

MODERNISING TELEVISION REGULATION IN AUSTRALIA.



MEDIA REFORM GREEN PAPER
ACTF RESPONSE: 21 MAY 2021

MODERNISING TELEVISION REGULATION IN AUSTRALIA.



ABOUT THE ACTF

The ACTF is unique in the world; a not-for-profit organisation with a singular purpose to deliver quality screen content to children all over Australia, and all over the world. The ACTF has been at the forefront in creating a world class Australian children's screen industry with an enviable reputation.

The ACTF makes Australian children's lives better through screen content that reflects our culture and our values. We act as a catalyst for the production of quality Australian children's screen content which reaches and connects with children on all the platforms they engage with. We achieve this by providing:

- Script development funding;
- Capacity building/enabling/nurturing producers and emerging talent;
- Production investment (via distribution advance and/or equity);
- Promotion, worldwide distribution, advocacy for children's screen content; and
- Education resource development and scaffolding, and educational outreach.

The ACTF is a not-for-profit public company, independent of commercial interests. Our governing body is a Board of Directors, all of whom serve in an honorary capacity. They come from every State and Territory and their expertise ranges across the screen sector and creative industries, educational practice and leadership, child psychology, public companies, legal and private enterprise.

We occupy a singular position at the intersection of the screen business, education, Australian culture and social impact. No other organisation comes to the table with the same bundle of attributes: the cultural remit, the financing expertise, the distribution insight, and the educational background and reach. We have a proven and renowned track record and internationally unparalleled expertise in how children's content is commissioned, made, promoted and distributed into the world. Working across multiple platforms we operate across different parts of the value chain – from development to Executive Producer on production, to international distribution, educational development and promotion. Importantly, we don't always perform all these roles on all the productions we support. We operate in a nimble and flexible way, depending on an individual production's needs and a producer's experience and expectations.

For nearly 40 years we have embraced, championed and adapted to changing times and opportunities, whilst maintaining our focus on achieving quality outcomes for the child audience. The ACTF consistently delivers industry leadership, as we are uniquely placed with the sole interests of the children's audience at the centre of what we do.

The productions we support deliver exceptional public value as they are accessible to generations of children via multiple plays in Australia and around the world, and are used as a springboard for education and learning, shaping our young audience's sense of identity and the community to which they belong. These are the great benefits that Australian children's content delivers.

WHY SUPPORT AUSTRALIAN CHILDREN'S SCREEN CONTENT – THE PURPOSE

Today's children are inundated with screens during their formative years, right at the time when they are developing their values, identity and self-esteem. It is vital they be provided with screen content that is made especially for them. Yet the creation of children's screen content is disadvantaged because it does not command the levels of investment from broadcasters or others that adult content does. It is the clearest example of market failure in the screen sector, but also the greatest example of public value. Successive Australian governments have supported the provision of high-quality, original and distinctly Australian television for children, through a mix of regulation, direct subsidies and tax incentives. As a result, Australia has been a world leader in the production of high-quality children's screen content. In 2020 the Commonwealth Government started the process of reform of regulation and funding for the screen sector and this Green Paper continues that process. It is critical to ensure that the re-design of the policy framework secures Australian children's content on all the platforms children are now engaging with.

The core premise of the ACTF's response to the Green Paper is the simple, but fundamental fact, *Children are a special segment of our population - they are an audience, not a genre.*

ACTF RECOMMENDATIONS

We are recommending:

ALL CONTENT SERVICE PROVIDERS HAVING OBLIGATIONS TO AUSTRALIAN AUDIENCES, INCLUDING CHILDREN

Acknowledge the different and complementary roles of public broadcasters and commercial service providers.

- The proposals around restacking spectrum should be augmented with consideration around future proofing commercial broadcaster obligations in an age where there is growing emphasis on internet delivery.
- A genuinely platform neutral expenditure model would see obligations apply to any content service whose primary purpose is to provide professionally produced content delivered over the internet to Australians.
- The ACTF agrees with the industry view that an expenditure obligation of 20% of revenue generated in Australia would be appropriate.
- Regardless of where the expenditure obligation is ultimately set, a proportion of that – at least 25% – should be set aside for children's content on all services that include children's content.
- The public broadcasters should be brought inside the policy and regulatory framework, recognising the vital role they play in delivering Australian content to audiences. Ensure minimum funding for children's content at the public broadcasters (ABC, SBS and NITV) which is ring-fenced and protected for that purpose to ensure high levels of new Australian children's content are commissioned by the public broadcasters and reported to the ACMA.

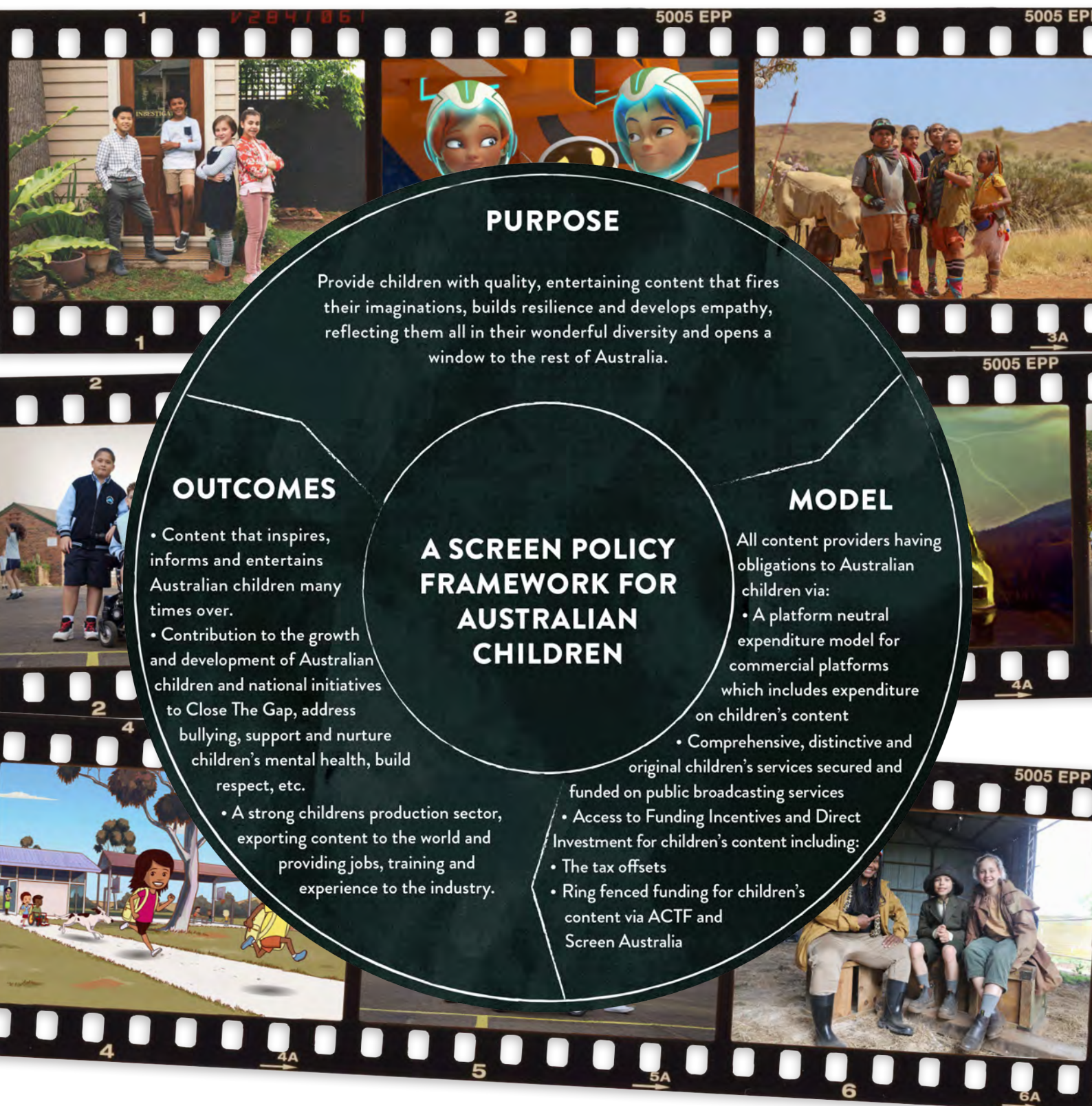
UNIQUE FUNDING ASSISTANCE FOR CHILDREN'S SCREEN CONTENT THROUGH THE CAST FUND

Acknowledge the vulnerability of Australian children's content and the difficulty in financing this content by allocating 30% of those funds to children's content via Screen Australia and the ACTF.

WHAT THIS WILL ACHIEVE – THE SOLUTION

Adopting this suite of measures will achieve:

- A comprehensive, predominantly Australian service for children up to 16-years-old on the public broadcasters; and Australian content on commercial platforms wherever those platforms target a children's audience;
- An attractive financing environment for children's content without risking that funding being appropriated or re-allocated to other forms of content; and
- Content that inspires, entertains, informs and educates Australian children and their families, contributing to wider national priorities such as healthy gender attitudes, mental health, anti-bullying and school readiness initiatives.



CHILDREN ARE THE MOST IMPORTANT AUDIENCE OF ALL.

1. WHY CHILDREN'S CONTENT MATTERS AND READING THE GREEN PAPER THROUGH THAT LENS

There are 4.7 million children in Australia.

In their formative years they are inundated with screens, right at the time when they are learning who they are and developing their values, identity and self-esteem.

At the Children and Adolescent Mental Health Conference in April 2021 the Australian Children's Commissioner, Anne Hollonds, pointed out that ensuring the safety and well-being of Australian children does not belong to one portfolio. The Commissioner argued that we need to embrace a comprehensive national approach to ensure that all children can thrive and participate in Australian society, and that all Government policies should be viewed through the lens of what is in the best interests of children.¹

The Australian Children's Television Foundation (ACTF) appreciates the opportunity to provide feedback to the Media Reform Green Paper.

In this submission, we look at the Media Reform Green Paper through a lens which considers what's in the best interests of the children's audience; and we argue that every single aspect of the proposals to modernise television regulation in Australia should consider that audience.

For decades, Australian Governments have been leaders in this space. All the way from development of the original Children's Television Standards (CTS) for commercial broadcasters in the late 1970s, which were ground-breaking at the time, to recent years, where Australia has been a world leader on cybersafety protections with the establishment of the e-Safety Commissioner. This approach is consistent with our ongoing obligations under the *United Nations' Convention on the Rights of the Child*, which require that information of social, cultural and linguistic benefit be made available to children via mass media.

Now it is time to address the needs and best interests of the children's audience at a time of great technological and regulatory change and upheaval. The opportunity is not only to protect children from harmful material, but to ensure that they thrive - by providing them with positive, inspiring, educational and entertaining media choices, which contribute to their cultural, emotional and social growth - on all the platforms they engage with.

The Green Paper has set out a potential path for reform of the media regulatory framework which considers the impact of the new SVOD and AVOD streaming platforms, the future of free-to-air broadcasting and the role of the public broadcasters. But it has missed the opportunity to specifically consider the impact of the reforms on the children's audience.

Indeed, when children's content is referenced in the Green Paper, it is referenced alongside adult drama and documentary content, with the assumption being that children's content is another "genre" of content.

In fact, children are a special segment of our population - they are an audience, not a genre.

¹ National Children's Commissioner's Anne Hollonds address on Adolescent Mental Health: <https://www.youtube.com/watch?v=tmxzSgPmciM>.

When Australian children see their lives reflected on screen, they experience recognition, affirmation, and gain positive role models; the characters and stories help them to imagine all the possibilities for someone who looks and sounds like them. But our nation's kids are not an homogenous group: there are children all over Australia, in urban settings and in remote and regional communities. Children who belong to the oldest continuous living culture on earth, children growing up in prosperous homes surrounded by "stuff", children of recently arrived families beginning to find their way in a new country. There are many different styles of families, and those families are dealing with all sorts of complex issues, which impact directly on the children growing up inside them.

What all of this means is that we need an array of Australian stories and programs, reflecting the full diversity of children and their lives, and appropriate for their different developmental stages, on all the platforms children turn to for entertainment. The screen stories we watch influence how we think about others, as well as how we think about ourselves. Quality local content exposes children to a range of faces and voices that is genuinely representative of their community. At the same time, becoming engaged in a television drama is an opportunity to try on someone else's shoes and consider what it's like to be them. Australian children's television is building empathy, kindness, social cohesion and shared values.

For these reasons, the value of Australian children's screen content to our national interest should not be underestimated, and neither should its existence be taken for granted. Quality local children's content comes about through strong Government policy which supports and encourages that content being made.

The ACTF response to the Green Paper amplifies the public value of children's screen content and proposes that this content should be given greater weight within the policy proposals put forward in the Paper.



LITTLE J AND BIG CUZ, NED LANDER MEDIA

"When you're in that mindset of a little kid seeing something for the first time, the world is big. These kids [in Little J and Big Cuz] are discovering things about themselves, about the world – and about each other."

DEBORAH MAILMAN, ACTOR, *LITTLE J AND BIG CUZ*



FIRST DAY, EPIC FILMS

"This isn't your disposable, everyday show. Instead, First Day invites parents and audiences to consider what is being explored and generate discussion within households. It's already being heralded as a heartfelt, educational and impressive piece of work."

CHRISTOPHER WESTON, HITC



THALU, WEERIANA STREET MEDIA

“As I watch NITV’s new kid’s live action drama, Thalu, I’m struck by one unavoidable aspect. The 6 Indigenous kids wandering around the outback here are happily enjoying an adventure. They are calmly at one with their land. Were this 6 kids from a metropolitan city, I dare say this would be a tale about being lost and probably pretty frightened. Therein lies the difference. Thalu is made for its audience and reiterates a place in the world.”

**DAVID KNOX IN TV TONIGHT,
20 APRIL 2020**



HARDBALL, NORTHERN PICTURES

“My class has greatly enjoyed watching a weekly episode of Hardball during their half hour of free choice time on Fridays. It has generated lots of interesting discussion, particularly as many of my students are yet to visit mainland Australia, and as such have had limited exposure to children from other cultures. A number of students have told me they are also watching the series at home.”

**ELIZA CHILDS, 5/6 EXTENSION TEACHER,
MORNINGTON ISLAND STATE SCHOOL QLD**



HARDBALL, NORTHERN PICTURES

“Hardball parallels the diversity in my class where there are many differently abled learners whose questions continually drive our learning in a myriad of directions. Their intellectual capacity is often underestimated.”

**JUDY BEAL, STEM LEADER,
BRAEVIEW SCHOOL R-7 SA**



“Our children, more than any other group, are shaped and influenced by a range of social, biological and environmental factors, all of which go into making the whole child.

Their mental health and wellbeing cannot be separated from the broader context of their lives, including their consumption of screen time.

Unfortunately over 13% of 4 to 11-year-olds in Australia have experienced a diagnosable mental health condition in the past 12 months. Furthermore 30% of 7 to 18-year-olds report a lack of sleep, high levels of stress and depressive symptoms.

An estimated 23% of Aboriginal and Torres Strait Islanders aged between 4 to 10-years-of-age experience psychological distress compared to 8% of all children at the same age.

Mental health is an integral part of overall health for children, just as it is for adults. This data highlights that children can and do experience mental health difficulties.

Never has it been more important for young people to develop the skills, knowledge and strategies to build resilience. Resilience is the capacity to face, overcome, be strengthened and transformed by adversity.

Exposing Australian children to stories that exemplify these characteristics - is a crucial, but often overlooked part of mental health promotion.

There is power in the narrative and giving our children exposure to uplifting and inspirational, home grown stories that are relevant to their day to day lived experience - represents an important protective factor against the many and varied social toxins to which many are exposed.”

DR MICHAEL CARR-GREGG
CHILD AND ADOLESCENT PSYCHOLOGIST
BOARD MEMBER OF THE ACTF

2. THE ISSUES IN THE GREEN PAPER

2.1 A new class of television licence: The Commercial Broadcasters (Chapter 3)

The spectrum reform proposed in Chapter 3 of the Green Paper acknowledges that terrestrial broadcasting services exist in a more crowded and contested market and that the current regulatory framework is outdated.

Restacking spectrum in such a way that broadcasters will need less of it, and raising funds from spectrum that is no longer required, is a good idea. But this Review should go further and look at the very concept of broadcasting, to determine whether the proposals are future proofed. The proposal that Australian content obligations be removed from the digital multi channels in return for giving up spectrum doesn't achieve that, because it ignores that the future is Internet delivery.

Broadcasting Video On Demand (BVOD) is overtaking demand for digital multi-channels. The ACTF distributes children's content worldwide, and increasingly we find that broadcasters who previously had dedicated digital children's channels are beginning to house those channels predominantly, and sometimes exclusively, online. It is conceivable that Internet delivery will replace the need for any spectrum at all.

It is unlikely that the free-to-air (FTA) broadcasters will voluntarily abandon spectrum altogether. (Indeed, a more likely response from the commercial broadcasters to this Green Paper might be as audacious as to argue that they will gladly accept the reduction in taxes, but won't give up any spectrum in return). Soon, however, it is likely that the mainstream channels (both commercial and public) will be delivered via broadcast spectrum and operate as a kind of teaser/front shop to a much more extensive offering that exists online. The mainstream channel might not reflect most of the network's offering at all. (It is possible, for example, that no children's content is broadcast on the main channel, but that children's programs are available through a network's online provision). In these circumstances, restricting a network's 55% Australian content obligation to the main broadcast channel could be a distortion of a network's entire offering, if it mostly exists online. Consideration should be given to harmonising the obligations imposed on commercial broadcasters with any obligations that are imposed on subscription video on demand (SVOD) or advertising video on demand (AVOD) services. Otherwise, the SVOD and AVOD services (assuming they have an expenditure obligation imposed) could end up carrying the higher regulatory burden, with the FTA services operating free of regulatory obligations in the online space.

Indeed, in the scenario outlined in the previous paragraph the FTA broadcasters have an extraordinary advantage, with a free broadcast channel to effectively promote and enhance discoverability of their online offering. The FTAs surely can't have it all ways – to hold onto valuable spectrum and make a lesser contribution.

2.2 Promoting the public interest derived from the spectrum: the funds (Chapter 4)

The ACTF supports the proposal to use the proceeds from any spectrum sale to support regional news and media, as well as the Australian screen sector. The ACTF's comments in this submission are confined to the Create Australian Screen Trust (CAST) proposal.

The paper proposes a structure whereby there is a Board of Trustees for the CAST Fund, with Screen Australia administering the Fund. The Green Paper suggests that it would be the role of the Board of Trustees to identify projects and make recommendations for funding to Screen Australia. This structure overlooks the experience and expertise that already exists within Screen Australia and would duplicate the role of other organisations, including Screen Australia.

If the sale of spectrum generates considerable funds, and the intention is that the CAST Fund is to be established to generate income for investing in screen content over the long term, those funds should be invested and managed expertly. The Commonwealth's Future Fund is already established for this purpose and manages several funds for specific purposes. The Future Fund could be tasked with the role of establishing and investing the spectrum sale proceeds into the PING and CAST Funds.

The Minister and the Department of the Arts should direct the earnings of the CAST fund to Screen Australia and the ACTF. It is critical that funding decisions are made by organisations who know what they are doing. Those organisations already have expertise, Boards and processes and structures in place to assess projects, make funding decisions and deliver results for the screen sector. A Statement of Expectations from the Minister can ensure that the funds deliver a broad volume and diversity of content, that they are available for the investment of content on all platforms and should support both highly distinctive and cultural content, as well as commercial content with high prospects of recoupment.

Given the significance of the children's audience, outlined at the beginning of this report, at least 30% of those funds should be earmarked for the children's audience, with those funds disbursed to both Screen Australia and the ACTF specifically for that purpose.

2.3 Harmonising Australian Content Obligations: the SVODS (Chapter 6)

As discussed previously in this submission, "broadcasting" is moving online, and consideration should be given to harmonising the obligations imposed on commercial broadcasters (BVOD) with those that will also be introduced for SVOD and AVOD streaming services.

Definitions are also crucial. Obligations should apply to any content service whose primary purpose is to provide professionally produced content delivered over the internet to Australians. There should be no exemption for services owned by a corporate structure that also owns a broadcasting licence.

Obligations should apply from the point where a service has 500,000 subscribers or registered users and is generating \$50 million per year in revenue.

The level of obligation should be commensurate with international standards. These vary, especially in Europe where there is a European quota and then individual countries have introduced country-specific obligations. For example, in France, there is an expenditure requirement of up to 25% of the turnover of these platforms in addition to the European quota obligation.² The 5% level proposed in the paper is therefore demonstrably low. The ACTF agrees with the widespread industry view that an expenditure obligation of 20% of revenue generated in Australia would be appropriate.

The expenditure obligation should only apply to newly commissioned Australian content (as opposed to acquiring existing content) in order to stimulate new production.

Regardless of where the general expenditure obligation is set, a proportion of that – at least 25% – should be set aside for children's content on all services that include children's content, with exemptions for those services that do not provide any content for children.

Reporting should be the domain of the ACMA – who should oversee all content obligations, whether on commercial or public free-to-air television or BVOD or subscription television or SVOD or AVOD services.

² France, AVMS Directive: implementing heavier obligations for on-demand AV media service providers:
<https://www.lexology.com/library/detail.aspx?g=e3669a28-3bdd-4ff6-9369-1173577172f6>;
Europe's New Rules of Engagement With Streamers Making Slow But Steady Progress:
<https://variety.com/2021/digital/news/europe-avms-streamers-1234915013/>.

2.4 Enhancing the role of the national broadcasters in providing Australian content: Australian content commitment and reporting requirements for national broadcasters (Chapter 7)

We support the Green Paper proposal to introduce a commitment to Australian content in the charters of the national broadcasters, and the requirements for annual reporting on expenditure and levels of Australian content.

Now that the commercial broadcasters are not obliged to commission minimum levels of children's content, it is more important than ever that obligations for public broadcasters include a specific focus on content for children, and to clarify that children are a priority audience for the public broadcasters.

These proposals are also consistent with the practice regarding public broadcasters around the world, including the proposal that the ACMA would oversee the obligations to ensure compliance and transparency.

In the United Kingdom, the BBC has a Charter Renewal process (now occurring every 11 years to ensure that it falls outside the electoral cycle) and there is a 5.5 year Review inside that process, where a funding settlement for the next five years is made. A regular Charter Renewal process for the ABC and SBS would enable long term planning for both broadcasters and enshrine genuine editorial independence, balanced with specific obligations, transparency and accountability to the Australian community.

Sufficient resources need to be provided to the ACMA to ensure the organisation has the capability to be an active regulator to ensure compliance with the content obligations in a fast moving and challenging environment.

THE ABC

The ABC is the home of high-quality Australian children's content. It is also free and accessible to all Australians. Its role as the key provider of Australian children's content must be codified, and the benchmark set appropriately high.

The Australian community looks to the ABC for children's content, both for pre-school and school-aged children. There can be little doubt of the widespread expectation that the ABC, consistent with its public broadcaster obligations, would undertake the heavy lifting in terms of commissioning, producing and scheduling the widest and most distinctive range of Australian content for the children's audience.

Children's content should not be treated as an optional extra or as just another genre within an overall "Australian content bucket" at the ABC. The ABC should be required to provide Australian children with a fully comprehensive public broadcasting service which includes all genres from news, documentary, live action drama, animation, comedy and light entertainment.

The way in which children will consume content (from linear channels to iView and beyond) will change over time. It's therefore important that obligations are not tied to a particular technology but articulate important principles which transcend platforms. Those principles should be:

- That the ABC's mission for children is to inform, educate and entertain all Australian children with a fully comprehensive public broadcasting service;
- That the ABC delivers children high levels of Australian content, reflecting Australian culture, values, voices and diversity, with content that is distinctive, original, innovative, entertaining, aspirational and inspirational;
- That the ABC's children's offering is freely and widely accessible to all children in Australia, no matter where they live, across all its platforms;
- That the ABC provides content for children in all age groups; and
- That the ABC endeavours to give Australian children a voice and a role in the civic life of our country.

These aspirations set the bar high and would require the ABC Children's Department to receive additional specific support and resources. Funding for children's content should be discussed as part of the ABC's funding settlement and that funding should be specifically set apart and ring-fenced for the benefit of the children's audience.

The ACTF is not suggesting that the ABC should be subject to overly proscriptive rules that set number of hours for different sub-categories of children's content. Rather, that the principal benchmarks that the ABC reports against should be set high and that reporting should address the principles that are articulated and provide transparent and useful data around the amount of content, genres, expenditure and reach. The expectation should be for most of the children's content on the ABC to be Australian (for example the BBC is expected to provide a service for children that is at least 70% British content³).

SBS AND NITV

In their submission to the Supporting Australian Stories Options Paper Review in 2020, SBS and NITV made clear their aspiration to build a bigger children's offering for NITV. They expressed the view that the ABC already broadcasts a wealth of general children's content, and that rather than compete with that content, there is potential for SBS to complement that content through NITV.

The ACTF strongly supports NITV's aspirations to build a rich library of children's content which represents First Nations children and communities in an authentic way. To do this properly requires different programs which are regularly refreshed, and suitable for different ages and showing the diversity of First Nations children's culture and experience. Investing in programs for First Nations children will reward NITV with an audience who will grow up with the channel, but it is an even more important investment for the nation as these programs can contribute to Closing The Gap, through the self-esteem, confidence, resilience and learning skills they impart. Good quality entertaining programs will also attract a wider audience to the channel, which means the wider population having the opportunity to be exposed to First Nations people and culture. As with all children's programs the investment has a long tail, as a new group of children can watch the programs as if they were new every few years.

In an environment where the commercial broadcasters may choose to commission less children's content, there is also potential for SBS to play a bigger role for the children's audience generally. There is hardly any free to air content for teens (13 to 17) in Australia, and competition with the ABC for the general children's audience might also be a good thing. Indeed, if we are to have two public broadcasters, the notion that they do compete might be a good policy outcome from the perspective of audiences as well as the production industry. As obligations for the public broadcasters are drafted and funding is considered, clarity around the purpose and roles of the two different public broadcasters would be useful.

³ Operating licence for the BBC's UK Public Services:
https://www.ofcom.org.uk/_data/assets/pdf_file/0022/107239/summary-regulatory-conditions.pdf.



LITTLE J AND BIG CUZ, NED LANDER MEDIA

“Here at NITV, Little J & Big Cuz has a very special place in our hearts. The program plays an integral part in creating more representation on screen here in Australia, and giving Aboriginal kids a national platform to see their own faces and hear their own voices – something that is so important for our mob.”

**TANYA ORMAN IN INSIDE FILM,
17 JUNE 2020**

3. SUMMARY OF RECOMMENDATIONS TO SUPPORT CONTENT FOR THE CHILDREN'S AUDIENCE

The progress that the Commonwealth Government is making towards modernisation and reform of the screen sector, including the proposed measures in the Green Paper, demonstrate that there is a widespread acceptance that a broad suite of policy measures – which incorporate widespread content obligations, taxation incentives and direct funding measures – is required to ensure a diverse, successful and vibrant screen industry.

It is vital that we put the children's audience at the centre of that policy - not just because children's screen content is the most vulnerable form of content – but because the children's audience is the most important audience of all.

If we view the Green Paper proposals through that lens, then we need to:

1. Ensure that wherever any commercial platform targets a children's audience that it spends 25% of whatever its expenditure obligation is on children's screen content.
2. Ensure that at least 30% of the funds available to the screen industry from the CAST Funds are allocated to the children's audience; and
3. Enshrine the significance of the children's audience to the ABC and SBS/NITV in their charters and ensure adequate resources for that audience are ring fenced for that purpose within those broadcasters.



HARDBALL, NORTHERN PICTURES

“Hardball brings together people from different backgrounds, cultures and experiences in this clever and funny series. The show is a delightful celebration of diversity, inclusion and friendship through sport.”

**MARNEY MALABAR,
DIRECTOR OF TVOKIDS, CANADA**



HARDBALL, NORTHERN PICTURES

“Many think he will never make it, but Mikey teaches them all a lesson of optimism and tenacity. Filled with fun and comedy, Hardball conveys to our young audience the underlying universal message that leading a good life starts with yourself and your positive approach towards its challenges.”

**PATRICIA VASAPOLLO, ARD HR,
HEAD OF FAMILY & FICTION**