



Broadcasting Legislation Amendment (2021 Measures) Bill No.1 2021

Australian Writers' Guild and Australian Directors' Guild

Joint Submission

28 May 2021

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Committee Secretary
Senate Standing Committees on Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600

By email: ec.sen@aph.gov.au

Dear Secretary

Broadcasting Legislation Amendment (2021 Measures) Bill No.1 2021

We refer to the legislation above and welcome the opportunity to make a submission to the Committee's inquiry into the Bill. We would like to comment on Schedule 1 of the Bill, relating to the New Eligible Drama Expenditure (**NEDE**) Scheme for subscription television.

The Australian Writers' Guild (**AWG**) is the professional association for Australian screen and stage writers principally in film, television, theatre, audio and digital media. We represent over 2,000 members who create 90% of the content on our screens. The AWG has fought for nearly 60 years to improve professional standards, conditions and remuneration for Australian stage and screenwriters, to pursue a thriving stage and screen industry environment, and to protect and advance the creative rights of our members.

The Australian Directors' Guild (**ADG**) is a Registered Organisation under the Fair Work Act 2009 and union representing Australian directors who are engaged in work in the film, television, online, arts and entertainment, music clips, animation, commercial advertising and related industries. Formed in 1982, the ADG currently has towards 1,000 members nationally including Baz Luhrmann, Peter Weir, Gillian Armstrong, Fred Schepisi and Phillip Noyce to name a few.

The AWG and ADG do not support Schedule 1 of the Bill and the halving of the pay television requirement to invest in Australian drama. We believe that the subscription broadcasting licensees requirement to invest 10% of their drama budget on local content should be preserved at the current level. Despite changing market conditions, it remains important for pay TV customers to have access to Australian stories and Australian voices. The proposed cut will not only damage cultural outcomes but will also have a contractionary impact on the local production industry, and hence local jobs.

The members of our organisations were pivotal to the introduction of the NEDE Scheme for subscription television in the late 1990s. Since then, the NEDE scheme has resulted in a wealth of high-quality drama on Australian screens. It has resulted in notable and award-winning titles like *Top of the Lake*, *Hacksaw Ridge*, *Lion*, *Love My Way*, *Wentworth*, *Devil's Playground*, *Deadline Gallipoli*, *Fight Season*, *Mr Inbetween*, *Picnic at Hanging Rock*, *Secret City* and *Tangle*.

Given Foxtel has argued for complete deregulation, we are concerned that any reduction in the level of obligation will result in a redirection of investment away from Australian drama. The fact that recent levels of investment are at or about the minimum required amount suggests that regulation is the determining factor in that content being created.

We bring to the Committee's attention the government's current consideration of regulation of popular streaming-video-on-demand (**SVOD**) and advertising-video-on-demand (**AVOD**) platforms under the 'Media Reform Green Paper'. The local content investment obligations of those service providers are a key regulatory setting that will help determine the future of Australian content. We believe that there should be no change to the pre-existing local content obligations on either the subscription broadcasters or the commercial free-to-air broadcasters until the SVODs and AVODs are regulated.

Time and time again, the Australian public has shown that it is keen to see local content and support for the local content quotas is well documented.¹ Our local screen production industry contributed over \$3 billion in value to the economy and over 25,000 full-time jobs in 2015.² This industry brings together thousands of workers and businesses, whose crafts and skillsets run the gamut of creative endeavours, technical mastery and logistical problem-solving. In previous submissions, our organisations have argued that the current system has not kept pace with new modes of delivery and accessibility. The quota system must be reformed and updated in order to capture SVOD and AVOD platforms and, in doing so, the government can promote the growth and sustainability of the Australian screen industry and stimulate the production of internationally competitive and commercially successful scripted content. This must be the government's priority. It should not be looking to dismantle the current system and reduce the already modest obligations of the commercial free-to-air and subscription broadcasters.

The government has proposed that the regulation on SVOD and AVOD platforms should be implemented on July 2022, for the 22-23 financial year.³ We argued that regulation needed to be implemented as soon as possible, on 1 January 2022. We argued that any further delay would result in an enormous negative impact on production. The industry is already feeling these effects and cannot wait until July 2022 for this much needed reform. As reported in *The Australian* on 10 May 2021, Nine Network and Network 10 both failed to meet their annual quota of first release Australian drama last year, while the Seven Network failed to produce the minimum amount of children's programs. Network 10 and Seven Network both failed to meet the quota for Australian preschool programs. Due to the pandemic, ACMA accepted the non-compliance by commercial broadcasters.⁴ Modelling by Screen Producers' Australia shows that there is likely to be a damaging contraction in the sector before July 2022 with a loss of \$100 million of local production per year (and a total loss of \$225 million of Australian content from April 2020).

A decision on the future of the NEDE scheme should be delayed until the government has determined the shape of regulation on streaming services and has moved to implement that regulation. This will

¹ See Screen Australia, 'Currency Report' (2016) and Screen Australia, 'Convergence Review' (2011).

² Screen Australia, Currency Report (2016), 5.

³ 'Media Reform Green Paper – Modernising television regulation in Australia' (2020), 42.

⁴ Sophie Elsworth, 'TV networks forgiven for content shortfalls', [The Australian](#), 10 May 2021.

ensure a holistic policy decision can be made and will help avoid a contractionary impact on the local industry.

At that point, the NEDE scheme should be thoroughly reviewed, with consideration given to whether it should be extended to cover other genres of Australian programming which are vulnerable to market failure.