Submission by Free TV Australia

Supporting Australian Stories on our Screens

June 2020

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1. Executive Summary

- Free TV echoes the sentiments expressed in the Options Paper that Australian screen content is highly culturally significant and economically valuable. We are passionate about bringing a diversity of Australian content, including news and current affairs, sport, entertainment, lifestyle and drama, to all Australians, for free. We are committed to ensuring Australian audiences continue to see and hear Australian faces, voices and stories on their screens into the future.
- We remain the largest producers and commissioners of Australian content investing approximately $1.6 billion every year, despite declining revenues as a result of digital disruption and rising costs. Australian content represented 85 per cent of commercial free-to-air broadcasters' total content spend in 2018/19. We are also significant employers of Australian screen production and broadcast professionals, employing more than 16,000 people directly and indirectly.
- This review comes at a critical time when the industry is facing extraordinary challenges. The need for significant reform to ensure our sector is sustainable has never been more needed. The media landscape has fundamentally changed in the last 10 years, with an ever-expanding number of services and platforms for consumers to choose from, which has in turn changed audience behaviour and preferences.
- As audiences migrate to different, unregulated platforms, particularly for adult drama and children's content, broadcasters' business models have been increasingly challenged. At the same time, the benefit of the existing regulatory framework, which forces broadcasters to show minimum amounts of this content at specific times, is declining and the negative impact it is having on the broadcast industry is increasing.
- Free TV does not support Model 1 of the Options Paper. Maintaining the status quo is no longer an option. It is putting at risk our ability to commission Australian content that audiences want to watch and to invest in the Australian screen production sector. The regulatory framework needs to be reformed to give commercial free-to-air broadcasters maximum flexibility to allocate their limited resources on content that audiences want to consume on linear broadcast. This is critical for broadcasters to remain viable in the rapidly evolving media environment.
- While adult drama and documentary continue to add texture and depth to free-to-air television, trusted news & current affairs, sport, and unscripted entertainment programming continue to draw and grow large audiences. This programming plays a significant role in the television landscape, bringing families together, providing viewers with a unique perspective on Australian life and delivering significant economic benefits. It should not be undervalued.
- Free TV supports Deregulation (Model 4). This model would provide maximum flexibility to allow commercial free-to-air broadcasters to respond to audience preferences and pivot as necessary to genres that are in demand and can be monetised on their platforms. In our view, deregulation of quota obligations (with the exception of the overall Australian transmission quota) coupled with robust production support and incentives, is the model of the future in an increasingly global content market and the best way to future-proof our industry.
- To the extent that quota obligations remain, we do not support Models 2 or 3. Model 2 proposes only minimal change, to 'fine-tune' the existing regulations and funding arrangements. It fails to address some of the clear problems with the existing regulatory framework, which is no longer fit for purpose, in particular in relation to children's content.
- While we agree there is a need for significant change, we do not support Model 3 which proposes to introduce reforms that will exacerbate problems experienced by commercial free-to-air broadcasters and encourages an inefficient allocation of limited resources. It proposes a

requirement to invest a set percentage of revenue in Australian scripted programming which would entrench the existing problems faced by commercial free-to-air broadcasters.

- If there is a need to retain some form of genre-specific obligation, our preferred approach would be to create a single combined points system for documentary, children's content and adult drama. Such a model would aim to:
  - incentivise programming in these genres on linear television but in a manner that gives broadcasters increased flexibility to determine the best mix for their audience and business models in terms of both format and volume
  - incentivise drama content with higher production values and global appeal
  - reduce the burden on broadcasters by allowing them to more efficiently manage their content.
- We would also propose strengthening production incentives, which are critical to ensuring the success of our industry in an increasingly global market. Free TV has long supported increasing the Producer Offset for television drama and documentary to 40% in-line with feature films coupled with the removal of the 65-episode eligibility cap. The Producer Offset is vital for encouraging and rewarding investment in drama and documentary along with harmonising the Location Offset and PDV Offset at 30%. This position is echoed by others within the sector.

KEY RECOMMENDATIONS

Recommendation 1:

- Modernise the existing Australian Content obligations to support a sustainable commercial television sector and enable Free TV broadcasters to deliver content that responds to audience needs.
- Retaining the existing outdated rules is not an option (Model 1).

Recommendation 2:

- Move towards deregulation of quota obligations (with the exception of the overall Australian transmission quota) coupled with robust production support and incentives (Model 4).
- To the extent that specific content obligations are retained, Free TV supports a single combined points model for commercial television broadcasters covering drama, documentary and children's content.
- Models 2 and 3 should not be adopted. Model 2 fails to address underlying issues and Model 3 is inefficient and inflexible.

Recommendation 3:

- Increase the Producer Offset for television drama to 40% in line with feature films.
- Harmonise the PDV and Location Offset at 30%.
- Allow all content producers to apply for discretionary Government funding (such as Screen Australia funding) on a non-discriminatory basis, including in-house production.

2. Introduction

Free TV Australia is the peak industry body for Australia's commercial free-to-air broadcasters. We advance the interests of our members in national policy debates, position the industry for the future in technology and innovation and highlight the important contribution commercial free-to-air television makes to Australia's culture and economy.

Free TV proudly represents all of Australia's commercial free-to-air television broadcasters in metropolitan, regional and remote licence areas.

We welcome this opportunity to submit our views to the *Supporting Australian stories on our screens Options paper* (Options Paper) published by the ACMA and Screen Australia.

A strong commercial free-to-air broadcasting industry delivers important public policy outcomes for all Australians and is key to a healthy local production ecosystem. This in turn sustains Australian storytelling and local voices and is critical to maintaining and developing our national identity.

This Review comes at a critical time for commercial free-to-air television broadcasters who are now operating in a rapidly evolving and highly competitive multi-media environment. New entrants are flooding into the market driven by new technology, business models and changing consumer behaviour.

Within this environment, commercial free-to-air broadcasters are battling declining advertising revenues and increasing costs of producing Australian content, while being required to continue to comply with a range of restrictive and costly regulatory obligations. These obligations were put in place when broadcasting was the only source of audio-visual content in the home for most Australians and they have not reflected market realities for several years.

Despite this, commercial free-to-air broadcasters are continuing to invest in valuable Australian content and in transforming their businesses to compete in the new environment. However, the current regulatory framework is preventing them from functioning in an efficient and effective manner to the detriment of the broader screen sector.

The Options Paper proposes 4 regulatory models for consideration. In this submission we set out:

- Why Model 1 is unsatisfactory (and agree with the view expressed in the Options Paper that this is not sustainable)
- Why we support Model 4 - deregulation combined with robust production support and incentives as the model of the future in an increasingly global content market
- Why we do not support Models 2 or 3 proposed in the Options Paper
- Our preferred regulatory approach if we do not move to Model 4 at this point in time.

As Free TV represents the interests of commercial free-to-air broadcasters, this submission does not comment on regulation of other platforms.

3. Value of a sustainable commercial free-to-air industry to the public

3.1 Contributing to Australian life

The commercial free-to-air broadcasting industry plays a critical role in informing, entertaining and enriching the lives of Australians.

Our content is enjoyed by an average of over 14 million Australians each week,[1] who can access it across the nation free of charge. This content includes national and local news and current affairs programs, which play a critical role in providing information to Australians.

It also includes live and free coverage of sporting matches, unscripted entertainment programs that give viewers an insight into the lives and personalities of other Australians, iconic high-quality dramas and much more.

Perhaps the best way to imagine the value of the commercial television sector is to try to imagine Australia without it. This is a particularly difficult scenario to imagine during times of national crisis as we have recently experienced. In 2019/20, with the bushfires, floods and COVID-19 pandemic, it has become particularly apparent that Free TV broadcasters deliver a vital national public service to Australians.

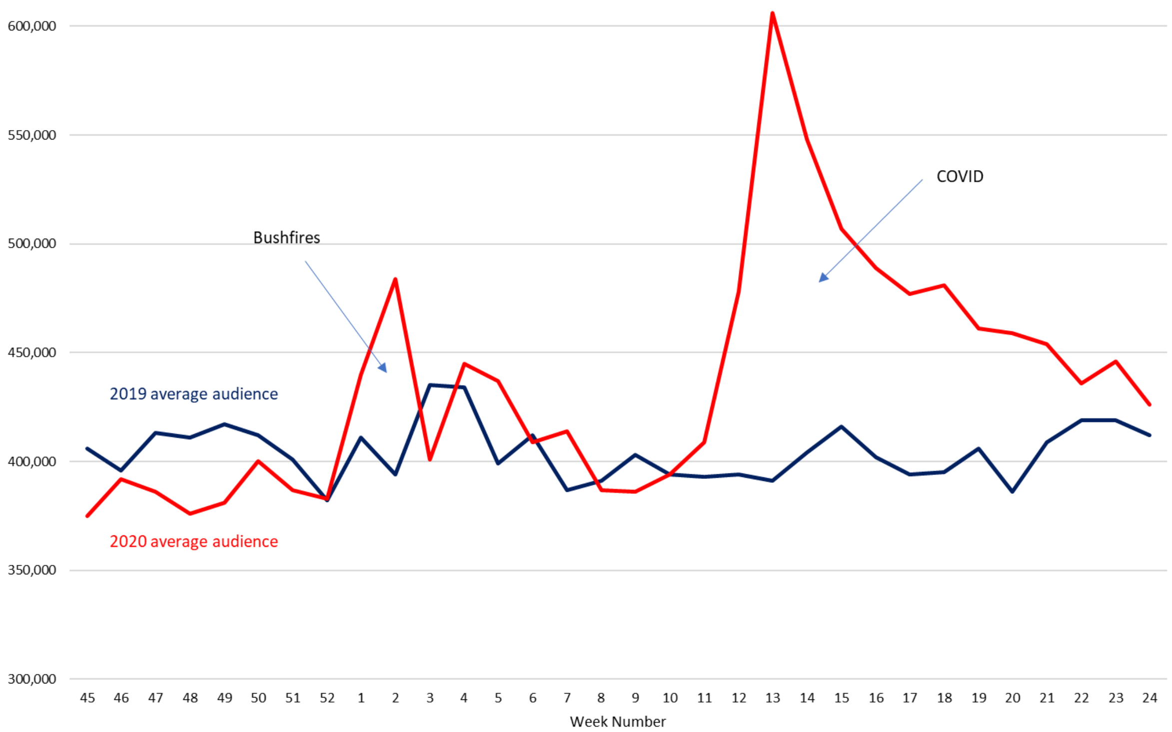
During the COVID-19 pandemic, Australians relied on our news and current affairs programs more than ever before to make sure they got the facts they needed to understand the implications for their health, their families and for the country.

A combination of an absolute commitment to providing this information through an Australian lens coupled with creativity and ingenuity allowed us to meet audience demand for these services. This was in the face of a challenging production and broadcast environment caused by the pandemic, including significant increased costs of delivering this content.

Figure 1 below shows the significant increase in average audiences for news and current affairs programs during this period.

[1] OzTAM and Regional TAM, average audiences, 6am-midnight on the primary channels.

Figure 1: Average Audiences for News Programs on Commercial Primary Channels[2]



Average audiences for these programs were up by 60% at the end of March in all demographics and up to 92% in the sub 54 age group. Morning news and current affairs shows also saw incredible growth of up to 76%.[3]

The significant increase in our news and current affairs programs during this time demonstrates why flexibility in the regulatory framework, one of the key tenets of this submission, is so important. Audiences were demanding that we focus our content investment on news and current affairs services in response to COVID-19. However, broadcasters invested in these services for audiences despite the regulatory framework, not because of it. While the Government subsequently announced relief in relation to broadcasters' quota requirements during this time, the regulatory framework itself was not equipped to allow us to pivot our resources in response to audience preferences, despite the clear public interest in doing so.

3.2 Delivering a cultural and economic dividend

Seeing ourselves and our society represented on screen plays an important role that shapes who we are, reflects our shared history and binds us as a nation. It defines our culture and identity. It also lets us showcase Australia's people, our values – and our spectacular cities and landscapes – to the world. As noted in the Options Paper, the cultural significance of Australian screen content is difficult to

[2] OzTAM 5 City Metro Overnight Average Audience, Total News Genre, 16/02/20 – 22/03/20.
[3] Ibid.

quantify but is well established and accepted, with 76% of surveyed Australians in favour of government support to the sector.[4]

The significant direct and indirect economic contribution of the screen industry to the Australian economy is well documented, including contribution to other creative industries such as music, performing arts and design.[5] In addition, showing Australian content to the world generates significant indirect exports in other sectors such as tourism and education.

We believe it should be acknowledged that the cultural and economic benefits of screen content are not limited to scripted drama, documentary and children's content. Australian stories are not told as they once were, and modern audiences are engaging with content differently. While scripted drama is an important part of Australian storytelling, it is not the only way to build a deep sense of identity as a nation.

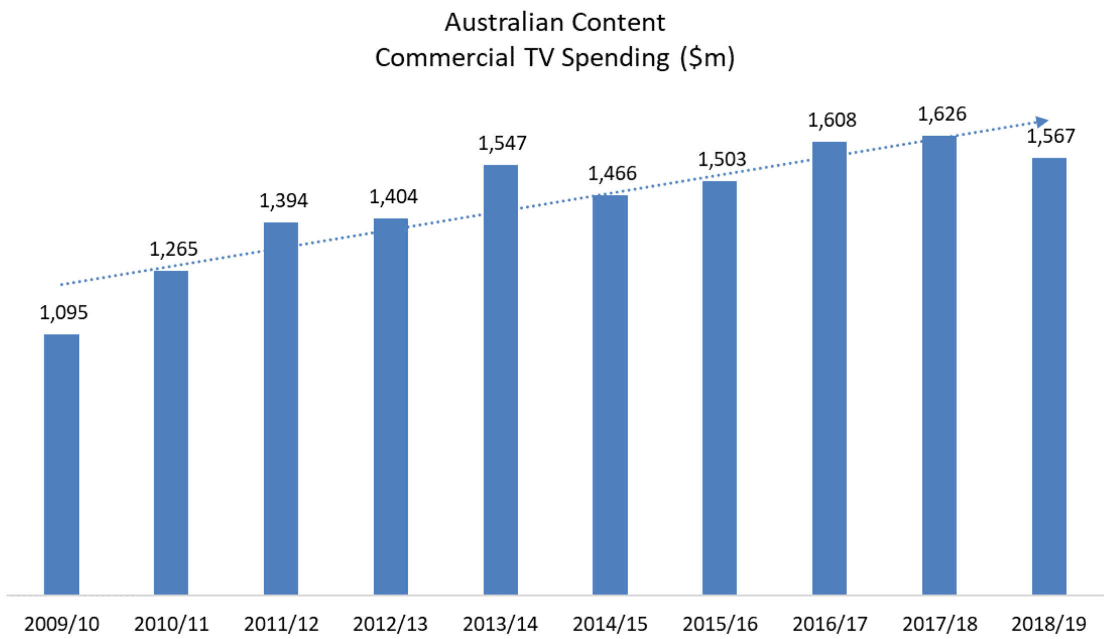
Today, Australian stories can be found in a diverse slate of programming choices including news and current affairs, sport, comedy, lifestyle and entertainment. Our top-rating entertainment programs are filled with stories of triumph, resilience and aspiration. Our members showcase the lives and talents of ordinary Australians through programs such as *Australia's Got Talent*, *LEGO Masters*, *The Voice* and *MasterChef Australia*. Local productions such as these offer powerful true stories of ordinary Australians overcoming adversity and personal achievement, while giving Australian children a diversity of role models.

3.3 Free TV's investment in the screen production industry

Despite all the recent changes in the media landscape, commercial free-to-air broadcasters remain the largest investors in the Australian screen production sector. We invest approximately $1.6 billion in Australian content every year and have invested over $7.7 billion over the last 5 years. Figure 3 below shows the increase in Free TV's investment in Australian content over the past decade.

[4] Options Paper, 15.
[5] For example, See Screen Australia's report; Screen Currency – Valuing our screen industry, 2016. https://www.screenaustralia.gov.au/getmedia/1b1312e5-89ad-4f02-abad-daeee601b739/screencurrency-sa-report.pdf

Figure 3: Australian Content Spend on Commercial Free-to-Air Television 2010-19



Australian content represented over 85 per cent of commercial free-to-air networks' total content spend in 2018/19. The latest figures from ACMA show each network averaged well above the required 55 per cent of Australian content on their main channels at 73%, and over double the required 1460 hours on their multi-channels.[6]

3.4 Free TV's investment in training and employment

As noted in the Options Paper, the screen industry generated approximately 30,528 creative, innovative and skilled jobs for people as at June 2016, up 4.9% from June 2012.[7] Many of those jobs were driven by productions commissioned by television broadcasters.

Commercial free-to-air broadcasters employ more than 16,000 people directly and indirectly providing diverse and fulfilling careers for some of Australia's most talented and experienced professionals in the content production process: producers, actors, presenters, writers, directors, editors, designers and production crew.

These jobs are to be found in a broad range of genres such as news, sport, entertainment and lifestyle programs, as well as dramas including the long-running serials such as *Home and Away* and *Neighbours*, which have been the launch pads for many successful careers both on and off screen each having employed thousands of cast members, writers, directors and production crew over three decades.

6 ACMA, Program expenditure information July 2018 – June 2019, Aggregated data for commercial television, May 2020.
7 Options Paper, 14.

Our industry has and continues to develop and mentor new professionals on and off the screen giving many not just their first break but a launching pad to global careers. This development and mentoring is also found in remote and regional Australia where many new graduates learn their trade.

Other key areas of employment can be found in publicity, marketing, advertising sales, program distribution, intellectual property management, finance and the operation of broadcast transmission systems. For example, Free TV broadcasters employ promotional and marketing teams that are heavily focused on supporting the release of locally produced content. Maintaining these marketing and publicity capabilities also involves a large amount of related spending including employment of local skilled creatives, the use of commercial airtime to promote shows, advertising expenditure across other media platforms such as radio, out-of-home, online and social media and other costs.

This promotional effort is critical to the health of the local production ecosystem because it raises the profile of Australian content and the actors, presenters, sports people and other individuals who feature in it. This maximises audiences for local content, increases the likelihood of programs being recommissioned and assists with international distribution.

4. The new media landscape

4.1 New technologies

As highlighted in the Options Paper, the way people access and engage with audio-visual content has changed radically over the past decade.[8]

In 2005, the last time any of the commercial free-to-air sub-quotas were adjusted, Australians only had two main choices of platform for television content: free-to-air TV from commercial or public broadcasters and pay TV services. The Internet had arrived, but it was very early days for services such as YouTube and their vast quantities of free video content; Facebook was only available to university students and the iPhone and iPad did not exist. There were no catch-up TV services from the free-to-air broadcasters (the first to arrive was the popular ABC iView application in 2008) and "video-on-demand" meant a trip to the local Blockbuster or Video Ezy.

By 2019, the average home had 6.6 'screens' that could deliver TV.[9] In addition to traditional television, we now watch 'TV' on mobile phones, PCs, computers and tablets. Audiences have access to content via many different devices and services including professional video content via either subscription or advertiser funded online services, as well as entirely new types of short form and/or user generated content through digital and social media platforms. The ACMA has estimated that over 70% of Australians have access to at least one subscription service, with Netflix being substantially dominant. However new services are increasingly entering the Australian market including for example, Amazon Prime and Disney Plus.

These changes in technology have changed the way that audiences, particularly young audiences, interact with content and with each other. A recent Screen Australia report found that 90% of active VOD users are also active on social media, and 74% have viewed screen content via social platforms.[10] For example, shows such as *My Kitchen Rules*, *The Voice* and *The Bachelor* get high engagement on platforms such as YouTube, Facebook, TikTok and Instagram.

4.2 New and evolving audience behaviour

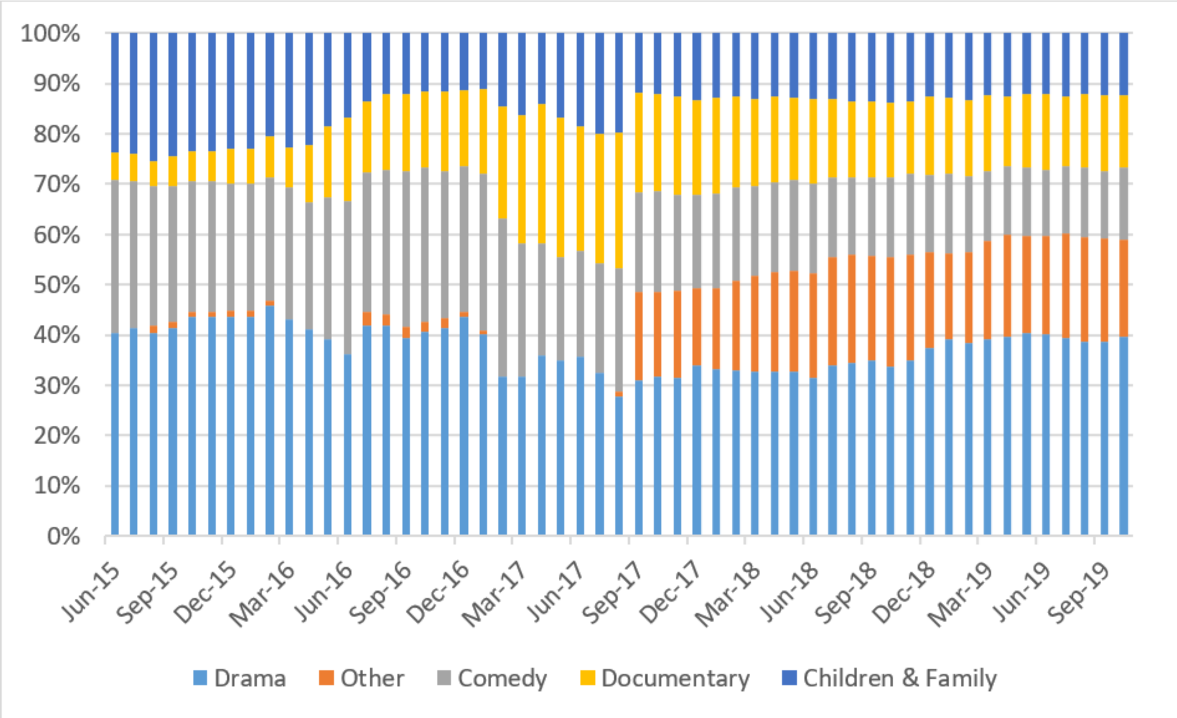
As acknowledged in the Options Paper, these rapidly changing technologies, particularly the rise of online streaming services, supported by taxpayer-funded high-speed broadband infrastructure, has given Australians unprecedented choice over the type and volume of content they consume. As Australians are consuming more content online, audiences are also changing their preferences in relation to the type of content they prefer to watch on commercial television.[11]

For example, the Options Paper notes that while audiences for children's, drama and documentary programming on free-to-air television and recorded playback services are declining, online viewing of these genres is growing, and is increasingly being used as a primary way of accessing professionally produced drama and narrative content.[12]

[8] Options Paper, 9.
[9] Ibid.
[10] Screen Australia, Australian Trends in Online and On Demand Viewing, 2018.
[11] Options Paper, 18-20
[12] Options Paper, 5.

Figure 4 (Figure 5 in the Options Paper, replicated below), illustrates that drama makes up the greatest proportion of content available on SVOD platforms in Australia.

Figure 4: Genre of Australian content on SVODs, June 2015 to October 2019[13]



On-demand platforms deliver access to massive libraries of high-quality drama series from around the world and this content is available 24-7 without any scheduling constraints. This has been the driving force behind the growth of subscription video services such as Netflix, Amazon Prime and Disney Plus – here and overseas – and is the primary reason audiences are moving away from linear television for this type of content.[14]

The migration of audiences to subscription on-demand services, has been fuelled by the ability to consume drama in a new way. A March 2017 survey of more than 2,000 Australian consumers by Deloitte found that 59% were bingeing – defined as watching three or more consecutive TV episodes in a single sitting.[15] Not only can viewers watch several episodes of drama at a time but they are able to binge watch many first release dramas all at once rather than having to wait week to week for new episodes to drop. Nearly a third of those 'bingers' (29%) did so at least weekly and the average length of a binge session had increased to six episodes from five a year earlier. That equated to 4.5 hours of TV watching in a single sitting. This is the rise of 'binge' watching. The ability to "binge" watch and to do so ad free makes watching drama on the on-demand services very attractive to audiences.

As the Options Paper notes, and Figure 5 (Figure 3 of the Options Paper, replicated below) highlights, this has also resulted in a significant and persistent shift away from drama towards sports and

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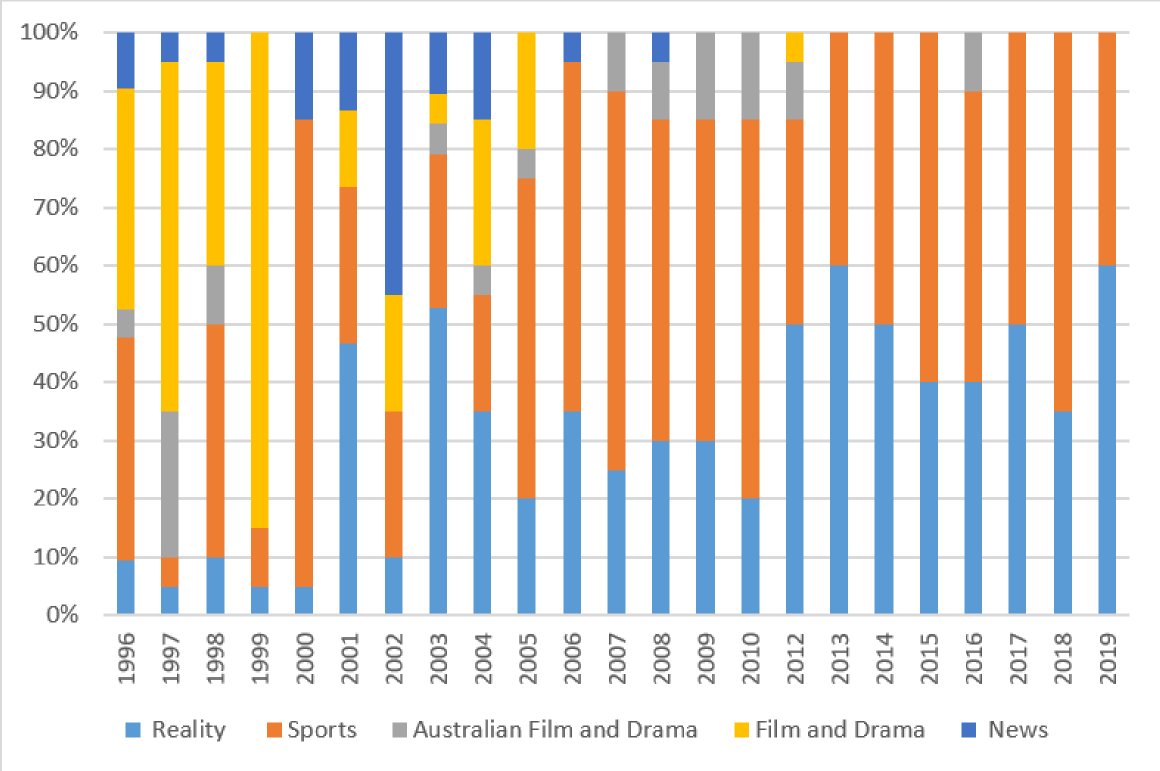
[13] Options Paper, 20. Source: Ampere Analysis, Bureau of Communications and Arts Research (BCAR) analysis.
[14] Options Paper, 8.
[15] Deloitte Access Economics, Screen Production in Australia: Independent screen production industry census, SPA 2018.

unscripted programming as the most popular program genres for audiences on free-to-air television over the past decade.[16]

Figure 5: Top 20 shows on FTA television by genre[17]



While the Options Paper notes that drama content is the top-rating genre on broadcaster video on demand (BVOD), growing 36.9% in 2019 and making up 28 per cent of all BVOD viewing from July to December 2019,[18] this is a very small viewership in real terms and includes ad-free platforms such as ABC iView that may be skewing these overall trends in BVOD viewing. It does not detract from the overall trend away from commercial television to SVOD platforms for scripted content. BVOD currently represents approximately 3% of both viewing and revenue for Free TV broadcasters.[19]

The shift away from commercial television is most evident in relation to children's content. Kids now spend more time online than watching TV. Figure 6 below, extracted from Free TV's 2017 report *Changing views: Australian kids and commercial television*, shows which platforms are used to watch children's programs by frequency. YouTube is by far the most frequently used platform, followed by other SVOD platforms and then free-to-air television.

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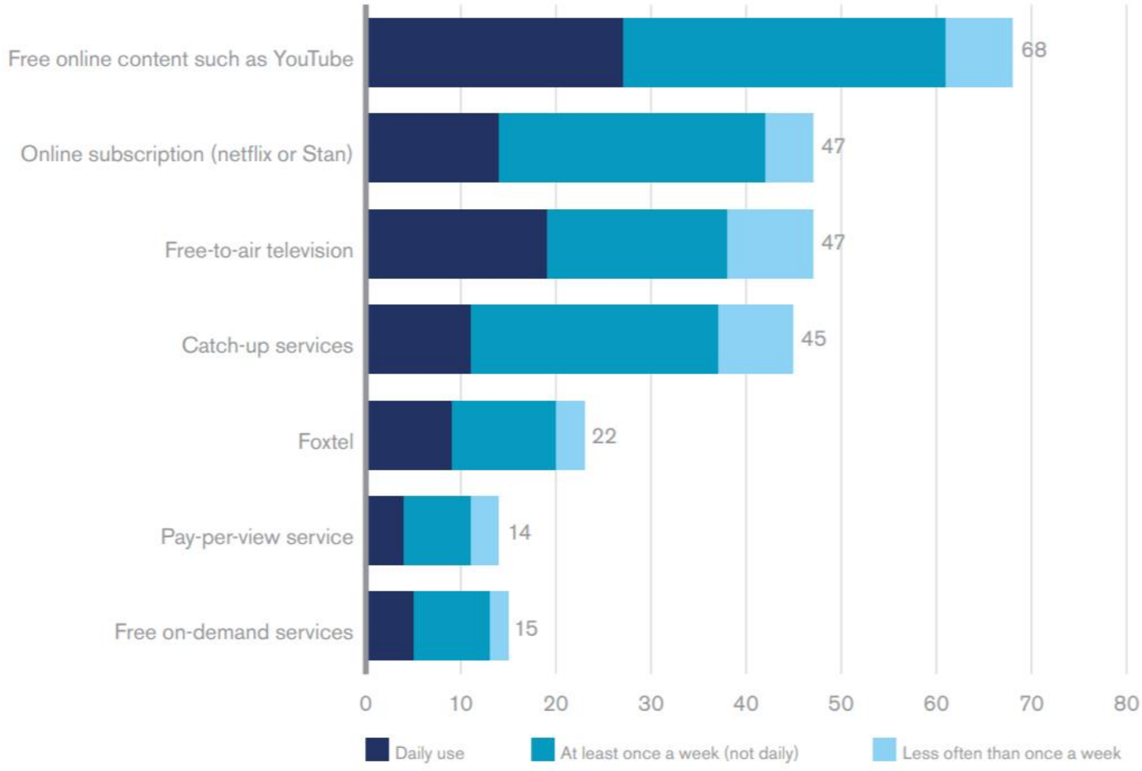
[16] Options Paper, 18.
[17] Options Paper, 18. Sources: OzTam, Screen Australia and TV Tonight, Bureau of Communications and Arts Research (BCAR) analysis.
[18] Options Paper, 19.
[19] Linear TV revenues decreased 5.1% in 2019 from 3.626 billion to 3.44 billion. BVOD revenues increased 38.2% from 90.3 million to 124.8 million during the same period.

Figure 6: Platforms used to watch children's programs, by frequency[20]



Source: Children's television viewing and multi-screen behaviour, ACMA, August 2017.

This trend of children spending less time watching commercial television is a reflection of the many other options now available to them. It is not unique to Australia – for example Ofcom's 2018 Report, *Children and parents media use and attitudes* found that YouTube is increasingly seen as the viewing platform of choice for children (particularly among children aged 8-11) and over half of children aged 5-15 watching OTT television services like Netflix and Amazon Prime Video.[21]

In terms of viewing of children's content on free-to-air television, children's viewing preferences have also dramatically changed, shifting to dedicated ad-free destination services. While there are often fewer than 1000 children watching C and P programs on commercial television, C and P programs on ABC Kids (ABC 2) attract significantly higher ratings. Appendix A shows that once again in 2019, all of the Top 30 children's programs watched by children age 0–14 on free-to-air television were on ABC Kids.[22] Appendix B shows the average audience numbers for children's content on commercial television.

The data in Figures 4, 5 and 6 above and in Appendix A demonstrates the move away from commercial television for scripted drama, documentary and children's content. However, commercial television is still playing a powerful role in presenting Australian stories to Australian audiences.

Entertainment programs such as *Australia's Got Talent*, *LEGO Masters*, *MasterChef Australia*, *Australian Ninja Warrior, I'm A Celebrity…Get Me Out Of Here!* and *The Voice*, have challenged the concept of what constitutes 'drama' and 'storytelling' in the modern era and feature a large amount

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[20] Free TV, *Changing views: Australian kids and commercial television*, 14. Source: Children's television viewing and multi-screen behaviour, ACMA, August 2017.

[21] Ofcom, Children and parents: Media use and attitudes report 2018. See https://www.ofcom.org.uk/__data/assets/pdf_file/0024/134907/children-and-parents-media-use-and-attitudes-2018.pdf

[22] OzTAM, Children's programs, 5 city metro, Consolidated 28, 2019-2020.

of dramatic content and follow compelling narratives. These programs consistently rate highly and regularly attract hundreds of thousands of children, who are now most likely to be co-viewing with other family members when watching commercial television.

They engage a wide family audience through entertaining narratives and rich storytelling that is crafted to appeal to all ages. They also play an important role in bringing families together - a key social outcome in an era when it is less common for families to spend time together. The popularity of these programs on commercial television underscores the key point that audiences are demanding different content from different platforms.

4.3 The challenging economic environment

The rapid growth in competitors and dramatic shifts in viewing behaviours have had a major impact on commercial television broadcasters. Over the last decade, broadcasters have faced a dramatic increase in competition for viewers and advertising revenue which has put significant pressure on their revenues. In the last 5 years, this has become increasingly urgent, with revenues dropping rapidly.

As outlined at section 4.2 above and acknowledged in the Options Paper, competition for audiences and the significant fragmentation of audiences across new entertainment platforms, has resulted in a decline of terrestrial broadcast viewing. [23]

Commercial free-to-air broadcasters are further constrained in their ability to compete by an outdated and highly rigid regulatory framework which dictates precisely the amount of content of each genre that commercial broadcasters are required to produce, as well as how and when we are required to make that content available. By contrast, SVOD platforms have significant budgets and no regulatory constraints in terms of how to allocate those budgets. For example, productions such as *The Crown* on Netflix, which has been cited as 'the most expensive TV show ever' are very difficult to compete with for eyeballs. The ACCC recognised this in its recent Digital Platforms Inquiry Final Report. It found that the regulatory disparity between Australian media companies and digital platforms can distort competition by providing digital platforms with a competitive advantage and that there is a case for fundamental regulatory reform.[24]

In addition to revenue losses from competition for audiences, the rise of digital platforms Google and Facebook has also had a significant and irreversible effect on Free TV broadcasters advertising revenues. These platforms have captured more than half of all Australian advertising revenue in a little over a decade, largely by monetising third party content, including commercial television content. In other words, these platforms have used commercial broadcasters' own content investments to compete with commercial broadcasters for eyeballs.

As well as competition for viewers and advertising revenue, the costs of producing content are also increasing. The most recent Screen Australia Drama Report found that the average cost per hour for all titles had increased 7% to $760,000 per hour. As the Options Paper highlights, the relative cost of making content such as drama and children's programming further increases as it becomes less profitable, putting further pressure on broadcasters' budgets.[25]

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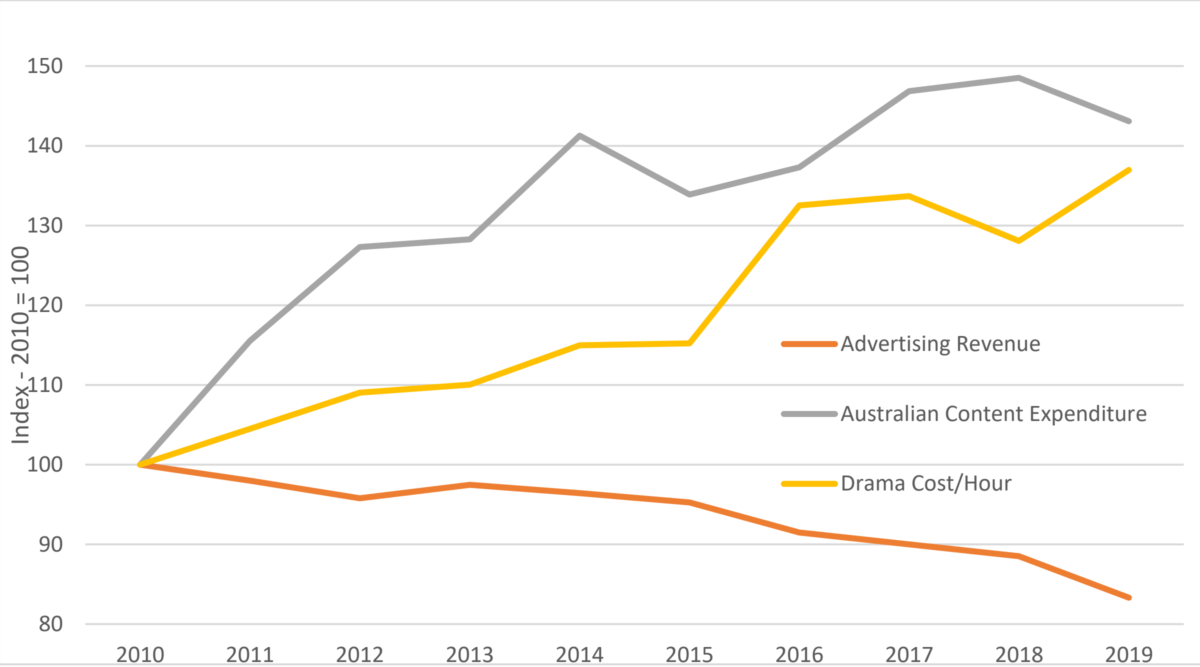
[23] Options Paper, 30.
[24] ACCC Digital Platforms Inquiry Final Report, Chapter 4.
[25] Options Paper, 5.

The combination of these factors has fundamentally changed the economic environment that broadcasters are operating in. Figure 7 below demonstrates that television advertising revenue has been declining by around 3% a year in the last five years. In 2019 alone, linear revenues decreased 5.1% from $3.626 billion to $3.44 billion. While broadcasters BVOD revenues increased 38.2% during the same period, this was off a low base of $90.3 million (an increase to $124.8 million). At the same time, broadcasters' Australian content expenditure and the associated costs of production have been rising.

Figure 7: Growth rates over the last decade: Revenue, Spend and Costs



In the last 6 months, the additional pressures arising from COVID-19 mean that parts of the industry are now fighting for survival. The COVID-19 crisis is having, and is expected to continue to have, significant financial impacts on our sector for a significant period of time. These impacts include:

- Significant reduction in advertising revenues. It is unclear when or if the advertising market will return to previous levels (which were already in decline).
- Anticipated future medium to long term difficulties in the production pipeline due to financing and other issues (particularly with drama, which is commissioned years in advance).
- Potential closure of regional newsrooms or redeployment of journalistic resources from regional to metropolitan services.
- Reduction in available staff for critical activities which may limit the ability to deliver some services.

In these circumstances, the industry needs certainty that it will not face outdated and costly regulatory burdens into the future. Broadcasters can no longer afford to make content regardless of whether there is a viable audience for that content or not. The regulatory framework needs to be reformed to allow them to better allocate their limited resources.

As the Options Paper acknowledges, the status quo is unsustainable.[26] Ultimately, this could lead to the market being unable to support 3 competing commercial free-to-air broadcasters which would in turn lead to falling production levels and less Australian content overall.

[26] Options Paper, 36.

5. The status quo (Model 1)

5.1 Existing regulations are excessive, rigid and outdated

Model 1 in the Options Paper proposes retaining the existing regulations and incentives. In Free TV's view, the status quo is simply not an option in light of the changes and challenges outlined above.

As the Options Paper notes, the long-term effects of maintaining the status quo are likely to be deleterious for the entire Australian content production ecosystem and result in contraction of that ecosystem, because it focusses the production sector on a domestically regulated content slate for a declining commercial free to air sector and inhibits responsiveness and innovation.

The structural changes of digital disruption have brought about a permanent shift in the advertising market and broadcasting will not see a return to the market conditions of 10 or 20 years ago. The status quo is jeopardising the continued delivery of free-to-air services to the public and investment in the Australian production sector. Over time, broadcasters will simply not be able to meet their obligations. [27]

While much of the current Australian content quota framework for television broadcasters was developed in the 1980s, its core dates back to the 1960s. The current framework of children's content and drama obligations that apply to Free TV broadcasters is summarised in Appendix C. This framework has not reflected market realities for several years. More importantly, the current rules do not achieve their intended public policy objectives. It goes without saying that if people are not watching content being offered up, that content cannot be having a cultural impact.

Reform is therefore urgently required to ensure that the framework that applies to commercial broadcasters' serves audiences and allows broadcasters to deliver content in a sustainable way and to compete with global media technology companies. The existing sub-quotas need to be reconsidered and, in our view, removed. We outline the issues with the children's and drama sub-quotas more specifically below.

5.2 Children's quotas are failing

The existing children's quotas on commercial television, including C, C drama and P are a case study in policy failure. In fact, children's quotas are a clear example of how regulatory interference in a market not only causes significant commercial harm but also fundamentally serves no purpose for Australian children. The quotas have become completely irrelevant to modern Australian families, their children and their viewing choices. It is time they are abolished and a new approach is adopted – one that recognises what and where children are watching.

5.2.1 Very low audiences for C and P programming on commercial TV

It is incontrovertible that audiences for C and P programs on commercial networks have declined sharply over the last 15 years, despite the fact commercial free-to-air broadcasters:

- are meeting their regulatory obligation and broadcasting over 1000 hours of locally produced children's programs each year;

[27] Options Paper, 36.

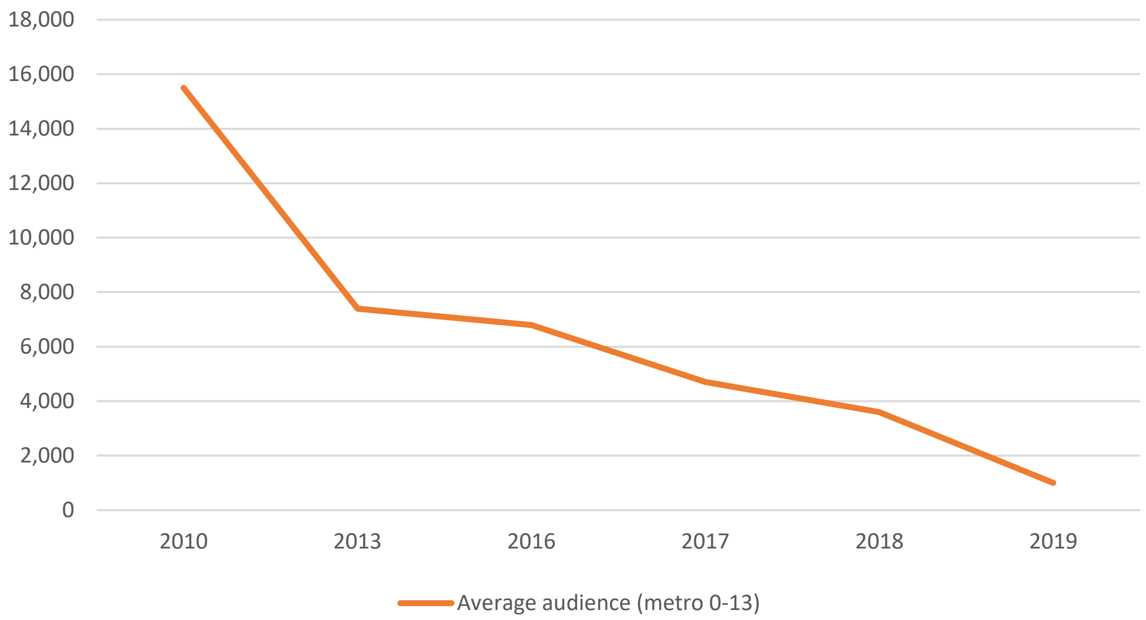
- creating and commissioning high quality award-winning shows for children;
- broadcasting these shows every weekday and at the specified times required by the *Children's Television Standards 2009* including before and after school for C programs and mornings for P programs; and
- have made concerted efforts to market and cater specifically for children's content. For example, Nine launched GoKids! on its GO! multi-channel in December 2016 but was unable to build any meaningful audience for this content.

According to the ACMA's most recent report on children's viewing and multi-screen behaviour, there was an almost 80% decline in the child audience for the highest-rating C and P program between 2005 and 2016 (185,000 down to 41,000).[28]

Analysis of OzTAM data by Free TV demonstrates the extent of the decline. Figure 8 below shows:

- in 2010, only 23% of C and P programs attracted an average of less than 10,000 children aged 0–13 years, by 2016 nearly 80% of C and 100% of P programs had an audience of less than 10,000, with the average being 6,800. This declined even further to 4,300 by 2017 and 3,600 in 2018.
- in 2019, the average child audience had shrunk even further to 1000 - many C and P shows screened to fewer than 1,000 children on commercial free-to-air television.[29]

Figure 8: Decline in average audience (0-13) for C and P programs[30]



Source: OzTAM Consolidated 7 (Live + As Live + Time Shift to 7) , 5CM

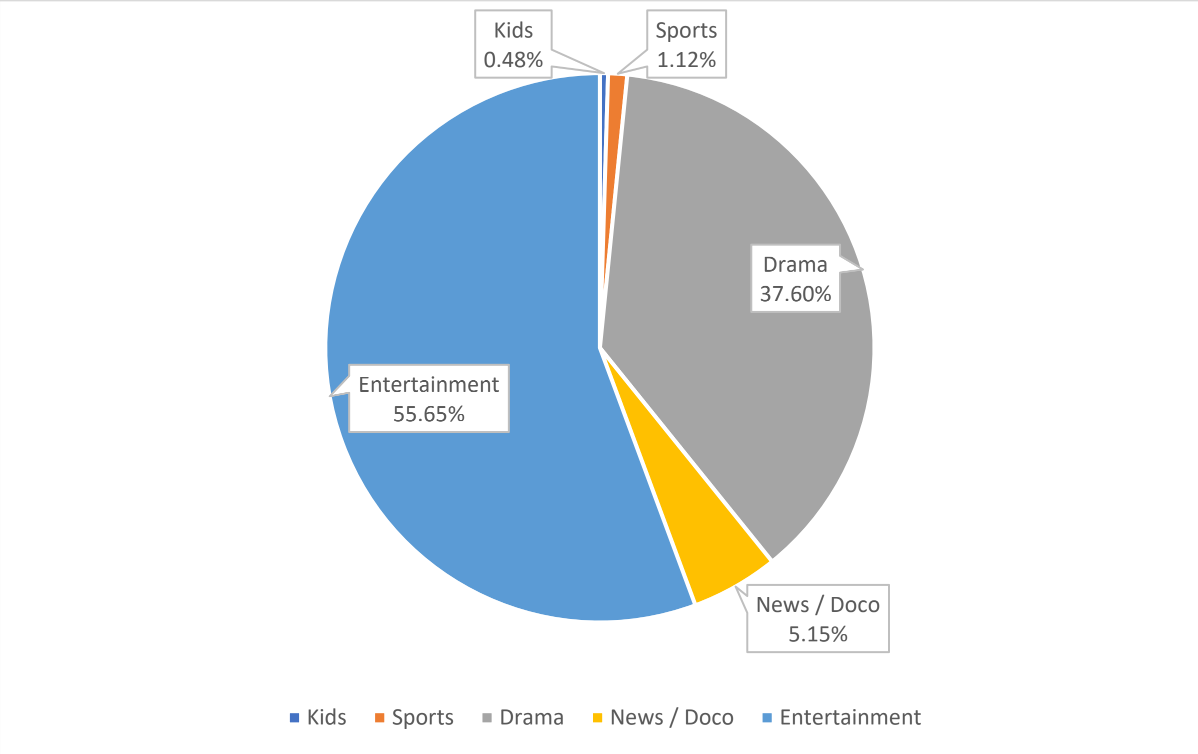
The numbers of children watching C and P shows on Free TV broadcasters' BVOD services is also low. Figure 9 below shows the percentage of time spent viewing children's programming on broadcasters' catch-up services relative to other genres is below 1%.

[28] ACMA, Children's Television Viewing and Multi-Screen Behaviour: Analysis of 2005–16 OzTAM Audience Data and 2017 Survey of Parents, Carers and Guardians, 15.

[29] OzTAM Consolidated 28, Children's Programs, 2019, 2020 5 City Metro; OzTAM VOD Kids Genre List – Minutes viewed, 2019, Jan – May 2020 . See also, Appendix B.

[30] OzTAM Consolidated 7 (Live + As live + Time shift to 7), 5CM.

Figure 9: Most watched genres on commercial free-to-air BVOD services



Source: OzTAM, Viewing on commercial FTA, Kids Genre, Jan 2019-May 2020

At first glance this seems inconsistent with the Options Paper which indicates that children's content is the second highest-rating genre on BVOD services behind drama, making up 18 per cent of all viewing on the platform.[31] However, as indicated in the Paper, this figure includes ABC iView, with *Bluey*, the most played program in the history of iView measurement, accounting for more than 200 million program plays.

This recent data confirms that parents and kids are continuing to increasingly opt for the ad-free option of ABC iView, which offers a dedicated kids app, along with other subscription services like Disney+ to provide age appropriate content.

It also shows that criticisms that child audiences are low on commercial broadcasters' channels because they have 'sequestered' their C and P programs on multi-channels[32] do not have any merit, given the popularity of the ABC's multi-channels with child audiences.

5.3 Adult drama quotas are unsustainable

In addition to children's programming, adult drama is the other genre of programming that has felt the full disruptive force of new media most significantly, with drama consumption (whether Australian or international drama) increasingly shifting from linear to subscription on-demand services.

This impact can be seen clearly in falling audiences for traditional scripted drama programs on free-to-air television. This decline is well depicted in Figure 4 of the Options Paper, which stacks the

[31] Options Paper, 22.
[32] SPA, Submission to Australian and Children's Screen Content Review, 43.

highest-rating Australian TV dramas on FTA networks between 2016-19.[33] Figure 4 clearly shows the rapidly declining audience numbers across free-to-air broadcasters.

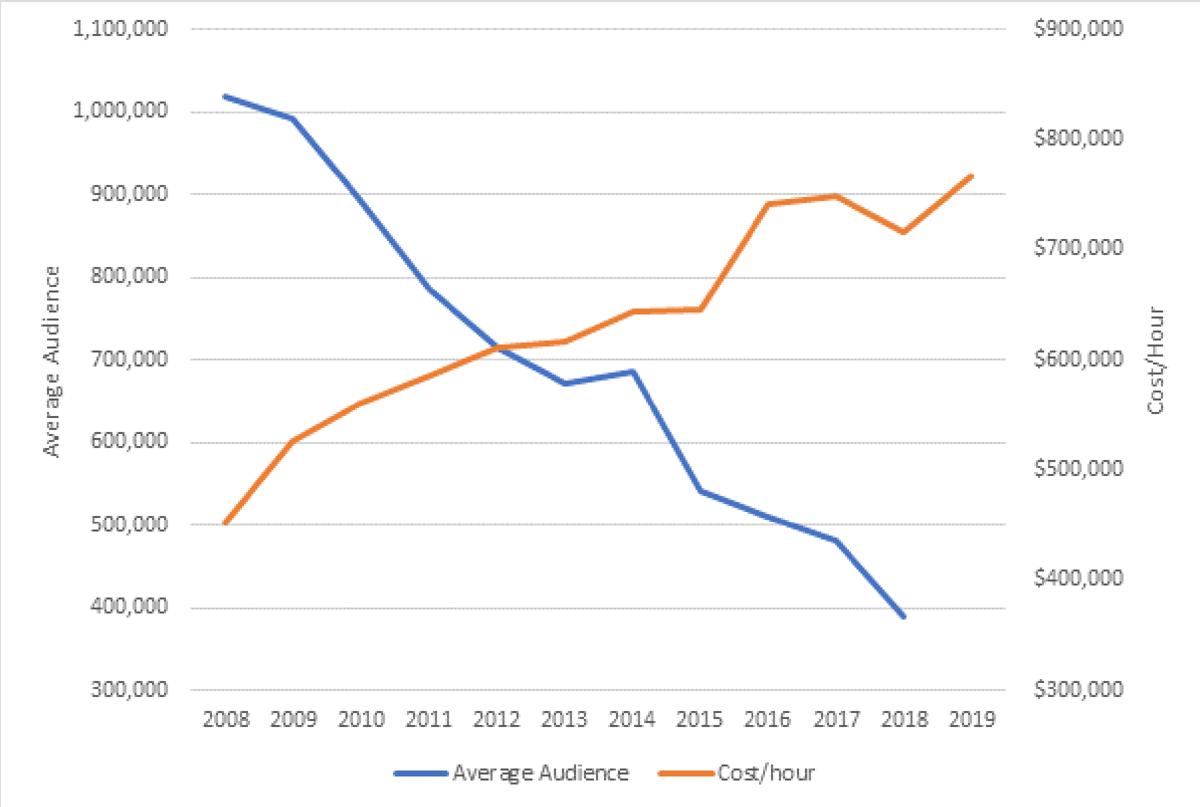
According to analysis by Screen Australia, in 2008, 18% of the top 50 programs on Australian TV were dramas. By 2015, none of the programs in the top 50 rating programs was a scripted drama.

In 2008, Packed to the Rafters was the highest rating Australian drama series, with an average five city metro audience of close to 2 million viewers. In 2018 and 2019, no drama series (whether Australian or international) had an average five city metro audience in excess of 1 million for its free-to-air broadcast.[34]

This pattern is not unique to Australian drama, it applies to all drama on linear television. For example, Ofcom has also reported changing viewing habits of drama content and consequent changes in the way PSBs support this content. Ofcom's recent Media Nations report cited a 46% decline in hours of drama programming in 2018 compared with 2008.[35]

While audiences are declining, the costs of drama are increasing. As noted above, the most recent Screen Australia Drama Report found that the average cost per hour for all titles had increased 7% year on year to $760,000 per hour. The average audience vs cost of drama production is illustrated in Figure 10 below.

Figure 10: Average audience and cost/hour of drama production, 2008 – 2018.



[33] Options Paper, Figure 4, 19.
[34] OzTAM, Top 20 programs classified as drama, 5 City Metro, Consolidated 28, 2018-19.
[35] For example, see Ofcom, Media nations: UK 2019, 45.

The trends above mean there is a significant and unsustainable amount of Australian drama content for commercial free-to-air broadcasters. In 2018 this requirement translated into Australian commercial free-to-air broadcasters broadcasting 432 hours of first release Australian drama. By contrast, public service broadcasters in the UK – a significantly larger market - produced 338 hours of drama in 2018.[36]

This clearly shows that the drama sub-quota is unsustainable. While Australian dramas add texture and depth to the free-to-air broadcasters schedules, the quotas need to be removed to allow broadcasters to balance this with other content so that they can allocate their resources effectively to the benefit of their audiences.

5.4 A new approach is required

The above examples show that the existing system, and the sub-quotas in particular, are not fit-for-purpose, effective or efficient. This is because the public policy basis underlying the sub-quotas is inherently flawed. It makes a number of assumptions which are simply no longer valid. Firstly, it assumes that audiences have the same viewing habits that they did over 20 years ago, which is simply not the case.

Secondly, it assumes that people want to watch the same type of content at the same time across all commercial free-to-air broadcasters. This is no longer the case. In fact, forcing broadcasters to compete with each other, not only in relation to the same types of content (including content that isn't rating) but also in the same time-slots (because of the requirements imposed by the regulatory regime), is not effective or efficient. It decreases their ability to compete even further, in addition to the pressures they are already facing from online platforms and SVODs which are able to provide content in new ways. As discussed further below, regulators around the world are starting to acknowledge this.

Finally, it assumes that rigid rules are necessary to meet social policy goals. The existing rigid rules are in fact diverting resources away from the important local stories that audiences want to see on commercial television to content that people are not watching. As demonstrated by the examples in the next section which sets out Free TV's preferred model – deregulation – a more flexible system is required to enable media companies including broadcasters to keep up with the rate of change that is occurring.

[36] ACMA compliance report 2018; Ofcom Media Nations UK 2019 ; https://www.ofcom.org.uk/__data/assets/pdf_file/0019/160714/media-nations-2019-uk-report.pdf

6. Deregulation (Model 4)

Model 4 in the Options Paper proposes deregulation, which Free TV supports. As noted in the Options Paper, the change in the content industry over the last 10 years has been profound. High-speed broadband, new interfaces and business models and mobile devices give viewers a much greater range of choices. The removal of all content quotas would allow commercial free-to-air broadcasters to make programming decisions based entirely on their audiences and allow them to more effectively and efficiently meet their business objectives.

There is no doubt that what a modern Australian content regulatory framework requires is more flexibility to allow content producers and distribution platforms to move with audience preferences and change their individual business focus to genres that are in demand on their platforms. Flexibility is becoming increasingly essential for the ecosystem to work.

Despite the scare campaigns levelled from some quarters, there is no evidence that would suggest de-regulation will lead to an abandonment of Australian content on our screens. In fact, there is ample evidence to suggest that the opposite is true. As already outlined, the commercial free-to-air broadcasters on average deliver significantly more Australian content than is required by the quotas for both their primary and multi-channels. This shows that broadcasters deliver Australian content not because regulators demand it but because audiences want to watch it. In fact, it is excessive regulation in the form of specific sub-genres of local content that have led to market failure.

We therefore believe that deregulation of quota obligations (with the only exception perhaps of a flexible overall Australian broadcast transmission quota) alongside strong production support and incentive based policies is the model of the future and the best way to ensure we future-proof our industry.

Deregulation would recognise that the ecosystem has fundamentally changed, with different content providers performing different roles and focusing on different genres and business models. It would provide the flexibility that is necessary for all media companies to evolve with changing market conditions. For regional broadcasters for example, it might enable them to re-focus their limited resources on providing new and more targeted local content relevant to their specific audiences.

Deregulation, particularly in relation to genre-based quotas, is increasingly the case in jurisdictions around the world as jurisdictions adjust to new media environments and increased competition from multi-national online platform providers. The UK and New Zealand do not have any genre-based sub quotas at all, yet they have strong production industries.

However, maintaining and bolstering incentives and funding would be an essential part of this model. Examples from other jurisdictions show that a model based on incentives rather than quotas can work well and better enable broadcasters to adapt to changing market conditions and viewer preferences. Both the UK and New Zealand have strong funding and incentive schemes. We provide examples from these jurisdictions below.

6.1 The UK Example

In the UK, broadcasters are not subject to quotas in relation to children's or adult's programming. The UK *Communications Act 2003* abolished genre quotas for drama, children's and documentaries.

The UK retains only some quotas, mainly on the BBC.[37] In addition, the EU Audio-Visual Media Services Directive members requires states to have a majority of linear TV devoted to EU programming.

Despite the much lighter-touch regulatory regime, statistics show:

- UK Production spend grew by 13.6% during the period 2012-13 to 2017-18;[38]
- Record production spend in 2019 of 3.6bn pounds;[39]
- First-run UK-made network programming, as a proportion of total spend, has remained broadly consistent: 89% in 2017, 89% in 2016, 86% in 2014 for the PSBs.[40]

While genre-based quotas have been removed in the UK, incentives heavily support genres that are not produced solely from market forces and are culturally beneficial. They include:

- Children's Television Tax relief – for content where the primary target audience is children under 15. Overall, tax relief amounts to a 25% saving on 80% of eligible expenditure.
- Young Audiences Content Fund – to assist with production costs of children's programming intended for audiences up to 18 years of age If the applicant is successful, they will be awarded up to 50% of the production budget.
- High End Television Tax Relief – for drama, comedy or documentaries with costs over GDP 1 million on average to produce.
- Animation – where at least 51% of the core production expenditure must apply to animation costs. Overall, tax relief amounts to a 25% saving on 80% of eligible expenditure.

Tax incentives play a significant role in growing content production in the UK. The Children's television tax relief was reported as being introduced in April 2015 following the success of the film, high end TV, and animation tax reliefs in the UK,[41] to counteract the decline in investment in children's TV in the previous decade. These have been reported by broadcasters in the UK as working well since they were introduced and as having successfully increased competition to invest in children's content.[42] Broadcasters including the BBC have also highlighted the importance of the animation tax credit in incentivising a growing global market for commissions.[43] Similarly to New Zealand, the UK also has a higher location offset (25%) than Australia.

A 2018 UK report commissioned by the British Film Commission found that government tax incentives including those outlined above, have helped to power unprecedented levels of production, creating thousands of jobs, growing businesses and infrastructure, generating record levels of investment,

[37] Commercial broadcasters are also subject to independent production quotas (Channel s 4 and 5 and ITV are subject to an annual minimum of 25% transmission time), and ITV and Channel 4 are subject to a requirement that 25% of production spend and transmission time to productions MOL. Channel 4 is also required to allocate transmission time to productions made in regions outside England.
[38] Study on the Economic Contribution of the Motion Picture and Television Industry In Australia, Report presented to the MPA and ANZSA by Olsberg SPI, 13 November 2019, 8.
[39] https://www.bfi.org.uk/news-opinion/news-bfi/announcements/bfi-statistics-2019
[40] https://www.ofcom.org.uk/__data/assets/pdf_file/0020/117065/communications-market-report-2019.pdf
[41] https://www.gov.uk/government/news/autumn-statement-2014-16-things-you-should-know
[42] https://www.ofcom.org.uk/__data/assets/pdf_file/0009/112212/BBC.pdf
[43] https://www.ofcom.org.uk/__data/assets/pdf_file/0009/112212/BBC.pdf

boosting exports of UK productions and services internationally and creating spill over benefits for other industries.[44]

While the UK does not impose genre sub-quotas, Ofcom does have regulatory oversight to ensure that a suitable quantity and range of high-quality and original programs for children and young people. However, the obligation in the *Digital Economy Act 2017* is expressed as a duty to ensure the ecosystem overall includes a suitable quantity and range of high-quality and original programs for children and young people. It does not apply quotas, and broadcasters are not expected to make the same programming.[45] In its 2018 Children's Content Review, Ofcom expressed the view that while children's programming still matters, setting quotas for children's programming on free-to-air television channels would not be an effective approach because of the changing viewing habits of young audiences.[46]

6.2 The New Zealand Example

New Zealand has no content quotas. The only instance of a requirement for children's content, on TVNZ, a state-owned television network, was removed by the *Television New Zealand Amendment Act 2011*.[47]

Despite not having any content quotas, Statistics NZ data on the screen industry shows that in 2017:[48]

- Gross screen sector revenue increased 8% to $3.5 billion
- Total expenditure on production was $1 billion, up 32%
- Revenue received by production and post-production businesses from international sources increased 19%
- The sector employs around 14,000 people.

The most recently available data shows that during the period from 2014-2018, the New Zealand screen industry experienced growth from 3.155 billion (in 2013-14) to 3.3 billion (in 2017-18), driven by greater revenue in production and post-production.[49] New Zealand is a much smaller market than Australia, with a population of approximately 4.8 million people, and a different historical context in terms of the evolution of the broadcasting sector. However, the growth of the screen production sector in New Zealand in recent years in the absence of any content quotas shows that deregulation can be successful and local content production can flourish in the absence of quotas.

It is important to note that New Zealand provides significant encouragement of national production through its incentives and support by funding agency New Zealand on Air (NZ on Air). Each year NZ on Air invests approximately $80 million in free-to-air television programs supporting up to 1000 hours

[44] British Film Commission, Screen Business: How tax incentives help power economic growth across the UK, See https://www.bfi.org.uk/sites/bfi.org.uk/files/downloads/screen-business-full-report-2018-10-08.pdf
[45] See for example, https://www.ofcom.org.uk/__data/assets/pdf_file/0017/155015/childrens-content-review-response-to-plans.pdf
[46] OfCom Childrens Content Review: Update 2018; https://www.ofcom.org.uk/__data/assets/pdf_file/0023/116519/childrens-content-review-update.pdf
[47] See http://www.legislation.govt.nz/bill/government/2009/0089/7.0/versions.aspx
[48] https://www.mbie.govt.nz/business-and-employment/economic-development/screen-sector/the-benefits-of-the-new-zealand-screen-industry/
[49] https://www.stats.govt.nz/information-releases/screen-industry-201617

of new local content.[50] This is done through the New Zealand Media Fund (NZMF) which supports local content for television, radio, music and online media and is funded by parliamentary appropriation.

New Zealand made a range of changes to bolster its screen incentives for both film and television in 2013, including lowering the qualifying expenditure threshold for TV productions and the equivalent of its PDV offset.[51] In addition, in terms of incentives, New Zealand has a substantially better location offset (20-25%) compared to Australia (16.5%), therefore is attracting productions that would potentially otherwise be made in Australia.[52]

6.3 The global content opportunity

These examples of the UK and New Zealand show that it is possible to have a strong local production sector without genre-based quotas on commercial broadcasters. Indeed, we believe this approach would provide the much-needed flexibility required to ensure all contributors to the screen production ecosystem, including broadcasters, are able to adapt and evolve in response to changing audience preferences, technologies and economic conditions.

While this would be a significant change from the status quo, we think that with the right incentives in place, it would benefit the production industry as well as broadcasters. The regulatory sub-quotas on commercial broadcasters, by their nature, focus the local production sector on servicing a declining local broadcast market, which puts downward pressure on production budgets and reduces the likelihood of strong international sales.

A regulatory approach based on incentives and funding, rather than quotas, to support the viability of local production and incentivise culturally desirable content, has worked well in the UK and in New Zealand. As outlined above, reports from these jurisdictions indicate that it has encouraged unprecedented levels of production activity, and attracted international screen productions including skilled crew, infrastructure and technology which have flowed back into producing more local film and television, and in turn resulted in a range of economic benefits.[53]

More flexibility and a production support incentives based approach rather than rigid quota approach in relation to genres such as children's and drama in Australia, would enable broadcasters to take risks with new ideas and formats and compete on a more even playing field with our competitors, who have no regulations – to the benefit of viewers.

In our view, this should be the model we are aiming for to ensure success of our industry in Australia and internationally in an increasingly global content market.

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[50] https://www.nzonair.govt.nz/research/local-content-report-2016/
[51] https://mch.govt.nz/incentive-changes-sustainable-nz-screen-industry
[52] For example see file:///C:/Users/SWaladan/Downloads/Chapter2.pdf, 2.92.
[53]See for example https://www.mbie.govt.nz/business-and-employment/economic-development/screen-sector/the-benefits-of-the-new-zealand-screen-industry/

7. An alternative regulatory model

In this section we consider the alternative regulatory models put forward in the Options Paper and outline why we do not support Models 2 or 3. We also consider what a regulatory model should look like if we do not move to complete deregulation.

7.1 Proposed Models 2 and 3

The Options Paper puts forward two regulatory models other than the status quo. Free TV does not support either proposed model for the reasons outlined below.

7.1.1 Why Model 2 is not supported

Model 2 is based on our existing regulatory model, but proposes only minimal change, to 'fine-tune' the existing regulations and funding arrangements, including:

- Removing the requirement for P and repeat C programming – but retaining the requirement for 130 hours per year of C programs per year including 96 hours per triennium of C drama – or allowing broadcasters to contribute to a Children's Content Fund in lieu of broadcasting children's content;
- "simplifying" the drama points system (although it is not clear in what way).

While only limited information is provided, Model 2 clearly fails to address some of the key problems with the existing regulatory framework. In particular, Model 2 does not acknowledge that:

- the children's sub-quotas are failing and should be removed (including all C as well as P quotas) (see section 5.2 above). Given the digital disruption faced by broadcasters there is no logical reason commercial television broadcasters should bear the responsibility for the Children's television production sector, whether via quotas or contribution to a content fund, when the audience for that content is on other platforms. Further, contribution to a content fund directs limited resources away from content broadcasters need to be commissioning;
- the drama sub-quota is not sustainable and this cannot be addressed by mere 'simplification'. There is a continuing decline in audiences for drama on commercial television as audience preferences for drama consumption have shifted and because the existing quotas do not reflect modern viewing habits (see section 5.3 above); and
- the *Australia-New Zealand Closer Economic Relations Trade Agreement* or the problems that would arise if this agreement is re-negotiated or the definition of 'first-release' changed as implied in the Options Paper (see section 7.4.5 below).

In addition, the proposed changes to the incentives do not go far enough to support the industry into the future (see section 7.3 below).

Model 2 therefore does not adequately address the key concerns that the Options Paper identifies with the status quo. It is not fit for purpose, effective of efficient. Adopting this model would not sufficiently protect against the contraction of the content ecosystem that the outdated sub-quotas will result in over time. It does not sufficiently remove the financial risks to broadcasters as a result of investment in Australian content to meet the sub quota requirements.

For these reasons, if Deregulation (Model 4) as outlined in section 6 above cannot be achieved at this point in time, we prefer the alternative model proposed in section 7.2 below based on a points attribution system that better targets new commissioned Australian content.

7.1.2 Model 3 is not supported

Model 3 recognises the need for significant reform and a more harmonised regulatory environment but approaches it from the view that the current regulatory regime be expanded to cover all content platforms with a one-size fits all approach. Commercial free-to-air broadcasters have a fundamentally different business model than other platforms in the marketplace. Model 3 would only entrench the problems faced by commercial free-to-air broadcasters while also adding significant competition for the acquisition of Australian content that will likely further push up production prices to budget breaking levels.

It proposes the rigid and risky requirement on commercial free-to-air broadcasters to invest a percentage of revenue in scripted programming, to be implemented by either:

- Option A requiring service providers to either make content available on our services or contribute to a production fund to be administered by Screen Australia.
- Option B requiring services providers to negotiate investment plans and have them approved by the ACMA.

Model 3 would introduce a high level of uncertainty. It would not address, and would potentially exacerbate, the challenges we already face. Both of the implementation options proposed under Model 3 would require broadcasters to invest or spend on scripted content without any reference to audience demand or the content strategies of a particular content platform or provider. It effectively proposes an alternative form of a drama sub-quota, albeit via an investment requirement rather than a quota.

Free TV does not support any model which rigidly determines expenditure or hours of broadcast for genres which are declining in popularity on commercial television and for which audience demands are changing quickly. As set out above in relation to the existing children's and drama quota, requiring broadcasters to spend on specific genres where the viewership is migrating to other platforms is not only contrary to the policy goals of these quotas but also harmful to broadcasters.

This approach takes resources away from other genres which are in-demand on our platform, by forcing broadcasters to invest large amounts of money to acquit sub-optimal quota obligations at a time when broadcasters cannot afford it. It would continue to entrench the difficulties faced by broadcasters in relation to broadcasting programs which do not attract large audiences and are not commercially viable. It would also divert critical investment by broadcasters in growing and diversifying their platforms to attract and retain audiences.

Furthermore, any model based on a percentage of gross revenues as Model 3 proposes, does not account for the contribution of adult drama to those revenues and does not account for the profitability of adult drama to the business (i.e. revenues may have increased but drama may not have contributed to that increase).

Just as the existing drama sub-quota is not sufficiently flexible to accommodate audience demands and in our view should not be continued, Model 3 is similarly inflexible and should not be adopted for the same reason. It does not recognise the declining audiences for traditional scripted content on commercial television and potentially weakens the regulatory framework.

Neither of the implementation options proposed under Model 3 provide the necessary flexibility broadcasters require to respond quickly to changes in audience demands or to decide the composition and scheduling of Australian programming on their platforms including the format/genre, volume of format/genre and scheduling of such content.

Option A proposes, as an alternative to platforms commissioning content themselves, an option to contribute to a production fund. This alternative is not supported as it reduces and diverts away from broadcasters very limited resources that they can use to create new content that they can use on their platforms. A production fund managed by a third party is essentially a levy on commercial free-to-air broadcasters from which they derive no market-driven outcome.

Option B, which requires investment plans to be approved by a regulator, would introduce an unheard of and concerning level of regulatory interference in the operation of a business. The programming that commercial broadcasters invest in is not currently subject to approval by the regulator and in our view, it should not be. This would be a retrograde step that would be extremely detrimental for Australian audiences and we would strongly oppose such a model. There is no role for any regulator in determining the broadcast schedules of commercial television broadcasters. Not even the taxpayer funded broadcasters face this type of interference in the decision making of programming and content creation. Neither commercial broadcasters nor any other platform should be subject to this level of interference.

Commercial broadcasters are best placed to make programming and investment decisions given their deep understanding of their audiences and platforms. In relation to programming decisions, broadcasters are required to make decisions quickly in the complex and fast-moving environments they operate in. It would not be workable to have decisions approved by the regulator or made by a production fund. In terms of investment decisions, this would be equally unworkable given timing requirements for making investment decisions (it can take up to 3-4 years to develop, fund and produce a drama).

7.2 A modernised quota system

As set out in section 6 above, in Free TV's view, the case for deregulation, given market realities and based on international experience, is compelling. However, if the Government is unwilling to remove all content quotas at this point in time, our preferred regulatory approach for quotas on broadcast would be one which is based on the existing model but with reduced quota obligations which introduces some flexibility and takes into account the need for a sustainable commercial television industry. In this section, we set out a proposed alternative regulatory model, for consideration.

7.2.1 A new approach is needed

While Free TV agrees with the Options Paper that the regulatory framework should be modernised and future proofed, as outlined above, we do not think Models 2 or 3 as put forward would effectively achieve that and in the case of Model 3, this would in fact set us backwards.

Genre-specific sub-quotas (which are largely retained in proposed Model 2 in the Options Paper), do not enable broadcasters to take into account the changing nature of audience preferences.

This is an opportunity to make significant reforms that better enable broadcasters to meet the objects of the Content Standard. The regulatory framework should incentivise the diverse range of programming that Australians value on Free TV screens, encourage broadcasters to take risks on new approaches to delivering this material and provide the flexibility needed to move with audiences.

7.2.2 A single combined points model focussed on flexibility and incentives

We currently have an adult drama quota system that centres on a system of points for different formats and additional specific hours-based quotas for preschool programs, children's programs, children's drama, and documentaries.

The volume of content required to meet the existing requirements is not sustainable into the future. In addition, the current model does not offer the flexibility or incentives to support innovation and differentiation in a converged media environment. It does not take into account:

- Cost of production
- Any distinction between original commissioned programs and acquired programs.
- The cultural, training and employment benefits of long running serials.

If deregulation is not an option, we propose one simplified points system for documentary, children's content and adult drama, aimed to:

- Incentivise the programming that the Government has determined to have a high cultural value, including documentary, scripted drama and children's programming – but enable broadcasters to determine the right mix of these programs for their audience and business strategy
- Provide the flexibility to respond to rapidly changing audience viewing behaviours over time
- Incentivise original commissions, while acknowledging that acquisitions still make a contribution
- Incentivise the commissioning of drama content in Australia with higher production values by giving commissioned drama higher points based on QAPE
- Reduce the overall burden on broadcasters to reflect the realities of the new media landscape.

Our proposed model of points per hour is set out in Table 2 below. We note that based on the Options Paper it is a priority to better target new, commissioned Australian Content but this should not be done in a manner that does not address the challenges faced by broadcasters and indeed should lessen rather than increase the burden on broadcasters.

Table 2: Proposed Single Combined Points Model

Originally commissioned programs	
Type of program	**Points per hour**
C/P Programs (unscripted)*	2
Documentary	2
Adult Drama QAPE per hour less than $400k	2
Adult Drama QAPE per hour between $400k-$700k	4
Adult Drama QAPE per hour between $700k-$1m	6
Adult Drama QAPE per hour between $1m-$1.5m	8
Adult Drama QAPE per hour more than $1.5m	10
C Drama	10
Acquired Programs	
Type of Program	**Points per hour**
C/P Programs (non-drama)	1
Documentary	1
Drama Serial	1
Drama Series	3
Drama Mini-Series	4
TV Movies	4
Feature Film licence fee <$250k per title	2.5
Feature Film licence fee >$250k per title	4
C Drama	5

We would retain the requirement to reach 250 points annually and this would still be based on the duration of programs. However, our model removes the additional requirement to meet 860 points every triennium. Instead, in the event that broadcasters fail to meet their obligations in any given year, they would be required to carry forward and acquit any remaining points that have not been met in the following year. This would operate similarly to the existing subscription television annual requirement.

We believe our proposed model will provide broadcasters with the incentives necessary to make available a range of culturally significant content while at the same time enabling them the flexibility to differentiate their service offerings and to adapt over time to changing audience tastes and priorities. It will cater to a wider variety of production budgets that respond to audience appetites and genre requirements and allow a greater diversity of Australian stories in terms of scale, subject matter and platform and audience appeal. We note that this approach is consistent with the ABC's approach in its recent five-year plan to focus on quality over quantity when commissioning programming. This is currently not possible under the rigid drama sub-quota requirement.

7.2.3 Retention of the overarching transmission quota and commitment to Australian content

Australia's commercial free-to-air broadcasters are deeply committed to Australian content. When programs are created to suit our audiences tastes and needs there continues to be strong demand for Australian-produced content. That is why the commercial broadcasters support the ongoing commitment to overarching transmission quotas.

While the current system of a primary channel requiring 55% of content between 6am and midnight and 1460 hours across a network's multi-channels has been useful for viewers during the transition years from analogue to digital broadcasting, the rigidity of these two quotas is no longer keeping up with platform savvy audiences. We agree with the Options Paper that modifications to provide additional flexibility would update the way the existing quota works.

Our proposal is to retain a transmission quota that is equal to the existing quotas but can be flexibly acquitted across a network's channels. In practice, that would mean converting the current primary channel quota (55% of content from 6am to midnight) into an hours-based quota which currently equates to 3614 hours. This would be added to the existing multi-channel quota of 1460 hours to create a total annual Australian content quota of 5074 hours.

The transmission quota would continue to ensure that all Australians have access to the same minimum amount of free Australian content as they do now. However, by removing the distinction between primary and multi-channels it would provide additional flexibility to acquit obligations across all channels and to develop niche channels rather than forcing broadcasters to retain traditional channel formats.

We believe the new one-system points model which is focused on incentivising specific genres, together with the overarching transmission quota which is focused on ensuring minimum levels of Australian content continue to be produced, would appropriately balance the need for a regulatory framework that promotes a diversity of Australian voices, programs and stories with the need for sustainability and certainty for industry.

7.2.4 Removal of platform and scheduling requirements

In addition to recalibrating the points model, it is essential that rigid rules around platform and scheduling are also removed.

Firstly, broadcasters should be able to acquit points by releasing content to online platforms as an alternative to free-to-air broadcast (as suggested in Model 3 of the Options Paper).

As audience preferences continue to change and evolve, the ability to acquit quota obligations online will provide greater opportunities for new forms of Australian content to develop, including content targeted at niche audiences, short-form scripted content, and novel forms of storytelling that are directly engaging with audiences. This flexibility is essential in the face of increasing consumer demand to access certain formats such as scripted dramas and documentaries online. Given that children are increasingly looking to online platforms for content, we believe that this flexibility in conjunction with our proposed single points model outlined above, will significantly incentivise commercial broadcasters to meet the demands of younger audiences.

Secondly, the definition of 'first release' should enable any program to count towards a sub-quota if it is the first time it has been broadcast on free-to-air television. There are currently anomalies in the treatment of programs that screen first on an SVOD service such as Netflix or Stan compared to those that might appear on a pay TV service such as Foxtel, which do not allow for this.

At the moment, a commercial free-to-air broadcaster can screen an Australian drama or mini-series that has already appeared on an SVOD or AVOD service and have it count towards its drama sub-quota. Yet it cannot count an Australian drama series or mini-series that has been broadcast on pay TV (only a feature film or tele-movie can be counted).[54]

This is a regulatory disparity and an outdated condition that goes against the notion of making regulation platform agnostic. Removing this anomaly would encourage co-productions of series with subscription broadcasters, which may enable the future commissioning of very high quality content or content with more niche appeal that could not be adequately financed solely for the free to air market.

An additional benefit would be encouraging the provision of access to content on free-to-air television that had previously only been available to pay TV subscribers. Given that significant Government funding support such as the Producer Offset is available to support the production of content for subscription tv, it would be valuable for that content to be made available to a broader audience including those that may be unable to pay for subscription services.

Thirdly, the requirement that Australian drama programs must be broadcast in prime time in order to count towards the quota should be removed. The concept of 'prime time' does not exist online where there are no time-zone requirements and where content can be accessed at the viewers chosen time. No time-based scheduling restrictions should be applied in order for any content to be counted towards the quota other than a requirement that it has been made available to Australian audiences during that year.

Finally, the Children's Television Standard (CTS) should be revoked. In addition to the outdated requirements in relation to scheduling of C and P content discussed above, the CTS also contains outdated and onerous requirements such as pre-classification by the ACMA, advertising time limits and outdated advertising restrictions (for example, in relation to the giving of prizes, repetition in advertisements and clear presentation). Many of the advertising restrictions overlap with existing obligations under either the Commercial Television Industry Code of Practice, the Australian Association of National Advertisers (AANA) Children's Advertising Code or one of the other AANA Codes. In our view, none of obligations in the CTS are necessary to retain.

7.3 Reform of incentives and funding

As outlined in section 6 above, incentives rather than quotas are what is going to really drive the success of our production industry in an increasingly global content market. In particular, incentives and direct funding are increasingly essential in order to:

- support the production of world class culturally significant Australian content with international appeal - that will promote our people and our values to the world; and
- attract large budget international footloose productions to Australia, taking advantage of our facilities and our talent.

7.3.1 The Producer Offset

The Producer Offset is a predictable and certain source of funding that has played a significant role in in the maintenance and growth of a vibrant and successful production sector in Australia.

[54] Australian Content Standard, s 8.

Free TV agrees with the Options Paper that the Producer Offset should be reformed in response to audience and marketplace changes since its introduction in 2007. In our view, it should be brought into line with the current rate for feature films – 40%, and the 65-episode cap on eligibility for the offset should be scrapped.

However, if as proposed by Model 3, the producer offset for film is replaced with a single flat rate covering all offsets (including the producer offset, the location offset and the PDV offset) of 30% for both film and television productions across all platforms then we would be supportive of this. However, it must be noted that a flat rate would not distinguish between foreign and Australian content produced in Australia and may not adequately meet the social and cultural objectives of government policy. Therefore, a cultural uplift of up to 10% should be strongly considered for at least some genres, such as scripted programs and children's content.

Model 2 of the Options Paper proposes an undesirable single flat rate for one-off feature length films (regardless of platform) and children's content only. It proposes that the offset would remain unchanged for other television productions.

In our view there is no reason for continuing to distinguish between one-off productions and series. Television production is just as valuable as feature film production to the strength of our production industry – some would argue it is more valuable as tv series provides consistent longer term employment opportunities for screen production professionals.

The cost and quality of premium Australian television content is now comparable to film and the same pool of cast and crew often work across both formats.

Bringing the offset level for television in line with feature films will encourage investment in the Australian production industry and, provide an additional incentive for investment in Australian content.

The increasing costs of producing Australian content and declining revenues of broadcasters increases the need for the nation to support local production. A modern content regulatory framework should have incentives that encourage innovation in our industry and foster the evolution of formats for a modern audience.

We also support the view that the Producer Offset should be available not only for traditional scripted dramas and documentaries but also for re-interpretations of these traditional genres as they are evolving over time and that are valued on Australian screens.

While we appreciate the intention of reserving offset support for certain genres, it needs to be acknowledged that traditional forms of content are being reinterpreted by audiences and producers in the new media environment. Some flexibility needs to be applied in interpreting the genre-based restrictions to ensure the incentive schemes remain fit for purpose into the future.

At the moment, content genre eligibility for the Producer Offset is out of step with the Location Offset and PDV Offset both of which have a broader definition of qualifying productions. This is leading to adverse outcomes for the Australian production industry. For example, Network 10 has announced that, due to the travel restrictions brought about by COVID-19, it will be producing the entire next series of *The Amazing Race Australia* in locations around Australia. Being a reality program, it does not qualify for the Producer Offset for TV of 20%. However, if the exact same franchise were to film *The Amazing Race America* in locations around Australia, then it would qualify for both the Location Offset and the Location Incentive that offer a combined offset of 30%. This creates a disincentive for the production of significant and popular content in Australia that would otherwise be supporting hundreds of jobs, investing in local businesses and promoting Australian tourism destinations to audiences both here and abroad.

In order for the Producer Offset to encourage a broad spectrum of content and encourage investment in the Australian production sector, consideration should be given to significantly reducing the minimum spend thresholds. The existing minimum spend requirements are job killers that are stymieing creativity. In an increasingly competitive content environment where broadcasters' investment capabilities are being seriously challenged, there needs to be more support for commercial networks to take risks with new stories and new formats at sustainable investment levels. This would also create significant incentives to invest in more local content providing more opportunities for Australian-based jobs and career development and helping to make the production sector more sustainable by making production teams less reliant on any particular project.

Free TV agrees that the Producer Offset's 65-hour cap on drama should be abolished, as suggested in the Options Paper. The rationale for removing the offset after 65 hours was that shows that survive to five seasons should have become self-sustaining. However, the reality is that the challenges of funding a drama series in Australia do not change or ease after multiple seasons – especially in an environment of declining domestic audiences for drama on free-to-air television. For this reason, it has been very rare for local dramas to continue beyond the 65-hour point.

Even some of the most successful Australian drama titles such as *Offspring* (Ten) were made at a heavy loss despite being produced with assistance from the offset for the first few seasons. Once the 65-hour cap is reached, it can almost double the financial contribution required of the broadcast partner. In short, removing the cap would allow successful titles to continue being created for longer. This would in turn deliver a range of benefits to the industry that would further the government's objectives and represent a good continued investment of taxpayers' funds.

7.3.2 Location and PDV offsets

The PDV and Location offsets and Location Incentive play a valuable role in supporting the strength of the Australian screen production sector.

Free TV agrees with the Options Paper that the 30% PDV Offset should be retained. It supports work on post-production, digital and visual effects for film or TV production in Australia, regardless of where a project is shot. It is important this remains in place to ensure that high-value post-production skills and technology remain in Australia, especially in relation to programs that are not entitled to the Producer Offset.

The creation of a permanent Location offset of 30% (scrapping the need for the Location Incentive) would also have significant positive benefits for the Australian production sector and the broader economy. By incentivising more regular investment by major production companies in Australia it would also help to provide some critical balance in local versus foreign content investment that would make the production sector much more sustainable for the long-term.

As argued above for the Producer Offset, consideration needs to be given to significantly reducing the minimum spend requirements for the Location and PDV Offset. Keeping the levels at their current rate is impacting Australia's ability to attract more consistent project investment which would deliver more sustainable jobs in the production and PDV sectors. Lowering the existing thresholds would also help ensure broadcasters can more fairly meet their local content investment requirements and encourage further opportunities to invest in new forms of content that may otherwise be too risky or uneconomical to deliver, bringing further value and diversity of Australian content to free-to-air audiences.

7.3.3 Screen Australia funding

Commercial free-to-air broadcasters are currently explicitly excluded from accessing discretionary production funding from Screen Australia. There is no basis for this exclusion. In our view, Government funding such as Screen Australia funding should be available on a non-discriminatory basis.

The existing exclusion from Screen Australia funding goes against the entire rationale behind such funding, which is to support Australian production. Commercial broadcasters and groups eligible to apply for Screen Australia funding all call on largely the same pool of actors and production professionals to complete their productions. In other words, Australian content is being made by the same people but under different models. Commercial broadcasters' production units should therefore be free to apply for Screen Australia support for relevant productions in the same way as other producers. Proposals should be assessed on the basis of creative merit and potential contribution to the growth of Australian content.

In-house productions that help the government achieve its goals by generating Australian-made content and building an internationally competitive industry comprising strong, locally owned businesses, should be able to compete for government funding. In-house production is not less worthy of support compared to 'independent' production. This is particularly the case given about half of all Screen Australia TV drama funding is currently provided to foreign-owned multinational production companies, most of which are much larger than Australia's free-to-air broadcasters.

Access to Screen Australia funding would help production groups to become strong and sustainable Australian businesses in their own rights, selling to their commercial broadcaster parents as well as other platforms.

7.4 Other elements of a modern Australian Content Framework

In addition to the modernised regulatory framework and strong incentives and funding, we would propose the following additional elements to future-proof the Australian content regulatory framework:

- Publicly funded national broadcasters should support Australian content policy objectives and step in where the market has failed
- The requirements for 420 visas should be simplified
- The existing anti-siphoning conditions on Foxtel should be harmonized across online platforms
- The definition of 'first release' should not be changed contrary to the *Australia New Zealand Closer Economic Relations Trade Agreement.*

7.4.1 National broadcasters

Options 2 and 3 propose reporting requirements and a requirement that funding be allocated specifically to children's content, respectively. In our view, both of these measures should be adopted in respect of both the ABC and the SBS.

The ABC and SBS play important roles in Australia's media landscape and in helping the government achieve its cultural policy objectives. This is especially the case in areas where it may not be commercially viable for other operators to deliver relevant content, such as children's programming and niche content for specific ethnic groups. 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. In fact, the ABC's recently announced 5-year plan explicitly details its commitment to further invest in children's content and higher-cost adult dramas as well as regional and indigenous stories. This role should be formalised as the Options Paper suggests. We are also aware of calls for tied funding for children's television programs within the ABC funding arrangements and would support the production sector in this position.

The ABC has invested significant taxpayer funds in creating and promoting dedicated ad-free children's channels, ABC Kids and ABC ME. This has resulted in the ABC being the primary free-to-air service for delivering children's programming in Australia. The ABC's services are extremely popular, as reflected in the fact that all 30 of the top rating C and P programs for children in 2019 appears on these channels.[55] The proposals in the Options Paper are appropriate and in line with audience preferences.

Giving the ABC a greater role in children's TV also better matches with the commercial reality of funding the content and the strong preference of audiences that children's content be free of advertising.

7.4.2 Australian content in Advertising

Section 122(6) of the BSA currently requires that the ACMA ensure a standard is in place which has the same effect as section 5 of the *Television Program Standard 23 – Australian Content in Advertising* as in force on 4 August 2004, which requires that at least 80% of total advertising time broadcast each year between 6am and midnight is occupied by Australian produced advertisements.

In our view this regulatory measure is outdated and should be removed. Broadcasters have consistently exceeded the 80% requirements since it was introduced. There is clearly no need for regulatory intervention in this area. This is another example of legacy regulation that came about in the 1990's at a time when the media landscape was significantly different to now and which does not apply to any other media platform.

7.4.3 Visas

Consideration should be given to simplifying the requirements for the subclass 420 visa which allows visa holders to work temporarily in Australia in the entertainment industry.

To obtain a subclass 420 visa, workers are currently required to be nominated and sponsored and the nomination cannot be approved unless it is supported by a certificate given by the Arts Minister. These certificates are given in accordance with the *Guidelines on the entry into Australia of Foreign Actors of the purpose of employment in film and television productions*. In addition, as part of this process, for certain nomination types, the sponsor is required to consult the relevant Australian union. These requirements are incredibly onerous and time-consuming.

The purpose of these requirements and the Guidelines is to ensure that Australian performers receive a fair chance in securing employment in film and television productions shot in Australia and that Australian faces and voices are seen and heard on screen. However, while these requirements may have been appropriate safeguards when they were introduced in the 1980s, the screen production industry has developed significantly since their introduction, and they are no longer necessary in the

[55] See Appendix A.

current production environment. The simplification of subclass 420 visa requirements will not result in an influx of foreign entertainment industry works because Australian audiences value and demand Australian content and Australian actors.

Free TV would therefore support the removal of the requirements to consult with the relevant union (to align the Subclass 420 visa with other temporary work visas) and for certification from the Arts Minister. We would also recommend removal of sponsorship and nomination requirements for short term stays of up to 12 months.

7.4.4 Anti-siphoning

The anti-siphoning rules are a necessary part of a regulated local content framework. More importantly, the rules deliver a critical public policy objective – to ensure that all Australians can access the significant sporting events that bring us all together as a community reliably and free. The policy basis underpinning these rules remains relevant. That is, commercial and national broadcasters should continue to be supported in fulfilling their role of reflecting and developing a sense of Australian identity, through enabling Australians to access events of national importance and cultural significance. This legislative intention is enshrined in the objects of the Broadcasting Services Act 1992 (Cth) (BSA): ss 3(a), (aa), (e), (ea), (f), (fa) and (g), BSA.

However, the way Australians view and consume sporting content has changed significantly in the last 5 years – and is expected to continue changing in the future. The cost to broadcasters of delivering these public policy outcomes has also significantly increased. For example, the cost of AFL broadcast rights for 2017-2022 was $418 million - up from $250.9m in 2012-16 (a 66.8% increase). Similarly, the tennis rights were approximately $40m per annum in 2013-18 when Seven held them; Nine are now paying $60m per annum. While sport remains hugely popular on Free TV, the ability of broadcasters to continue to deliver this important programming in addition to the significant cost burdens of meeting content quota requirements must be considered as part of setting the overall local content requirements for commercial free-to-air broadcasters.

There has also been a proliferation of online content service providers, with many demonstrating an interest in acquiring local sporting rights. The current anti-siphoning regime cannot fully address its original legislative intention or achieve the objectives of the BSA in future if it is not broadened to apply to the online viewing platforms.

The current scope of the existing rules calls into question their ability to deliver their public policy objective into the future. For example, while the existing rules apply to Foxtel, they do not apply to Foxtel's Kayo Sports platform. Amazon Prime has recently re-signed a deal to stream NFL Thursday night football across its streaming platform. There have also been a number of reports that Facebook will likely bid on sports rights, having already signed content deals with the AFL, NFL and Cricket Australia.

We would therefore propose to harmonise the current anti-siphoning regime in order to preserve and give effect to the regime's original legislative intention in the context of a 21st century digital economy. This could be done by introducing provisions in the BSA that allow ACMA to make rules replicating the current anti-siphoning regime to apply to online content service providers.

7.4.5 Treatment of New Zealand content

Model 2 in the Options Paper suggests that the definition of 'first-release' should be revised to address anomalies in the treatment of New Zealand content. We do not support this proposal.

It is clearly contrary to the *Australia-New Zealand Closer Economic Relations Trade Agreement* (ANZCERTA) which requires that New Zealand persons and service providers are provided equal access to Australian markets and that Australia not introduce any measure that discriminates against NZ persons or service providers or is a disguised restriction on trade. We do not think it is necessary or appropriate to upend Australia's bi-lateral trade agreement with New Zealand in relation to this issue.

We understand a proposal has been put forward that the definition of 'first release' should be changed to 'first released worldwide'. This proposal would be problematic for a number of reasons in addition to breaching our international obligations under ANZCERTA.

Contrary to the objects of the Australian Content Standard, it would not promote continued community access to Australian programs in Australia. For example, it would mean that programs that otherwise satisfy the requirements of the relevant Australian program definition but which have a first broadcast release overseas for any reason (for example, because the funding for the program was provided from outside Australia), would not qualify. This would act as a disincentive for broadcasters to acquire programs that are required to have a first broadcast release anywhere outside Australia, or to invest in co-productions or offshore investment in Australia content.

Alternative proposals, such as to provide for a more limited definition of "Australian program", are also inappropriate. Narrowing the definition of Australian program would be likely to negatively impact the Australian creative sector and to be ineffective in any event, given the provisions of both the Broadcasting Services Act and the Content Standard that separately allow New Zealand content to be treated in the same manner as Australian content.

New Zealand programming makes up only a small percentage of Free TV broadcasters' schedules overall however it is a small but important source of content for Free TV broadcasters in meeting their quota obligations given the challenges we face meeting the sub-quota obligations.[56]

[56] ACMA, Compliance with Australian Content Standard and Children's Television Standards between January 2019 – December 2019, 2020.

A. Top 30 Children's Programming 2019

Program Title	Channel	Audience 0-13
BLUEY	ABC	222,000
THE HIGHWAY RAT	ABC	120,000
ROOM ON THE BROOM	ABC	117,000
STICK MAN	ABC	115,000
THE GRUFFALO	ABC	112,000
PEPPA PIG	ABC	109,000
JEMIMA'S BIG ADVENTURE	ABC	105,000
BIG BLOCK SINGSONG	ABC	104,000
THE GRUFFALO'S CHILD	ABC	103,000
ZOG	ABC	96,000
HEY DUGGEE	ABC	95,000
WE'RE GOING ON A BEAR HUNT	ABC	95,000
PET SUPERSTARS	ABC	94,000
RUSTY SAVES CHRISTMAS	ABC	94,000
KIRI AND LOU	ABC	93,000
ANDY'S DINOSAUR ADVENTURES	ABC	90,000
DINOSAUR TRAIN	ABC	90,000
PJ MASKS	ABC	90,000
NELLA THE PRINCESS KNIGHT	ABC	87,000
OCTONAUTS	ABC	87,000
RUSTY RIVETS	ABC	87,000
THOMAS AND FRIENDS	ABC	87,000
BECCA'S BUNCH	ABC	86,000
FLOOGALS	ABC	86,000
BEN AND HOLLY'S LITTLE KINGDOM	ABC	85,000
SCHOOL OF ROARS	ABC	85,000
ANDY'S SAFARI ADVENTURES	ABC	83,000
GO JETTERS	ABC	83,000
SMALL POTATOES!	ABC	83,000
KAZOOPS!	ABC	82,000

Source: OzTAM Consolidated 28 (Live + As Live + Time Shift to 28). 13th May 2020 Consolidated 7 only. Children's genre.

B. Average Child Audience in C+P qualifying programs in 2019

Program Title	Channel	Audience 0-13
FLUSHED	7TWO	15,000
BOTTERSNIKES AND GUMBLES	7TWO	12,000
TOYBOX	7TWO	10,000
IT'S ACADEMIC	7TWO/7flix	9,000
GET ARTY	7TWO/7flix	8,000
SMASHHDOWN!	9GO!	8,000
HICCUP & SNEEZE	9GO!	7,000
SHERAZADE: THE UNTOLD STORIES	10 Peach	6,000
KITTY IS NOT A CAT	7TWO/7flix	5,000
THE DAY MY BUTT WENT PSYCHO	9GO!	5,000
HEIDI	9GO!	4,500
KUU KUU HARAJUKU	10 Peach	4,000
QUIMBO'S QUEST	10 Peach	4,000
TOTALLY WILD	10 Peach	4,000
CROCAMOLE	10 Peach	3,500
SCOPE	10 Peach	3,500
CAPTAIN FLINN AND THE PIRATE DINOSAURS	9GO!	3,000
PIRATE EXPRESS	9GO!	3,000
THE BUREAU OF MAGICAL THINGS	10 Peach	3,000
NATE IS LATE	9GO!	2,500
FANSHAW & CRUDNUT	9GO!	1,500
MATCH IT	7TWO/7flix	1,500
BRAINBUZZ	9GO!	1,000
DROP DEAD WEIRD	7TWO	1,000
GAMIFY	10 Peach	1,000
GET CLEVER	7TWO	1,000
JAR DWELLERS SOS	10 Peach	1,000
JAY'S JUNGLE	7TWO	1,000
NEWS OF THE WILD	7flix	1,000
PIPSQUEAKS	7TWO	1,000
RANDOM & WHACKY	10 Peach	1,000
SURPRISES	9GO!	1,000
TEDDIES	9GO!	1,000
ZOOMOO	7flix	1,000
ZOOMOO WILD FRIENDS	7TWO	1,000
ALICE-MIRANDA FRIENDS FOREVER	9GO!	0
ALIEN TV	9GO!	0
BERRY BEES	9GO!	0
DOGSTAR CHRISTMAS IN SPACE	9GO!	0
FANSHAW & CRUDNUT - ATTACK OF THE SLUG SANTAS	9GO!	0
LARRY THE WONDERPUP	7TWO	0
MOTOWN MAGIC	7TWO	0
OH YUCK	7TWO	0
SKINNER BOYS	9GO!	0
SPACE CHICKENS IN SPACE	9GO!	0
OzTAM Average Audience (0-13 metro)		**1,000**

Source: OzTAM. Consolidated 28 (Live + As Live + Time Shift to 28). 28th May 2020 onwards Consolidated 7 only. Programs aired twice a day have been averaged. OzTAM average is calculated on average of all episodes of all programs listed and cannot be replicated from this summary table.

C. Existing rules for children's content and drama

The current framework of children's content and drama obligations that apply to Free TV broadcasters is summarised below.

7.4.6 Children's content obligations

Commercial television broadcasters are subject to onerous obligations in relation to the amount of children's content they are required to show as well as how and when they are required to show it. These include:

Quota obligations:

- A minimum of 260 hours of children's C programs annually including 32 hours of first run children's drama programming
- A minimum of 130 hours of Australian preschool P programs annually

Australian content obligations:

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

Time zone requirements

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

Requirements to broadcast minimum amounts on weekdays

- A minimum of 30 minutes of P material in P periods every weekday and a minimum of 30 minutes of C material every weekday between the designated time bands.

Advertising restrictions

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

ACMA classification requirements

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

7.4.7 Drama obligations

Complex and outdated points system

The drama quota system centres on a complex system of points based on format factors per hour, which are awarded according to the format, duration (in commercial hours on a pro rata basis) and licence fee of drama programming. The current system is set out in Table 1 below.

Broadcasters must attain 860 points every three years (with a minimum of 250 points per annum), with differing points per hour awarded solely based on the format of the program. This sub-quota was last adjusted in 2005 (increased from 830 points) – when Australians only had two main choices of platform for television content: free-to-air TV from commercial or public broadcasters and pay TV services.

Table 1: Existing drama points model

Type of program	Format factor per hour
Serial or series produced at a rate of more than 1 hour per week	1
Serial or series produced at a rate of less than one hour per week: • produced by independent producer for prescribed licence fee (currently $421,000 per hour for 2016); • in any other case	 3 2.5
Mini-Series	4
TV Movies	4
Feature Film – licence fee is < $211,000	2.5
Feature Film – licence fee is > $211,000 per hour	4

Platform requirements

The sub quota requirement must be met on linear television. There is no flexibility to meet these obligations on broadcasters' catch-up services, where viewing of drama is relatively more popular than other genres, compared to on linear television.

Prime-time requirement

The Australian Content Standard requires that, to count towards the drama sub-quota, first release Australian drama programs must be broadcast in prime time (subject to some limited exceptions, for example, if a first release Australian drama program of at least 60 minutes' duration is scheduled to begin before or at 10.30 pm on a day, the part of the program broadcast between 11 pm and 11.30 pm on that day is taken to have been broadcast in prime time).[57]

First-release requirement

In order to count towards the drama sub-quota, a program must be a 'first release' Australian drama program. The definition of what constitutes a 'first release' program is also complex. Essentially:

[57] Australian Content Standard, s 10.

- A program (except a telemovie or feature film) is a first release program when it is first broadcast in the licence area if it has been acquired within 2 years of the completion of production of the program.
- A program that is a telemovie is a first release program when it is first broadcast by a licensee in the licence area (whether or not the program has already been broadcast in the licence area by a subscription television broadcasting service) if it has been acquired within 2 years of the completion of production of the program.
- A program that is a feature film is a first release program when it is first broadcast by a licensee in the licence area (whether or not the program has already been broadcast in the licence area by a subscription television broadcasting service) if it has been acquired within 5 years of the completion of production of the program.[58]

[58] Australian Content Standard, s 8.