AUSTRALIAN SCREEN INDUSTRY GUILDS AND ASSOCIATIONS RESPONSE TO TREASURY LAWS AMENDMENT (MEASURES FOR A LATER SITTING) BILL 2021: FILM TAX OFFSETS – EXPOSURE DRAFT

31 May 2021

Georgina Prasad
Individuals and Indirect Tax Division
Treasury
Langton Cres
Parkes ACT 2600

By email: film@treasury.gov.au

Dear Ms Prasad,

RE: TREASURY LAWS AMENDMENT (MEASURES FOR A LATER SITTING) BILL 2021: FILM TAX OFFSETS – EXPOSURE DRAFT.

We refer to the legislation above and welcome the opportunity to respond to the Exposure Draft relating to proposed Australian screen production incentive reforms.

Increasing the Producer Offset rate for non-feature film productions from 20 per cent to 30 per cent.

We support the increase in offset rate for non-feature film productions but note its legislative impact is substantially weakened by reduced market-opportunity for independent television production following the government's partial deregulation of commercial free-to-air television from January 1, 2021[1], and its intended reduction of Australian Drama obligations for Pay TV from July 1 2020. Whilst the government's new local content sub-quotas give broadcasters more flexibility, they also permit significant reductions in output overall, leading to fewer new commissions of Australian TV drama content.

The government stated in its rationale for increasing the offset that *'This increased rate will open up opportunities for the screen sector to engage further with international streaming services, which will enhance the availability of Australian content to Australian audiences no matter on what platform they choose to watch it.[2]'* However we would note that to a very significant degree, Australians get to see great local stories at home because of the combined forces of financial assistance in the form of tax offsets AND regulation in the form of content quotas. Currently streamers with a significant audience base in Australia and substantial locally sourced revenue have no regulatory obligation to commission or program Australian content.

[1] https://www.communications.gov.au/what-we-do/television/modernising-australian-screen-content-settings
[2] https://www.communications.gov.au/what-we-do/television/modernising-australian-screen-content-settings/qa

We bring to the your attention the government's current consideration of regulation to ensure popular streaming services are contributing to Australian content. This is a key regulatory setting that will help determine the future of Australian content. Separate to this response our guilds and associations did not support schedule 1 of the Broadcasting Legislation Amendment (2021 measures) which proposed to halve pay television requirement to invest in Australian drama and also submitted to the government's Media Reform Green Paper that a content spend obligation of 20% of locally sourced revenue be imposed on streamers from January 1, 2022.

Increasing the threshold for feature length content supported through the Producer Offset from $500,000 to $1 million.

We are concerned that the government's stated objective that *'Increasing the minimum qualifying Australian production expenditure [QAPE] threshold for feature length content from $500,000 to $1 million will encourage the creation of high-quality productions that are larger in scale*[3]*'* will have an unintended decimating impact to feature documentary production and stifle innovation and opportunity for new talent which are characteristics of feature production at the lower end of the budget scale.

One-off, single documentary feature films provide a significant cultural and social benefit to Australia – capturing and preserving our social, historical and political narratives. Feature documentaries are often made over many years, on much smaller budgets than their drama counterparts – which means they will be disproportionately impacted by the proposed reforms. According to analysis by Documentary Australia Foundation (DAF)[4], on average, over the last three financial years (2017/18 - 2019/20) only 42% of Screen Australia funded documentary features had budgets over $1million. DAF goes on to note that award-winning documentaries such as *Backtrack Boys, Gurrumu*l and *In My Blood It Runs* would not have been able to be made if the proposed increased in QAPE threshold had been in place.

Low budget features have included some of Australia's most memorable films over the last decade such as *Ruin* from Amiel Courtin-Wilson and Michael Cody, *Strange Colours* by Alena Lodkina and Isaac Wall, *Toomelah* from Ivan Sen, *Son of a Lion* and *Jirga* from Benjamin Gilmour, and *Sequin in a Blue Room* from Samuel Grisven and the Australian Film Television and Radio School.

Whilst many of these films do not have wide-scale commercial success, they have immeasurable cultural impact beyond the commercial and beyond our borders and importantly provide skills development and career springboards for Australia's next generation of screen storytellers with relatively minimal impact to overall program expenditure. Screen Australia's Drama report notes that of the 33 features that started production in 2018/19 with total budgets of $316 million, only 6% of films were made for under $1 million[5].

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[3] https://www.communications.gov.au/what-we-do/television/modernising-australian-screen-content-settings/qa
[4] https://documentaryaustralia.com.au/advocating-for-documentary/
[5] https://www.screenaustralia.gov.au/sa/media-centre/news/2019/10-31-drama-report-2018-19-australian-titles

We also bring to your attention that the first movie in George Miller's *Mad Max* franchise, the latest iteration of which will support more than 850 local jobs and bring in around $350 million into the economy[6], was made on a very low budget. This underscores the significant, long-term cultural and economic dividends in government also supporting innovative Australian storytellers at the bottom end of the budget scale.

Increasing the threshold for PDV (Post, Digital & Visual Effects) content supported through the PDV Offset from $500,000 to $1 million.

We are concerned that the intended increase in threshold is contrary to the government's stated intent to 'assist in the growth of our PDV sector'.[7] Australia's post-production and visual effects businesses are highly-regarded around the world. Their creativity, skills and expertise are highly sought after and enable local film makers to tell innovative and expansive stories to a world class technical standard. We are concerned that the proposed change would lead to sector consolidation and reduced creative and competitive diversity, with very large projects worked on by fewer select operators.

The PDV offset with its existing threshold has been instrumental in the growth and global prominence of a diverse Australian post and visual effects sector. Fundamental to these creative enterprises maturing from start-up phase to stable footing has been their ability, in the first instance, to secure smaller contracts (under $1m) on very prominent feature and TV projects (given their scale/capacity in start-up phase would not support higher value, large-scale contracts). These smaller contracts provide the ability to attract local and international talent, generate local skills and jobs, provide opportunity for business growth, and provide new entrants and emerging companies with a profile sufficient to secure further, larger contracts. Additionally, we would note that Australian state governments have recognised the strength of the existing rebate with its current threshold, introducing their own compatible PDV rebates. Reducing the threshold would have severe flow-through impact to these highly successful state-based complimentary initiatives:
NSW and Queensland each offer a 10 per cent PDV incentive with a minimum spend of $500,000, while South Australia also provides 10 per cent at $250,000. Post-production work in Western Australia is eligible for a 20 per cent rebate on the first $500,000 and a further 10 per cent for all expenditure over that.

We would also bring to your attention that this change could have wider implications to the independent production sector in that, for added revenue diversity and stability, a number of local independent production companies operate a 'mixed model' of production and postproduction selling surplus in-house postproduction capacity after creation of their own in-house IP. The threshold change would have a detrimental impact to these business models increasing financial stress on businesses already impacted by COVID and the recently announced partial deregulation of free-to-air commercial television.

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[6] https://nsw.liberal.org.au/Shared-Content/News/2021/MAD-MAX-PREQUEL-FURIOSA-TO-BE-FILMED-IN-NSW
[7] https://www.communications.gov.au/what-we-do/television/modernising-australian-screen-content-settings/qa

Remove the ability to claim production costs incurred in other countries towards the Producer Offset.

Where an Australian production requires a foreign location shoot, certain types of expenditure can be claimed as QAPE; the clause takes its name from an example in the legislation's initial explanatory memorandum which acknowledges a film about Australia's involvement in Gallipoli would need to shoot in Turkey. Self-evident in its name is that productions that aspire to tell global stories with global appeal require the inclusion of authentic international elements.

We are concerned that important high profile feature films such as the critically acclaimed *Lion* (which had a very substantial and contextual Indian shoot component) and documentaries such as *Surgery Ship* would not have the international reach and appeal without the inclusion of international elements. They also would not be able to secure co-production finance without these critical story elements being eligible for tax offset.

We would also note that the removal of this clause could have the unintended effect of disincentivising the employment of Australian crew on international locations with a likelihood that producers would look to employ cheaper foreign crews for international story elements. This is counter to the intended effects of the change, which is to provide greater employment opportunities for Australians.

Proposed amendment to cap copyright expenditure for a pre-existing work for use in the film at 30% of the total of the company's production expenditure on the film.

The Guilds and Associations do not support the proposed 30% cap on the amount of copyright expenditure that can be counted as qualifying expenditure for the Producer Offset. This change stands to have a disproportionate impact on the creation of documentaries which tell Australia's social, political, cultural and economic history, given their reliance on historical archive material. Music and other Documentaries which rely on music licensing will also be adversely affected by this proposed cap. These documentaries play a vital role in documenting our history for future generations and in schools and universities and are at risk from this change.

Subparagraph 376-65(2)(b)(i) Before "exhibition", insert "commercial".

As part of its proposed media reforms, the government has undertaken exhaustive consultation with industry participants dating back to and including is Options Paper in March 2020[8]. We are not aware of the proposed qualifying criterion of 'commercial' having been proposed at any point throughout the consultation process nor has the policy problem this change proposes to address been presented. We cannot support this change without an appropriate definition or policy explanation as we are concerned that this change would have the consequence of narrowing the scope of eligibility leading to a contraction in market.

[8] https://www.communications.gov.au/sites/default/files/consultation/pdf/supporting-australian-stories-on-our-screens-options-paper.pdf

Subsection 376-170(2) (table item 7, column headed "Type of expenditure", paragraph (c)) Omit "re-versioning", substitute "the first re-versioning of".

This change, similar to the above, has not been proposed at any point throughout the consultation process nor has the policy problem this change proposes to address been presented. We cannot support this change without more detailed definition or policy explanation as we are concerned that this change would have negative repercussions to independent producers' finance plans, given international finance often comes with a requirement for local producers to finance and create international versions.

Thank you again for the opportunity to provide a response.

Yours sincerely,

Association of Drama Agents – NSW
Australian Cinematographers Society
Australian Directors' Guild
Australian Drama Agents Association
Australian Guild of Screen Composers
Australasian Mechanical Copyright Owners Society
Australasian Performing Right Association
Australian Production Design Guild
Australian Screen Directors Authorship Collecting Society
Australian Screen Editors
Australian Screen Sound Guild Society
Australian Writers' Guild
Australian Writers' Guild Authorship Collecting Society
Casting Guild of Australia
Media Entertainment & Arts Alliance
Screen Producers Australia