

Australian content quotas

Introduction

- 3.1 The regulatory regime governing the Australian screen industry includes Australian content quotas, as well as sub-quotas for children's content, documentaries and Australian drama. These quotas apply to free-to-air broadcasters and pay television, and ensure a minimum amount of Australian screen content is produced and broadcast.
- 3.2 This regime was constructed to remedy a 'market failure'. Law-makers recognised that regulation and incentives were necessary to ensure Australians had access to a variety of recognisably-Australian screen content, because:
- the viewing audiences and markets for Australian content are small;
 - Australian content is expensive to produce; and
 - broadcasters have access to cheaper international content in English.¹
- 3.3 The Explanatory Memorandum for the Broadcasting Services Bill 1992 (Cth) (the BSA) provides a context for why Australian governments value Australian screen content, and have traditionally supported quotas:
- The rationale for this provision is that it is widely accepted that television is a powerful medium with the potential to influence public opinion, and that television has a role to play in promoting Australians' cultural identity.²
- 3.4 Further, the regulations are designed to ensure Australians have access to screen content that 'reflects the multicultural nature of Australia's

1 Department of Communications and the Arts, Australian and Children's Screen Content Review, *Consultation Paper*, Canberra, August 2017, p. 1.

2 Broadcasting Services Bill 1992, *Explanatory Memorandum*, Current revised, p. 65.

population, promotes Australians' cultural identity and facilitates the development of the local production industry.'³

3.5 As well as legislating to ensure Australian content is shown on Australian screens, the current provisions 'provide for children to be specifically catered for in programming'.⁴

3.6 This chapter discusses the current quotas and regulations in relation to Australian content, including Australian children's and preschool children's ('C' and 'P') programming,⁵ the role of the Australian Broadcasting Corporation (ABC) and Special Broadcasting Service (SBS) in commissioning and broadcasting Australian content, and the issue of Australian content on subscription video on demand (SVOD) services.

The current quota system

Background

3.7 The BSA contains specific rules about the broadcast of, and/or expenditure on, Australian content. The current regulations require commercial television broadcasters to meet minimum transmission quotas of general Australian programming. These quotas are summarised in Table 3.1.

3 Broadcasting Services Bill 1992, *Explanatory Memorandum*, Current revised, p. 66.

4 Broadcasting Services Bill 1992, *Explanatory Memorandum*, Current revised, p. 66.

5 The Australian Communications and Media Authority (ACMA), *C and P programs*, <www.acma.gov.au/Industry/Broadcast/Television/Childrens-TV/c-and-p-programs-i-acma> viewed 30 August 2017.

Table 3.1 Content requirements for commercial free-to-air broadcasters

Content type	Minimum Australian content requirements
Overall	55 per cent of all programming broadcast each year between 6am and midnight
Australian adult drama	At least 250 points of first-release Australian drama programs broadcast each year
Australian C and Australian P programs	260 hours of C material broadcast each year 130 hours of P material broadcast each year 50 per cent of C programming must be first-release Australian C programs All P programs broadcast must be Australian programs
Australian C drama	At least 25 hours of first-release Australian C drama programs broadcast each year in the C time band 8 hours of repeat Australian C drama programs broadcast each year in the C time band
Australian documentary	20 hours of first-release Australian documentary programs broadcast each year between 6am and midnight

Source Australian Communications and Media Authority (ACMA), Submission 64, p. 9.

3.8 Broadcasters must also meet minimum sub-quotas for Australian documentary and drama:

- at least 20 hours of first-release Australian documentary programs annually, each of at least 30 minutes duration, between 6am and midnight;
- minimum amounts of first-release Australian drama, based on a points system:
 - ⇒ at least 250 points for first-release Australian drama each year and a score of 860 points for each triennium period.

3.9 The points system is detailed in Table 3.2.

Table 3.2 Points system for Australian drama, documentary and children’s programs

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 the rate of one hour or less per week	2.5
Australian drama series or serial produced at the 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 ACMA, Submission 64, p. 5.

- 3.10 A 'first-release program' is defined as a program that is 'first broadcast in the licence area if it has been acquired within 2 years of the completion of production of the program'.⁶
- 3.11 Drama programs from New Zealand can also be counted towards the Australian drama sub-quota and the children's drama-sub quota.⁷
- 3.12 Finally, commercial broadcasters are required to provide children's C and P programming. The 'C' and 'P' labels are derived from the classifications applied to children's content, where 'C' is children's content, suitable for children under the age of 14, and 'P' is preschool content. Commercial broadcasters must provide:
- 260 hours of children's (C) programs each year, including at least 25 hours of first-release Australian C drama and eight hours of Australian C drama that is not first-release; and
 - 130 hours of P programming.⁸
- 3.13 Regional television networks must also provide 'local' content:
- minimum amounts of local (regional) content (this provision is only relevant to some regional commercial television broadcasters):
 - a minimum of 720 points per six-week period; and
 - a minimum requirement of 90 points per week. Local content can either relate to the licensee's licence area, or to a smaller local area within the licensee's licence area.⁹
- 3.14 There are additional requirements in relation to children's content that prescribe what commercial television networks can show and when. The following restrictions also apply:
- 50 per cent of C programs must be first-release Australian C programs and all P programs must be Australian;
 - C and P programs must be shown within designated time bands:
 - ⇒ C programs, between 7am-8.30am and 4pm-8.30pm Monday to Friday and between 7am - 8.30pm Saturday, Sunday and School holidays; and
 - ⇒ P programs, between 7am - 4.30pm Monday to Friday.

6 *Broadcasting Services (Australian Content) Standard 2016*, Part 4, Section 8, 'What is a first release program', p. 9.

7 ACMA, *Submission 64*, p. 9.

8 ACMA, *Submission 64*, p. 9.

9 ACMA, *Submission 64*, p. 9.

- A minimum of 30 minutes of P material must be shown in P time periods every weekday and a minimum of 30 minutes of C material must be shown every weekday between certain times; and
 - While there is no stipulated number of hours for first-run P programs, the ACS states that: 'A P program must not be broadcast more than 3 times in a period of 5 years'.¹⁰
 - All C and P programs must be classified by the Australian Communications and Media Authority (ACMA) before being shown. To achieve a C or P classification a show must be 'entertaining' and 'well produced', and be content that 'enhances the understanding of children (or preschool children) and is appropriate for children (or preschool children)'.¹¹
- 3.15 The following advertising restrictions apply to C and P programming:
- no advertisements can be shown during P programs;
 - there are specific time limits on advertising during C program; and
 - advertisements must be suitable for children, and cannot be broadcast more than twice in half an hour.¹²
- 3.16 The BSA also requires subscription television licensees and channel suppliers that provide drama channels to invest at least 10 per cent of their total program expenditure on new Australian drama.¹³ There is no stipulation that they must broadcast the content.
- 3.17 The BSA does not include SVOD services and any service that makes programs available via the internet, meaning that these platforms are not currently required to broadcast or invest in Australian content.¹⁴

ABC and SBS

- 3.18 The ABC and SBS are exempt from the Australian content quotas and are instead regulated by their respective charters.
- 3.19 The ABC charter requires it to broadcast 'programs that contribute to a sense of national identity and inform and entertain, and reflect the cultural

10 *Broadcasting Services (Australian Content) Standard 2016, 'C Programs and P Programs', Part 8, Section 14, p. 16.*

11 ACMA, *Children's Television Standards*, <www.acma.gov.au/Citizen/TV-Radio/Television/Kids-and-TV/childrens-television-standards-kids-tv-and-advertising-i-acma> viewed 9 October 2017.

12 ACMA, *Children's Television Standards*, <www.acma.gov.au/Citizen/TV-Radio/Television/Kids-and-TV/childrens-television-standards-kids-tv-and-advertising-i-acma> viewed 9 October 2017.

13 ACMA, *Submission 64*, p. 1

14 ACMA, *Submission 64*, p. 11.

diversity of, the Australian community', but does not stipulate specific local content quotas.¹⁵

3.20 SBS's charter does not overtly state that it should produce Australian content but stipulates that SBS must:

... contribute to extending the range of Australian television and radio services, and reflect the changing nature of Australian society, by presenting many points of view and using innovative forms of expression.¹⁶

3.21 ABC and SBS do invest significantly in Australian programming including drama and documentaries, as according to the department:

Between 2011–12 to 2015–16, the ABC has provided an average of 60 per cent Australian programming between 6am and midnight on ABC1 over the last five years, with a rate of 70 per cent in 2015-16. The SBS has provided an average of 44 per cent of Australian programming between 6pm to midnight on SBS1 between 2011–12 to 2015–6, with a rate of 39.3 per cent in 2015-16.¹⁷

Compliance

3.22 Compliance with the broad Australian content quota is high. Table 3.3 demonstrates that the commercial networks exceed the 55 per cent requirement, achieving 60 to 70 per cent Australian content over a 5-year period.¹⁸

Table 3.3 2012–2016 Australian content compliance results published by the ACMA

Quotas on commercial free-to-air television	Australian programs on primary channel (5 year average)	Australian programs on non-primary channels (5 year average)	First-release Australian documentary (5 year average)	First-release Australian drama (triennial score 2014-2016)
Minimum requirement	55%	1 460 hours	20 hours	860 points (over three years)
Seven	70%	3 561	65	883
Nine	70%	1 984	24	870
Ten	62%	3 392	31	874

Source Department of Communications and the Arts, *Australian and Children's Screen Content Review, Consultation Paper*, August 2017, p. 7.

15 *The ABC Charter*, <about.abc.net.au/how-the-abc-is-run/what-guides-us/legislative-framework> viewed 30 August 2017.

16 *About Us: SBS Charter*, SBS website, <www.sbs.com.au/aboutus/corporate/index/id/25/h/sbs-charter> viewed 31 August 2017.

17 Department of Communications and the Arts, *Australian and Children's Screen Content Review, Consultation Paper*, August 2017, Attachment B, p. 16.

18 Detailed data on compliance with the quotas is available in ACMA, *Submission 64*.

- 3.23 The ACMA submits that regional commercial television licensees record ‘a high level of compliance with the regional local content obligations’ which has been so consistent that it adjusted the local content licence condition in 2014 so that reporting was no longer required.¹⁹
- 3.24 In relation to the first release drama quota, the commercial free-to-air broadcasters tend to meet the quota, but not exceed it significantly.²⁰
- 3.25 The ACMA confirmed in relation to the children’s sub-quota that commercial free-to-air networks broadcast ‘only the minimum that they are obliged to’. Table 3.4 provides these details.²¹

Table 3.4 2012–2016 Australian content compliance results – children’s content

Quotas on commercial free-to-air television	First-release Australian children’s drama (triennial score 2012-2014)	First-release Australian children’s programs (5 year average)	All children’s programs (5 year average)	All Australian preschool programs (5 year average)
Minimum requirement	96 hours	130 hours	260 hours	130 hours
Seven	97 hours	130 hours	261 hours	131 hours
Nine	92 hours	129 hours	310 hours	131 hours
Ten	97 hours	131 hours	262 hours	131 hours

Source Department of Communications and the Arts, *Australian and Children’s Screen Content Review, Consultation Paper, August 2017, p. 7.*

- 3.26 Pay television broadcasters are also meeting their quota. The expenditure quota imposed on pay television is called new eligible drama expenditure (NEDE). It provides flexibility for pay television producers to show the Australian content they produce on whatever channel they like. The ACMA indicates that compliance with the NEDE is satisfactory.²²
- 3.27 The NEDE scheme is structured according to an ‘accrual expenditure model’ and runs over a rolling three-year cycle. The ACMA provides the following example in its submission to demonstrate how the scheme functions:

For example, where a scheme participant’s expenditure for a given year is under 10 per cent, the participant must spend an amount

19 ACMA, *Submission 64*, p. 9.

20 Department of Communications and the Arts, *Australian and Children’s Screen Content Review Consultation Paper, August 2017, p. 7.*

21 Ms Jennifer McNeill, General Manager, Content, Consumer and Citizen Division, ACMA, *Committee Hansard*, Canberra, 16 June 2017, p. 13.

22 ACMA, *Submission 64*, p. 8.

equal to the shortfall in the next financial year on new Australian drama, at a minimum. Where a participant's expenditure is over 10 per cent (and any existing shortfall expenditure) the excess may be nominated as 'carry-forward expenditure' and used in the following financial year.²³

3.28 Table 3.5 provides the NEDE expenditure for the last five years.

Table 3.5 New eligible drama expenditure results 2011–2012 to 2015–2016

	2011-2012 (\$m)	2012-2013 (\$m)	2013-2014 (\$m)	2014-2015 (\$m)	2015-2016 (\$m)
New eligible drama expenditure requirement	\$28.82	\$33.41	\$28.57	\$31.28	\$32.79
Expenditure on new eligible drama	\$24.38	\$13.70	\$36.81	\$36.43	\$51.23
Expenditure nominated to make up previous year's shortfall	\$6.81	\$6.41	\$25.76	\$18.06	\$15.44
Expenditure nominated towards current year's 10 per cent requirement	\$22.53	\$6.42	\$10.14	\$12.47	\$27.21
Remaining obligation to be acquitted in the next financial year	\$6.41	\$25.76	\$18.06	\$15.44	\$2.44

Source ACMA, *Submission 64*, p. 8.

Reforming the quotas

Moving to an expenditure-based system

3.29 There were various proposals during the inquiry to reform the current hours-based Australian content quota system.

3.30 Seven West Media stated that broadcasters struggle with the hours-based quotas because people no longer want to consume content, particularly drama, through live broadcast, preferring to 'wait and record it all or stream it all'.²⁴

3.31 The Australian Children's Television Foundation (ACTF) stated that the time-slot specific, hours-based quotas currently imposed on the

23 ACMA, *Submission 64*, p. 8.

24 Ms Therese Hegarty, Director of Content Distribution and Rights, Seven West Media, *Committee Hansard*, Sydney, 20 July 2017, p. 28.

- commercial broadcasters 'are anachronistic'. They proposed a number of other solutions, including 'tradable' quotas.²⁵
- 3.32 The Australian Council on Children and the Media (ACCM) argued that the hours-based quotas are no longer serving children either, as they are 'too easily circumvented'.²⁶ The ACCM proposed consideration of an alternative system of spending requirements and funding measures 'to ensure that the content is produced and finds its audience'.²⁷
- 3.33 The Victorian Government submits that the current regulatory framework is failing to serve its audience as intended, because in order to be counted as Australian content only need to be produced by Australians, and may in fact be aimed at an international audience. It states that 'alternative approaches should be considered to ensure that Australian stories are produced primarily for Australian children'.²⁸
- 3.34 Ms Patricia Edgar argues in her submission to the Australian and Children's Screen Content Review that the ABC should be funded and directed to provide content for children aged two to nine years old, and that children aged ten to 16 years should be served by 'a new multi-platform service appropriate to their needs and interests'.²⁹ She proposes that this should be financed through both public and private funding mechanisms, including a levy on the free-to-air commercial broadcasters of \$10 million a year.³⁰
- 3.35 SPA supports the idea of a contestable children's screen content fund to which the free-to-air broadcasters would be obliged to contribute.³¹
- 3.36 The ACTF also argued that this would allow one or two of the broadcasters to 'commission quality and distinctive Australian programs', rather than what they called 'three commercial broadcasters doing a lousy job'.³²
- 3.37 The ACCM also proposed introducing an expenditure-based requirement, which they argue would be harder to 'water down' than the hours-based

25 Ms Jenny Buckland, Chief Executive Officer, the Australian Children's Television Foundation (ACTF), *Committee Hansard*, Melbourne, 26 July 2017, p. 53.

26 Professor Elizabeth Handsley, President, the Australian Council on Children and the Media (ACCM), *Committee Hansard*, Canberra 16 August 2017, p. 16.

27 Professor Handsley, President, ACCM, *Committee Hansard*, Canberra, 16 August 2017, p. 16.

28 Victorian Government, *Submission 138*, p. 7.

29 Ms Patricia Edgar, 'What really happened to Australian Children's Television? And where to from here?', *Submission to the Australian and Children's Screen Content Review*, July 2017, p. 3.

30 Ms Edgar, 'What really happened to Australian Children's Television? And where to from here?', *Submission to the Australian and Children's Screen Content Review*, July 2017, p. 3.

31 SPA, *Submission 86*, p. 15.

32 Ms Buckland, CEO, ACTF, *Committee Hansard*, Melbourne, 26 July 2017, p. 54.

quotas, which it argues in the case of children's content are being filled with cheap animation.³³

- 3.38 The MEAA refers to the 2012 Convergence Review's recommendation to establish a 'Converged Content Fund', which would be funded by a percentage of total revenues from 'eligible content service enterprises invested in Australian dramas, documentaries and children's programs'.³⁴
- 3.39 However, Flying Bark criticised this popular proposal, saying that a content fund would effectively be 'reducing the mechanism of competition', meaning producers would have a reduced market for their content.³⁵
- 3.40 In relation to quotas for subscription television, SLR Productions proposes in its submission that the expenditure requirements for Australian children's drama on pay television networks should be increased.³⁶

Children's quotas

- 3.41 The ACMA submits that the children's television quotas should be *reviewed* to ensure they are still fit-for-purpose, due to:
- changes in children's viewing behaviours, including a shift away from commercial television to dedicated children's channels on the ABC and pay television; and
 - the fact that, under the current regulatory framework, children's programming is uncommercial.³⁷
- 3.42 Research from the ACMA indicates however that while live broadcast television watching is decreasing it is still dominant among younger children.³⁸
- 3.43 Changes in children's viewing habits are summarised by the Australian and Children's Screen Content Review as follows:

The viewing habits of Australian children are also undergoing particularly rapid change. Very young children are watching ABC 2 and ABC ME in preference to commercial free-to-air stations, with two out of three parents reporting their children aged under 15 prefer watching children's programs on ABC channels. Overall, children are slowly migrating away from television and 2016 was

33 Professor Handsley, President, ACCM, *Committee Hansard*, Canberra, 16 August 2017, p. 18.

34 MEAA, *Submission 125*, p. 3.

35 Ms Stephen, Flying Bark Productions, *Committee Hansard*, Sydney, 20 July 2017, p. 68.

36 SLR Productions, *Submission 137*, p. 4.

37 ACMA, *Submission 64*, p. 1.

38 ACMA, *Communications report 2015-16*, p. 5.

the first year in which the total time Australian children spent online on computers, tablets or mobile devices exceeded the time they spent watching television.³⁹

- 3.44 The commercial broadcasters do not argue for changes to the general local content quota of 55 per cent, which they all exceed, but are all of the view that the children's sub-quotas should be abolished or dramatically reformed.⁴⁰
- 3.45 Nine Entertainment Co. argues that existing regulation is 'based on the previously prominent position of the FTA networks', where they were considered 'an essential service or public utility', and that this is no longer relevant in a context with more players in the game.⁴¹
- 3.46 Free TV Australia submits that the Australian content obligations are 'onerous and rigid' and put the commercial broadcasters at a competitive disadvantage.⁴²
- 3.47 Network Ten commented that commercial broadcasters cannot monetise children's content because of the time bands in which it must be shown, and the restrictions around advertising.⁴³
- 3.48 Flying Bark Productions reject the idea that children's content is uncommercial however and commented that its business is dependent on monetizing children's content.⁴⁴
- 3.49 Flying Bark suggested that the commercial broadcasters were not being inventive enough to tap into what she called the 'multibillion dollar children's entertainment services industry'. It proposed that the broadcasters could 'drive a sustainable service for children through investigating new models'.⁴⁵
- 3.50 Ms Edgar comments in her submission to the content review that broadcasters need to accept that children's programming may not always be commercial:

39 Department of Communications and the Arts, Australian and Children's Screen Content Review, *Consultation Paper*, August 2017, p. 4.

40 Ms Longstaff, Acting CEO, Free TV Australia, *Committee Hansard*, Sydney 20 July 2017, p. 45. See also Seven West Media, *Submission 128*, p. 2; Network Ten Pty Ltd, *Submission 130*, p. 2; and Nine Entertainment Co., *Submission 134*, p. 11.

41 Nine Entertainment Co., *Submission 134*, p. 11.

42 Free TV Australia, *Submission 135*, p. 2.

43 Mr Paul Anderson, Chief Executive Officer, Network Ten, *Committee Hansard*, Sydney, 20 July 2017, p. 33.

44 Ms Barbara Stephen, Managing Director, Flying Bark Productions, *Committee Hansard*, Sydney, 20 July 2017, p. 68.

45 Ms Stephen, Flying Bark Productions, *Committee Hansard*, Sydney, 20 July 2017, p. 66.

It is understood the best children's media programs will not necessarily pay their way. Just as we need to subsidise schools, we need to subsidise the programs that will support the development and enlightenment of young children.⁴⁶

- 3.51 The ACTF submits that without the quotas, broadcasters will not make children's content at all:

Broadcasters can import children's content for a fraction of the cost of production of local content ... With an infinite supply of cheap or free content, there is little incentive for a commercial broadcaster to invest in quality, locally made children's programs.⁴⁷

- 3.52 The ACCM maintains that the quotas 'are beneficial for children', providing 'a minimum amount of quality, age appropriate, entertaining, life-enhancing and culturally-relevant content for Australian children'.⁴⁸

- 3.53 Dr Anna Potter referred the committee to the example of the United Kingdom, where she said children's quotas were removed in 2003 and have recently been reinstated:

The children's television industry was decimated; spending dropped by 90 per cent on local children's television. Just this year, Ofcom have reintroduced those quotas.⁴⁹

- 3.54 Network Ten argued that children's television production 'should be the remit of the national broadcasters, ABC and SBS'.⁵⁰

- 3.55 The ACCM criticised the suggestion that children's television should be entirely left to the ABC and SBS, however, and argued this 'would mean only one program would be available at any given time', leaving children with no choice or diversity of content.⁵¹

The move to animation

- 3.56 Broadcasters are increasingly fulfilling their children's drama content quota obligations by showing animation rather than live-action drama.

- 3.57 The ACTF identifies the introduction of the PDV Offset as one of the reasons for this move:

46 Ms Edgar, 'What really happened to Australian Children's Television? And where to from here?', *Submission to the Australian and Children's Screen Content Review*, July 2017, p. 33.

47 ACTF, *Submission 91*, p. 5. See also, Dr Anna Potter, *Submission 97*, p. 3.

48 ACCM, *Submission 126*, p. 2.

49 Dr Anna Potter, *Committee Hansard*, Brisbane, 13 July 2017, p. 11.

50 Mr Paul Anderson, CEO, Network Ten, *Committee Hansard*, Sydney, 20 July 2017, p. 32. See also, Mr Marks, CEO, Nine Entertainment Co., *Committee Hansard*, Sydney, 20 July 2017, p. 38.

51 Professor Handsley, President, ACCM, *Committee Hansard*, Canberra, 16 August 2017, p. 18.

[Access to the] PDV Offset meant that animated series that were commissioned for lower licence fees than Screen Australia required, were able to access Commonwealth support ... The outcome is that whereas the C drama quota previously showcased a range of Australian drama for children, animated drama with (frequently with generic or 'international' settings) now dominates.⁵²

- 3.58 The Australian and Children's Screen Content Review *Consultation Paper* confirms that 10 out of the 14 domestic children's titles produced in 2015–16 were animated, and most accessed the 30 per cent PDV Offset instead of the 20 per cent producer offset for television.⁵³
- 3.59 The *Consultation Paper* notes also that 2016 saw only eight hours of live-action children's drama broadcast under the quotas, compared to 84 hours of animated children's drama.⁵⁴
- 3.60 The ACTF suggests this is a problem because Australian animations are largely being made for a global audience and 'rarely contribute to the audience's developing Australian identity'.⁵⁵
- 3.61 The ACCM stated that animation:
- ...doesn't have that capacity to represent to Australian children their own life and their own environment in a way that enables them to feel that extra level of engagement and to have the opportunities to reflect on their own culture and their own environment and to find their place in it better.⁵⁶
- 3.62 While some animation includes Australian storylines, accents and characters, Dr Potter claims that 'most animated series produced to fill the CTS quota carry no recognisable Australian content'.⁵⁷
- 3.63 Dr Potter argued that this is counter to the policy intent of the quotas, because international-style animations are being used to fill content quotas 'that were put in place expressly to support identifiably Australian content'.⁵⁸

52 ACTF, *Submission 91*, p. 8.

53 Department of Communications and the Arts, Australian and Children's Screen Content Review, *Consultation Paper*, August 2017, p. 8.

54 Department of Communications and the Arts, Australian and Children's Screen Content Review, *Consultation Paper*, August 2017, p. 8.

55 ACTF, *Submission 91*, p. 8.

56 Professor Handsley, President, ACCM, *Committee Hansard*, Canberra, 16 August 2017, p. 16.

57 Dr Anna Potter, *Submission 97*, p. 5.

58 Dr Potter, *Committee Hansard*, Brisbane, 13 July 2017, p. 15.

- 3.64 Flying Bark Productions defends animation as a valid form of Australian content and cautions against taking a narrow view of what is ‘Australian’. Flying Bark states that it produces animated content which:

...reflects the diversity of identities that makes someone Australian. What is critical in these programs is that we ‘hear or see’ Australians on our screens, and that our storytelling reflects our sense of humour, values and diversity in characters and settings wherever possible.⁵⁹

- 3.65 The Media, Entertainment and Arts Alliance (MEAA) recommends:

A study should be commissioned to determine whether separate caps are required for children’s animation and conventional children’s live action drama as a means of preserving live action children’s drama as a total proportion of Australian content obligations.⁶⁰

Inclusion of on-demand platforms

- 3.66 Australian and children’s content quotas do not apply to internet-based and SVOD providers in the Australian market, such as Netflix and Stan. A number of submissions recommend that this be changed.⁶¹

- 3.67 The Victorian Government proposes that the current inability to apply the quotas to SVOD services ‘appears contrary to the original intent’ of the legislation. It submits:

SVOD services fall outside the definition of a ‘broadcasting service’ because they deliver content via the internet not spectrum. Subsequently, new players in the screen content landscape such as Netflix are not subject to content quotas (or a range of other regulation) imposed on traditional television broadcasters. This appears contrary to the original intent of the *Broadcasting Services Act 1992*, which was to apply a simple regulatory regime to television ‘irrespective of the technical means of delivery’.⁶²

- 3.68 Submitters to this inquiry make various suggestions for imposing local content regulation on the SVOD sector, including:
- implementing an Australian children’s quota on all new and emerging platforms such as Netflix, Amazon, Stan and YouTube;⁶³

59 Flying Bark Productions, *Submission 141*, pp. [8-9].

60 MEAA, *Submission 125*, p. 3.

61 See for instance: SPA, *Submission 86*, p. 15; Kapow Pictures, *Submission 48*, p. [2]; MEAA, *Submission 125*, p. 2; and SLR Productions, *Submission 137*, p. 5.

62 Victorian Government, *Submission 138*, p. 4.

63 SLR Productions, *Submission 137*, p. 5.

- requiring SVOD providers to invest a proportion of Australian revenues into local content production;⁶⁴ and/or
 - introducing ‘technology neutral regulation’ that captures online subscription services.⁶⁵
- 3.69 The ACMA submits that the lack of regulation of SVOD providers ‘has implications both for the efficacy of the interventions themselves and for the impact of those obligations on the competitive environment’.⁶⁶
- 3.70 SPA argues that current content obligations ‘should also be extended to SVOD services or other digital platforms’ to ensure they invest in local children’s content.⁶⁷
- 3.71 Nine Entertainment Co. described imposing quotas on new services as ‘a real danger’ however, describing it as ‘inflexible regulation’ that would ‘be very detrimental to the development of those businesses’.⁶⁸ Nine Entertainment Co. also provided figures suggesting Stan, which it part owns, is increasing its local content year on year without a quota:
- ...in 2015 they did three hours, and that has increased to nine hours of local content in 2016, and in 2017 it’s 21 hours, so it’s growing.⁶⁹
- 3.72 Dr Potter recommended that any new regulatory system arising from the review should impose a ‘funding obligation’ onto all providers of screen content, including SVODs. She added that ‘they are making money out of this country, so why not invest something in local content.’⁷⁰
- 3.73 The government previously explored the idea of imposing quotas on new market entrants, such as SVOD providers, in the 2012 Convergence Review which proposed a model based on investing a percentage of the companies’ revenues in Australian content. The report argues that this approach provides ‘a measure that is consistent with all businesses and content delivery models’.⁷¹
- 3.74 The quotas currently imposed on subscription television provide an example of an expenditure-based quota in practice. The ACMA regulates

64 MEAA, *Submission 125*, p. 2.

65 Create NSW, *Submission 142*, p. 9.

66 ACMA, *Submission 64*, p. 11.

67 SPA, *Submission 86*, p. 15.

68 Mr Marks, CEO, Nine Entertainment Co., *Committee Hansard*, Sydney, 20 July 2017, p. 41.

69 Ms Clare Gill, Director of Regulatory Affairs, Nine Entertainment Co., *Committee Hansard*, Sydney, 20 July 2017, p. 41.

70 Dr Potter, *Committee Hansard*, Brisbane, 13 July 2017, p. 15.

71 Australian Government, *Convergence Review: Final Report*, Canberra, March 2012, p. 65.

the quota, which provides flexibility to the business to determine how and even when expenditure occurs, within limits.⁷²

- 3.75 The ACTF submission recommends that the government establish a new regulatory framework for all commercial screen content distribution platforms that is 'platform agnostic', applies to all commercial services in the market, and includes an Australian children's content obligation. It also supports an accompanying 'contestable fund' that would provide:

...adequate provision of discrete government funding to a contestable content fund for the production of original, high-quality Australian children's drama.⁷³

Conclusions

- 3.76 Australian content quotas apply to the commercial free-to-air television broadcasters. The quotas stipulate that no less than 55 per cent of programming is Australian, and set sub-quotas for specific genres, including documentary, drama and children's content. An expenditure-based drama quota also applies to subscription television providers that provide drama channels, such as Foxtel.
- 3.77 Commercial broadcasters are required to provide children's C and P programming. 'C' is children's content, suitable for children under the age of 14, and 'P' is preschool content. Commercial broadcasters must provide:
- 260 hours of children's (C) programs each year, including at least 25 hours of first-release Australian C drama and eight hours of Australian C drama that is not first-release; and
 - 130 hours of P programming.⁷⁴
- 3.78 Commercial broadcasters are also currently required to broadcast first-release Australian drama according to a points system.
- 3.79 Each broadcaster must achieve a score of at least 250 points for first-release Australian drama each year. Australian programs used to fill this quota are worth between one and four points, depending on the type of content and the licence fees paid. For instance, long-running series dramas are worth one point, whereas an Australian telemovie or miniseries is worth 4 points.⁷⁵
- 3.80 Under the current system of regulation, the commercial broadcasters each show approximately 390 hours of Australian content for children on an
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72 ACMA, *Submission 64*, p. 8.

73 ACTF, *Submission 91*, p. 13.

74 ACMA, *Submission 64*, p. 9.

75 ACMA, *Submission 64*, p. 5. See Table 1 on page 4 of this chapter for a detailed breakdown.

- annual basis.⁷⁶ The ABC is currently showing approximately 3400 hours of Australian content for children per year across all of its channels.⁷⁷
- 3.81 There are currently no quotas imposed on the ABC or SBS.⁷⁸ There are also no quota obligations for SVOD providers such as Netflix and Stan.
- 3.82 The quota system plays an important role in sustaining the television production industry in Australia. Some groups advised that if the quotas were removed the production of Australian drama, particularly children's programs, would be dramatically reduced.
- 3.83 Evidence from the ACMA to the inquiry indicates however that the existing regulations:
- do not account for the new ways that viewers are consuming screen content, such as through catch up services and on-demand or 'binge' watching; and
 - because of a loophole in the legislation, do not apply to new market entrants whose services are internet-based, including SVOD providers like Netflix and Stan.⁷⁹
- 3.84 Free-to-air broadcasters all meet their drama quotas and Australian drama and other content remains popular.
- 3.85 Australian drama is vital for the production industry in Australia and is important for Australian viewers. Current levels of expenditure on Australian drama must therefore be maintained in any revised quota system.
- 3.86 Large internet-based screen content providers such as Netflix are already taking a significant share of the Australian viewing audience and this share will most likely rise quickly in the future.
- 3.87 Documentary is also a valuable genre in the Australian screen content landscape and should continue to be produced and broadcast.
- 3.88 The committee notes that reality television is very prominent on commercial broadcasters. This is a bona fide genre that is popular with Australian families and provides significant employment opportunities for the screen workforce. Reality shows should not be discriminated against by any future reforms to the quota system.

76 ACMA, *Submission 64*, p. 9.

77 Mr Anderson, Director Television, Australian Broadcasting Corporation (ABC), *Committee Hansard*, Canberra, 16 June 2017, p. 21.

78 ACMA, *Submission 64*, p. 9.

79 ACMA, *Submission 64*, p. 11.

- 3.89 The viewing habits of children appear to be moving away from the commercial channels but the committee does not support the complete removal of children's content obligations from commercial broadcasters.
- 3.90 There is also no requirement to produce children's live-action drama under the current Australian content rules and the commercial networks are increasingly using animation to comply with this particular sub-quota.⁸⁰
- 3.91 There are many quality animations being produced but live-action drama must continue to be part of the mix of content produced for children.
- 3.92 The ABC should not become the only destination for children's viewing on free-to-air television. Not all children have access to pay television and subscription content services and therefore will benefit from a variety of content options on different free-to-air broadcast channels.
- 3.93 Some changes to the children's quota system are warranted however, given the changes in viewing trends. The committee therefore supports reforms to the current sub-quota system for C and P content but only if they continue to ensure access to a variety of quality Australian content for children, particularly live-action drama, across different platforms.
- 3.94 A review of the hours-based quota for first-release children's screen content would also be worthwhile. However, any reduction in this quota obligation would have to be replaced with a system for ensuring the continued production of new, high quality Australian content for children.
- 3.95 The committee would support a contestable fund as an alternative approach to an hours-based sub-quota for new children's content. Contributions to this fund would need to be made by the commercial broadcasters to finance the creation of quality Australian children's programs into the future.
- 3.96 In addition, all commercial content providers in the Australian market, including SVOD providers, should invest some of the revenue they earn in Australia on producing new Australian content, including children's content.
- 3.97 In summary, Australia's content quota system should:
- be platform neutral;
 - apply to new market entrants;
 - consider moving, at least in part, to an expenditure-based system for new-release children's material; and

80 Department of Communications and the Arts, Australian and Children's Screen Content Review, *Consultation Paper*, August 2017, p. 8.

- ensure that a variety of high-quality Australian content for children continues to be available across different platforms.

Recommendation 3

- 3.98 **The committee recommends that any future reforms to Australia’s content quota system ensure that commercial and subscription television companies continue to invest in and broadcast Australian programs for general audiences at current levels. In addition, the new quota system should provide that subscription video on demand services invest a percentage of the revenues they earn in Australia, for example 10 per cent, in new Australian content.**

Recommendation 4

- 3.99 **The committee recommends that the children’s content sub-quotas be reformed in light of current viewing trends but continue to ensure access to a variety of quality Australian content for children, particularly live-action drama, across all platforms.**

Recommendation 5

- 3.100 **The committee recommends that the Australian Government reviews the hours-based quota for first release children’s screen content and considers replacing some or all of this quota obligation with a contestable fund to support the creation of quality Australian children’s programs into the future.**

New Zealand content

Analysis

- 3.101 Under the current rules, New Zealand productions can be used to count towards Australian screen content quotas. This is as a result of the *Australia-New Zealand Closer Economic Relations Trade Agreement*, which

does not contain a 'cultural exception' that is often included to allow countries to protect their cultural industries.⁸¹

3.102 New Zealand programs can also count as first-release under the quota system because they are being shown for the first time in Australia.⁸²

3.103 Australian broadcasters are showing what SPA considers to be a *substantial* amount of New Zealand content as Australian content: 180 hours in 2014 and 135 in 2015.⁸³

3.104 Data provided by the ACMA confirm that, while the overall proportion of content derived from New Zealand and shown on the networks is low (less than 1 per cent for the three major free-to-air broadcasters), it is higher for the sub-quotas.⁸⁴

3.105 According to the ACMA, Ten provided almost 19 per cent New Zealand content towards its first-release children's drama content quota in 2016, which equates to 5 hours.⁸⁵

3.106 SPA suggested that the loophole allowing New Zealand programs to count as first run in Australia could be closed by requiring the definition to be 'first released worldwide'.⁸⁶

Conclusions

3.107 Australian television broadcasters can use New Zealand programs to acquit their quota obligations including first-release requirements because they are being shown for the first time in Australia.⁸⁷

3.108 The regulations should require that all first-released content used to meet Australian quota obligations must not have been previously broadcast in another country.

Recommendation 6

3.109 **The committee recommends that first-release be redefined to mean first broadcast anywhere in the world.**

81 Screen Producers Australia (SPA), *Submission 86*, p. 13.

82 SPA, *Submission 86*, p. 13.

83 SPA, *Submission 86*, p. 13.

84 AMCA, *Supplementary Submission 64.2*, p. [1].

85 AMCA, *Supplementary Submission 64.2*, p. [3].

86 Mr Matthew Deaner, CEO, Screen Producers Australia, *Committee Hansard*, Sydney, 19 July 2017, p. 32.

87 SPA, *Submission 86*, p. 13.

Quotas for the ABC and SBS

Analysis

- 3.110 There are concerns that the ABC may have recently reduced its commitment to producing children's content and proposals from many in the industry that quotas should be imposed on the ABC and SBS to ensure that quality programming will continue to be available for Australian children.
- 3.111 SPA argues that the ABC has 'been reducing' its expenditure on children's content and that there is 'no guarantee that the ABC will maintain their commitment to children's content in the future'.⁸⁸
- 3.112 The ACTF also stated that the ABC was reducing its targets for children's programming:
- The ABC set a target of achieving 40% Australian content on ABCME's launch date, with a target of 50% local content by 2010. But in 2015/16, ABC executives indicated that they were working towards a significantly diluted target of 25% Australian content across both children's channels.⁸⁹
- 3.113 The MEAA recommends that the ABC and SBS charters should be amended so that each is obliged to provide 'quality Australian drama, including children's drama', and report on their 'investment and production outcomes' through their annual reports.⁹⁰
- 3.114 Dr Potter argued that without any quota or obligation, the ABC is 'free to withdraw funding from its children's services without public consultation or scrutiny'.⁹¹
- 3.115 The ACTF argues that a well-resourced ABC is critical for children, and that the ABC needs to have clear commitments to delivering children's content, further stating:
- Investment in local children's content production by the ABC mitigates the risk of a failure by the market to provide distinctly Australian content suitable for child audiences.⁹²
- 3.116 The ACTF cites the example of the United Kingdom quotas for the BBC as a possible model for Australia:

88 SPA, *Submission 86*, p. 14.

89 ACTF, *Submission 91*, p. 10.

90 MEAA, *Submission 125*, p. 3.

91 Dr Potter, *Submission 97*, p. 7.

92 ACTF, *Submission 91*, p. 10.

Interestingly, the regulator in the UK has just suggested numbers of hours for the BBC. It's suggested that the BBC should do 100 hours of brand-new British content for preschoolers every year and 400 hours of brand-new British content for older children every year.

...

I think they're good numbers.⁹³

- 3.117 The ACCM went further, suggesting that the ABC should be held to providing at least a 50 per cent Australian content for its child audiences, and that 50 per cent of drama should be live-action.⁹⁴
- 3.118 The ABC does not support a quota being imposed upon it:
- I think the ABC's position is that we do not think that applying quotas to the ABC is good. Apart from interfering with our independence as an independent broadcaster, I am not sure you get good outcomes with quotas. I am not convinced of that for the ABC, across all of its services.⁹⁵
- 3.119 The ABC clarified also that while it is seeking to increase its Australian production in 2018 it does not set specific hours-based targets for local content, preferring to allow for flexibility in its editorial decisions based on the availability of high quality content across genres.⁹⁶
- 3.120 The ABC also stated that it broadcasts over 3 400 hours of Australian children's content per annum – much more than the commercial broadcasters,⁹⁷ who broadcast around 400 hours each.
- 3.121 Interestingly, SBS welcomes the idea of a quota being placed upon it, but only if adequate funding is provided to cover the costs. It recommends the government:
- Consider a fully-funded content quota for SBS to support the further development of multicultural, multilingual and Indigenous children's content.⁹⁸
- 3.122 The ACTF talked about the positive contribution to children's television that SBS is making through their Indigenous network, NITV. The ACTF stated:

93 Ms Buckland, CEO, ACTF, *Committee Hansard*, Melbourne, 26 July 2017, p. 52.

94 Professor Handsley, President, ACCM, *Committee Hansard*, Canberra, 16 August 2017, p. 19.

95 Mr David Anderson, Director Television, ABC, *Committee Hansard*, Canberra, 16 June 2017, p. 25.

96 Mr Anderson, Director Television, ABC, *Committee Hansard*, Canberra, 16 June 2017, p. 20.

97 Mr Anderson, Director Television, ABC, *Committee Hansard*, Canberra, 16 June 2017, p. 20.

98 Special Broadcasting Service (SBS), *Submission 133*, p. 1.

If NITV were actually provided with a bit more funding, they could probably do some terrific stuff. They will go on to share some of that content with the ABC.⁹⁹

Conclusions

- 3.123 The ABC charter specifies that it has a role in broadcasting programs of an educational nature but does not oblige the ABC to provide content specifically for children.¹⁰⁰ The SBS charter does not contain this requirement either.
- 3.124 The ABC now holds a dominant position in television entertainment for Australia's children, particularly pre-schoolers, and community feedback to members of the committee has confirmed that the ABC is the primary source of programming for their children. The committee appreciates and values this important contribution and for this reason believes that it must be maintained.
- 3.125 The editorial independence of the ABC should be preserved but the ABC charter should require a specific hourly commitment to children's programming that reflects its already strong commitment to children's television.

Recommendation 7

- 3.126 **The committee recommends that the charter for the Australian Broadcasting Corporation be amended to require a minimum hours-based quota for first release children's screen content. This reflects the ABC's strong commitment to children's television and community feedback indicating that the ABC has become the primary provider of Australian programming for children.**
- 3.127 SBS does not play a significant role in the children's viewing market due to its focus on multicultural and multilingual broadcasts and it would not be beneficial to impose a specific children's content quota on SBS.
- 3.128 SBS indicates that the proportion of Australian content on its main channel is currently 30-35 per cent.¹⁰¹ The committee believes that SBS should be

99 Ms Buckland, CEO, ACTF, *Committee Hansard*, Melbourne, 26 July 2017, p. 53.

100 *Australian Broadcasting Corporation Act 1983*, <www.legislation.gov.au/Details/C2014C00721> viewed 28 September 2017.

101 SBS website, *Frequently asked questions- production*, <<http://www.sbs.com.au/aboutus/faqs/index/id/80/h/Production>> viewed 26 October 2017.

required to source more of its multicultural programming in Australia to support the domestic screen sector. This should also include a greater commitment to programming from regional areas.

Recommendation 8

- 3.129 **The committee recommends that the Special Broadcasting Service Corporation charter be amended to require additional multicultural programming to be sourced domestically so that a minimum of 50 per cent Australian content is shown across all of its channels. This must also include a commitment to more content from regional areas.**