Submission by Free TV Australia

Pre-budget submission
2019-2020

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1 Executive Summary

- Free TV represents all commercial free-to-air commercial broadcasters in Australia. Collectively, these networks invest $1.6 billion every year to make great Australian content. This investment supports over 15,000 direct and indirect jobs and contributes a total of $2.8 billion each year into the local economy. For this investment and support of local employment to be sustained in the long-term, Australia's media regulations need to keep pace with the rapid changes in the sector.
- Despite the increased competition for viewers from unregulated streaming services and the significant advertising revenue impact from the rise of the dominant digital players, Google and Facebook, commercial television remains the most heavily regulated media platform.
- This regulatory disparity was noted in the recent ACCC Digital Platforms Inquiry Preliminary Report. Even though the final report is not due until the middle of the year, there are a number of obvious issues the Government should address now to remove or limit these disparities.
- On corporate tax, Free TV has welcomed previous budgetary measures designed to level the playing field. For example, we have supported measures such as the Multinational Anti-Avoidance Law (MAAL), Diverted Profits Tax and the GST reforms to cover digital products. We would welcome further international action to ensure that the dominant digital players face equivalent levels of corporate tax on their Australian profits.
- However, Free TV is concerned that other interim measures, such as a digital services tax, would capture the digital offerings of Australian based media companies. Revenue taxation would be a retrograde step in comparison to the much-needed reforms the Government has only recently taken to remove the revenue-based broadcast licence fee. This would amount to double taxation and would be a disincentive for further innovation and investment by Australian based businesses.
- The 2019-2020 Budget should also include the long overdue Government response to the 2017 Australian and Children's Content review. By the time the Budget is delivered it will be over two years since the content review was commenced by Government. The investment uncertainty created by the lack of response to this important review is having a significant negative impact on the media industry and the wider production sector.
- As part of a comprehensive package to modernise the regulatory framework, the following reforms should also be announced in the Budget:
  - **Equalise financial incentives and support:** There is currently an outdated distinction between feature films, which can access a producer offset of 40% of qualifying expenditure and television that is limited to 20%. Both offsets should be set at 40%. In addition, the current restriction on broadcasters accessing Screen Australia funding should be removed.
  - **Reform of the children's quota**: Since our 2018-2019 Pre-Budget submission the child audience for programming made especially for them on commercial television has fallen a further 31%. This underlines that the children's quotas should be abolished as children simply are not watching the high-quality, award winning shows that broadcasters invest millions in making available to them.
  - **Update quota for Australian drama:** Escalating production costs need to be recognised by rewarding investment in higher budget shows with higher production values. The value of high-volume serials needs to also be more appropriately recognised as they form the bedrock of the production sector in terms of employment and training.

2 Introduction

The value of commercial free-to-air television to the Australian public remains high. Free-to-air television delivers high-quality programming to 98 per cent of Australian households. 20 million Australians watch broadcast TV each week.[1]

The commercial free-to-air broadcasting industry is proudly the largest producer and commissioner of Australian content. The latest financial reports by the ACMA show that local content investment continues to grow and now stands at 80% of all production spending.[2] Our members are deeply committed to ensuring Australian audiences continue to see Australian faces, voices and stories on their screens. The local content they broadcast delivers enormous cultural and social value by creating and reinforcing our national identity.

Exports of Australian television productions also help showcase Australia to the world. These direct exports have been valued by Deloitte at $252 million a year, with a further $725 million a year coming from related tourism.[3] The commercial free-to-air broadcasting industry plays a huge role in generating these benefits by creating and delivering content across a wide range of genres. These include news and current affairs, sport, entertainment, lifestyle and Australian drama. We have recently reinforced this by our support for the Prime Minister's Pacific Islands "soft diplomacy" initiative.

But this role is at risk if the budgetary and regulatory settings do not keep pace with the rapid change being experienced in the media sector. The explosion in competition for viewers is fragmenting audiences and reducing advertising revenues. Online advertising revenue has grown exponentially since 2008, while commercial TV revenue has been flat or declining.

Despite the structural shift in advertising revenues, the investment of the commercial free-to-air sector in Australian content has continued to grow—at 6% year-on-year. Our members now invest $1.6 billion annually in creating Australian content – representing 60% of all local spending on content.

Free TV members are fully committed to the role that they play in telling Australian stories to Australians. They understand and appreciate the cultural and social dividend that is delivered through the portrayal of the breadth and depth of Australian culture on television.

As in previous submissions to pre-budgetary processes, the measures included in this submission seek to work within existing policy settings, updated for the modern media era. We are proposing modest refinements that are the minimum necessary to ensure that the broadcast and production sectors remain sustainable and the delivers on the demands of the modern Australian audience.

The changes that Free TV are proposing will help ensure the Australian public continues to enjoy watching a large quantity of high-quality local content free via our broadcast networks. They will also ensure our members can continue to act as the cornerstone for the local production sector – in a way that is relevant and sustainable.

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1 https://oztam.com.au/documents/Other/AVVR-Q4-2017-Med%20Res%20Final.pdf

2 https://www.acma.gov.au/theACMA/Library/Industry-library/Broadcasting/broadcasting-financial-results-report

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

3 Digital services tax

3.1 Free TV supported previous reforms

Free TV has strongly supported the Australian Government's efforts to address the imbalance in the taxation of the global digital players who have the ability to structure themselves to avoid paying tax in Australia.

In particular, we have publicly congratulated the Government for the introduction of the Diverted Profits Tax in 2017. We also submitted to the Treasury's Tax White Paper Task Force in 2015, noting our support for the:

- Tax Laws Amendment (Tax Integrity Multinational Anti-Avoidance Law) Bill 2015 to stop multinational entities using artificial or contrived arrangements to avoid a taxable presence in Australia;
- G20 OECD global standard and action plan to combat offshore tax evasion; and
- extension of the GST to offshore intangible supplies such as digital content, games and software, as part of the 2015-16 budget.

Consistent with our previous support for levelling the taxation framework, Free TV continues to support further measures that would appropriately tax businesses that have a significant economic presence in Australia, while having a limited physical presence.

3.2 The need for caution on a digital services tax

Free TV's strong preference is for the Government to focus on further measures to estimate the Australian based profits of digital players such as Google and Facebook, in coordination with other countries.

We do not currently support interim measures such as the digital services tax. Many companies who are based in Australia, employ thousands of Australians and invest in local services also provide digital services, including digital advertising.

3.2.1 Our experience with revenue-based taxation

From the 1960s to 2017, commercial free-to-air broadcasters paid a broadcast licence fee, based on a percentage of advertising revenue. This amount was levied on top of the corporate income tax payments.

In 2017, this revenue-based tax measure was removed, in favour of an administrative charge for accessing spectrum allocated to broadcasting services. This reform was overdue considering the seismic shift in the media landscape that had occurred over the last decade and the increased competition from new entrants that did not pay the licence fee, avoided corporate income tax and the GST on subscriptions. As discussed above, we congratulate the Government on the steps it has taken to address these issues to date.

Inadvertently capturing the digital services of commercial free-to-air broadcasters would be a retrograde step, compared with the significant progress the Australian Government has made recently.

3.2.2 Risk greater than potential benefit

We are concerned that the digital services provided by some of our members could be captured by a digital services tax. This would undermine their significant investment in these services and amount to reimposing double taxation on commercial free-to-air broadcasters, who were only recently relieved of the gross revenue tax imposed by the broadcast licence fee.

In our view, the risk that the tax may inadvertently capture the digital services of commercial free-to-air broadcasters outweighs any potential benefit from the imposition of the tax on our competitors. In the UK, the recently announced 2 per cent digital services tax is expected to raise less than £400 million pounds annually.[4] Assuming the same per capita take in Australia, this would equate to about A$240 million annually in additional tax revenue for the Australian Government.

The measures already undertaken by the Australian Government has seen $7 billion worth of revenue brought back onshore by Facebook and Google. Free TV considers that further international cooperation should be sought to build on the success of these initiatives, rather than seeking to apply potentially costly interim taxation measures.

4 The UK digital services tax is linked to revenue generated from the "participation" of UK users, but will apply only to search engines, social media platforms and online marketplaces. The UK Treasury advice specifically notes that it is not a "generalised tax on online advertising or the collection of data." Tax will only be payable of revenues "derived from these services to the extent they are performing one of the in-scope business models."

4 Addressing regulatory imbalance

Commercial free-to-air television is the most heavily regulated of all media platforms. This puts us at a competitive disadvantage to competing new entrant businesses. This is because new entrants are free to meet changing audience demands and acquire new businesses and technologies immediately, rather than being locked into delivering regulated content hours and being subject to restrictive regulations on the content and placement of advertising.

As found by the ACCC in its preliminary report of the Digital Platforms Inquiry, the current approach to regulation:

> *… "results in regulatory disparity that provides digital platforms with an unfair advantage because they operate under fewer regulatory restraints and have lower regulatory compliance costs than other media businesses when performing comparable functions."*[5]

The ACCC has recommended an independent review to design a regulatory framework to consistently regulate the conduct of all entities which perform comparable functions in the production and delivery of content in Australia.

While Free TV would be an active and willing participant in any such review process, there are clear actions that the Government can take immediately to address the disparity recognised by the ACCC. First amongst these is the long-awaited Government response to the 2017 Australian and Children's Content Review. This is addressed below.

Similarly, the election blackout period that applies to advertising on television and radio from midnight Wednesday before polling days is illogical and a significant competitive disadvantage in the internet era. This disparity should be removed immediately.

4.1 Continuing delays in modernising Australia's content regulations

The Government announced the terms of reference for the Australian and Children's Content Review in May 2017 as part and parcel of a comprehensive package of measures, including a Government commitment to reform the current outdated Australian content standards.

Free TV actively participated in the consultation process throughout 2017. The final report from this review was handed to Government in December 2017.[6] Since that time a number of Free TV members have delayed making significant programming commitments with the expectation that they would shortly have greater clarity around the future of Australian content regulation.

Broadcasters need regulatory certainty as the process of developing and commissioning an Australian production can take a number of years. The ongoing delay in announcing the Government's response to the Australia content review is impacting on our ability to invest in Australian content and needs to be resolved as a matter of urgency.

4.2 Equalise financial incentives

4.2.1 Set the producer offset for all productions at 40%

The producer offset has played a powerful role in promoting the local production of feature films, TV drama and documentaries since being introduced in 2007. It has been particularly effective in supporting the production of high-budget, high production value content that has performed well in Australia and internationally. However, it does not make sense to continue to differentiate between feature films, which can access an offset of 40% of qualifying expenditure and television that is limited to 20%.

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[5] Ibid, pg 91
[6] https://www.communications.gov.au/australian-childrens-screen-content-review

Providing equal access to the producer offset rate at 40% would encourage greater investment in the Australian production industry and provide an additional incentive for broadcasters to invest in Australian content.

There are numerous reasons to treat television and other eligible projects the same as film, specifically:

- Television production contributes just as much to creating a vibrant industry as film production. In fact, it can have a greater impact because broadcasters typically offer longer-running employment and training opportunities, which increases the pool of Australian screen production talent for the benefit of all formats.
- There is now little technological distinction between film and TV production and most are produced by the same pool of cast and crew talent.
- Successive editions of the Screen Australia *Drama Report* show that the costs of producing television drama have been increasing, which increases the need for the nation to support local production. In fact, the cost of producing quality television is now comparable to the cost of producing film, and can also be higher.
- The historic ‘hold back’ window between the release of a film in cinemas and its release on free-to-air or subscription TV platforms is rapidly closing.

The export of these uniquely Australian stories promotes Australian culture, showcases our talents on and off screen, to the rest of the world. Australian screen content plays a powerful role in strengthening the brand value of Australia, including strengthening Australia’s image as a desirable destination for tourism and migration. A survey commissioned by Deloitte Access Economics in 2016 revealed that around 230,000 international tourists are estimated to visit or extend their stay in Australia each year as a result of viewing Australian film and TV content. This represents around $725 million in estimated tourism expenditure in Australia each year that may be associated with Australian screen content.

While big budget foreign productions can provide short term opportunities for local talent and businesses, the commercial television industry plays a more critical role in maintaining and growing our production sector in the long term, providing ongoing investment and regular employment opportunities and a vital training ground many screen industry professionals.

Free TV is also aware of calls to limit the access of broadcasters to the producer offset and arguments that the quotas alone determine the hours of production. Similar to the issues set out below in relation to Screen Australia funding, this argument is based on an outdated view of the content creation sector.

There are a number of significant threats to the ability of the commercial broadcasting sector to continue its critical role in the production of Australian content and particularly Australian drama. Currently the pressures on content budgets are three-fold. There is increasing competition for content from new entrant streaming services, advertising revenues are falling, and audience demands for high production values are increasing. In this environment, significantly increasing the costs for the main investor in Australian content would be disastrous for the content eco-system. Free-to-air broadcasters would simply not be able to commission anything like the same volume or quality of Australian content as currently is the case.

For a strong and healthy screen production industry to be viable in Australia, there needs to be a strong and vibrant commercial free-to-air broadcasting sector that has the capacity to commission quality shows from an equally strong and vibrant production sector. Policies that deliberately disadvantage the sector that contributes six out of every ten dollars in Australian content, can only make the entire eco-system weaker.

4.2.2 Remove 65-episode cap

The 65-hour limit on the application of the producer offset to commercial TV series should be removed in the 2019-2020 budget. Under this limit – or cap – a series is no longer eligible for the offset after it has been in production for 65 hours (about five seasons).

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.

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.

4.2.3 Provide equal access to Screen Australia funding

Screen Australia is the Australian Government's main agency for supporting the Australian film and TV industry. It provides grants, loans and recoupable investments for projects, businesses and practitioners across film, TV drama, documentary and multi-platform storytelling.

Commercial free-to-air broadcasters are explicitly excluded from accessing production funding or other assistance from Screen Australia. We believe this exclusion is based on an outdated view of how the television production industry works. For example, 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.

A condition of the 2019-2020 funding for Screen Australia should be that it provides equal access to all producers.

This change would mean that production units owned by commercial free-to-air broadcasters would be treated in the same way as any other production business operating in Australia. It would also mean the government would be free to provide its financial support to those projects and groups it believes – through Screen Australia – will best help it achieve its goals. Those objectives include generating Australian-made content and building an internationally competitive industry comprising strong, locally owned businesses.

4.3 Update the content quota systems

4.3.1 Children are watching TV, just not what we are required to produce

Ask any Australian child what their favourite show on commercial television is and you will get answers like *Little Big Shots*, *Australian Ninja Warrior* or *MasterChef Australia*. However, you will almost certainly not hear about the high quality, award winning shows that are made especially for children that commercial broadcasters invest millions in making available to them.

Free TV asked the research group OzTAM to analyse audiences for programs classified as C and P broadcast on any commercial free-to-air TV channel in the calendar years of 2010, 2013, 2016 and 2017. As presented in our 2018-2019 Pre-Budget submission, this analysis revealed that on average very few children are watching programming classified as C and P released on commercial free-to-air TV:

- In 2016, the average child audience in C and P programming was 6,800. In 2017, this had fallen to just 4,700. That is a 30% fall in 12 months.

- In 2017, of all children in the 0-13 age bracket, a mere 0.16% of them watched a program made especially for them on commercial TV.
- Over 80% of programs made specifically for children are now broadcast to an average 0-13 metro audience of less than 10,000.

This again highlights that despite commercial broadcasters spending millions of dollars every year on award winning programs specifically for them, children continue to tune out.

Despite these trends, commercial free-to-air broadcasters are still required to screen a collective total of at least 1,170 hours of programming annually for children aged up to 14, to meet C and P quota obligations imposed by the government.

We also note children's quotas on commercial TV broadcasters have largely disappeared in other comparable nations. The United Kingdom abolished children's quotas in 2003 and New Zealand removed them in 2011. Canada also removed children's content quotas in 2011, but requires the nation's public broadcaster (CBC) to broadcast 15 hours per week material for children under 12.

The entertainment programs broadcast by our members are capturing the imagination of hundreds and thousands of Australian children. In fact, the stories told by the new entertainment formats are leading to a new era of family co-viewing. Families are putting down their mobiles and tablets and coming together in the living room to hear Australian stories—just told in a modern way. These are Australian stories told in a way that resonates with how Australian children and families are now engaging with our platform.

This is in stark contrast to the programming that is mandated under the existing children's quota. Abolishing the quota will enable our members to reinvest the money they are spending producing expensive children's content into programming that will resonate with Australian families. Allowing free-to-air broadcasters to invest in the most valued content will stimulate more production and, in turn, support a long-term sustainable industry.

4.3.2 An Australian drama quota that meets today's audience

The current drama quota system, which sets mandatory requirements for commercial free-to-air broadcasters, dates back to the 1960s and was last substantially updated in 2005. This system has become outdated due to the radical changes in technology and audience behaviours seen in recent years.

Without having an impact on the bottom-line, one of the most important changes the government can make in the 2019-2020 budget is introducing flexibility into the content quota system. This will enable commercial free-to-air broadcasters to 'follow the audience' in terms of the content they want to watch and the new platforms they want to watch it on.

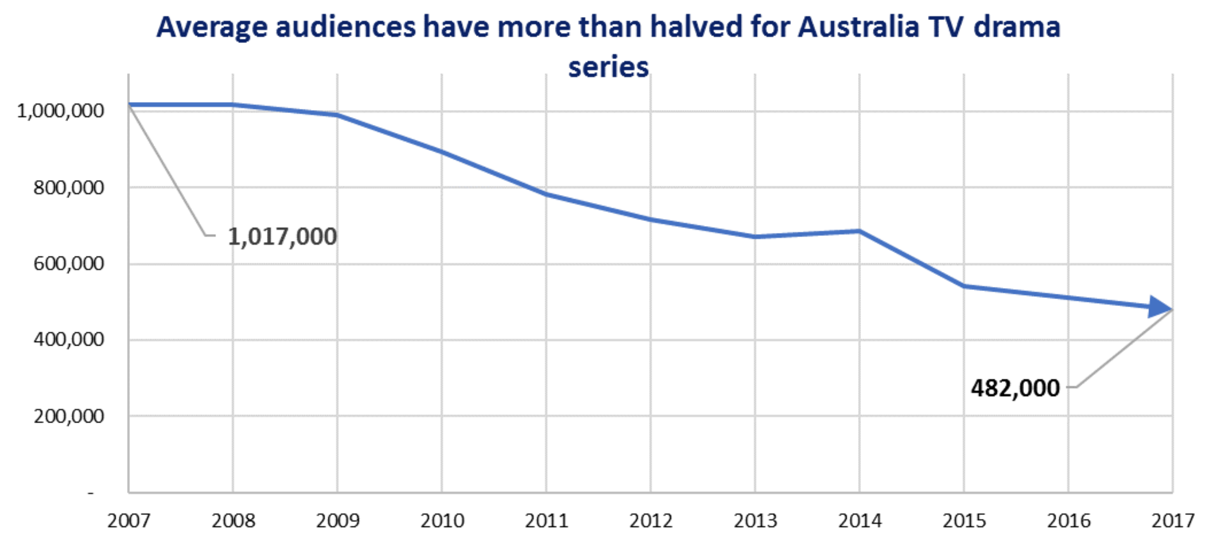
The drama quota system centres on a system of points, which are awarded according to the format and duration (in commercial hours on a pro rata basis) of drama programming. This model requires the production of a large amount of Australian drama content for free-to-air TV.

This content is expensive to produce and is attracting shrinking audiences. In this environment, we recommend that the drama quota become more flexible to reflect escalating production costs by rewarding investment in higher budget shows with higher production values. The value of high-volume serials needs to also be more appropriately recognised as they form the bedrock of the production sector in terms of employment and training.

Under the existing model, broadcasters must attain 860 points each three years, with differing points per hour based solely on the format of the program. Furthermore, the cost of production is not considered, there is no distinction between original commissioned programs and acquired programs, and the cultural, training and employment benefits of long running serials are significantly undervalued.

Since we made our 2018-2019 Pre-Budget submission, there has been a further 6% fall in adult drama series audiences. In 2017, only one drama series had an average audience of over 1 million people. Dramas like *800 Words*, *House Husbands* and *Offspring* had average audiences well less than 1 million.

In the last ten years, average audiences for drama series have more than halved.



Source: OzTAM, Overnight Data (Live + As Live Viewing) & Consolidated 7 & 28 data where available.
Drama programs with more than 2 episodes airing within the year.

We propose a new model for calculating drama scores that better reflects the needs and preferences of our current audience. Our proposal model retains the need to reach 860 points each three years and is still based on the use of format factors and the duration of programs. However, it recognises the difference between original commissioned programs and acquired programs. It also acknowledges that local production costs have risen in recent years, and that many popular dramas on on-demand platforms from overseas now have very large production budgets.

This approach also ascribes a slightly higher value to long-running series, which serve audiences and also play a key role in providing employment and training that benefits the entire Australian content production sector.