast radio and online; and
- Australia's public broadcasters remain a key platform for supporting and promoting Australian content.[79]

Digital radio

5.70 The Australian Music Code does not apply to DAB+ (digital stations). However a range of submitters advocated for the application of local content quotas to DAB+ stations. For example, ARIA noted that during the review of the Code in 2016, it advocated that DAB+ stations should not be exempt from the Australian music quotas, and that its position on this issue remains unchanged.[80]

5.71 Ms Lynne Small, General Manager, ARIA, commented that in 2010 when CRA sought the inclusion of the DAB+ exemption, it argued that 'the imposition of Australian music quotas on new digital-only channels would prevent licensees from providing a wide range of new and diverse programming and hence would defeat one of the government's key broadcasting objectives'. Ms Small told the committee that 'it is unclear to us how the imposition of Australian music requirements would affect the development of such programming'. Further, 'eight years later it is now even more troublesome, particularly as the stations that are available on the spectrum, such as hot hits, easy hits, classic rock, digital and urban hits, are playing music with very broad appeal'.[81]

5.72 It was argued by ARIA that DAB+ is a transmission technology, not a format. That content is communicated via a digital rather than analogue service does not

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78 Mr Dean Ormston, APRA AMCOS, *Committee Hansard*, 1 August 2018, p. 6. Benchmarks are discussed further below.

79 APRA AMCOS, *Submission 28*, p. 7.

80 ARIA, *Submission 33*, p. 6.

81 Ms Lynne Small, ARIA, *Committee Hansard*, 1 August 2018, p. 16.

provide any basis to support the proposition that Australian content obligations. Further, the digital spectrum was allocated to CRA members at no additional cost, and members have enjoyed a lengthy moratorium on new entrants.[82]

5.73 The digital spectrum is a public asset, and ARIA argued that access to such an asset should be accompanied by public responsibilities, one of which should be support for Australian content.[83] AMPAL stated that DAB+ stations should not be viewed as exempt from the policy objectives of the *Broadcasting Services Act 1992*, namely, 'developing and reflecting a sense of Australian identity, character and cultural diversity, by prescribing minimum content levels of Australian music'.[84]

5.74 ARIA and AMPAL both noted that the 2012 Australian Government Convergence Review Final Report recommend that 'Australian music quotas should continue to apply to analogue commercial radio services offered by content service enterprises and be extended to digital-only radio services offered by content service enterprises.[85]

5.75 However, CRA urged caution in extending music content quotas to DAB+ stations, as stations frequently change formats, and are still developing audiences. Ms Warner, CRA, noted that presently only 28 per cent of all radio listening is via a DAB+, and it is a smaller percentage listening to DAB+ only stations. Ms Warner stated:

> At the moment, the DAB+ stations are a little bit experimental in terms of what they're used for and the formats. Our members are trying to build the audiences up for them. They're not making revenue out of them at the moment. So we would say there needs to be an exemption until we see a significant uptake of the listening to those DAB+-only stations…in the future, when the audiences have built and if the formats are relevant for an Australian music quota. At the moment, the listening to the DAB+-only stations is very small. They are niche audiences which our members are trying to build up and trying to find a way of gaining revenue out of that, because it's a cost to broadcast in DAB+.[86]

Community radio

5.76 Code 5 of the Community Radio Broadcasting Codes of Practice articulates a stated purpose of '…the commitment of community radio stations to develop

82 ARIA, *Submission 33*, p. 6.

83 ARIA, *Submission 33*, p. 6.

84 AMPAL, *Submission 26*, p. 4.

85 ARIA, *Submission 33*, p. 6; AMPAL, *Submission 26*, p. 4. See Australian Government Convergence Review Final Report, March 2012, Recommendation 19, p. 76.

86 Ms Joan Warner, CRA, *Committee Hansard*, 4 September 2018, p. 10.

Australian music and provide opportunities for performers to have their work regularly broadcast…'[87]

5.77 The Community Broadcasting Association of Australia (CBAA) was commended by APRA AMCOS on the inclusion of Australian music quotas in the Community Radio Code. APRA AMCOS did however note that it is not in possession of sufficient music usage data to indicate whether community radio broadcasters are complying with the prescribed Australian music quotas under the Community Radio Code. As such, APRA AMCOS called on the CBAA to 'take a more active role in policing its members' compliance with Australian music quotas'.

5.78 APRA AMCOS noted that the Australian Music Radio Airplay Project (Amrap), established by the Australian Government in 1998 to ensure the distribution of new Australian music to community radio stations nationwide, has supported thousands of artists and distributed over a million Australian music tracks to community radio for airplay. APRA AMCOS told the committee that it understands that over 80 per cent of the community radio stations use Amrap services to access Australian content and promote artists on air and online. APRA AMCOS stated that 'it is critical that Amrap continues to operate and evolve as an innovative service that ensure Australian artists are heard by Australian audiences'.[88]

Streaming services

5.79 As noted above, the rise of online streaming services has fundamentally changed the ways in which music is consumed, produced, and marketed. Ms Sivakumar, ARIA, noted that digital distribution now accounts for over 75 per cent of Australian recording revenues, driven primarily through consumer adoption of music services such as Google, Spotify and Apple Services. Ms Sivakumar told the committee that pre-programmed playlists, and playlists based on algorithms, influence listenership on streaming services. Further, while such services have contributed to the growth of the recorded music industry, they 'bring greater challenges for Australian artist to have visibility on these services, and to be heard'.[89]

5.80 This was also acknowledged by the Phonographic Performance Company of Australia which submitted that:

> The exponential growth of online music streaming services has provided artists and record labels with immense opportunities to disseminate their recordings on line throughout the world. However, there are no Australian content requirements imposed on music streaming services and it is

87 ARIA, *Submission 33*, p. 4. See also Community Radio Broadcasting Codes of Practice, 23 October 2008, Code 5, available at https://www.cbaa.org.au/resource/codes-practice-%E2%80%93-code-5-australian-music.

88 APRA AMCOS, *Submission 28*, p. 6.

89 Ms Rohini Sivakumar, ARIA, *Committee Hansard*, 1 August 2018, p. 15.

> enormously difficult for Australian recording artists to be 'heard' amongst the millions of songs that are accessible on these online music streaming services.[90]

5.81 A number of witnesses acknowledged that local content quotas would be difficult, if not impossible, to implement for online streaming services. However witnesses suggested that online streaming services should nevertheless be required to support Australian music through a range of measures such as locally employed staff, the curation of local playlists and ensuring that a proportion of Australian content is appropriately represented in marketing material.[91] For example, the Australian Independent Record Labels Association submitted:

> …while quotas should not be applied to streaming services for practical and legal reasons, there should be some responsibility on these services to support local content in areas of their service that they do control, including: having local employees dedicated to curating and supporting Australian content; investing in locally produced and curated playlists; ensuring that a proportion of Australian content is appropriately represented on its locally curated playlists; and highlighting Australian artists in its promotional material internally to its users and externally in marketing channels.[92]

5.82 Mr Dean Ormston, APRA AMCOS, told the committee that all online streaming services have shown support for Australian artists through the provision of local curation teams which ensures that Australian users are not 'receiving a homogenous global package'. However, Mr Ormston argued that further certainty is required to ensure that Australian artists are not overwhelmed by internationally popular acts. Mr Ormston noted that this did not necessarily mean a quota, but rather, a 'benchmark'.[93]

5.83 APRA AMCOS explained that it is in 'ongoing discussions with major music streaming services as to how they can demonstrate their commitment to Australian music on their services'. APRA AMCOS submitted:

> One option would be for music streaming services to voluntarily commit to making available in prominent positions on their Australian service offerings: (i) local playlists (such as a Sounds Australia playlist); (ii) include a minimum of 25% local content in locally curated playlists.[94]

5.84 APRA AMCOS stated that it 'does not consider this to be an onerous or unreasonable request to make of music streaming services operating in Australia'.

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90 Phonographic Performance Company of Australia, *Submission 30*, p. 2.

91 ARIA, *Submission 33*, p. 6. See also Phonographic Performance Company of Australia, *Submission 30*, p. 2.

92 Australian Independent Record Labels Association, *Submission 31*, p. 1.

93 Mr Dean Ormston, APRA AMCOS, *Committee Hansard*, 1 August 2018, p. 3.

94 APRA AMCOS, *Submission 28*, p. 9.

Further, the promotion of playlists featuring increased levels of Australian music to Australian consumers in an on-demand environment may even 'make good business sense rather than be seen as a cost or inconvenience'. APRA AMCOS further suggested that 'it is also a way for foreign multi-national companies (who are generating significant revenue from sales to Australian consumers) to support the local music industry in one of the increasingly important territories in which they operate'.[95]

5.85 It was noted that in January 2018, Sounds Australia appointed Mr Dom Alessio as a Digital Export Music Producer specifically to investigate the opportunity and potential to increase the number of Australian artists included in overseas curated digital playlists on services such as Spotify and Apple Music.[96]

5.86 Mr Michael Chugg, Executive Chairman, Chugg Entertainment and Chugg Music, however told the committee that streaming services should be subject to a 25 per cent Australian content quota.[97]

5.87 CRA told the committee that it does not support increased regulation for online streaming services. Ms Warner, CRA told the committee:

> We are never likely to be in a position where we recommend increased regulation, even for competitors. It would be nice to see them featuring Australians in recommended playlists or on their websites, but at the end of the day we don't support increased regulation for other media or ourselves.[98]

Public performance

5.88 The public performance section is a critical part of the music ecosystem, though it is often overlooked in reporting. However it has demonstrated constant growth over the past 20 years, and represents 14 per cent of global recorded music revenues. In Australia, approximately $100 million is collected from the public performance sector, which represents double the revenue from radio broadcasts for artists.[99]

5.89 Mr David O'Rourke, Chief Executive Officer, Nightlife Music, stated that a 'thriving and well-supported local background music sector' is able to support the Australian music industry, however, the sector is 'under threat as infringing services increasingly penetrate our marketplace'.[100]

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95 APRA AMCOS, *Submission 28*, p. 9.

96 APRA AMCOS, Submission 28, p. 3.

97 Mr Michael Chugg, *Committee Hansard*, 16 November 2018, p. 12.

98 Ms Joan Warner, CRA, *Committee Hansard*, 4 September 2018, p. 2.

99 Mr David O'Rourke, Nightlife Music, *Committee Hansard*, 4 September 2018, p. 12.

100 Mr David O'Rourke, Nightlife Music, *Committee Hansard*, 4 September 2018, p. 13.

5.90 Mr O'Rourke explained that consumer streaming services are being used in business environments, at a fraction of the cost of complaint services which undermines any commitment by background music companies to support the Australian music industry. Mr O'Rourke stated:

> With no one party responsible for policing infringement, the situation is intensifying and placing increasing pressure on the entire segment, which will disrupt the very fragile balance that underpins the resurging music industry. Consumer streaming services are fantastic for personal use, but they are not suited, licensed or targeted at a business environment. Their local content editors are focused on showcasing great music, but they are not focused on matching that music to each and every business. So when they are used in a business context, there is no focus on meeting content quotas and, hence, no shopfront benefits for Aussie artists from public performance—not to mention the devaluing of music in the public domain and removing the very distribution data required by the public performance societies to ensure the right artist is paid when their music is played.[101]

5.91 Mr O'Rourke stated that the use of unlicensed music providers for background music is eroding the price for background music providers, and creating a smaller market for such services.[102] As a result, Mr O'Rourke called for more government regulation of the sector to both protect the background music industry, and more broadly, Australian artists. Mr O'Rourke stated:

> …what we're looking for is an environment where there's more legislation from government as opposed to less, to try and promote services that are legitimate and to make sure that Australians are rewarded when their content is used.[103]

International perspective

5.92 Throughout the inquiry, the committee heard comparisons between the Australian regulatory environment and countries such as Canada. In particular, submitters noted that Canada makes a significant investment in its music industry, whilst also implementing stringent local content quotas for commercial broadcasters.

5.93 Canada has commercial radio content quotas that are both a higher proportion, and required to be met in more limited prime time window, than Australia. All stations (English and French language) must ensure that at least 35 per cent of the music broadcast each week is Canadian (compared with the maximum of 25 per cent in Australia for some format categories). The Canadian broadcast window is 6.00am to 6.00pm rather than the Australian broadcast window of 6.00am to midnight. Further,

101 Mr David O'Rourke, Nightlife Music, *Committee Hansard*, 4 September 2018, p. 13.

102 Mr David O'Rourke, Nightlife Music, *Committee Hansard*, 4 September 2018, p. 18.

103 Mr David O'Rourke, Nightlife Music, *Committee Hansard*, 4 September 2018, p. 14.

the Canadian model includes far fewer format categories, and does not allow broadcasters to self-select their format category.[104]

5.94 ARIA argued that these 'stronger local content requirements have been a key factor in the rising success of the Canadian music industry, both domestically and internationally'.[105]

5.95 APRA AMCOS also noted the 'enormous investment' made by the Canadian government in the music 'ecosystem'. Mr Dean Ormston, APRA AMCOS, told the committee that this investment 'dwarfs anything that we are doing here in terms of local support and their export market'. Mr Ormston stated:

> It's the combination of those factors, with their radio support et cetera, in Canada that has seen amazing acts and artists coming out of Canada over the last few years. As we've said to government more generally, it's not a matter of just one fix; it's a matter of looking at the ecosystem and going, 'What do we do in each of these spaces to ensure the benefit of the greater whole?'[106]

104 ARIA, *Submission 33*, p. 7.

105 ARIA, *Submission 33*, p. 7.

106 Mr Dean Ormston, APRA AMCOS, *Committee Hansard*, 1 August 2018, p. 7.

Chapter 6

Committee view

6.1 The Australian screen production and distribution industry generates a significant amount of activity and employment across the economy. In 2014–15, it contributed $3 billion in value add to the economy, and more than 25,000 full-time equivalent jobs.

6.2 Further, Australian screen content informs our sense of who we are, offers unique forms of cultural expression, and provides culturally significant experiences shared by millions of Australians. Quality Australian content travels the world, shaping our view of the world, and shaping the world's view of Australia. Screen mediums promote social inclusion and connectedness, which in turn, forms the foundation of social capital from which benefits originate and contribute to social welfare.

6.3 The Australian screen industry is an ecosystem comprising thousands of highly skilled employees and a wide-range of businesses. When screen content is produced in Australia, the economic benefits not only flow to those directly involved in production such as actors and crew, but to local communities, and the tourism, retail, and hospitality sectors. Further, the benefits continue to accrue long after production has ceased through: post-production work; tourists seeking to visit iconic set locations; the re-investment of revenue in training and technological upgrades for future productions; and export revenues.

6.4 Locally produced Australian content must be recognised as the cornerstone of the Australian screen industry. Without it, the Australian screen industry would collapse—international productions filmed or post-produced in Australia, whilst important to the ecosystem, are insufficient to sustain the Australian screen industry. Businesses and employees rely on the income and investment that comes with the regular opportunities provided by locally commissioned Australian content. It is important that attracting international productions should not be prioritised ahead of cultivating a strong screen industry through the production of Australian content. As such, it is imperative that we ensure that we have the correct policy settings to support the growth and future of the Australian screen industry. This includes a framework of broadcast content quotas, fair terms of contract, and government incentives.

6.5 The committee acknowledges the substantial amount of work undertaken as part of this inquiry, and the information this report contains. Senators have reached differing conclusions on the issues presented, and these will be outlined in additional comments. The committee thanks all those who participated in the inquiry.

Senator Sarah Hanson-Young
Chair

Australian Greens' additional comments

1.1 Australian stories and Australian music contribute so much to our national identity, our economy and our creative capacity, they must be protected and given the opportunity to thrive.

1.2 The Australian Greens have worked hard to identify key policy changes that could help support the sector and ensure that Australian stories can be told and Australian music recorded and heard.

Quotas

1.3 Australia's commercial free-to-air and subscription television broadcasters are subject to a range of content quota obligations under the *Broadcasting Services Act 1992* (BSA). These include requirements regarding children's, and Australian content.

1.4 Quotas serve to ensure the delivery of quality content that reflects and informs our sense of national identity, and encourages and supports the domestic screen industry through sustained and regular employment opportunities.

1.5 Commercial broadcasters described content obligations, particularly in relation to children's content as onerous and anachronistic, and argued that content quotas should be altered or removed. Commercial broadcasters argued that children are choosing to watch shows such as *The Bachelor*, *Ninja Warrior*, and *Masterchef* rather than specifically designated children's television.

1.6 The Australian Greens strongly rejects calls to reduce current content obligations. Children's television contributes to the cognitive, emotional and creative development of young people and it is crucial that Australian children grow up with a strong sense of identity that reflects our culture and values. The Australian Greens accept that while children may watch shows such as *The Bachelor*, these shows are not children's content, and should not be considered as such.

1.7 Further, children's television is an important component of Australia's screen industry, providing employment opportunities for thousands of people, and indeed, providing a training ground for cast and crew. The Australian Greens were concerned to hear that without a children's content quota obligation, commercial broadcasters would simply stop investing in the production of such material. Such a move would have a devastating impact on the industry, both reducing work opportunities, and jeopardising the future of the industry.

1.8 While we accept that commercial broadcasters find it difficult to monetise children's television, it should be highlighted that broadcasters occupy a privileged position in regards to access to public spectrum, and protection from competition. It is entirely reasonable for the Australian public to expect commercial broadcasters to make a contribution in return for such a position.

1.9 Commercial broadcasters also argued that the definitions included in the Australian drama content quotas require amendment. Suggestions include: broadening the definition of drama to include reality television; and altering the meaning of 'first release' to allow for shows to be counted as first-release for free-to-air if it has been shown on subscription television. The Australian Greens are of the view that these changes would have negative consequences for the screen industry, including a reduction in the amount of Australian drama content commissioned.

Recommendation 1

1.10 The Australian Greens recommend that the content quota system be maintained to ensure the production of uniquely Australian content, and children's television.

1.11 As noted earlier, SVOD services have significantly changed the viewing habits of millions of Australians. As such, witnesses argued that regulatory equality between such services and commercial and subscription television broadcasters must be achieved.

1.12 This is an issue which countries around the world have been grappling with, and a number of regulatory responses have been seen. These regulatory models include imposing on SVOD services: an expenditure obligation; a content percentage obligation (a percentage of the content library); or a promotion obligation. We note that witnesses argued for an expenditure obligation, as this would focus on working with and nurturing creative talent across the industry.

1.13 The Australian Greens note that the benefit of an expenditure model (i.e. the obligation to spend a designated amount on the commissioning of local content) rather than a volumetric quota (i.e. the obligation to provide a percentage of local content) lies in the flexibility it provides an SVOD service provider to invest in the quality, rather than quantity, of production. Further, the nature of SVOD services differs significantly from linear broadcast, where content quotas are indeed appropriate, and effective. Witnesses argued that a promotion obligation, which ensures the prominence of local content in advertising and display, should also be implemented alongside an expenditure obligation to ensure that Australian audiences have both awareness of, and access to, local content.

Recommendation 2

1.14 The Australian Greens recommend that the Australian Government implement at least a 10 per cent expenditure, and a separate promotion, obligation on SVOD services operating in Australia.

Terms of Trade

1.15 The Australian Greens note the evidence provided that the market for television content in Australia is an oligopsony where broadcasters exert significant control over the market. We were concerned to learn that the disparity in market power is being enshrined in contracts, for example through contracts which warehouse all channels of distribution post production despite most producers relying on post production distribution for revenue. The Australian Greens were also concerned to learn that there is a trend for more in-house production which is reducing opportunities for the independent production industry.

1.16 The Australian Greens note that the United Kingdom has transformed its independent production industry through the introduction of Terms of Trade governing agreements between broadcasters and producers. These terms of trade allow producers to retain control over rights, and to build their own portfolio of products that can be marketed elsewhere.

Recommendation 3

1.17 The Australian Greens recommend that the Australian Competition and Consumer Commission examine the need for UK-style Terms of Trade provisions to address the oligopsonic market conditions which currently exist.

Music

1.18 The Australian music industry (including theatrical production) makes a significant contribution to the Australian economy with $10.554 billion generated in 2016, along with 92,379 people employed. It should be noted that Australia is the seventh largest recorded music market in the world in absolute value, and even higher on a per-capita basis.

1.19 Access to Australian music allows the community to develop and reflect a sense of national identity, character and cultural diversity. Local songs are a vital means of expressing our ideas, perspectives, values and identity, and equally are a means of projecting that voice to both local and international audiences. As such, the BSA establishes local music content obligations for commercial broadcasters.

1.20 These music quotas are an obligation that is inherent in gaining access to the finite broadcasting spectrum to deliver a commercial service to the Australian public. These quotas ensure that all Australians are able to access Australian music—across genres and formats—and ensures that Australian musicians are able to benefit from the development of the industry.

1.21 The Australian Greens were extremely concerned to hear of a number of allegations that commercial broadcasters may be circumventing the intention of the music quotas. First, by making Australian music accessible to audiences—by playing required content during so-called 'dead hours' (between 10pm and midnight). Second, given stations have the ability to self-classify their music format under the Code, they are choosing formats that are subject to a lower applicable proportion of Australian music. These formats are also not defined in the Code which compounds the problem. Further, some witnesses alleged that commercial broadcasters are simply not meeting content quotas at all. It was alleged that a failure to play Australian music on commercial radio, and a failure to play it during primetime listening hours, has a detrimental impact on the Australian music industry, with artists struggling to achieve breakthrough and commercial success. We note that Canada has a 35% local content quota for the vast majority of formats (i.e. removing the problem of self-classification) between the hours of 6am and 6pm.

1.22 The Australian Greens note that these allegations were strenuously denied by Commercial Radio Australia, but we are of the view that these allegations are sufficiently concerning as to warrant investigation by the Australian Communications and Media Authority (ACMA). The Australian Greens are aware that there have been no enforcement actions taken against commercial radio broadcasters for failure to comply with content quotas, but notes that the current complaint system under the Code may not be fit for purpose to raise complaints of this nature. The Australian Greens consider that the ACMA should work with Commercial Radio Australia, ARIA, APRA AMCOS, and other music industry stakeholders to ensure that content obligations are being met, and are being met in accordance with the policy intention, and that the current Code in respect of Australian music is still fit for purpose in terms of its format classification, complaint system and its application to DAB+ stations.

1.23 The rise of music streaming services has changed the way that millions of Australians purchase and listen to music. Similar to SVOD services, witnesses argued that these services currently have no local content requirements and there should be some regulatory response. It is recognised that an on-demand music streaming service differs from traditional broadcast radio where the listener has no influence over the tracks that are played. However, it was argued that streaming services should support Australian content in areas of their service where they do have control, including investing in and promoting more local playlists, having a local content quota percentage on local playlists, and local promotion obligations to Australian artists.

Recommendation 4

1.24 Australian Greens recommend that the Australian Communications and Media Authority work with CRA, ARIA, APRA AMCOS, and other music industry stakeholders to ensure that Australian content obligations are being met by commercial broadcasters, and the current Code is still fit for purpose in terms of quota levels, application to DAB+ stations, time period and format categorisation given useful international comparators such as Canada.

1.25 The Australian Greens also recommend ARIA, APRA AMCOS and other the music industry stakeholders explore local content obligations with the music streaming services, with the Government to have oversight if industry agreement cannot be reached.

Tax incentives for screen industry

1.26 The Australian Government offers a number of tax incentives for the screen industry, including the Location Offset, the Producer Offset, and the Post, Digital and Visual Effect (PDV) Offset, to attract international productions to Australia, and to support the Australian screen industry. Tax incentives are proven to be an effective mechanism to attract investment, and are central to the Australian Government's screen industry policy framework.

1.27 Witnesses argued that the Producer Offset should be available at a single rate of 40 per cent, and eligible for both film and television production. The Australian Greens are persuaded by the evidence that the screen industry in Australia should be viewed as a whole, rather than be delineated by the screen medium for the final product. There are a number of reasons to treat television projects in the same way as film projects. In particular: the range of employment and training opportunities generated; the lack of technological distinction between film and television production; and the cost of producing quality television is now comparable to the cost of producing film. We accept that a uniform offset would boost production, leading to benefits for actors, crew, artists, and Australian audiences.

1.28 The Australian Greens were particularly interested to hear that economic analysis by PwC found that 360 new television jobs, and $103.9 million in economic activity would be created if television projects were able to access an offset of 40 per cent. In addition, raising the current offset of 20 per cent for television productions to 40 per cent would cost the Australian Government $15.5 million, yet would generate an additional $119.4 million in economic activity, resulting in an overall gain for the economy of more than $100 million.

Recommendation 5

1.29 The Australian Greens recommend that the Australian Government introduce a single Producer Offset of 40 per cent for all types of qualifying production, including both film and television. The Australian Greens also recommend that the Producer Offset only be available to production companies which do not also hold a broadcasting licence to ensure the future of Australia's independent production sector.

1.30 Submitters argued that television productions should be eligible for the Producer Offset beyond the current limit of 65 hours (approximately five seasons). We heard that this limit was based on a now outdated rationale that television series become self-sustaining once they have 'survived' for five seasons. The Australian Greens accept the evidence that popular shows are being discontinued, because contrary to this underlying rationale, costs actually increase over time, and without the offset, production cannot continue.

Recommendation 6

1.31 The Australian Greens recommend that the Australian Government remove the 65 hour cap on television series from accessing the Producer Offset.

1.32 The Australian Greens were concerned to hear that as a result of a protocol to Australia's Closer Economic Relations agreement with New Zealand, and a High Court decision (*Project Blue Sky v Australian Broadcasting Authority*), New Zealand content is treated as Australian content for the purpose of Australian content quotas.

A number of witnesses described this as a 'loophole' which has undermined the effectiveness of Australia's local content regime, and which is a significant impediment to local production industry growth.

1.33 The Australian Greens particularly note that New Zealand's tax incentives of 40 per cent may be encouraging broadcasters to move away from producing content in Australia, but who are nevertheless able to meet local content quota requirements.

1.34 It is concerning that the requirement to broadcast Australian content is being undermined by this loophole and The Australian Greens are of the view that New Zealand content should not be considered local content for the purpose of quotas.

Recommendation 7

1.35 Australian Greens recommend that the Australian Government no longer recognise New Zealand content for the purpose of Australian content quotas.

1.36 It is clear that Australia's tax incentives—in particular the Location Offset of 16.5 percent—have not kept pace with international developments and are no longer competitive. For example, jurisdictions such as the United Kingdom, Canada, South Africa, Hungary, and the US states of Georgia, New York and Massachusetts offer location incentives of between 25 and 40 per cent.

1.37 In 2018, the Australian Government announced it would provide $140 million over four years from 2019–2020 through the Location Incentive Program to increase the Location Offset from 16.5 per cent to an internationally competitive 30 per cent. The Australian Government stated that this funding would attract over $260 million per year in new foreign expenditure to the local economy, and would create more than 3,000 jobs for Australian cast and crew and support the services of approximately 6,000 Australian businesses each year.

1.38 The Australian Greens welcome this announcement; nevertheless, it remains concerned that this 'top up' funding does not provide sufficient investment certainty to attract production companies to Australia. We were concerned to hear evidence from production companies that have chosen not to film in Australia due to a lack of certainty regarding tax offsets.

1.39 As such, the Australian Greens are of the view that the Location Offset should be increased to 30 per cent. Such an increase will eliminate the need for top-up funding grants, and will provide financial certainty to overseas production companies considering Australia as a destination. Further, a rate of 30 per cent is widely accepted as internationally competitive in comparison to locations such as the United Kingdom, Canada, South Africa, and a number of US states.

1.40 The Australian Greens note that the House of Representatives Standing Committee on Communications and the Arts' report for its inquiry into factors contributing to the growth and sustainability of the Australian film and television industry also recommended that the Location Offset be increased.

Recommendation 8

1.41 The Australian Greens recommend that the Australian Government increase the Location Offset to 30 per cent.

1.42 The Australian Greens also heard that changes to the eligibility criteria for, and application of, tax incentives are also required to ensure the future of Australia's screen industry.

1.43 Witnesses stated that the Location and PDV offsets are at different rates, and that this differential is creating issues for projects. We understand that the eligibility criteria mean that a production can only access one offset, and that if a project only accesses the Location Offset of 16.5 per cent, then any PDV work undertaken for this project will only be eligible for this incentive, rather than the higher PDV Offset of 30 per cent.

1.44 The Australian Greens note that the House of Representatives Standing Committee on Communications and the Arts' report for its inquiry into factors contributing to the growth and sustainability of the Australian film and television industry recommended that the PDV and Location Offsets be decoupled to allow projects to claim both offsets. We support this recommendation.

Recommendation 9

1.45 The Australian Greens recommend that the Australian Government decouple the Location and PDV Offsets to allow for both offsets to be claimed for any single eligible production.

1.46 Submitters also argued that subscription video on demand (SVOD) services should be eligible to claim both the Location and the PDV Offsets. It is clear that television viewing habits have changed significantly over the past decade, with SVOD services being taken up by millions of Australian customers. Further, SVOD services such as Netflix are commissioning and producing a range of original content. It is essential that Australia remains competitive in the global market.

Recommendation 10

1.47 The Australian Greens recommend that the Location and PDV offsets be platform-neutral in their eligibility criteria, allowing SVOD services to access such incentives without disadvantaging the film and television industry.

Senator Sarah Hanson-Young
Chair
Senator for South Australia

Labor Senators' additional comments

1.1 This inquiry was established to examine the economic and cultural value of Australian content on broadcast, radio and streaming services.

1.2 Labor Senators acknowledge the enormous economic and cultural value of our screen and music sectors. Labor is a party of the arts and we affirm the centrality of Australian content to Australia's national identity, social cohesion and economic success.

1.3 Labor Senators are pleased this inquiry recognised the challenges the screen and music industries are facing, as well as some opportunities to improve and reform government support and regulation.

1.4 Labor is committed to supporting Australian stories being created and told by Australians on our screens. Labor believes in a thriving grassroots music scene, in keeping venues open and musicians in work, to enable our music sector to reach its full potential.

1.5 Labor Senators acknowledge the *Make It Australian* campaign and the unified push by our screen industry to inspire Government to improve and evolve the rules, incentives and funding for the screen sector in the contemporary media environment.

1.6 We note that the case for genuine reform of the policy and regulatory framework for Australian content, in response to digitisation, convergence and the rise of over-the-top services, such as SVOD services like Netflix, has long been made out.

1.7 Labor commissioned the Convergence Review, which recommended far-reaching reforms seven years ago and, since then, Labor has repeatedly called for holistic reform to modernise the policy and regulatory framework so that Australia may realise the benefits of convergence to support Australian content across platforms.

1.8 Labor Senators note that, while Australia's regulatory framework remains stuck in the siloed era of last century, the Audio-visual Media Services Directive in the EU, for example, covers both traditional television broadcasts and on-demand audiovisual media services, including online platforms disseminating audiovisual content, and imposes a set of minimum rules on a range of services to achieve a balance between competitiveness and consumer protection.

1.9 We note that successive Chairpersons of the Australian Communications and Media Authority (ACMA) have referred to the regulatory framework as 'strained', 'broken' and 'irrelevant'. We further note the remarks of Labor's Shadow Minister for Communications who stated:

> Australia is barely playing catch-up when it comes to the design and implementation of a coherent, 21st century policy and regulatory framework that levels the playing field between content providers [and]

> sustains the broader ecosystem' and that 'There is plenty of work to be done to guide a transition in the sector where all players in the ecosystem do their bit.[1]

1.10 And:

> Without such reform, creative industries, including the screen production and interactive game development sectors, miss out on a range of growth and investment opportunities … and Australia fails to grow the jobs and industries of the future, fails to harness trade opportunities and fails to facilitate content creation that enriches our cultural expression, enhances social cohesion and builds the nation.[2]

1.11 We also note the policy position outlined by the Leader of the Opposition and Shadow Minister for Arts:

> We are looking at policy options to start conversations about ensuring Australian music is well positioned on new platforms, including streaming services. Labor will also look for opportunities to support composers of screen content including ensuring that government-funded productions better utilise Australian composers and/or musical works.[3]

1.12 Labor Senators note that after five and a half years in government, the Coalition has failed to articulate an agenda or vision for the Australian screen and music sectors, has failed to undertake holistic reform of the regulatory framework and has cut around half a billion dollars from the public broadcasting, in breach of an election promise not to.

1.13 Labor Senators are concerned that the failure of leadership on Australian content under the Liberal-National Coalition is causing uncertainty for industry, dampening investment and failing to address systemic issues in terms of competition and diversity in the content sector.

1.14 Labor Senators are concerned that the Australian and Children's Screen Content Review stalled because it was undertaken in reference to an outdated regulatory framework and lacked a critical policy development step: public consultation on options, needed to foster a constructive dialogue on the way forward.

1.15 Labor Senators are concerned that the Minister for Communications and the Arts has refused to release of the report of the Australian and Children's Screen Content Review, which was delivered to him well over a year ago and which has been sought via Freedom of Information and a Senate Order for Production of Documents.

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1 Address to CAMLA, 17 May 2018.

2 Address to Sydney Institute, 14 March 2019.

3 Soundtrack Australia: Turning up the Volume, Labor's Music Policy, 30 November 2018.

1.16 Labor Senators are further concerned that the Government has not tabled a response to the Coalition-majority House of Representatives inquiry into Factors contributing to the growth and sustainability of the Australian film and television industry, which tabled its report over a year ago, or moved to implement this Committee's recommendations on the future of Australia's video game development industry.

1.17 Labor Senators acknowledge that with more players in the media and communications ecosystem, there are potentially a greater number of contributors and ways of achieving outcomes to support the production and consumption of Australian content. We also recognise that getting the mix of incentives and obligations right is critical to ensuring that all players in the ecosystem contribute sustainably to the content sector.

1.18 Labor Senators acknowledge the need for government to ensure appropriate Australian content quotas and expenditure requirements. These measures are vital in fostering Australian production and promoting Australian stories, including children's content, and we understand they must be well-crafted to ensure they are fit for purpose, avoid negative unintended consequences in terms of accessibility and competition, and best serve Australian content producers and consumers.

1.19 Labor Senators understand the importance of tax incentives for the screen industry and commend submitters for advancing proposals to this inquiry. However, while many proposals are worthy of consideration, we believe these cannot be considered in isolation and that government needs to take a holistic, evidence-based approach to craft an overall framework that avoids unintended consequences.

1.20 Labor wants to ensure Australian music is well positioned on new platforms, including streaming services and will also look for opportunities to support composers of screen content including ensuring that government-funded productions better utilise Australian composers and/or musical works.

1.21 Labor wants to see more Australians making music, listening to music and seeing music live. Australian screen content needs to be seen and heard by Australians and across the world and we need the right measures in place in the contemporary environment.

1.22 Labor Senators thank all organisations and individuals that made submissions to this inquiry and gave evidence at hearings, as well as the Secretariat for their ongoing research and administrative support.

Recommendation 1

1.23 Labor Senators recommend the Australian Government:

- **Immediately release the report of the Australian and Children's Screen Content Review.**
- **Undertake public consultation on options to break the current impasse, cast the policy and regulatory net widely and ensure modernisation of the framework on a holistic and evidence-based footing to avoid negative unintended consequences.**
- **Implement the new framework as soon as practicable to end the years of inaction, uncertainty and missed opportunities in the Australian content sector.**

Senator Anne Urquhart
Senator for Tasmania

Senator Anthony Chisholm
Senator for Queensland

Appendix 1

Submissions, additional information and answers to questions on notice

Submissions

1	Federation of Ethnic Communities' Councils of Australia (FECCA)
2	Foxtel
3	Sony Pictures Entertainment / Columbia Pictures
4	Australian Communications and Media Authority
5	Australian Children's Television Foundation
6	Free TV Australia
7	Screen Australia
8	Victorian Film and Television Industry Working Party
9	AusFilm
10	Australian Screen Asociation
11	Dr Anna Potter, University of the Sunshine Coast
12	Google Australia
13	Fox Studios Australia
14	The Walt Disney Company (Australia) Pty Ltd
15	Stan Entertainment Pty Ltd
16	Netflix, Inc.
17	Australian Directors' Guild and Australia Screen Directors Authorship Collection Society
18	Commercial Radio Australia
18.1	Correction to Submission 18 received 15 February 2018
19	ABC Friends National
20	State Government of South Australia
21	Australian Writers' Guild
22	Special Broadcasting Service Corporation (SBS)
23	Save Our SBS Inc
24	Film Victoria
25	Australian Broadcasting Corporation
26	Australasian Music Publishers Association Limited (AMPAL)
27	Media Entertainment and Arts Alliance (MEAA)
28	APRA ACMOS
29	Queensland Government
30	Phonographic Performance Company of Australia
31	Australian Independent Record Labels Association
32	Department of Tourism and Culture, Northern Territory Government

33	Australian Recording Industry Association (ARIA)
34	Screen Producers Australia
35	Flying Bark Productions Pty Ltd
36	Confidential
37	Ms Chrissie Vincent
37.1	Response to Submission 37 from Commercial Radio Australia
38	Community Broadcasting Association of Australia
39	Screen Producers Australia and APRA AMCOS
40	Nightlife Music
41	Australian Communications Consumer Action Network (ACCAN)
42	Australian Small Business and Family Enterprise Ombudsman
43	Mr George Villaflor

Additional information

- Commercial Radio Australia – Correspondence dated 27 October 2017
- Screen Australia – Screen Australia children's content production funding 2016-17
- Australian Recording Industry Association (ARIA) – Additional information regarding the digital radio audience, 17 August 2018
- APRA AMCOS – Response to evidence provided by Nightlife Australia, 16 October 2018

Answers to questions on notice

- Australian Broadcasting Corporation – Answer to question taken on notice, public hearing, Canberra, 11 April 2018 (received 4 May 2018)
- Australian Broadcasting Corporation – Answer to question take on notice, public hearing, Canberra, 11 April 2018 (received 9 May 2018)
- Free TV Australia – Answers to questions taken on notice, public hearing, Sydney, 1 August 2018 (received 28 August 2018)
- South Australian Film Corporation – Answer to question taken on notice, public hearing, Adelaide, 4 September 2018 (received 17 October 2018)

Appendix 2

Public hearings

Wednesday, 11 April 2018 – Canberra

Australian Broadcasting Corporation

Mr David Anderson, Director, Entertainment and Specialist

Special Broadcasting Service Corporation (SBS)

Mr Michael Coonan, Head of Regulatory Affairs
Mr Marshall Heald, Director, Television and Online Content

Screen Australia

Mr Graeme Mason, Chief Executive Officer
Ms Fiona Cameron, Chief Operating Officer

Wednesday, 1 August 2018 – Sydney

APRA ACMOS

Mr Dean Ormston, Chief Executive
Mr Jonathan Carter, Head of Legal, Corporate and Policy

Australian Children's Television Foundation

Ms Bernadette O'Mahony, Head of Development and Production

Australian Recording Industry Association (ARIA)

Ms Lynne Small, General Manager
Ms Rohini Sivakumar, Corporate Counsel, Commercial

Screen Producers Australia

Mr Matthew Deaner, Chief Executive Officer
Mr James Cheatley, Director, Government Relations and Policy

Free TV Australia

Ms Bridget Fair, Chief Executive Officer
Mr Ross Mitchell, Director of Broadcasting Policy

Media Entertainment and Arts Alliance (MEAA)

Ms Kelly Wood, Organiser
Ms Helen Dallimore, National Performers Committee Member
Mr Matthew Day, Actor
Ms Fiona Donovan, Member

Tuesday, 4 September 2018 – Adelaide

Commercial Radio Australia

Ms Joan Warner, Chief Executive Officer
Mrs Sarah Kruger, Head of Legal and Regulatory Affairs

Nightlife Music

Mr David O'Rourke, Chief Executive Officer
Mr Phil Brown, General Manager Strategic Partnerships

Fox Studios Australia

Mr Wayne Borg, Managing Director

SA Film Corporation

Ms Courtney Gibson, Chief Executive Officer

Friday, 16 November 2018 – Canberra

A & R Vicious Recording

Mr Andrew Van Dorsselaer, Director

Chugg Enertainment

Mr Michael Chugg, Executive Director

KAOS Management

Mr Russell Thomas, Owner

Helium Records

Mr Mark Pope, Managing Director

Save Our SBS Inc

Mr Steve Aujard, President
Mr Matthew Ng, Vice President