SUPPLEMENTARY SUBMISSION
TO THE PRODUCTIVITY COMMISSION

Review of Broadcasting Legislation

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AUSTRALIAN FILM COMMISSION (AFC)
FILM AUSTRALIA LTD (Film Australia)

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1. EXECUTIVE SUMMARY

This supplementary submission has been prepared by the Australian Film Commission and Film Australia in response to the request from the Commission to provide further comment on certain issues.

In particular it deals with the following:

- the issue of a fourth commercial licence
- alternative models to the current system of content quotas.

In addition in Appendix 3 we provide some further information as discussed at our appearance at the public hearing on 10 June, 1999.

1.1 Fourth Commercial Licence

We are mindful that the digital conversion legislation envisages the lifting of the limitation on further commercial licences in 2008.

We are not opposed in principle to the idea of a fourth licence. The key question is how it would enhance the achievement of the cultural objectives of the Act and the diversity of the broadcasting system.

In this respect it would need to be established that:

- it would lead to an increase, and not a diminution in Australian content levels, and;
- that it would not result in a reduction in licence fees paid to program makers, given the direct bearing licence fee levels have on Australia's capacity to produce local content.

1.2 Alternative Models

This submission looks at an expenditure model, the idea of matching subsidy, and transferable quotas.

It concludes that each of these poses considerable difficulties and would not provide better outcomes than the current system.

An Expenditure Model

The submission challenges the argument for shifting to an expenditure model, ie. that the current subquota system promotes genres of limited audience appeal and inhibits innovation.

A shift to an expenditure model would lose the transparency of the current system and involve significant compliance problems.

It would almost certainly involve a number of complex and potentially controversial debates around definitions and whether the model should be based on program expenditure or gross revenues.

It would appear that a shift to an expenditure model would provide very uncertain outcomes as compared to the benefits of the current quota system with its clear and fairly readily measured outcomes.

Matching Subsidy

A number of concerns about a matching subsidy model are outlined:

- It could lead to reduced amounts of Australian programming.
- An automatic open-ended matching subsidy arrangement would not be consistent with the desire of Government to have certainty about subsidy levels.
- It would be at odds with the policy objectives of Government support for the film and television sector – ie. that subsidy should be directed to those high cost/high risk formats where market failure is greatest.

Transferable Quotas

We are concerned that a transferable quota system would lead to uncertain outcomes, to the 'ghettoisation' of certain kinds of Australian programs and to reduced choice for viewers.

2. A FOURTH COMMERCIAL TELEVISION CHANNEL

2.1 Introduction

In the course of the hearings there has been considerable discussion about the limitation on additional commercial licences and in particular of the desirability of a fourth commercial service. Under the digital conversion legislation there is a prohibition on additional commercial TV licences until 2008. The legislation also provides for a review to be carried out before the end of 2005 to determine whether any new commercial licences should be issued.

We are aware the commission is looking at whether the analogue simulcast period could be shortened and the various limitations which form part of the digital conversion scheme lifted, so that further competition is opened up at an earlier date.

We are not in principle opposed to the idea of a fourth commercial channel.

From our point of view the key issues relating to the 4th commercial licence are the impact on Australian content levels and more generally whether the public interest would be served by such a move.

We consider the question is whether it can be demonstrated that this would enhance the achievement of the cultural objectives of the Act and serve the public interest.

As Brian Johns, the Managing Director of the ABC put it, in his evidence at the public hearings (p.618B transcript), "the end I believe remains constant and that is diversity, and Australian quality, Australian content for Australian identity".

In this respect diversity is key - diversity of content, diversity of structures and diversity of control. These outcomes would be achieved if the following conditions were met:

- that the 4th channel did not lead to a greater level of media concentration;

- that it would be subject to the same content requirements as the other free-to-air services and that its establishment would lead to an increase in Australian content levels;

- that correspondingly, it would not lead to a reduction in licence fees paid to Australian program makers given the direct relationship between these and Australia's capacity to produce local content;

- that it would provide the public with quality, innovative programming.

2.2 Impact on Australian Content

There was some discussion before the Commission about whether a fourth channel would assist the problem of the 'negative terms of trade' for program suppliers that was discussed by a number of industry bodies. The problem cited was the growing gap between what broadcasters are prepared to pay and the costs of producing quality Australian programs. In our original submission we discussed the increased reliance of television drama, and particularly the more expensive forms such as mini-series and telemovies, on overseas sales.

In particular the industry concern is:

- that the level of licence fees paid by broadcasters has in real terms declined significantly over the last ten years or so;

- that program suppliers are not in a strong enough bargaining position to negotiate better prices; and

- that there is a 'certain sameness' to the amounts paid for particular kinds of programming.

This last concern was most recently voiced by producer Hal McElroy on the ABC's PM program on 8 July, 1999. To quote, "There seems to be a ceiling in Australia as to what the networks will pay for a drama, regardless of its cost of production". He referred to this ceiling as being between $200,000 to $250,000 per episode and that it was only in rare cases such as *Water Rats* that this figure was exceeded.

The Commissioners have raised the question as to whether the introduction of a further competitor would improve the bargaining position of program suppliers and hence assist in changing this pattern.

Our view is that this would not necessarily occur.

2.2.1 A Buyer's Market

In relation to the purchase of Australian drama and documentary programs from the independent sector the television industry is often described as being 'a buyer's market'.

This is illustrated by the generally agreed decline in licence fees over the last decade. With a large number of independent producers producing or seeking to produce, for the limited opportunities in the market, it is a situation where supply far outstrips demand.[1] In addition to the large and very competitive independent production sector, the buyers can also source from foreign suppliers and their own in house capabilities. It is also a situation where demand is down as shown in our original submission.

A recent comment by Cherrie Bottger, network manager children's television for the Ten Network illustrates the abundant supply point. She advised that Ten receives, on average, 15 proposals for children's programs each week and said, "There are a lot of creative children's producers out there."[2]

This is not a situation confined to Australia.

We understand that the UK Office of Fair Trading is currently looking at the issue of market power of broadcasters vis a vis program makers.

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1 The ABS reported in its 1996-97 survey that there were 2,003 businesses in the film and video production industry at the end of June 1997 and that for 313 of these television program production was their main activity. ABS, Film and Video production and Distribution 1996/97. Serial No. 8679.0.

2 Interview in ABA Update, July 1997. p.12.

More generally there has been considerable examination of the issues facing the UK television production sector in recent times. Part of the terms of reference of a current UK inquiry are to look at sources of investment in programs, to consider the factors which affect the development of the UK program supply industry, and to propose action by the industry and Government to strengthen its performance.[3]

This is in a period which is seeing a considerable expansion of services with the introduction of a fifth free-to-air service in 1997, and the introduction in 1998 of digital television involving a move to a multichannel environment.

A recent study by Arthur Andersen for the European Broadcasting Union looked at the impact of digital television on program supply. This concluded that while digital television is set to drive up demand for secondary rights to domestic production, it is unlikely to lead to an explosion in originated production expenditure. *"When it comes to financing new originations, the broadcaster will pay the producer the same price but demand more rights"*.[4]

In summary there are strong indications that the expansion of services does not necessarily improve the position of domestic program suppliers.

Any fourth commercial operator is going to be faced with considerable start up costs and like the existing free to air operators, with growing competition from pay television and with the competition that is emerging albeit slowly, from new services such as datacasting, and the internet. Given the relative costs of commissioning programming, versus buying imported programs off the shelf, it can be expected that a new service would seek to contain variable costs by meeting content requirements as cheaply as possible.

Some might argue that because Australian programs rate well a new service would want and need to include Australian drama and documentary as part of its strategy to win over audiences.

However, a range of Australian programs rate well - ie. news and current affairs, general entertainment and lifestyle programs as well as drama. A new service could therefore seek to attract audience (and fulfil content requirements assuming the same requirements applied) by concentrating on the cheaper forms of Australian programming including serials, and by filling much of their drama programming with 'high end' imported drama shows.

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3 The inquiry set up by Culture Secretary, Chris Smith and carried out by a team of experts under the auspices of the Government's Creative Industry's Task Force is looking into ways of improving exports of British-made television programs. Outline of inquiry available at www.nds.coi.gov.uk

4 Article by Jonathan Davis, London Economics in Broadcast 8 January 1999 p.1. The details of the report itself are : Arthur Andersen, *The Impact of Digital Television on the Supply of Programs: A Report for the European Broadcasting Union*, December 1998.

Under this scenario there would be no impact on the price structure for quality documentaries, drama series, mini-series and telemovies.

Given the above factors we tend to the view that the existence of a fourth channel would not necessarily improve the bargaining position of program makers, and arguably could worsen it.

2.2.2 Further Issues

The argument traditionally put against a 4th service is that it will lead to further fragmentation of the advertising market and pressure on quality and local content levels. FACTS has put this position in some detail in its submission. SPAA has pointed to the UK and New Zealand examples. In the UK a 5th channel was introduced in 1997. Channel 5 programming came in for considerable criticism in the UK Independent Commission (ITC) Annual Performance Review. The ITC found that original new drama fell woefully short of quota, that some programs were overly 'voyeuristic' and many entertainment shows were not only low-budget but poor quality.[5]

In New Zealand a fourth channel TV4 was launched by TV3 in 1997. This follows deregulation of the market in the late eighties which led, amongst other things, to the establishment of CanWest's TV3. Television Business International reports as follows on the New Zealand outcome:

> *"...surveys show that viewers are increasingly dissatisfied with purely market driven television. Between 1991 and 1996 figures for average time spent viewing in the five plus demographic showed a fall by four minutes according to A.C. Nielson McNair."*[6]

In the NZ On Air 1998 Local Content Report, the Chairperson David Beatson drew attention to the increasing reliance of New Zealand television on repeated and semi-infomercial programs. He expressed concern about diversity of local programming being on the wane and said:

> *"Neither is this diversity enhanced by the proliferation of new channels. While these television options are often trumpeted as delivering more choices to viewers, the survey confirms that such choice relates to predominantly foreign culture."*[7]

We also note there are counter arguments such as those mentioned by News Ltd in the hearings, ie. that advertising revenue may well grow as media changes, as occurred with the introduction of FM Radio. Television Business International has reported that in the UK Channel 5 "has helped grow the audience for commercial channels from a 56.6% share among

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5 *Broadcast* , (UK Weekly), 9 April, 1999, p.19.
6 TBI Yearbook 1999 p.251.
7 NZ On Air, *Local Content '98*, February, 1999.

individuals in the first quarter of 1997 to 58.4% in the last quarter.[8] We also note that ABA Financial Results show that total advertising revenue increased by 7.0% from 1996/97 to 1997/98 and that in the four years from 1994/95 to 1997/98 there was an average annual growth of 7.5%.[9]

No doubt these issues will be canvassed more thoroughly in the review of the 3 commercial channel policy. The Commission may also be able to undertake some detailed investigation into the future prospects for growth in advertising revenue and the viability of a fourth commercial channel.

On the other hand it is possible that the question of the impact on revenue levels and accordingly on the quality of existing services cannot be resolved decisively and will continue to be subject to competing views and analyses.

It may well be that a more sensible approach is to set the policy parameters under which a 4th channel would be allowed. These in our view should be based on the points set out at the end of section 2.1.

Lastly we question whether the issue of a fourth commercial channel is the main priority in the immediate term. As the Commission will be aware there are serious concerns about the impact of digital conversion on consumers. These centre on the cost of purchasing the necessary equipment to receive digital television when the simulcast period is over and on whether all television households will be able to get adequate access to digital service or be faced with blackouts from time to time. These are just some of the many issues to be resolved relating to digital conversion as evidenced by the considerable number of inquiries occurring or to occur prior to 2005. Given the very uncertain outcomes it may well be more appropriate for further examination of the 4th channel question to occur within the framework of the review required under the Digital Conversion legislation.

3. ALTERNATIVE MODELS

The Commission's terms of reference require it to investigate alternatives to the current regulatory models. In our original submission we dealt with two options - replacing the current arrangements with a subsidy based model and secondly, placing greater responsibility for Australian content on the national broadcasters.

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8 TBI Yearbook 1999, p.88.

9 ABA Broadcasting Financial Results 1997/98.

Here we deal with the following proposals the Commission has identified:

- replacing the current quota arrangements particularly in the subquota areas with an expenditure model similar to that applying to pay television;

- establishing a matching subsidy type arrangement;

- transferable quotas

3.1 Benefits of Current Arrangements

The Australian content system like most operating internationally is a quota based approach. As well as the transmission quota, there are the subquota areas of adult drama, children's drama and documentary where licensees are required to screen minimum amounts of Australian content. The rationale for these subquotas is twofold:

- that notwithstanding the efficiency of the Australian production industry, these are genres which are particularly vulnerable to imported programming because of their cost relative to the cost of imported programs selling at secondary prices;[10]

- that it is important to have an Australian presence in these culturally and socially important areas of programming.

This system is complemented by the availability of public subsidy, for mini-series, telemovies, children's drama and documentaries.

The key features of the system are as follows:

- broadcasters are required to support and broadcast Australian programs in these three well established program areas;

- the government subsidy is targeted to those types of programming where market failure exists, ie. the more expensive (relative to the cost of imported programming) forms of programming.

The positive outcomes of the regulation for Australian content have been much commented on, including in the course of the Commission's inquiry.

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10 An interesting insight into the efficiency of the Australian industry was provided in the ABC Radio National "Australia Talks Back" program on Australian content, 14 July 1999. Steve Knapman, the co-producer of the ABC program *Wildside* said Australian drama was efficient because it had to be and because the industry had learnt to work very quickly in the last 10 years or so. He cited the case of British television personnel coming to Australia to observe the production of *Wildside* in order to learn how production was completed so efficiently and quickly.

The broadcasters have advocated loosening of the current requirements while at the same time vigorously arguing for maintenance of those aspects of regulation which protect them from competition such as the ban on a 4th commercial service.

However they, along with most other parties have been clearly agreed on one thing - that the standard of television in Australia is very high and that the public is, on balance, well served by the current arrangements. It is not unusual for Australian television to be held up internationally as a positive example of a broadcasting system 'that has got it right'.

The Australian character of our services, a key aspect of which is the presence of adult and children's drama, has played a major role in achieving this outcome.[11] In these circumstances to endorse an alternative arrangement for delivering diversity and Australian identity one would need to be confident there were clear indications a better result would ensue.

3.2 An Expenditure Model

The proposal we consider here is that broadcasters would have to spend a certain percentage of their expenditure (on particular types of programming) on Australian programming. We are assuming that for the point of discussion this would apply to the current subquota areas, ie. adult drama, documentaries, children's drama and other children's programs.

As we understand it the reasoning behind such a proposal is that the current arrangements inhibit innovation and force broadcasters to support particular program categories when they would prefer to develop other program categories in response to viewer interest.

This argument seems to rest on two hypotheses:

- that the current sub quota categories are outdated and of limited audience interest; and

- that the structure of the subquota categories inhibits innovation.

It is important to remember the minimal nature of the subquotas. They mean each network must screen per year:

- 15 hours of first release documentary increasing to 20 in 2000;
- 32 hours of first release children's drama, and 8 hours of repeats;
- 80 to 225 hours of first release adult drama in prime time - ie. from 5pm to 11 pm.[12]

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11 The documentary requirement is still fairly new having been introduced in 1996. This plus the fairly minimal requirement makes it difficult to assess at this stage.

12 The points system for adult drama requires 225 points a year, but 775 points over 3 years - so on average the minimum yearly requirement is somewhat higher, ie. 258 points or from 80.7 to 258 hours.

Further the Children's Television Standards require that 130 hours (21 minutes a day) of first release Australian C programs, and 130 hours of Australian P programs must be broadcast each year. (The children's drama requirement is part of the overall C requirement.)

So are these outdated genres that are unappealing to audiences?

- Work carried out by Franco Papandrea found considerable viewer support for Australian documentary and children's programming. He conducted a contingent valuation survey of the community benefits of Australian television programs. This found that children's and documentary programs were the areas where demand for additional programming was highest.[13]

- The information in Appendix 1 shows that on average networks currently screen considerable amounts of drama, documentaries and children's programming.

- Free to air schedules internationally continue to carry a wide range of program formats, including drama, documentary and children's programming.

- The recent ratings success of the documentary series *Our Century* is notable in light of the issues raised about the appeal of the documentary genre in the FACTS submission. Currently screening in primetime (6.30 pm on Sundays) on the Nine Network, "Our Century" has received average ratings of 21 (for the 16 episodes shown to date) with a highest rating of 27.[14]

- In its submission FACTS advised the Commission that the obligations involved in the current children's program standards were onerous, and that children were not attracted to the type of drama the standard seeks to encourage. However there is considerable evidence of the popularity of many of the children's drama programs screened on commercial television.

    - A recent feature article in the Age *Green Guide* by Barbara Hooks discussed the increased attractiveness of children's television to the commercial industry and how it is being seen as the next big growth area.[15]

    - *Thunderstone* screening on Network 10 is winning the Friday 4pm time slot and has sold to the Disney Channel and RTL Germany.

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13 Franco Papandrea, *Measuring Community Benefits of Australian TV programs*, BTCE Occasional Paper 113 AGPS, Canberra 1996. This also found that a substantial majority of Australians were broadly satisfied that the benefits derived from Australian television programs are commensurate with the cost of supplying the programs.

14 Program investors are Film Australia, the Nine Network, the Commercial Television Production Fund and ScreenSound Australia (formerly the National Sound and Film Archive).

15 Barbara Hooks, "A Growing Concern", The Age, Green Guide, 15 April 99, p.3.

- The ACTF points to the popularity of websites children have set up devoted to their favourite Australian children's drama series such as *Ocean Girl*, also a Network 10 program.[16]

- *Crashzone* which screened on Network 7 is another case in point - rating as well as the top rating *Rage, Recovery* and *Video Hits* and even beating them on occasion.[17]

The appeal of children's programming was recently articulated by Cherrie Bottger, network manager, children's television for the 10 Network:

> *"Children have a voice today unlike in the past. Parents listen to their children a lot more. Because children have that say, they are also consumers. They watch a lot more television than the average adult does, and they are learning from television all the time. The child audience is very responsive: each week we receive, on average, 1200 email, letters and website requests for information."* [18]

The growing popularity of children's programming and documentary channels on Australian pay television area would also seem to counter the suggestion that these are unpopular forms of programming.

It could be argued that current patterns of programming are likely to change dramatically with convergence and the introduction of new services.

However the following points emerge from an examination of the many articles, reports, and comments about future media scapes and the impact on existing services:

- it is far too early to say with any certainty how convergence will unfold, what sort of new services will emerge, and what changes in programming formats on existing services will result.[19]

- while they will face growing competition, free to air services as we broadly know them today are likely to continue, and hold significant market share for the foreseeable future.

- free to air services given their need to maintain mass appeal are likely to continue to provide a range of program formats.

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16 ACTF submission, p.5.

17 The Age, Green Guide, op cit.

18 ABA Update, July 1999, p.13.

19 This emerges also from evidence to this inquiry, as expressed in the comment by Telstra representative Deena Shiff, - "Telstra in all honesty doesn't know what the main game is." p.636D transcript.

It is worth noting that in the United States where multichannelling is most advanced in the sense of the proliferation of pay services, the program formats of drama, documentary and children's programs continue on free-to-air services.

3.2.1 The Question of Innovation

We cannot agree that the current system is inflexible and inhibits innovation.

We dealt with the flexibility provided by the current arrangements in our original submission at pp.15 to 16. To summarise, with drama and documentary subquotas, the absence of prescriptions, apart from the minimum number of points or hours, means there is complete flexibility to innovate within the program categories.

Sketch comedy, animated drama and dramatised documentary all fall within the definition of 'drama' for the purposes of adult and children's drama programming.

If it is accepted that the categories of drama, children's drama and documentary will continue to be a significant part of the programming schedules of free to air services, it is hard to see an argument for lesser minimum requirements than currently apply.

There is no obstacle to networks experimenting in other program formats, as well as experimenting in terms of subject matter and form within the subquota areas. A considerable amount of innovation does indeed occur. On the other hand the criticism is also voiced that the networks tend to pursue similar program styles and do not in fact utilise the opportunities for innovation that currently exist.

In summary, we do not consider the case for changing the subquota system to provide for more innovation has been made out. The concern remains that behind the call from broadcasters and aspiring broadcasters for more flexibility is perhaps the desire to reduce costs by discontinuing the more expensive forms of Australian programming.

The end result would be a reduction in choice and diversity for Australian viewers.

3.2.2 Administrative and Compliance Problems

It is very likely an expenditure model would raise complex administrative and compliance issues.

The current arrangement has the benefit of transparency. In terms of verification the ABA 's main task is to confirm that the program has met the definitions of the different program types and the test of being

"Australian". This is a fairly straightforward process given the objective nature of the tests involved.

The ABA publishes the list of programs the broadcasters submit each year as counting towards their content obligations. It is therefore accessible to industry parties and the general public and any concerns about a program's compliance with the eligibility criteria can be raised.

While the ABA has broad information gathering powers under Part 13 of the Act, and powers in respect of licensees accounts under Section 205 B, in practice there are likely to be problems verifying that a licensee's obligations have been met.

The ABA would certainly have to collect more information than currently occurs, for example information on various sub categories of foreign programming other than drama.

We are uncertain whether the current level of resources of the ABA would be adequate to carry out the collection and verification of the information required.

Further the question arises as to whether the information on expenditure in various program categories would be publicly available. Currently this information is only available on an aggregate basis for the whole industry. There are likely to be commercial sensitivities which mean the networks would be reluctant for detailed information on their individual expenditure to be made publicly available. Yet there may be a community expectation that this would occur.[20]

There would almost certainly be a number of complex and potentially controversial issues surrounding the definition of 'program expenditure'. The ABA's pay television guidelines provide an indication of the type of issues that arise in this respect.

The Commission has recognised that there would be issues relating to assessing program costs when dealing with in house production.

One of the conclusions of the ABA's 1997 report on the pay television local content requirement was that a revised and enforceable scheme should include "greater accountability by means of a specialised accounting standard that gives greater certainty about what constitutes program expenditure."[21]

A range of questions would also arise as to how the figure should be set.

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20 The ABA's guidelines for pay television recognise such concerns and advise that information in relation to the pay television expenditure requirement will only be published in aggregated form.

21 ABA Australian Content on Pay Television, Report to the Minister for Communications and the Arts, May 1977, p.15.

If an expenditure model was to be contemplated, it would be clearly not be inappropriate to take the 10% figure which applies for pay. This has been set on the basis of pay being in its start up phase and it is clearly not appropriate for the developed free-to-air industry. Moreover, it would mean, in the case of adult drama, a very significant reduction in the amount of Australian drama available to the community - from $82.3 million worth to $30 million on the 1997/98 expenditure figures.

It is difficult to see how an expenditure model would work for children's programming where, given the nature of the Children's standard, most of the material broadcast is Australian.

It could perhaps be argued that an expenditure test should be based on gross revenue rather than program expenditure. Yet here too it can be expected that similar complex issues would arise, relating to definitions, transparency and the resources the ABA would need to adequately administer such a system.

In summary it would appear that a shift to an expenditure model would provide very uncertain outcomes as compared to the benefits of the current quota system with its clear and fairly readily measured outcomes.

3.3 Matching Subsidy

The suggestion here, as we understand it, is that expenditure by licensees could be matched on some basis by government subsidy. Again we are assuming that this would apply to the vulnerable subquota areas of drama, documentary and children's drama. We have identified a number of difficulties associated with such an approach.

- Firstly in the absence of any mandatory expenditure requirements, such an approach could lead to significantly reduced amounts of local content. A licensee could choose to spend significantly less on Australian programs in the subquota areas so that when matched by subsidy the total would support considerably lower levels of programming than currently occur.

- A further problem with an automatic matching subsidy arrangement is that there would be no cap or ceiling on the amount of subsidy that might be provided. A key aspect of government support for the film and television industry is that the mechanisms used involve certainty as to quantum. This was a key reason for the move in 1988 away from the tax incentive regime under previous 10BA arrangements to the current direct funding model through the FFC.

- Thirdly an open ended matching subsidy system would be at odds with the policy objectives of government support for the film and television sector. Government subsidy is available for the quality, more expensive forms of drama and documentary only.

This situation reflects the view that has been held consistently by successive governments for some years - ie.:

- that direct and indirect subsidy should be directed to those high cost/high risk formats where market failure is greatest, and

- that it is reasonable to expect the commercial television industry to meet the cost of the less expensive forms of Australian programming.

The current position is that where subsidy is available, ie. for 'high end' adult drama, children's drama and documentary, something akin to a matching subsidy system applies currently via the FFC. FFC guidelines provide that subject to meeting objective criteria, financing is available for 'eligible Australian programs, - ie. mini-series, telemovies, children's drama and documentaries. Those criteria include in the case of television drama and documentary, broadcaster commitment to pay minimum benchmark licence fees.

Subsidy is not available for series and serials. Such programs are not eligible for FFC support nor do they qualify for tax concessions under either Division 10BA of the Income Tax Assessment Act or under the Film Licence Investment Scheme (FLICs). The latter is the new scheme for raising concessional investment in the film industry.

The same policy approach underpinned the Commercial Television Production Fund which also supported feature films, mini-series, telemovies and documentaries, but not series and serials.

Targeting of these particular formats is central to the pursuit of the government's cultural objectives. It occurs to ensure as the Gonski report said that the Australian industry can produce "a broad slate of products of different types, formats and genres, reflecting different ideas and points of views".[22]

3.3.1 The Current Operation of Federal Subsidy

<u>Adult Drama</u>

Consistent with its brief to support a diverse range of culturally relevant material, the FFC sets targets for its investments to ensure a spread of product against the various production categories. The 1998/99 targets are 50 to 60% for feature films, 30 to 40% for television drama and 10 to 15% for documentaries.

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22 D. Gonski, *Review of Commonwealth Assistance to the Film Industry*, January 1997, p.6.

<u>Television Drama</u>
In 1997/98:

- The FFC invested $27.1 million (39% of available funds) in television drama.[23]
- Just over $22 million or 81% of this was invested in projects for commercial television broadcast.
- The $22 million was comprised of around $5.4 million for adult drama programs and $16.6 million for children's drama.

In 1996/97, $11.8 million was invested in drama for the commercial sector, made up of $8.3 for adult drama and $3.5 for children's drama.[24]

Seventeen of the 38 children's drama programs screened by commercial broadcasters in 1996, 1997 and 1998 pursuant to their first release obligations, were supported by the FFC.

<u>Documentary</u>
While FFC subsidy is available for documentary, most documentaries screened by commercial television broadcasters are produced in house or by independent producers without subsidy.

FFC funding is available under Accord arrangements with broadcasters for documentaries that are "culturally relevant to Australia". FFC Accord funding is not available for documentaries that fall into subject categories such as wildlife, travel and adventure and natural history which are generally able to attract international presales and distribution guarantees.[25] The FFC used to have a formal accord system with the commercial broadcasters but this has now lapsed. Accord arrangements are now available with commercial broadcasters on a case by case basis. A broadcaster commitment of 30% of the budget is required for an Accord documentary which would mean in the case of a one hour program costing $200,000, a license fee of $60,000.

FFC investment is also available for non Accord documentaries where a domestic licence fee of less than 30% of the budget can apply, provided there is a greater level of market place attachment, via a presale in a major territory.

Over the three years from mid 1995 to mid 1998 11 FFC funded documentaries, mostly non Accord projects, were screened on commercial television, a period in which at least 150 Australian documentaries were

23 Investment in television drama programs is included here. The FFC also invests in feature films, many of which are screened on television following their theatrical release and which also count towards the ABA's drama quota.

24 Australian Film Finance Corporation Annual Reports 1996/97 and 1997/98.

25 Australian Film Finance Corporation Investment Guidelines October 1998.

screened.[26] A perusal of the ABA compliance lists shows that documentaries screened on commercial television are primarily adventure, outdoors, and nature type programs.

It is clear that for documentary the commercial broadcasters have sought limited access to the subsidy that is available.

Appendix 3 contains some further information on federal subsidy for television program production.

In summary, there appear to be a number of difficulties with an open ended matching subsidy scheme. In particular, by making subsidy generally available for all drama, documentary and children's programs it would conflict with the current policy objectives for government subsidy.

It could mean that government subsidy would be available for the less expensive forms of Australian programming currently considered to be the responsibility of broadcasters. In our view there would not be government or community support for shifting the current balance in this way.

Such a shift would occur at the expense of quality programs and would reduce the diversity available to Australian viewers.

3.4 Transferable Quotas

The Commission has raised the idea of transferable quotas as a possible way of meeting the expressed desire of the broadcasters for greater flexibility. Presumably the current 'must show' obligation would be deleted and a licensee could instead financially support a program which would be screened on another service.

We would share the concerns about such a proposal expressed by Brian Johns in the hearings on June 7th - ie., that it could lead to certain types of Australian programming becoming 'ghettoised'(pp.621 to 622 of transcript).

If particular types of programming, eg. drama, children's programs and documentary were concentrated on one or two services, they would often have to be shown outside of peak viewing times for target groups. This would then lead to reduced viewer choice. For example, in any week viewers now have the choice of a number of Australian dramas in prime time. This choice would be reduced if some of this programming moved to non-prime time spots.

26 The number of 150 comes from ABA Compliance Information for 1996 and 1997. As the documentary requirement was only introduced in 1996, the ABA does not publish information on Australian documentaries screened prior to that time.

This approach could also lead to uncertainties about outcomes. The theory, we assume would be that you would have the same amount of content overall. Instead of being spread across three networks, it would be concentrated on one or two. Financing of television programs is, as the Commission will be aware from various submissions and hearings, a complex manner. It increasingly involves a mix of network support by way of licence fee and/or equity investment, and private investment by way of overseas presales, distribution guarantees and as referred to above, FFC investment for quality forms of programming. We question whether under a transferable model there would be the same commitment to developing and driving projects forward.

The Commission also raised the possibility of the transferable quota model being coupled with an expenditure model, similar to what prevails in pay television. However the very different nature of pay and free to air services is relevant here. Pay television involves niche programming and in some cases very specialised channels. Transferability seemed reasonable because by their very nature there are some channels where it is not possible to have Australian programs, eg, Classic Hollywood movies and foreign movie classics.

Leaving these channels aside, there have been concerns about this and other aspects of the pay model. The recent ABA results demonstrate that the voluntary scheme that has operated has delivered very minimal levels of Australian programming. Moreover, the pay television industry is developing rapidly with considerably more channels than were available in 1992. Depending on the nature of the particular service, it may well be appropriate to move to a 'must show' model in the future.

As is much commented, free to air services are essentially different to pay because of their need to have mass appeal. There does not appear to be a compelling argument for licensees to be exempt from the obligation to show some Australian programs within the current well established program genres.

4. THE CURRENT SYSTEM – A PERSPECTIVE ON COSTS

The issue of the relative cost of the subquota areas also needs to be kept in perspective. The table in Appendix 2 sets out aggregate expenditure by commercial television in 1997/98 . This shows that the largest areas of expense in terms of Australian programs are news and current affairs ($161.6 million) followed by sport ($153.4 million). Then comes light entertainment ($127.2 million) followed by adult drama ($82.3 million).

The following table shows the percentage each of the subquota areas represents of total programming costs and of total expenditure

Commercial Television Expenditure 1997/98 - Australian Programs & Total Costs

Subquota Area	$(mill)	% of total program costs	% of total expenses
Drama	82.3	10%	3.6%
Children's drama	11.2	1.4%	0.49%
Children's other	11.8	1.5%	0.5%
documentaries	6.3	0.8%	0.3%

Source: ABA Financial Results 1997/98

5. THE FUTURE

When considering the question of Australian content in the digital era, it is important to return to the fundamental cultural objectives of content regulation-ie. to ensure there are representations of Australian concerns, stories and interests on our screens. There are strong arguments to support the strengthening of content regulation rather than its weakening as Australia moves into the digital age.

The experience with pay television is a graphic illustration of the problems involved in relying solely on market forces. Self regulation has led to very low levels of Australian content on a medium that is growing rapidly in significance and influence.

In a number of international jurisdictions, considerable attention is being devoted to ways of strengthening support measures to secure reasonable levels of locally produced programs. This is particularly important in an English speaking country like Australia where there is no language barrier to limit the impact of large amounts of imported material, particularly from the United States.

There are at times optimistic statements made about how the establishment of new services will lead to an almost insatiable demand for local content. For example the News Ltd submission states,

> *"Convergence will result in more types of media, which means more product will be required. As a competitive necessity each type of new media will need local content. This can only mean the production of more Australian content."* (p.13)

However more sanguine voices warn that the outcome may not be that rosy and that specific strategies will be needed. One of the major conclusions of the Arthur Andersen study on the Impact of Digital Television in Europe was:

> *"Regulation will not wither away in the digital world, and the current motivations (social and economic) for content regulation will remain, as the majority of new services on digital will be based on exploitation of existing rights, not on originated programming."*[27]

A recent UK study concluded:

> *"Digital television gives consumers more choice and improved picture quality but a lack of growth in advertising income and the need to fund more channels may lead to a decline in content quality as cheap foreign imports replace original production and in-house news."*[28]

In our submissions we have argued that

- the current system of content regulation for free-to-air television has served the community well; and

- that to dilute or change it in some of the ways which have been canvassed in the inquiry to date would not lead to better outcomes.

This is not to say that it could not be further improved in the future.

There is a need for careful consideration to be given as to how reasonable levels of Australian content can be achieved on the new services that are promised by convergence. We understand this will be a key aspect of the Ministerial Review of Convergence that is to take place in the latter part of this year.

We do not consider some uniform system of content regulation across various services would be appropriate. While there is considerable uncertainty about how convergence will unfold, it seems clear there will still be different and distinct types of services, eg. mass free-to air television, pay television, and new specialist entertainment, and information services such as datacasting.

As has occurred in the past with the introduction of pay services, it will be necessary to examine the nature of the service provided, and then establish what sort of measures are required to ensure a local presence on these.

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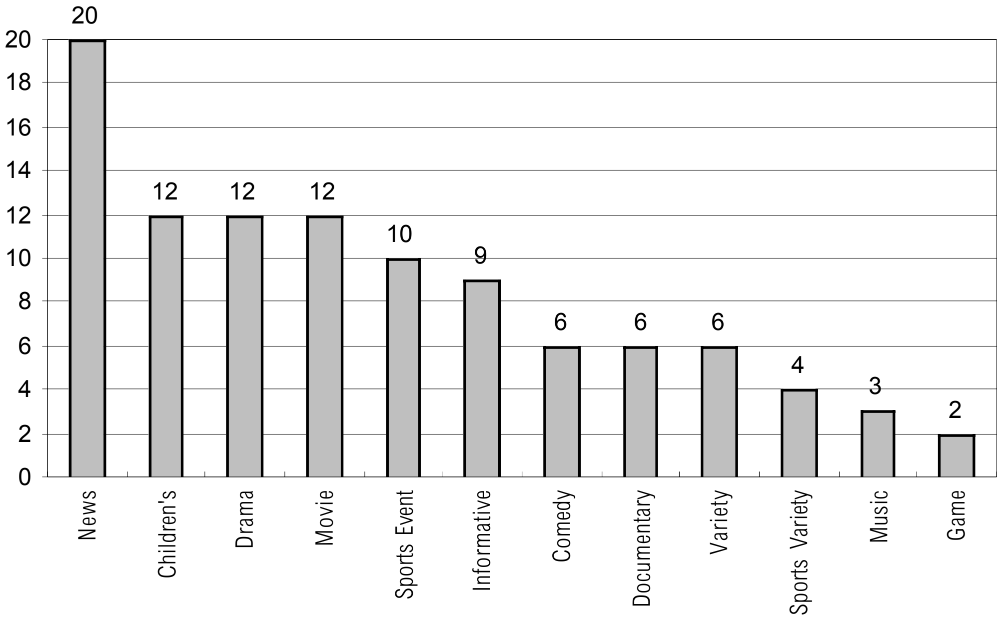
27 Arthur Andersen, op cit, p.95.

28 Abigail Thomas, *Regulation of Broadcasting in the Digital Age*, Report for the Department of Culture, Media and Sport, UK, - available at www.culture.uk/thomastitle.htm

Appendix 1

TOTAL BROADCAST HOURS BY PROGRAM TYPE

% BROADCAST HOURS 1997 6.00am – Midnight. Five City Average



All television programs - five metropolitan markets - January to December 1997 - 6.00am to Midnight.
Source: AC Nielson, TV Trends 1997.

AUSTRALIAN PROGRAMS – SHARE OF HOURS BROADCAST 1997 6.00am - Midnight.
Five City Average

CATEGORY	ALL PROGRAMMING		FIRST RELEASE AUSTRALIAN PROGRAMMING		
	Hours Broadcast[29]	% Share of Hours Broadcast	Hours Broadcast[30]	% Share of Hours Broadcast for Category	% Share of Total Hours
DRAMA	1577*	24%	174	11%	2.6%
CHILDREN'S	788	12%	263.6**	33.4%	4.0%
DOCUMENTARIES	394	6%	23	5.8%	0.35%

*Includes drama and movies.
**First release and repeats.

ABA Compliance Results 1997.

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29 Total hours for all categories is 6570, ie 18 hours x 365 days.
30 ABA Compliance Results.

Appendix 2

PROGRAM EXPENDITURE – AUSTRALIA

Australia	1993 - 94	%	1994 - 95	%	1995 - 96	%	1996 - 97	%	1997 - 98	%	% Change 1993 - 1998	% Change 1997 - 1998
Number of Stations	44		44		44		44		47			
Drama	72.6	11.1	72.8	10.7	77.2	11.0	73.8	9.7	82.3	10.3	13.3	11.5
Children's - Drama	3.0	0.5	4.4	0.6	7.0	1.0	7.8	1.0	11.2	1.4	272.1	44.0
Children's - Other	10.7	1.6	8.0	1.2	6.6	0.9	10.2	1.3	11.8	1.5	9.7	15.8
News and Current Affairs	156.5	23.9	145.0	21.4	139.7	19.9	155.1	20.3	161.6	20.2	3.2	4.1
Documentaries	19.3	3.0	24.0	3.5	24.0	3.4	13.3	1.7	6.3	0.8	-67.5	-52.8
Sport	106.3	16.2	117.3	17.3	128.8	18.4	149.7	19.6	153.4	19.2	44.4	2.5
Light Entertainment - Variety	36.7	5.6	33.0	4.9	49.1	7.0	62.5	8.2	47.3	5.9	28.9	-24.4
Light Entertainment - Other	38.7	5.9	51.2	7.5	49.5	7.1	68.6	9.0	79.9	10.0	106.5	16.4
Other Programming	26.1	4.0	21.7	3.2	22.2	3.2	8.5	1.1	12.4	1.5	-52.5	45.1
Total Australian	469.9	71.8	477.4	100.0	504.0	100.0	549.6	100.0	566.1	100.0	20.5	3.0
Overseas Drama	160.9	24.6	183.4	27.0	174.2	24.9	199.6	26.1	217.6	27.2	35.2	9.0
Overseas Other	23.2	3.5	17.2	2.5	22.4	3.2	15.3	2.0	17.2	2.1	-26.0	12.6
Total Overseas	184.1	28.2	200.6	29.6	196.5	28.1	214.9	28.1	234.8	29.3	27.5	9.3
TOTAL PROGRAMMING	654.0	100.0	678.0	100.0	700.6	100.0	764.5	100.0	801.1	100.0	22.5	4.8

Source: ABA Financial Results 1997 - 98.

Appendix 3

ADDITIONAL INFORMATION

1. Federal Subsidy for Programming in the Subquota areas
(discussed at p.912 ff of transcript)

On page 15 of the submission we provide information on FFC investment in programs for broadcast on commercial television.

The Commonwealth Government's total allocation to film and television agencies in 1999-00 is $113.66 million. As mentioned in the footnote at p.24 of our original submission, this includes funding to the Australian Film, Television and Radio School, ScreenSound) formerly the National Sound and Film Archive, the Australian Children's Television Foundation(ACTF) and SBS Independent.

Of these, Film Australia and the ACTF Foundation are also involved film and television production support. The ACTF is supported with an allocation of $2.3 million in 1999/2000 to promote the production of quality children's drama. ACTF funding is primarily for development purposes. Once a project proceeds to production the ACTF acts as producer and raises finance from other sources, eg, the FFC, private finance, primarily through domestic or foreign presales and distribution guarantees. Most ACTF programs are screened on ABC television. However the program *Crash Zone*, screened on Channel 7, was an ACTF initiated and produced project (see p.9). The initial series was funded by Disney and the second series is financed by Disney, the FFC and the ACTF.

Film Australia receives an allocation of $6.69 million in 1999/2000 for the National Interest Program. The NIP has been established to support the production and distribution of programs dealing with matters of national interest or designed to illustrate or interpret aspects of Australian life. Most NIP programs have been broadcast on the ABC or SBS. An exception is the documentary series *Our Century* discussed on page 9.

2. Federal Government Response to the Gonski Report
(p.922 of transcript)

As discussed on page 922 the broad thrust of this can be found in the keynote speech to the 1997 SPAA Annual Conference, by Senator Alston, the Minister for Communications, the Information Economy and the Arts.

Ministerial Speech of 15/11/97. Available under 'speeches" at www. dcita.gov.au

3. New Zealand Programs' Access to Australian Content Standard - Impact on Licence Fees Paid by Broadcasters in Both Countries

(p.920ff of transcript)

This was discussed at p 39 of our original submission. A more detailed analysis in contained in the AFC submission to the 1998 Senate Inquiry into Australian Content and s. 160D of the Broadcasting Services Act. The relevant section is now attached. The full submission can be found on the AFC's website- http://www.afc.gov.au/resources/online/pdfs/bsa.pdf

4. Reference to BTCE projections on pay television subscriber numbers

(p.919 of transcript)

We confirm that the BTCE report predicted subscriber numbers through to 2004-05.

Attachment to Appendix 3

IMPACT OF NEW ZEALAND PROGRAMS ON PRODUCTION LEVELS & LICENCE FEES IN AUSTRALIA & NEW ZEALAND

EXTRACT FROM AFC SUBMISSION TO THE SENATE ENVIRONMENT, RECREATION, COMMUNICATIONS AND THE ARTS LEGISLATION COMMITTEE, NOVEMBER 1998

From Section 5.4

New Zealand Programs Substituted for Australian – No Change in New Zealand

The attached table makes some projections about the impact on the separate Australian and New Zealand industries and the combined "Australasian" industry of New Zealand programs being eligible for content quotas. It is based on modest assessments of the amount of New Zealand material likely to be broadcast, ie, from 1 to 3 programs in total in a year.

The table is based on the assumption that there will be no additional production in New Zealand as a result of the change. We consider this to be a likely outcome with Australian broadcasters either buying existing programs "off the shelf" or making a contribution to new programs made for New Zealand television by way of pre-sales.

The accompanying notes show the outcome in some detail.

In terms of the combined Australian/New Zealand markets the outcomes are likely to be:

- no change in the total hours of Australian/New Zealand drama broadcast;

- licence fees paid by broadcasters are reduced significantly; and

- the combined value of production in the two countries is reduced as a result of the contraction.

Clear beneficiaries out of this would be Australian networks in that they would be paying less to fulfil their local content obligations. New Zealand broadcasters would also benefit by being able to reduce the costs of New Zealand programming

The New Zealand production industry would benefit to the extent that sales 'off the shelf' of existing material would represent additional income. The availability of Australian presales for new programs would only be of benefit to the extent that New Zealand licence fees were not reduced.

In the short term at least there is no apparent benefit to the New Zealand public and of course a negative impact on the Australian community as a result of the reduction.

Some Change in New Zealand

There are two possibilities:

1. Enhanced quality through higher production values.
   A variation of the above is that the additional revenue from Australian sales could act to enhance the quality and export potential of New Zealand drama. As noted already a key strategy of Project Blue Sky has been to increase foreign exchange earnings by way of foreign investment and overseas sales and accordingly to gear production more to the international market.

2. Increase in Quantity.
   A somewhat different picture from that outlined above would apply if there was an actual increase in the amount of New Zealand drama. This could occur as the viability of some New Zealand producers was enhanced by the additional income from the Australian market. Moreover supplemented by Australian licence fees, NZ on Air funding would be able to stretch further and fund more production. The extent of any increase in output would depend very much on whether the probable downward trend in New Zealand licence fees can be resisted.

If New Zealand programming were to increase in quantity and/or quality there would be benefits for the New Zealand audiences (presuming that relevance and appeal to New Zealand audiences doesn't suffer in the process of gearing production to Australian and other international markets).

Under both possibilities, unless the quantity of the new New Zealand programming is greater than the amount of Australian production displaced (a most unlikely outcome), the outcomes for the combined Australian/New Zealand industries are likely to be as follows:

- no change in the combined value of the Australian New Zealand industries;

- no increase in the quantity of local programs broadcast in the two countries taken together; and

- likely downward pressure on licence fees in both countries.

Attachment to Appendix 3 - Table

Impact of Revised Australian Content Standard on Australasian Production Levels ($A)

	AUSTRALIAN FIRST RELEASE DRAMA				NEW ZEALAND FIRST RELEASE DRAMA			AUSTRALIAN & NEW ZEALAND FIRST RELEASE DRAMA		
	Hours Transmitted Aust TV		Aust TV Licence Fees ($000)	Total Prod Budgets ($000)	Hours Transmitted NZ TV	NZ TV Licence Fees ($000)	Total Prod Budgets ($000)	Hours Transmitted	Licence Fees ($000)	Total Prod Budgets ($000)
1997 Adult Drama	469[1]		67,000[2]	102,800[3]	171[4]	8,000[5]	42,840[6]	640	75,000	141,900
Scenarios	**Aust**	**NZ**								
1	369	100	61,000[7]	91,800	171	6,000[8]	42,840	640	66,000	134,640
2	356	113	58,660	87,250	171	5,805	42,840	640	64,465	130,090
3	334	135	54,700	80,650	171	5,475	42,840	640	60,175	123,490

Note: The table is based on the hours of first release drama screened in Australia and New Zealand in 1997.

Scenarios

(1) One Australian network replaces one adult drama serial (0.5 hours per day) with an existing New Zealand serial = 100 hours in total for year.
(2) Two Australian networks replace one adult drama serial and one 13x1 hour series with similar existing New Zealand show (ie. 2 programs replaced in total)
(3) Three Australian networks replace one adult drama serial, one 13x1 hour series 1x1 hour per week series of 22 hours in total (ie. 3 programs replaced in total).

The reductions in Australian production budgets and licence fees are based on the known costs of both items for the particular types of programs involved.

Explanation of Implications of Scenarios

Australian networks will pay less for quota programs; Australian industry will make fewer programs. New Zealand industry will have new market for its existing programs but New Zealand broadcasters will reduce domestic licence fees in response.

1 ABA Compliance Results 1997 - Includes 2 in house productions.
2 Based on AFC database and industry information on licence fees - licence fee imprinted to in-house production.
3 AFC database.
4 NZ on Air - Local Content 1997.
5 New Zealand producer.
6 NZ on Air Annual reports + estimates.
7 Adjusted by reduction in licence fees paid for Australian programs but includes licence fee paid for New Zealand programs. The same applies to Australian licence fees in Scenarios 2 & 3.
8 The reductions in New Zealand licence fees are assessment based on New Zealand industry information.

Commentary

The table looks at the effect of New Zealand programs replacing Australian programs based on the local content broadcast in both countries in1997 year.

Three different situations are examined.

1. Where one Australian network broadcasts one New Zealand program - ie. 100 hours of a serial.

2. Where two Australian networks broadcast two Australian programs - one a serial as above and another a 13 one hour per week series.

3. Where each Australian network broadcasts a New Zealand program, ie, in addition to the two programs above, the third network broadcasts 22 episodes of a one hour a week New Zealand series.

The impact in Australia is as follows:

- hours of genuinely Australian content are reduced. The total hours of 'local' production remain the same but now include New Zealand programs. For example, if each network broadcast one New Zealand program (scenario 3), there would be a substitution of 135 hours of Australian programs by New Zealand ones.

- licence fees paid by the Australian networks for mandatory 'local'content are reduced - by $12.3 million under scenario 3. This occurs because they pay less for New Zealand programming than for Australian.

- the value of genuinely Australian production is reduced production - with the reduction being over $22 under scenario 3.

The impact in New Zealand is as follows:

- hours of New Zealand content on New Zealand television stay the same.

- licence fees go down as New Zealand networks seek to reduce costs in the knowledge Australian presales/sales are in place or possible.

- production levels stay the same.

In terms of the combined Australian/New Zealand industries the outcome is as follows:

- the combined total hours of local content is the same;

- the licence fees paid by broadcasters are reduced significantly;

- combined production budgets are reduced as a result of the contraction in the Australian industry- by $18.4 million under scenario 3.