AUSTRALIAN WRITERS' GUILD

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Submission

to the

Senate Environment and Communications Legislation Committee

Inquiry into the Package of Media Reform Bills

20 March 2013

Australian Writers' Guild

The Australian Writers' Guild (AWG) is the peak industry body representing writers and creators of film, theatre, television, radio and new media. On behalf its members, the AWG works to improve professional standards, conditions and remuneration; to protect and advance creative rights and to promote the Australian cultural voice in all its diversity.

Process

Given the time provided for consideration of and response to the *Broadcasting Legislation Amendment (Convergence Review and Other Measures) Bill 2013*, our submission will be limited to only a small number of crucial considerations.

The public interest has clearly not been served by this timeframe and the Australian Writers' Guild concurs with the colourful and aggressive responses to the process articulated in both the Ten Network and Seven West submissions to this Committee.

Original Legislative Intention

The *Broadcasting Legislation Amendment (Convergence Review and Other Measures) Bill 2013* (the *'Bill'*) is so-called because it was intended to be the legislative response to the recommendations of the Convergence Review. The Convergence Review was commissioned by the Government to provide guidelines for affecting policy intentions through regulation in the rapidly evolving proliferation of content delivery platforms.

The Convergence Review consulted widely, over an extended period, and made recommendations in the particular areas we focus on below based on careful consideration of the balance necessary between the evolving commercial pressures of the Broadcasters, and the cultural significance and commercial fragility of some forms of Australian content.

Rationale for Government intervention in this marketplace

The Convergence Review, the Productivity Commission's Report on Broadcasting[1], various other international regulatory reviews, and academic comparative international analysis [2] are unequivocal in their conclusion that broadcaster investment in the commissioning and broadcasting of narrative drama, children's television and documentary is not commercially viable.

[1] Productivity Commission, Broadcasting, report no. 11, 2000, p. 383, www.pc.gov.au/projects/inquiry/broadcasting/docs/finalreport.
[2] Peter Grant, 'Stories Under Stress - The Challenge for Indigenous [local] Drama in English-Language Broadcast Markets', 2008.

> " The (Convergence) Review considers that government intervention is necessary to ensure the production of content forms that the public considers valuable, but which would be under-produced if market forces alone were at play.
>
> In 2012, the content forms in need of such intervention remain Australian drama, documentary and children's programs. However, the situation may change in the future and the regulatory environment should be flexible enough to allow for this." [3]

In its report on broadcasting the Productivity Commission noted:

> "The broadcaster's main concern is the program's ability to generate a profit—that is, its advertising revenue relative to its cost. High cost programs with social and cultural value may be vulnerable to replacement by programs with a better revenue-to-cost ratio, even if the alternative is less popular with viewers and advertisers.
>
> While some Australian content may deliver higher ratings and therefore higher advertising revenues over time, in most cases this will not offset the substantially higher production costs". [4]

These are uncontentious, logical and cogent observations demonstrating the justification for significant Government intervention if it is to realise it's cultural objective of ensuring Australian audiences have ready access to the quality screen stories which reflect, shape, and form part of, the fabric of our society.

Content of the Bill

The *Bill* ignores one of the most culturally significant recommendations of the Convergence Review, yet provides no alternative in its place. The minimum sub-quota requirements set out in the *Broadcasting Services (Australian Content) Standard 2005* and the *Children's Television Standards 2009* are the only instrument governing the quantity of new Australian drama, children's television and documentary.

[3] Commonwealth of Australia, Convergence Review Final Report, 2012, p. 63.
[4] Productivity Commission, above n1.

As part of a comprehensive package of recommendations responding to the changing marketplace by providing greater flexibility and increased revenue for the FTA Broadcasters, the Convergence Review recommended a 50% increase in the sub-quotas as an interim measure. The Networks argument against the proposal is that they cannot afford any additional programming of this kind, confirming the very need for the regulation. This position has been heard and responded to with the *Television Licence Fees Amendment Bill 2013* permanently reducing their Licence fees by 50%.

The key argument against the sub-quota recommendation from stakeholders beyond FreeTV and its members is that it will soon become redundant as platforms proliferate and converge. In time this will be true, but the imminent death of television has repeatedly been prematurely forecast for well over a decade, yet it remains the dominant content delivery platform and viewing statistics are robust with other screen viewing being either complementary or supplementary.

Good regulation should respond to the current market reality while providing flexibility for the future.

This legislation does neither. It ignores the one crucial regulatory incentive recommended by the Convergence Review for additional investment in the Australian stories most at risk in the current environment, and provides no alternative. It then alters the relationship between the Australian Communications and Media Authority (the 'ACMA') and the Government in a way which eliminates the flexibility of the Statutory body to respond to the rapid change the legislation anticipates.

ACMA to be directed by primary legislative instrument

The *Bill* contains major changes to the relationship between the ACMA and Government. These changes remove the ability for the serving Minister to direct the ACMA by written notice (which is the current practice as prescribed by law); future Ministerial direction will only be valid by way of a legislative instrument.

The substitute Subsection 122(9) significantly restricts the ACMA's delegated authority - it will be prohibited from determining that the program standards for children's

television and Australian content be extended quantitatively. Notably, the ACMA are still permitted to determine that those standards be quantitatively reduced.

The dichotomy is indicative of the Government's purpose in introducing the above-mentioned changes: to safeguard the commercial networks from an ACMA determination that the current standards are insufficient.

This is a critical shift in the Statutory body's authority, unreasonably limiting its power to respond to the rapidly changing communications and media environment.

Brief comment on the Australian Content Transmission Quota

The insertion of Subsection 121G(2), which introduces a requirement for multi-channels to broadcast minimum hours of Australian content, whilst in itself is not detrimental, it is essentially redundant as it is not conducive and will have no real world impact on the most vulnerable, and culturally valuable, genres of new drama, documentary and children's programming in the foreseeable future.

Similarly the incentive for first release Australian drama available through the insertions of Subsection 121G(3) is a financially meaningless inducement or encouragement given the cost of producing one of new programming hour relative to the nominal, marginal cost of attaining the license to broadcast second-run programs.

Whilst this incentive can only be used for the purpose of meeting the Australian content requirements of subsection 121G(2), and cannot be counted toward minimum sub-quota requirements as set out in the Australian Content Standards, a financial incentive for investment in new Australian drama in lieu of an increased regulatory requirement for them will be disused and will have negligible, if any real word impact.

Increased Flexibility

The 'increased flexibility' provided by subsection 122G(10) of the Bill, which allows commercial networks to meet the quantitative sub-quota requirements set out in Broadcasting Services (Australian Content) Standard 2005 and Children's Television

Standards 2009, with programs of that kind broadcast for the first time on their multichannel, will have a dilutive effect.

The Convergence Review was clear that this 'flexibility' would only result in 'a small increase in the amount of Australian content shown on the networks' even if it were introduced as part of contingent package including an increase to sub-quotas of 50%.

In absence of any increase to sub-quotas, the provision for 'increased flexibility' will further dilute the amount of new Australian drama, documentary and children's programming that is broadcast on any one Australian free-to-air commercial network.