

SUBMISSION

BY

**THE AUSTRALIAN FEDERATION OF FILM AND TELEVISION
ASSOCIATIONS**

TO THE

**PRODUCTIVITY COMMISSION
REVIEW OF BROADCASTING LEGISLATION**

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THE AUSTRALIAN FEDERATION OF FILM AND TELEVISION ASSOCIATIONS

Founded in 1999, the Australian Federation of Film and Television Associations (AFFTA) comprises the peak organisations representing film and television industry practitioners in Australia. It provides the forum in which practitioners can collaboratively develop strategies to ensure the continued development and growth of a strong and vibrant Australian film and television industry. By bringing together the interests of diverse sectors, AFFTA is able to be the voice of the industry.

Australian Cinematographers' Society

Established in 1958 to raise and maintain professional standards, the ACS is concerned with the art, craft, and aesthetics of cinematography in the film and television industry, and works to give due recognition to outstanding work performed by cinematographers, and to support, protect, and advance the status and interest of cinematographers as a vocation and industry.

Australian Guild of Screen Composers

The AGSC was established in 1984 to represent and promote the interests of composers in film, television, video and multimedia. The AGSC is represented on numerous film and television industry and music industry committees and boards; and activities of the AGSC include a newsletter, seminars, and annual awards.

Australian Screen Directors Association

Formed in 1980, ASDA represents the interests of film and television directors, documentary filmmakers, animators and independent producers. ASDA works to promote excellence in screen direction, to encourage communication and collaboration between directors and others in the industry, and to provide professional support for its 900 members.

Australian Screen Editors

The ASE was formed in 1995 to promote, improve and protect the role of the editor as an essential and significant contributor to all screen productions. It is dedicated to the pursuit and recognition of excellence in the arts, sciences and technology of motion picture film and televisual post production.

Australian Screen Sound Guild

The ASSG represents the profession of screen sound in film, television, multimedia and other related audio industries. It was formed in 1988 with members including sound recordists, sound editors, sound mixers and other practitioners of sound for the screen.

Australian Writers' Guild

Established in 1962, the Australian Writers' Guild is the recognised industrial and professional representative of all performance writers across Australia, covering writers for film, television, theatre, radio and multi-media.

Media Entertainment and Arts Alliance

Established in 1992 following the amalgamation of the Australian Journalists Association, Actors Equity and the Australian Theatrical and Amusement Employees Association, the Media Entertainment and Arts Alliance is the industrial and professional organisation representing the people who work in Australia's media and entertainment industries. Its membership includes journalists, artists, photographers, performers and film and television technicians.

Screen Producers Association of Australia

The Screen Producers' Association of Australia is the industry's peak employer association. It represents some 520 independent companies involved in the production and marketing of audio-visual programs, including feature film, all forms of television, commercials and corporate video.

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1. Executive Summary

The Australian Federation of Film and Television Associations (AFFTA) firstly congratulates the Productivity Commission for producing a report that brings together a wealth of statistical information on the broadcasting sector. The information contained in the report has been useful in forming our response and will prove to be a valuable resource for the future.

AFFTA also commends the Commission for recognising the imperative for program types that are subject to market failure, but essential for the social and cultural health of the nation, to receive special protection. The need for Australian drama programs, documentaries and children's programs to be protected by Australian Content Standard sub-quotas is likely to grow rather than diminish over time, especially given the acceleration of the growth of delivery platforms in recent years and the volatility of international television market.

While commending the recommendations that sub-quotas for Australian drama, documentaries and children's programs be continued, AFFTA believes that repealing the overall transmission quota of 55% between 6am and midnight will have a devastating impact on the production industry. We also strongly believe it will not find favour with the general public. AFFTA does not subscribe to the view that free-to-air broadcasters will broadcast programs on the basis of audience preference.

Neither does AFFTA support the recommendation to repeal the Australian content quota in respect of commercials. AFFTA argues the quota for commercials should be reinstated at 1992 levels, namely 100%. The advertising sector of the film and television production industry is a crucial plank in the ongoing economic viability of the industry and makes a significant contribution to the cultural content of Australian television.

Rather than relaxing the "creative elements" test in the Content Standard as recommended, AFFTA believes the Content Standard desperately needs to be tightened.

AFFTA is also concerned that the Commission is considering allowing non-Australian programs access to the P program sub-quota.

AFFTA believes that a strong content regime is essential for cultural, social and economic reasons and supports the introduction of legislation to make enforceable 10% expenditure on Australian programs on predominantly drama, documentary, scripted learning and music pay television services, increasing over time to 20%.

Further, AFFTA agrees that:

- broadcasting licences be separated into licences granting access to spectrum and content-related broadcast licences granting permission to broadcast; the former to be administered by the Australian Communications Authority (ACA) and the latter by the Australian Broadcasting Authority (ABA).
- the foreign ownership rules allow for investment by foreign owned portfolio investment bodies and Australian owned portfolio investment bodies investing for foreign clients.
- the current 75% reach rule be retained.

AFFTA is not persuaded that there is adequate argument to justify either relaxing or repealing the cross media ownership regulatory framework.

Finally, AFFTA would support any recommendations to amend the schedule for the introduction of HDTV that would benefit consumers in terms of cost considerations and access.

2. Australian Content

2.1 Free to air Commercial Television

2.1.1 Overall Transmission Quota

As we approach the end of five decades of commercial free to air television broadcasting in Australia, television has established itself firmly as the most pervasive and influential of all media. The proliferation of other delivery platforms in the past decade has not shaken it from that position of strength.

It is for that reason that the Commonwealth has seen fit to maintain, review and revise the requirement that commercial free-to-air broadcasters have regard to not only the economic underpinning of their businesses but to their social and cultural responsibilities. Fulfilment of their social and cultural obligations is a precondition to the right to broadcast.

That being said it must be remembered that commercial free to air broadcasters are not in business to broadcast programs. They are in business to sell advertising space. The role that programming plays is to garner audiences sufficient to attract advertisers. Consequently, ratings and profitability are important but consumer preference is not. Excellent ratings can be achieved and are achieved with Australian programs. However, excellent ratings can be achieved at lower cost with imported programs.

It is important for Australian audiences to have access to a mix of programming from Australia and overseas.

To that end an overall transmission quota has been in place since 1961. When first introduced it was 40% of total broadcast time, later increasing to 50%, then to 50% between 6am and midnight and, most recently in 1998, to 55%. It should be noted that in the early years television did not broadcast 24 hours a day. It was the shift to continuous broadcasting that prompted the inclusion of the 6am to midnight time slot.

Given the networks' obligation to their shareholders to maximise returns on capital, AFFTA believes that, if the overall transmission quota is repealed, levels of Australian content will drop.

Around the world, the majority of countries have quotas of some kind. Whilst some do not count programs such as news, current affairs, infotainment, games shows or commercials within their quota requirements, mostly they are provided additional effective quota for these program types by requirements to broadcast overall hours in their national language.

Some countries do not have any content quotas at all. Japan and Mexico are good examples. However, both have very large domestic audiences that do not speak English. Hence they are protected to a far greater extent than can be the case for Australia from dumping of product from the United States.

Of the two major English speaking countries without content quotas, one is the United States, internationally the dominant market player in the television industry and with a population base large enough to be self-sufficient in all but the extremely high budget end of the range of television drama production.

The other is New Zealand. With no content quota, New Zealand achieved only 21 per cent of local content in 1997-8.

On November 10, 1999, the AFC released its National Production Survey for 1998/9. The following day, the Hon Peter McGauran, Minister for the Arts and the Centenary of Federation, released a report on the state of the film and television industry he had commissioned from the AFC and the FFC.

Both the AFC survey and the joint AFC/FFC report demonstrated just how volatile the Australian and international television sector is at present.

They revealed a significant decline in Australian television drama production in 1998/9:

- only 14 series and serials were produced in 1998/9 compared with 23 in the previous year and 21 in both 1996/7 and 1995/6;
- only two adult mini-series were made in 1998/9 compared with an average of four per year in the 1990s;
- current research indicates the 1998/9 level of production will stay static in 1999/2000;
- a dramatic increase in foreign television production;
- a dramatic increase in international co-produced television drama which will count as Australian content and thus displace Australian programs

The survey and the report point to the absolute need for sub-quotas for television drama, children's programs and documentaries and AFFTA commends the Productivity Commission for recommending that the sub-quotas for these program types be preserved.

However, in 1998/99, there were dramatic shifts in other program types not covered by sub-quota but included within the overall transmission quota.

Variety programs suffered the most. In November 1998, *In Melbourne Tonight* and *The Today Show* were both cancelled. In November 1999, *Hey Hey It's Saturday* aired for the final time ending its 28 year career.

Whilst it is true that Australian audiences demonstrate time again that they like Australian programming, it is not true that broadcasters will program according to audience preference. The economics of commercial free-to-air television is that of selling advertising space and as the Productivity Commission's Report makes clear, Australian programs "will not be preferred by broadcasters if the program costs relative to advertising revenue are higher than those for imported programs".¹

This is as true of many program types other than drama, documentary and children's programs. The same market place rules apply to programs such as variety, lifestyle, travel, infotainment and cooking programs.

The success of *Two Fat Ladies* screened on ABC TV, demonstrates that such overseas programs find favour with Australian audiences and can be acquired more cheaply than producing Australian programs.

The Productivity Commission Draft Report noted the value of in-house television production has decreased. Again this is true not only of drama. Most recently, *The Great Outdoors* has moved from in-house production with Channel 7 to being produced independently as the network continues to reduce its own overheads.

¹ Productivity Commission Draft Report Broadcasting, October 1999, p205

Once in-house production is shed, along with the associated costs of overheads, the networks are free to acquire what programming they desire from the market. And that market is international. Thus, without a transmission quota, Australian programs must compete with the international market place even in their own home market.

Overseas countries are tightening their content quotas to protect their own industries and to ensure reasonable levels of national content are screened. As that trend continues, the Australian industry will find it increasingly difficult to survive if there is no requirement for its programming to be aired locally.

AFFTA is strongly of the view that removing the overall transmission quota will result in significant erosion of Australian content. It would be unfortunate if the parlous New Zealand experience is repeated in Australia.

2.1.2 Sub-Quotas

As indicated above, AFFTA supports the Productivity Commission recommendation that sub-quotas are retained.

However, AFFTA is concerned that consideration is being given to relaxing the Australian content requirements in the P program sub-quota.

We note that many submissions to the Inquiry argue that the current regulatory framework had done nothing other than deliver sanitised mediocre programs “that look the same, sound the same, and the kids aren’t entertained by it.”²

That the ABC in particular has been so successful with its children’s programming rather begs the question that if the networks were prepared to allocate more financial resources their programming for children might benefit. Although the ABC is not regulated by the ABA, their programs nonetheless are immensely successful with their target audience and neither look the same, sound the same nor bore their target audience.

AFFTA recommends that the requirement for the P program sub-quota to be filled exclusively with Australian programs remains. Pre-school children are the most vulnerable and least discerning in the community and those most in need of television programming that reflects the culture and society in which they live.

2.2 Definition of an Australian program

AFFTA is alarmed that the Productivity Commission might recommend a relaxation of the ‘creative elements’ test in the definition of an Australian program “by removing criteria that require non-creative cast, crew and production processes to be Australian”.

AFFTA is puzzled at what “non-creative cast, crew and production processes” might be. Filmmaking is an intensely collaborative undertaking. Creative input occurs at all levels and all stages of a production. The creativity in colour grading is just as important as the creativity required in editing, “dressing” a set, identifying appropriate filming locations, recording the sound or mixing the sound track. It is equally difficult to understand what a non-creative actor might be.

Further, if Australia is to continue producing highly creative and skilled personnel in what appear to be considered the key creative positions of writer, director and producer, it is essential that they have opportunities to learn and practice their craft

² Prime Television in evidence before the Productivity Commission

and to work in creative collaborations on film and television productions before being handed the overall responsibility that accrues to the positions of say, director or producer. Once establishing themselves as a director or producer it is essential that they be able to form collaborative relationships with other key personnel such as cinematographers, editors, composers, designers and so on. Those personnel equally need to work with their own teams of creative contributors, be it set decorators, musicians, or costume makers.

Recent experience with the burgeoning of foreign television production alongside coproductions indicates if anything the definition of what constitutes an Australian program needs tightening.

2.3 Pay Television

The current legislation requiring predominantly drama pay television channels to expend 10% on Australian programming is demonstrably not working. Legislation is before Parliament to make the expenditure requirement enforceable.

AFFTA believes that the obligation to screen Australian programming should not be shouldered by the free to air broadcasters alone but rather should be shared by pay television.

Currently, the expenditure test is not generating increased output. Most expenditure has been by way of investment in feature films. The legislation allows for “double dipping” – for the programming to count on both free to air and pay television. This effectively simply lowers the licence fees paid by commercial television rather than increase levels of Australian content.

AFFTA recommends that:

- the current legislation be amended to make the 10% expenditure requirement for predominantly drama channels enforceable, accountable and transparent;
- a requirement to screen be introduced;
- “double dipping” be ended;
- the expenditure requirement increase to 20% over four years;
- the expenditure requirement be extended to predominantly documentary, scripted learning and music channels.

2.4 Advertising

AFFTA strongly urges the Productivity Commission to reconsider its recommendation that the quota for advertising be repealed.

The production of television commercials constitutes a fundamental plank of the industry infrastructure. The film and television industry is predominantly a freelance industry identified by engagements on short term contracts. Commercials form part of the base level of work essential to sustaining a viable industry – in terms of an employment base and facilities base. Furthermore, commercials are an integral part of Australian screen culture.

It is also an essential training ground and an area in which much necessary experimentation takes place. Commercials, for instance, have led the way in the digital effects and animatronics revolutions.

In 1992, the quota for advertising was amended from 100% to 80%. The high end of the budget range for commercials has always been advertising for the product of multinational companies. The effect of the reduction in the quota level was that

Australia lost much of the work in the high end budget range. This had a considerable impact on the sector and if the quota is repealed even more work will be lost. Whilst production will continue for local products and services, generally speaking that is the lower end of the budget range.

The flow-on effects will be erosion of work opportunities and an undermining of the facilities sector that is essential for a viable film and television production industry.

3. Broadcasting Licences

AFFTA has sympathy with the Productivity Commission's recommendation that broadcasting licences be split into separate "licences to use spectrum" and "licences to provide broadcasting services", the former to be regulated by the ACA and the latter by the ABA.

4. Foreign Ownership Restrictions

AFFTA is of the view that while an Australian owned broadcasting sector is preferable, it is not realistic any more. AFFTA supports some liberalisation of the current restrictions but is opposed to repealing all restrictions.

It is acknowledged that there is a need to achieve greater access to capital but that the need for Australian control should remain central to any amendments to the current restrictions.

Enhanced plurality of ownership and diversity of opinion could be achieved and the risk of increased media ownership diminished if the restrictions were amended to allow for investment by foreign owned portfolio investment bodies, providing foreign investment was restricted to 49% and the existing prohibition on foreign control is retained.

If the Productivity Commission recommends that the regulatory oversight of foreign ownership and control provisions are to be vested with the Foreign Investment Review Board, AFFTA strongly recommends that a Cultural Impact Study be implemented under the auspices of the Department of Communications, Information Economy and the Arts. We would welcome the opportunity to make further representations on this point.

5. Audience Reach Restrictions

AFFTA supports the retention of the current 75% reach rule. To repeal this restriction will have an unsustainable impact on regional Australia. In our view, it is essential that the ongoing viability of broadcasting in regional Australia be protected in the interests of the community.

Equalisation of services through aggregation has already impacted on regional Australia and they have as much right to have their local issues and concerns voiced in the media as those living in the cities.

Extending the reach to 100% would most likely result in the demise of regional television with concomitant loss of employment, loss of local programming, including news and loss of local advertising.

6. Cross Media Ownership

AFFTA remains unconvinced that there are any compelling reasons why the cross media ownership rules should be relaxed and for all the reasons outlined in the debate that has now ranged over the entirety of the existence of broadcasting believes the cross media rules are as relevant today as they have ever been.

7. The Introduction of HDTV

AFFTA is of the view that the scheduling of the introduction of HDTV should have as its overriding concern the cost and access impacts for the consumer. Accordingly, we would welcome recommendations that ease the impact on consumers to the greatest extent possible.

8. A fourth commercial free to air channel

Given the current state of the television industry with the rapid changes that have occurred in the past eighteen months, made clear in the report released by Senator McGauran referred to earlier, AFFTA is concerned that moves to a fourth channel in the immediate future might serve to drive down licence fees for Australian programs ever further. Consequently, AFFTA believes the advisability of an additional channel is a matter that should be reviewed in 2002. By then it might be possible to establish if the volatility of the past eighteen months has settled and whether the downturn in levels of Australian production and levels of licence fees eases or not.