AUSTRALIAN CONTENT ON STV

SEPTEMBER 2014 POLICY BRIEF

KEY POINTS

- **The subscription television (STV) industry is committed to producing and providing high quality and diverse Australian content, producing thousands of hours of Australian content each year across all program genres.**

- **In 2012-13, the Australian STV industry invested around $700 million in Australian content production, employing 6600 Australians and adding $1.6 billion to the Australian economy.**

- **STV broadcasting licensees and drama channel providers are required to spend at least 10% of their total drama production expenditure on new Australian content.**

- **Screen Australia is the primary Government agency for providing funding for Australian content.**
    - **In ASTRA's view, Screen Australia has traditionally retained a "one size fits all" approach to television production funding, skewed towards the business model of free-to-air television broadcasters.**
    - **However, ASTRA strongly supports many of the reforms Screen Australia has proposed in its current review of its documentary programs, particularly the introduction of greater contestability for Screen Australia funding.**

AUSTRALIAN CONTENT REQUIREMENTS

Division 2A of Part 7 of the *Broadcasting Services Act 1992* (Cth) (BSA) provides for the new eligible drama expenditure (NEDE) scheme for STV. The Scheme requires subscription television drama channel providers and licensees to spend at least 10 per cent of their total programming expenditure on new Australian or New Zealand drama productions or co-productions.

The scheme was first introduced as a voluntary drama expenditure scheme, before becoming compulsory in 1999.

The scheme operates under an accrual system where obligations that arise in one reporting period which are not acquitted, must be fully acquitted in the following period. Each year licensees and channel providers report their drama expenditure to the ACMA – expenditure must be at least sufficient to acquit any obligation left over from the previous year. STV licensees and their drama channel partners consistently achieve their expenditure obligations under the NEDE Scheme.

Commercial free-to-air (FTA) television broadcasters have a quota requirement of 55% of Australian content between 6pm and midnight on the primary channel, with sub-quotas for first release Australian drama, documentaries and children's programming (with children's programming required to be shown during the P and C periods of 3pm – 5pm). Amendments to the BSA in 2013 introduced modest Australian content requirements on commercial FTA secondary channels (with no requirement for new content, and the ability to use secondary channels to achieve sub-quotas).

AUSTRALIAN CONTENT FUNDING

Screen Australia

Screen Australia provides funding for Australian film, television and games producers. Funding for television programs is focused on drama, children's drama, and documentary programs.

ASTRA has previously expressed a view that Screen Australia retains a "one size fits all" approach to television production funding, skewed towards the business model of FTA television broadcasters, including excessive minimum licence fee requirements which do not recognise different models operating in the television broadcasting market. In particular, Screen Australia's funding guidelines have not reflected the commercial realities of the STV industry which specialises in producing quality niche programming rather than programs necessarily created for mass audiences, and where audience numbers are measured cumulatively over a number of targeted viewing alternatives. There should be greater flexibility to allow broadcasters and producers have to negotiate financing structures for projects, and where the licence fees, hold back periods and equity are subject to commercial negotiations between broadcasters and producers.

Review of Screen Australia's documentary funding

In April 2014, Screen Australia commenced a review of its documentary funding programs. ASTRA has long considered that the funding guidelines for Screen Australia's documentary programs limit the ability of STV to gain fair and equitable access to Screen Australia funding.

Currently, documentary funding for television broadcasters is subject to a notional split which sees 50% of funding to the ABC, 40% to the SBS, and the remaining 10% to STV and commercial FTA broadcasters. In ASTRA's view, direct investment of taxpayer funds into Australian content production should be fully contestable. In particular, organisations that already receive substantial Government support should not receive preferential treatment in what should be an open contest for content funding based on the merits of the proposed program.

There is nothing inherent in Screen Australia's obligations to necessitate a pre-determined broadcaster-based funding split favouring the national broadcasters, and the national broadcasters should not have an expectation that Screen Australia will routinely supplement their annual production budgets. This discriminates against commercial and subscription television broadcasters and anyone else (for example digital platforms) seeking to fund documentaries. If the national broadcasters believe they have a case for guaranteed additional documentary funding they should make it through the usual budgetary processes.

In June 2014, Screen Australia released draft revised guidelines for its documentary funding programs which would take some significant steps towards a more open and competitive process for accessing Screen Australia documentary funding, and recognise the increasing importance of platforms beyond traditional free-to-air (FTA) broadcasters for reaching Australian documentary audiences. In particular, ASTRA strongly supports Screen Australia's proposals to discontinue the notional broadcaster funding split and remove the requirement for minimum broadcaster licence fees in relation to some of the documentary funding programs.

However, ASTRA is disappointed that minimum licence fee thresholds would continue to apply to the proposed ‘Premium Documentary Program’, particularly given this program is intended to fund ‘high-end’, commercially risky projects. ASTRA also has some concern with prescriptive funding decision criteria that could lead to undue editorial focus on projects by Screen Australia. ASTRA supports simpler criteria which provide for oversight but place the focus on supporting projects that the applicant has shown are likely to resonate the viewing public.

On 30 July 2014, Screen Australia announced that the review process would be extended to accommodate further industry consultation, prior to the publication of amended draft guidelines in late August/early September. Screen Australia aims to finalise guidelines in early October, with a start date of 1 January 2015.

Producer tax offset

The Producer Offset is a refundable tax offset (rebate) for producers of Australian feature films, television and other projects. Screen Australia administers the Producer Offset Scheme.

The value of the Producer Offset is calculated based on a project’s qualifying Australian production expenditure (QAPE), and is worth:

- 40 per cent of QAPE incurred on a feature film; or
- 20 per cent of QAPE incurred on programs other than feature films (TV series, mini-series or telemovies, short-form animations, non-feature documentary, or direct-to-DVD or web-distributed programming).

ASTRA has consistently argued that the rebate rate for television programs should be raised from 20% to 40%, particularly given that television (particularly STV) is fast becoming the primary platform for high quality drama production.

Definition of ‘documentary’ for the purposes of the Producer Offset

In early 2012, the Federal Court upheld a decision of the Administrative Appeals Tribunal that found against Screen Australia’s decision that the factual TV series *Lush House* was ineligible for the Producer Offset. In response to this decision, tax legislation was amended in June 2013 to include a definition of documentary for the purposes of the Producer Offset scheme.

ASTRA considers that this definition has been framed too narrowly. The styles and formats of factual programming have evolved significantly over the past two decades, while audience expectations regarding the form, style and substance of factual programming are also evolving, meaning producers and broadcasters are constantly exploring new and innovative ways of delivering factual programming that is engaging and entertaining, and in formats that are relevant and accessible to changing audience demands. ASTRA is concerned that the underlying rationale for the current definition is that the more a factual program is produced with an eye to its ‘entertainment’ potential, the less likely is would be regarded as a documentary.

ASTRA believes that consideration should be given to differentiating the applicable criteria for decisions on direct funding of documentaries through Screen Australia programs on the one hand, and Screen Australia’s assessment of eligibility under the Producer Offset scheme under tax legislation on the other, to recognise that the primary public policy purpose of the Producer Offset scheme has been to encourage the development of Australian productions that are responsive to audience demands.