



**MEDIA REFORM GREEN PAPER:  
MODERNISING TELEVISION REGULATION IN AUSTRALIA**

**JOINT SUBMISSION  
FROM  
AUSTRALIAN GUILD OF SCREEN COMPOSERS (AGSC)  
APRA AMCOS**

**21 MAY 2021**

**APRA AMCOS**  
16 Mountain Street  
ULTIMO NSW 2007

**AGSC**  
PO BOX 3221  
TAMARAMA NSW 2026

**Media Reform Green Paper**  
**Modernising Television Regulation in Australia**  
**AGSC & APRA AMCOS JOINT SUBMISSION**

**Who We Are**

**AUSTRALIAN GUILD OF SCREEN COMPOSERS (AGSC)**

The Australian Guild of Screen Composers (AGSC) is an industry organisation that represents Australian screen composers in film, television, gaming and related industries. The AGSC has been established since 1981 and membership over the past 4 decades has included composers of such iconic and uniquely Australian films that include: *Crocodile Dundee*, *Muriel's Wedding*, *Strictly Ballroom*, *Shine*, *Animal Kingdom*, *Australia*, *Red Dog*, *Phar Lap*, *2040* and *The Australian Dream*; and television shows such as *McLeod's Daughters*, *Picnic at Hanging Rock*, *Rake*, *The Secret Life of Us*, *Offspring*, *The Code*, *Bluey*, *Doctor Doctor*, *Wentworth*, *The Gloaming*, *Bloom*, *Underbelly*, *Miss Fisher's Murder Mysteries*, *Stateless*, *Home and Away* and so many more.

The AGSC has partnered with other organisations such as APRA AMCOS, as well as advocated, lobbied and acted to increase opportunities for screen composers. We work alongside our screen compatriots in directing, producing, editing, design, casting, post-production areas such as digital and visual effects and others, to ensure that there is a viable and sustainable screen industry for us all to exist in.

**APRA AMCOS**

APRA AMCOS has been representing Australian songwriters, composers and publishers since 1926. With over 108,000 members across Australasia, our membership includes the very best and brightest of established and emerging musical talent at home and around the globe. We administer rights on their behalf, supporting screen composers, songwriters and publishers in an industry that is a flagship of Australian culture and creativity, generating billions of dollars each year for the Australian economy.

We are affiliated with similar collective management organisations around the world. So when Australian and New Zealand songs and compositions are played overseas, Australian and New Zealand composers and writers get paid. We also help music customers in Australia and New Zealand access music from the rest of the world. We work in partnership with government to support the development and career paths within Australian music through the cornerstones of live music, digital distribution, local venues, education and the global stage. APRA AMCOS has successfully initiated and led industry and government co-investment strategies, developing highly regarded capacity building programs, most notably: National Aboriginal and Torres Strait Islander Music Office, SongMakers, Live Music Office, SongHubs and Sounds Australia.

## INTRODUCTION

**Australia is more than just a film set. With the proliferation of local and international productions since the outbreak of COVID-19, our screen sector has the potential to capitalise on the benefits of not just being a safe, beautiful and diverse location but also as a highly skilled and creative workforce with the opportunity to build highly valuable intellectual property (IP) from screen production.**

COVID-19 has highlighted and accelerated the importance of the digital economy in Australia and globally. For Australia to become a leading and competitive digital economy, it is critical we have high-quality regulatory practices and standards that are fit for purpose and allow for cross-border mobility of digitalised services and associated data, with appropriate protections.

Recent trends show that Australia is letting go of critical IP opportunities to other nations when major screen co-productions are established. This is particularly the case with screen music and screen composition, which returned \$100million to the Australian economy through the APRA AMCOS royalty distribution process in 2019/2020.

For Australia to develop both the short term and long term benefits of a thriving screen sector, it must look to the value of intellectual property arrangements to ensure these valuable assets are not repeatedly lost to overseas partners.

Other countries are claiming the benefit of the IP derived from screen music by acquiring composer arrangements of co-productions and taking them offshore. These other territories then benefit from decades of earnings as films are re-shown, re-broadcast and in many cases re-popularised.

Australia has done well in recent years on developing the production and post-production facilities to build a globally regarded film industry. We now need to turn our attention to the longer term value of supporting our world-class screen composers so that the entire screen eco-system can benefit.

In recent years, many big Australian films receiving tax-payer supported offsets have used offshore screen composers (the likes of *Mad Max IV*, *The Dry*, *Penguin Bloom*, *The Great Gatsby*, *Mary Magdalen*, *Lion*, *The King* and many more), losing valuable IP. Some suggestions for future protection of Australian creators IP are made in the response summary.

Coupled with this is the emerging global trend for digital platforms and broadcasters to try to enforce copyright buyouts on screen composers. This is an emerging priority issue for creators globally. Buyouts are often forced on creators by the large subscription and advertising video services whose revenues they are driving. Instead of a regular earning stream, creators are offered a one-off fee with little freedom to negotiate.

Australia has the opportunity to lead the global policy debate around this unfair practice and support the rights of composers to earn fair remuneration for their work.

Australia succeeds best when the screen industry tells our stories, not just through our voice and our images, but with the beating heart of an Australian soundscape. A soundscape that is diverse, global and exceptional.

# **PRIORITIES TO STRENGTHEN AUSTRALIA’S SCREEN SECTOR**

## **OVERVIEW**

The AGSC and APRA AMCOS believe it is vital that any media reform legislates to create a more even playing field for all media platforms that equally champions the economic and cultural growth of our industry to ensure a thriving and sustainable business for all media creatives. It is equally important to ensure that Australian content is created, promoted and has the platform to be enjoyed both nationally and internationally.

The AGSC and APRA AMCOS broadly support the need for media reform regulation with regards to Australia’s changing media landscape to ensure a thriving and sustainable media industry that maximises economic and cultural growth for Australia. We acknowledge the challenges faced by free to air broadcasters and are fully supportive of measures to encourage new and emerging media platforms to play their part in creating, exhibiting and promoting new Australian content.

## **SUMMARY**

### **1. SVOD & AVOD CONTENT**

Investment obligations from SVODs and AVODs of a minimum of 20 per cent of their gross Australian revenue to be allocated to making local content to bring Australia in line with comparable territories including Canada. To ensure a true level playing field that future proofs the changing consumption of screen content, an obligation must also apply to any SVOD or BVOD owned by the holder of a broadcast licence.

### **2. FTA CONTENT**

The local content quotas for Free-To-Air Broadcasters must be maintained at their current rates with sub-quotas for drama, documentaries and children’s TV remaining at 55% for all broadcast television services, including the ABC and SBS/NITV and all sub-channels.

### **3. CULTURAL UPLIFT**

There should be a ‘cultural uplift’ of an additional 10 per cent on all Commonwealth and State Government offsets to incentivise the engagement of key Australian crew, all heads of department, including screen composition and sound post production.

### **4. NATIONAL BROADCASTERS**

Funding for Australia’s national broadcasters the ABC and SBS should ensure that they can support the development, production and broadcast of significant Australian scripted drama, documentaries and children’s television. Funding for this critical work should be increased annually and not subject to efficiency measures that it has been subject to in the past.

### **5. MAKE IT ACCESSIBLE**

Australian content made under the new legislation must be made ‘discoverable’ with prime spots and associated expenditure on advertising and awareness, where the content is prominently placed on the service, and not buried to the back of the SVOD catalogue.

## Proposed Changes to the Free-To-Air Broadcasters

Due to the egalitarian nature of free-to-air broadcast TV, we request that the Australian government ensures that any proposed reallocation and limitation of the broadcast spectrum has safeguards put in place to future proof the existence of broadcast TV. Within the potential new multiplex, the AGSC and APRA AMCOS advocates for the ABC and SBS to have a fair and dedicated section of the spectrum, which does not compromise their current broadcasting reach, with a guaranteed portion that does not limit any future expansion.

We support the creation of **CAST** in principle and the funding of this from the auction of the broadcast spectrum. The creation of these funds raised the following questions for the AGSC:

- What percentage of the auction funds will be allocated to CAST? (Suggest minimum 50% of gross proceeds)
- How much money is expected to be raised from the auction?
- What is the estimated amount of money expected to go into the initial creation of **CAST**?
- What is the value of the sale of spectrum against the loss of licence fees?
- What would the proposed cost be of administering CAST?

Can the government look to other countries such as the USA and Canada to determine whether similar spectrum auctions have taken place and what time lines these occurred within and what income they generated?

The AGSC and APRA AMCOS does **not** support the abolition of the 55% Australian quota for multi-channels. We are concerned that any reduction in quotas on FTA broadcast TV, across all channels, will not be ameliorated by the potential new content created by SVOD regulation, especially as any investment amount is not yet clear. We strongly support the principle of having sub-quotas, which include the creation of new Australian drama, children's and documentary TV for the main FTA channels, and advocate for the requirement of the subsidiary multichannels to retain a mandated 55% Australian content, **but be relieved of their** sub-quota obligations.

It is imperative that new Australian -made drama, documentary and children's TV continues to be created, promoted, and broadcast on all free-to-air TV for the many Australians who rely on this platform as their main access to local stories.

## Harmonising Australian Content Obligations

The Green Paper proposes an 'investment obligation' from SVODs and AVODs of 5% of their gross Australian revenue to be allocated to making Australian content under the 'New Australian Drama Scheme' (**NEDE**). The Green Paper advocates for the minister to have the right to implement a formal expenditure if the voluntary level is not met over two consecutive years.

The Green Paper acknowledges that other countries such as France have **legislated** for a minimum of **16%** of revenue to be invested in creating French content, and that in Europe, there is a requirement of **30%** of work in the catalogue from streaming services to be made up of European content.

The AGSC and APRA AMCOS strongly argues that 5% of gross revenue is too low, and coupled with the reduction in FTA quotas, and potential reduction in multi-channels (due to the narrowing of the spectrum) could be devastating to our film and TV industry. For that reason, we propose that a legislated investment requirement of 20% of Australian gross revenue (calculated to include all revenue collected from Australian subscribers, even if that revenue is collected off shore) from SVODs and AVODs should be allocated to making new Australian content as defined in the Eligibility Test outlined on page 31 of the Green Paper. We strongly advise that this be **mandatory** and not merely an obligation. ‘Obligations’ will be troublesome to enforce, as demonstrated by the lack of investment so far, and will not amount to any meaningful change.

*‘Annual research into Australian content in the local Netflix offer has found that since 2017 local content has constituted at most 2.5% of the catalogue- and, more recently only 1.7%’  
(Lobto and Scarlata, 2019).*

*‘There is more Australian content in the US catalogue than the Australian catalogue!’  
-Sage Journals (media International Australia).*

The AGSC and APRA AMCOS advocate for there to be not only a minimum spend on creating new Australian content, but that SVODs are required to have a greater number of Australian works within their catalogue, and suggest that in line with Europe, a minimum of 30% of the work in the catalogue on SVODs be made up of Australian content.

We recommend that all new local content seeking government incentives by way of producer offsets, be required to use local key creatives and Heads Of Departments (**HODs**); this relates to Directors, Cinematographers and Production Designers as well as Screen Composers, to foster a diverse array of local stories across drama, documentary and children’s TV along with feature films. This will help ensure that our industry thrives across the board from pre-production through to post-production and is not merely employing crew members for location filming.

## Exemptions

The Green Paper proposes that ‘the obligation would not apply to an individual SVOD or BVOD owned by the holder of a broadcast licence.’ This pertains to Channel 9’s Stan and Channel Ten’s (CBS) All Access. The AGSC argues that this should not be allowed, as it clearly advantages one media category over another, and is not a truly platform neutral approach. FTAs and SVODs are two completely separate business models. One derives their income primarily from advertising and the other primarily from paid subscription. The Green Paper advocates for a harmonisation between the two platforms. The proposed exemption means that Channel 9 and 10 are not held to the same standards as Channel 7 and nor held to the same expectations as Netflix etc. Advantaging one player type at the expense of the others manifestly undermines this argument and cannot be justified. Any form of exemptions immediately opens up loop holes to escape responsibility for obligations. The government must not entertain this.

## Create Australian Screen Trust (CAST)

The AGSC and APRA AMCOS argue that CAST should be implemented **regardless** of the success or not of the spectrum auction. SVODs should be mandated to contribute to CAST if they do not meet the target spend. We support the Green Paper’s proposal that this fund be administered by Screen Australia, but for decisions made for the allocation of these funds to be determined by the make up of a separate Trustees made up of people with experience across finance, business, distribution, content development, sales and acquisition sectors.

The AGSC and APRA AMCOS support the Green Paper's proposal to contain two funding pools:

One pool to support projects of cultural significance (that is, broadly the same criteria as are presently used by Screen Australia in determining whether to fund productions);

The second pool to focus on making commercial investments (that is, investments where there is a prospect of commercial return.

We further recommend that ACMA is also party to the administration of CAST to ensure both quality and quantity in programming that is beneficial both culturally and commercially to Australia. Distribution of funds from this trust should also fall under the eligibility umbrella of the '**Australian Program**' (pg 32) Key Definition, i.e. to be produced under the creative control of local creatives, which includes Heads Of Department and Post Production and Other Crew, such as Screen composers.

Because the proposed consolidation and auction of the spectrum may take some time, the creation of CAST should be actioned and operational within the next 12 months in line with any legislation and rollout of investment obligations for SVODs and AVODs, and created irrespective of the sale of the spectrum.

Further to this, the AGSC and APRA AMCOS have the following questions;

- How much money is expected to go into the initial CAST pool?
- How will the unspent funds in the pool generate income?
- Will it be invested in some other fund like The Future Fund?
- Would productions be able to apply to CAST as well as Screen Australia funding?
- The AGSC would like to know more about the proposed New Eligible Drama Scheme - NEDE.

## **Making Australian Content Discoverable**

The AGSC and APRA AMCOS advocate for all Australian content made under the new legislation to be made discoverable with prime spots and associated expenditure on advertising and awareness, where the content is prominently placed on the service, and not buried to the back of the SVOD catalogue.

We further recommend that SVOD and AVOD businesses be required to report to ACMA each year about performance expectations of creation and promotion of Australian content and request that these reports be available to the public to be able to inform the industry when they do so.

Along with the decline of audience numbers to broadcast TV due to the domination of SVODs in Australia, the Australian feature film industry, and cinema exhibition industry has been severely compromised. We recommend that the government look at further ways to attract the promotion and consumption of Australian films by introducing tax incentives for audiences purchasing tickets to see Australian films, as well as incentivizing distributors to exhibit Australian films in prime time and accessible spots for the public

## **Enhancing the Role of the National Broadcasters in providing Australian Content**

The AGSC and APRA AMCOS want to ensure a well funded ABC and SBS and support the notion of an allocated fund within the National Broadcasters' budgets dedicated to making scripted drama, documentary and children's television. This budget should be increased annually and not subject to efficiency measures that it has been subject to in the past. These productions are nearly exclusively outsourced to production companies and there simply cannot be efficiencies to be found within the National Broadcaster's budgets when this is the case.

Because the National Broadcasters aren't structured for commercial gain, we do not believe that they should necessarily be subject to the same quota regulations as the commercial networks. Historically, according to the Green Paper's report on page 38, ABC and SBS outperform all other networks in terms of commissioning Australian shows. We believe the National Broadcasters' respective charters should reflect what they invest in.

## **Further Measures to Ensure a Thriving Industry that Enhances the Economy**

It is imperative that any form of production that seeks to gain from government rebates or offsets be incentivised to use Australian creative Heads of Department. It is vital that these productions seeking Australian Government funding incentivise the creation of local intellectual property and operate under fair terms of trade. This means that royalties received for work generated here are retained by the local creatives who create that work to ensure that any future revenue from royalties flows back into the Australian economy, and is not taken offshore.

In the 2018/2019 financial year, APRA AMCOS domestic Australian revenue for all locally operating screen music royalty sources such as Television, Video on Demand, and Cinema was valued at around \$110 million, making up approximately 30% of APRA AMCOS total domestic Australian licencing revenue. For international revenue (royalties that APRA receives from the performance of Australian songs in overseas markets) it was worth approximately 40.9% of exports, proving that the investment in Australasian music in soundtracks of AV content improves our balance of trade figures.

APRA AMCOS and Sounds Australia recently participated in the Australian Government's Services Export Action Plan. By enhancing local production for digital platforms which includes local music will support the objectives of this strategy to boost returns from services export.

Australian film composers are made up predominantly of small business owners; their business model involves contracting other suppliers on a project-by-project basis such as orchestrators, mixers, studio engineers, copyists and musicians to produce their final product. A reduction in the back end royalty income would be a blow to the bottom line and hence has flow on affects to the employment ecosystem in the industry.

With the advent of multinational companies increasingly dominating the film and television market, it is vital that the government includes regulation to protect creators, such as screen composers from unfair contract terms; legislation to ensure that these terms are regionally specific to Australia, and not subject to US-style contracts (such as "work for hire" and "buyout" agreements); a statutory right for screen composers to be fairly remunerated for their work (especially if the SVOD is seeking additional funding via tax offsets); and assurances that the SVODs will operate under Australian copyright law.



Overseas productions shooting in Australia seeking government rebates should also have greater controls placed on them, such as eligibility checks for funding to foster and encourage local employment that goes beyond basic onshore expenditure location shooting, but rather extends into the post-production sector, and includes the use of Australian key creatives and heads of department.

## **QAPE threshold and documentaries**

With regard to content production, the proposed raising of the QAPE threshold for feature length production, from \$500,000 to \$1,000,000 is of major concern. This would make it increasingly difficult for low budget and documentary productions to be made and would reduce the amount of Australian stories being made and told. It is imperative that this threshold remains at the current level to allow for independent content to continue to be made by creators both large and small and that screen personnel including Australian Screen Composers be contracted and employed at this and all levels of production.

## **Summary of AGSC and APRA AMCOS response**

### **Chapter 1- Why Media Matters**

The AGSC and APRA AMCOS fully support the arguments set out in this chapter.

### **Chapter 2- The State of the Media Industry**

The AGSC and APRA AMCOS accept the arguments set out in this chapter

### **Chapter 3- A New Class of Television Broadcasting**

1. The AGSC and APRA AMCOS support the creation of CAST
2. The AGSC and APRA AMCOS does **not** support the complete abolition of quotas on multichannels if the sale of the spectrum proceeds.
3. The AGSC and APRA AMCOS support the notion of sub-quotas being retained for the FTA main channel and a general quota for the remaining multi channels .

### **Chapter 4- Promoting the Public Interest Derived from the Spectrum**

1. The AGSC and APRA AMCOS want the National Broadcasters to be guaranteed a broadcast spectrum that future proofs them from any proposed future expansion needed.
2. The AGSC and APRA AMCOS ask the government to seek advice on how any sale of the broadcast spectrum has been handled overseas .

### **Chapter 5- Supporting Broader Media Policy Outcomes**

1. The AGSC and APRA AMCOS support the creation of CAST regardless of whether the auction of the broadcast spectrum takes place or not.

2. The AGSC and APRA AMCOS want to know what percentage of proposed revenue is to be divided between CAST and PING?
3. The AGSC and APRA AMCOS want to know how the retained funds in the pool will generate an income if only up to 10% per year are proposed to be spent?
4. The AGSC and APRA AMCOS support the proposal of CAST being administered by Screen Australia with separate Trustees being appointed to judge the merit of the funds to be invested into Australian projects under the definition of 'Australian Program' that means using Australian HODs, post production and other crew.
5. The AGSC and APRA AMCOS suggest that ACMA should be a member of the CAST Trusteeship.
6. The AGSC and APRA AMCOS support the proposal to divide the CAST pool into two, with one dedicated to cultural significant programs and the second to focus on making successful commercial investments with CAST seeking a return on the investment.

## **Chapter 6- Harmonising Australian Content Obligations**

1. The AGSC and APRA AMCOS argue that the proposed voluntary 5% of Australian revenue from SVOD and AVOD to be invested in Australian content is far too low and well below other international models.
2. The AGSC and APRA AMCOS propose that 20% of funds generated in Australia by SVOD and AVOD be mandated to be invested in Australian content or redirected to CAST.
3. The AGSC and APRA AMCOS support the notion of creating sub quotas for SVODs and AVODs.
4. The AGSC and APRA AMCOS support the definition of Australian Program as being under the creative control of local creatives and that this standard refers to HODs, post production and other crew.
5. The AGSC and APRA AMCOS does **not** support the proposed quota exemption for owners of both FTA and SVOD platforms as this is clearly unfair to the entities who only own one form of service.
6. The AGSC and APRA AMCOS support a revenue threshold of \$50 million in gross Australian revenue as being the benchmark for local content obligations to be applicable.
7. The AGSC and APRA AMCOS support the proposal of obligations being divided between drama, children's programming and documentaries.
8. The AGSC and APRA AMCOS are not opposed to acquisitions of Australian first release productions to make up the quota of spend for SVODs. (Consultation question 6.6)
9. The AGSC and APRA AMCOS support the broader categories of content investment such as pre and post production as long as it is defined as an Australian program- one which is produced under creative control of local creatives. (Consultation question 6.7)

10. The AGSC and APRA AMCOS wants to ensure that the definition of quotas relates to gross revenue from Australian subscriptions and not the country issuing the invoice to avoid obligations.

## **Chapter 7- Enhancing the Role of the National Broadcasters in Providing Australian Content**

1. Because the National Broadcasters are not structured for commercial gain, there is no need to regulate them to the same degree commercial FTA. Currently, as shown in the paper (fig.11), National Broadcasters lead the way with regards to commissioning local content.
2. The AGSC and APRA AMCOS recommend that a dedicated part of the government budget for the National broadcasters be allocated to creating scripted drama, children's programs and documentaries.
3. The AGSC and APRA AMCOS further propose that this allocated budget increases every year and is not subject to efficiency measures- as the programs are generally outsourced to production companies.
4. The AGSC and APRA AMCOS support the charters of the National broadcasters remaining in place.

## **Chapter 8- The Way Forward and Future Protection of Australian IP**

1. The AGSC and APRA AMCOS supports the creation of CAST and the implementation of SVOD obligations to commence by July 1 2022 at the very latest.
2. The AGSC and APRA AMCOS recommends further measures to support the Australian economy and the film and TV industry by adopting measures to incentivise the creation of intellectual property to ensure that royalties flow back into the economy.
3. Legislation needs to ensure the local industry is sustainable with the prevention of buyouts so composers are fairly remunerated for their work.
4. Overseas productions shooting in Australia seeking government rebates should also have greater controls placed on them, such as eligibility checks for funding to foster and encourage local employment that goes beyond basic onshore expenditure for location shooting, but rather extends into the post production sector, and includes the use of local key creatives and heads of department.
5. Investigate the creation of a statutory right for screen composers to be fairly remunerated for their work which could be mandated for production seeking funding from tax offsets/rebates.
6. Ensure that all production seeking offsets/rebates operate under Australian copyright law.
7. The AGSC and APRA AMCOS recommend that the government look at further ways to promote and consume Australian films by introducing tax incentives for audiences purchasing tickets to see Australian films, as well as incentivizing distributors to exhibit Australian films in prime time and accessible spots for the public. This would also encourage SVODs to aim for theatrical releases as part of their distribution and marketing practice.

## CONCLUSION

Australia has a rich and varied culture- from First Nations, through to colonisation and multiculturalism. We also have a hugely talented pool of film and television practitioners who are able to grow this sector of Australia's economy.

The AGSC and APRA AMCOS recognise the changing media landscape and the Australian Government's goals to ensure new media and platforms play their part in keeping our own industry vibrant and sustainable. The AGSC does not believe that any voluntary objectives will realistically be met. We ask the government to create a clear framework for SVODs and AVODs to be encouraged to make, promote and exhibit new Australian stories made by local creatives with fair work practices which are consistent with our national historical standards, rather than with some of the new contractual models being presented by the SVODs currently.

It is imperative that the Australian government takes clear and decisive action that addresses the concerns and suggestions of **all** of the various industry members, including the independent sector, rather than simply the broadcasters and large media conglomerates. After all, it is the writers, directors, producers, designers, editors, cinematographers, and more, along with the screen composers, who are responsible for creating the content for entertaining and informing our nation and exporting these stories to the world.

**ENDS**