



## Screen Australia submission regarding changes to the Australian content and children's television standards

Screen Australia is the Commonwealth Government agency responsible for the Australian screen production sector. We support Australian screen stories released through cinema, television, and online platforms at home and abroad. We support and connect cultural, commercial and governmental stakeholders, ensuring the production of high quality, culturally significant and innovative Australian screen stories.<sup>1</sup>

This submission responds to the Australian Communications and Media Authority's (ACMA) call for comment regarding new *Broadcasting Services (Australian Content and Children's Television) Standards 2020* (the Standards), and the ACMA's *Changes to the Australian content and children's television standards* consultation paper (the consultation paper). Screen Australia welcomes the opportunity to provide comment. The ACMA has specifically welcomed comment from interested stakeholders on implementation issues raised by the draft Standards, including how the issues may be resolved, and suggestions for streamlining and improving the clarity of the obligations detailed in the draft Standards. In this context, Screen Australia submits that:

- A 'commissioned' project is generally understood to be one where a commissioning platform makes a significant financial contribution that enables production, in return for significant influence and the rights to premiere the project to its audience. These features may assist the ACMA's assessments of 'meaningful and material' contributions.
- The operation and effect of the Standards in 2021 should be assessed by the ACMA, in partnership with consideration of other reforms to screen content regulation and support. This assessment may capture the evolving understanding of specific terms such as 'feature film', as well as broader themes and factors.

### Definition of 'commissioned', and meaningful and material contributions

'Commissioned' is a commonly-used term in the screen industry. It can be used in relation to a variety of programs and circumstances, but generally refers to a project that is produced following a contractual arrangement with, and significant financial contribution from, a commissioning platform. In exchange for this financial contribution, the commissioning platform gains significant influence into the project, and releases the project to its audience. These features may assist the ACMA's assessments of whether a 'meaningful and material financial contribution' has been made to content.

Screen Australia generally considers a project to be 'commissioned' by a platform when:

- Prior to production commencing, the platform commits funding to the project.

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<sup>1</sup> Further information on Screen Australia's role can be found in Screen Australia's [Corporate Plan](#).

- Prior to production commencing, the platform generally makes initial payments to the production which represent a significant percentage of the platform's total financial contribution. Payments may also be made on the first day of principal photography.
- The platform makes a total financial contribution that is significant enough that it facilitates production: in other words, production of the project would likely not commence without the commitment and contribution of a commissioning platform. In this sense, a 'commission' differs from an 'acquisition' of content.

In exchange for this financial contribution, the commissioning platform generally:

- Acquires a degree of influence over the project, to ensure the content meets the platform's technical, legal, content, and other requirements. This influence is generally set out in contractual arrangements. It may or may not be exercised. The platform may gain input into, and/or approval regarding, some or all of:
  - key cast
  - key creative and crew roles
  - elements of the story and/or the script
  - edits of the project.
- Acquires a set of release rights in the local territory, most often including first release rights. Free-to-air television broadcasters usually pay licence fees to purchase rights to premiere broadcasts across one or more channels, and provide the program to audiences via further repeat broadcasts, multichannel broadcasts, and online, on-demand platforms.

The elements described above can vary from project to project. For example, a commissioning platform's input into a project can be influenced by many factors, including the platform's level of financial contribution. Platforms may acquire release rights for extended periods across multiple services, or for more limited release.

A commissioning platform pays a licence fee for the rights to screen an independently-produced project. In addition to paying licence fees, commissioning platforms may also contribute equity stakes to projects. Several Screen Australia funding programs that have reference to commissioning platforms have minimum licence fee requirements:

- [general drama](#) production funding requires a local presale of \$440,000 per broadcast hour from a commissioning platform
- [children's drama](#) production funding requires a local presale of at least \$100,000 per broadcast half hour from a commissioning platform, or local presales to a total of \$115,000 per broadcast half hour from any combination of commissioning platforms
- [documentary commissioned](#) program funding requires different minimum licence fees depending on Screen Australia's contribution and the project budget.

The elements described above may assist the ACMA to assess whether a platform has made a 'material and meaningful' financial contribution to a project, and whether the new requirement for

commissioned content is incentivising the commissioning and production of new and original content. The ACMA could consider other alternatives, including assessing the share of a commissioning platform's contribution to a project's finance plan, inclusive of licence fees, equity investments, and any other relevant contribution. This consideration could also take place following an assessment of the initial operation of the Standards.

The above elements may also assist the ACMA to further differentiate content that is 'commissioned' from content that is 'acquired'. 'Acquisitions' are generally understood to be content that is acquired, often after production has commenced or been completed following review of the content in some form, and typically for a lower fee than a 'commission'. An 'enhanced' or 'elevated' acquisition for a higher fee may provide the acquiring platform some ability to view further 'cuts' of the film and provide feedback.

### Ongoing reform processes

As the ACMA's consultation paper recognises, the Australian Government has committed to a staged process to reform media regulation.<sup>2</sup> Recent measures in this regard include changes announced on 30 September 2020,<sup>3</sup> and a Media Reform Green Paper, released on 27 November 2020.<sup>4</sup> These reform processes include:

- the current reforms to the Australian content and children's television standards
- a reduction in the expenditure obligation on subscription television broadcasters for new Australian drama programming
- a request that large video streaming services operating in Australia report to the ACMA on their level of investment in Australian content
- reforms to the Australian Screen Production Incentive, including to the Producer Offset for Australian screen content
- potential changes to the funding of Australian content
- additional and targeted funding for Screen Australia and the Australian Children's Television Foundation
- potential new content investment obligations on subscription and advertising video-on-demand services.

As the ACMA is aware, the screen industry is also undergoing rapid change, driven by ongoing digital disruption and the impact of the Coronavirus (COVID-19) pandemic. Each of these changes and processes may affect the framework of regulatory intervention and funding support that ensures the supply of important Australian screen content.

The current and new Standards have important effects on audiences and broadcasters, and also on the production industry and broader screen sector. Screen Australia understands the ACMA will monitor

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<sup>2</sup> Australian Government, [Regulating in the digital age, Government Response and Implementation Roadmap for the Digital Platforms Inquiry](#), p. 12.

<sup>3</sup> As detailed by [the Department of Infrastructure, Transport, Regional Development and Communications](#).

<sup>4</sup> As detailed by [the Department of Infrastructure, Transport, Regional Development and Communications](#).

the operation of the new Standards as a matter of course. Given the potential impact of the new Standards on Australian screen content production and distribution, Screen Australia suggests that the ACMA assess how content acquitted under the Standards meets the objects of the Standards. The ACMA could begin this process following the end of the 2021 calendar year, and also consider if other reforms, such as changes to the Producer Offset, give cause to refine the use of specific terms in the Standards. These terms could include 'production budget', 'feature film', and 'documentary', some of which are explored further below.

## Other definitional matters

### *Feature films*

Screen Australia researches the level of feature film production in Australia, and provides direct funding to Australian feature films. In this context, Screen Australia generally regards 'feature films' as content that is released, or produced for release, in cinemas and at film festivals.

Screen Australia is the 'film authority' that administers the Producer Offset on behalf of the Australian Government. The Producer Offset provides a specific rebate to content that is a feature film. Sections 10.30 and 10.130 of the relevant explanatory memorandum,<sup>5</sup> as well as section 2.5.4 of the Producer Offset Guidelines,<sup>6</sup> provide further guidance as to whether a project may be eligible for a rebate as a feature film.

The Government has announced a series of reforms to the Producer Offset, including harmonisation of the rebate to 30 per cent, and other changes to rebates for films and feature-length content.<sup>7</sup> These changes are scheduled to be effective from 1 July 2021.

The terms 'feature film', 'film', 'feature-length content' or 'feature' are sometimes used to refer to projects that are released on other platforms, such as video-on-demand platforms. Screen Australia suggests that following reform to the Producer Offset, the ACMA consider how the new Standards define 'feature film' and 'film', and whether the acquisition of first release Australian films under the new Standards is operating as an alternative to the commissioning of content, and meeting the objects of the Standards.

### *Definition of documentary*

The draft Standards state "“documentary” means a program that is a creative treatment of actuality other than a news, current affairs, sports coverage, magazine, infotainment or light entertainment program.' This definition represents a continuation of current practice, which has existed for several decades. Ongoing reform processes, including reform to the Producer Offset and content funds, may provide an opportunity to update the definition of documentary to better reflect current practice, plain English drafting, and provide more certainty to industry.

## Contact

Should the ACMA wish to discuss the content of this submission, please contact [REDACTED]  
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<sup>5</sup> Explanatory Memorandum, Tax Laws Amendment (2007 Measures No. 5) Bill 2007 (Cth). This document and other relevant legislation and rules may be found [on the Screen Australia website](#).

<sup>6</sup> The Producer Offset guidelines are available [on the Screen Australia website](#).

<sup>7</sup> As detailed by [the Department of Infrastructure, Transport, Regional Development and Communications](#).