

27 November 2023

## Targeted Consultation Paper – Refined Models

### SPA and MEAA Joint Response

SPA and MEAA together represent the many thousands of businesses and workers in the Australian screen industry. We are united in our call to the Australian Government to seize the current opportunity to put our industry on the best possible regulatory footing to take our industry forward.

Creating sustainable screen businesses will deliver strong and stable employment in good jobs as well as important skills development in an industry that will become increasingly valuable to the Australian economy in the years ahead, as well as providing audiences with access to Australian screen culture.

#### Summary

It is important that any model of streaming regulation achieves the policy goals and expectations of the National Cultural Policy *Revive* and delivers more genuinely Australian stories of cultural worth on our screens, including:

- A minimum 20% of revenue investment obligation by the steaming services or a certain and legislated pathway that will reach this goal within three years.
- A strong definition of 'Australian content', that will deliver screen stories of Australian cultural value.
- A 'terms of trade' framework to ensure that ownership of intellectual property in Australian creativity is secured for Australians and treated as a valuable national asset, and that suppliers and workers are treated in a fair and sustainable manner.
- Ensuring the majority of regulated commissioning is done as an arms-length transaction with independent screen producers and minimising in-house commissioning that obscures accountability and Australian industry sovereignty.
- A threshold of \$50 million in revenue or 500,000 subscribers to trigger regulation obligations and to capture all commercially viable streaming services.

- Minimum levels of investment by streamers in scripted drama, documentary, and kids' content to be legislated and a rejection of any so-called 'multipliers' that will in fact dilute overall investment in vulnerable genres.
- Minimum levels of investment in diverse and inclusive content including from First Nations storytellers.
- An investment obligation that focuses on new commissions and limits investment in acquisitions of titles more than three years old and excludes "in-house" spend.

## Response related to the Progressive Percentage of Expenditure Model

It is important that Australia has a robust, transparent and incorruptible regulatory model that all Australians can have confidence in and that will take our industry forward, meets the promise to Australian audiences of *Revive*, and demonstrates the Australian Government policy objective to grow the Australian screen industry as an important future industry for our economy in a screen content-hungry world.

This model has a number of loopholes that could easily be exploited by global streaming businesses and would not deliver any growth in the Australian screen industry or in the availability of Australian screen stories. It has little accounting integrity and minimal accountability.

This model is based on the outdated NEDE scheme which has resulted in a declining expenditure on drama by the cable subscription platform.

This model includes Australian drama acquisitions of any age. This detracts from a regulated investment obligation that should be confined to new commissions and co-commissions for the established and sound reasons that only these categories drive the creation of new stories and add to the overall library of Australian content available to audiences.

Similarly, allowing a streaming platform to acquit any part of its investment obligation from 'in-house' production spending weakens regulation and incentivises internal cost manipulation.

## Response related to the Percentage of Revenue Model

SPA and MEAA strongly support a revenue-based model of streaming regulation. Such a model is flexible, as it rises and falls in line with advertising revenue and subscriber numbers; it is fair as it ensures a modest percentage of revenue paid by Australian subscribers is returned to them as a "cultural dividend" in the form of Australia screen stories; and it provides regulation that ensures an important industry of Australia's future growth is sustainable by embedding terms of trade and a recognised role for the independent industry.

### *Growth mechanism to be legislated*

Any model of regulation must provide a legislated pathway from 10% to 20%. It is unacceptable to the screen industry for any detail of this to be left to the regulator to deal with at a vague and uncertain future date.

### *Commissions only to be counted*

The investment obligation must focus on new commissions and not acquisitions. An acquisition

of a program from more than three years should not be included in any investment or expenditure calculation. However, if any acquisitions are included in any spending obligation, these should be first release titles only and only a relatively small, agreed percentage of the overall acquitted investment obligation with the remainder on new commissions.

#### *Co-commissions with broadcaster*

In effect, this allows for “double-counting” of content for each separately regulated platform which would have the result of evading the ACCTs obligations on services such as Nine and Network Ten which have streaming platforms within their media groups. Given this, only the actual spend by a platform within a media group should be counted. Any spend counted within a media group should not add up to more than 100% for the purposes of any media regulation framework.

#### *Minimum investment in scripted drama, documentary, and kids’ content*

Minimum levels of investment by streamers in scripted drama, documentary, and kids’ content should be legislated as part of their investment obligation. This is consistent with the commitment made by the Australian Government in *Revive*.

Any so-called ‘multipliers’ that will in fact dilute overall investment in vulnerable genres and undermines the intent of what is to be achieved from regulation and should be rejected. For the same reason, SPA also rejects the proposed 1.2x multiplier for streaming services content released first in cinema.

#### *Minimum investment in First Nations, diverse and inclusive content*

The absence of obligations relating to First Nations, diverse and inclusive content risks a significant failure on *Revive*’s promise of ‘a place for every story, a story for every place’. Recent improvements in representation cannot be assumed to be guaranteed when large commercial players have historically driven over-representation of privileged people and communities to the exclusion of others. Investment is needed to support First Nations storytellers and also support diversity and inclusion outcomes to ensure that the policy delivers for all Australian audiences, and that all communities have access to creative work in the screen industry.

#### *Terms of trade needed*

Intellectual property is the end product of the screen industry. Ownership of intellectual property in Australian creativity must be treated as a valuable national asset to be retained by Australians. Workers and suppliers in the industry should also have the benefit of terms of trade in line with those used by screen agencies to ensure that they are treated in a fair and sustainable manner. Australian taxpayers invest significant funds into the development of screen programs, and we are entitled to share in the value added to our output and share in the success of this investment as well as have access to and benefit from the jobs and economic activity it generates. Any model of regulation therefore must include a “terms of trade” framework.

#### *Enshrine independence for Australian screen industry*

The Australian screen industry should retain its independent character that currently ensures diversity of screen stories and supports our unique character and creativity. This can be done by ensuring the majority of regulated commissioning is done as an arms-length transaction by minimising in-house commissioning by streaming services that obscures accountability and

Australian industry sovereignty. Regulation should require a streaming platform to expend at least 80% of their expenditure obligation with an independent Australian production business.

#### *Lower thresholds required*

The threshold of \$50 million in revenue or 500,000 subscribers for a service to trigger regulation obligations. This would capture all to capture all commercially viable streaming services, while ensuring smaller, more niche services and new entrants are exempt. Even at this level it is markedly higher than other nations.

#### *Sport expenditure to be excluded*

The inclusion of sport expenditure to discount a revenue obligation is not appropriate and only serves to create complexity and ambiguity. The sports industry and audience is already well-supported by the market and government. In the context of seeking to increase audience access to arts and culture in Australian life, diminishing this by including expenditure on sport is counterintuitive.

### Preferred model response

SPA and MEAA strongly support a revenue-based model for sound public policy reasons: it can be verified by government, it is straightforward, certain, flexible and fair. Of the two models proposed, only an amended Percentage of Revenue approaches what the Australian screen industry needs for a sustainable future.

This model needs the following specific adjustments:

- Sport expenditure to be excluded
- Legislated growth mechanism to reach 20%
- Thresholds that capture all commercially viable services
- Multipliers for any screen content should be rejected
- Minimum investment levels in vulnerable genres including children's programs and documentary
- Inclusion of minimum investment levels in First Nations, diverse and inclusive content
- Commissions and co-commissions only
- Recognition of role of independent sector through terms of trade.