2

Tax incentives for screen production

Introduction

2.1 There are currently three different tax incentives for the production of films and television programs in Australia. They include the producer offset, the location offset, and the post, digital and visual effects (PDV) offset.

2.2 These tax offsets are uncapped in most circumstances but only one type of offset can be claimed for any given production.[1]

2.3 Screen Producers Australia (SPA) states that government funding and tax incentives make up:

- 58 per cent of feature film production funding;
- 21 per cent of commercial television production funding; and
- 25 per cent of online and subscription video on demand (SVOD) production funding.[2]

2.4 The Department of Communication and the Arts (the department) stated that through these tax incentives, since their introduction in 2007, 'over $1.6 billion has been provided to support the sector, with over $1 billion provided through the producer offset alone, for stories with significant Australian content.'[3]

2.5 This chapter deals with issues raised in the inquiry concerning the three tax offsets for screen production. The producer offset is dealt with separately from the location and PDV offsets, which are considered

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1 Screen Producers Australia (SPA), *Submission 86*, p. 9.

2 SPA, *Submission 86*, pp. 7-8.

3 Mrs Sally Basser, First Assistant Secretary, Arts Division, Department of Communications and the Arts, *Committee Hansard*, Canberra, 16 June 2017, p. 2.

together. Separate conclusions and recommendations are made under these two sections.

Qualifying Australian production expenditure

2.6 A tax offset for screen production can only be claimed for eligible expenditure on that production, known as qualifying Australian production expenditure (QAPE).

2.7 Production expenditure is the expenditure incurred by the applicant company in, or that is reasonably attributable to, the making of the film or television program.[4] It does not include any aspect of financing, distribution, marketing or promotion of the project.[5]

2.8 QAPE is the subset of production expenditure that can be considered for a tax offset and includes:

- goods and services provided in Australia;
- the use of land located in Australia; and
- the use of goods that are located in Australia at the time they are used in the making of the project.[6]

2.9 QAPE is used to determine whether minimum expenditure thresholds have been met for offset eligibility. It is also then used to determine the actual return from the Australian Tax Office (ATO) as this is a fixed percentage of the QAPE spend.[7]

2.10 There are different QAPE expenditure thresholds for different types of production under each offset. For example, the current QAPE threshold to claim the producer offset for a cinematic feature is $500 000 which was reduced from $1 million in 2011-12.[8]

4 Screen Australia, *Guidelines: Qualifying Expenditure*, <https://www.screenaustralia.gov.au/funding-and-support/producer-offset/guidelines/qualifying-expenditure> viewed 18 August 2017.

5 Screen Australia, *Guidelines: Qualifying Expenditure*, <https://www.screenaustralia.gov.au/funding-and-support/producer-offset/guidelines/qualifying-expenditure> viewed 18 August 2017.

6 Screen Australia, *Guidelines: Qualifying Expenditure*, <https://www.screenaustralia.gov.au/funding-and-support/producer-offset/guidelines/qualifying-expenditure> viewed 18 August 2017.

7 Screen Australia, *Guidelines: Qualifying Expenditure*, <https://www.screenaustralia.gov.au/funding-and-support/producer-offset/guidelines/qualifying-expenditure> viewed 27 September 2017.

8 Screen Australia, *At a Glance: a Quick Reference Guide to the Producer Offset*, <https://www.screenaustralia.gov.au/getmedia/d077b782-71c2-4ad9-be1a-3cedf82c4946/Offset-at-a-glance.pdf> viewed 18 August 2017.

2.11 There are also significant Australian content (SAC) rules that must be met to obtain certification for the producer offset, as outlined in the next section.

2.12 Unlike the producer offset which has SAC requirements, the location and PDV offsets can be claimed for any production work conducted in Australia as long as the specific QAPE thresholds are met. These offsets are commonly claimed for foreign productions, including large blockbuster films in the case of the location offset, as outlined later in the chapter.

2.13 This chapter discusses the issues raised in the inquiry regarding the current tax incentives for screen production and makes recommendations for changes to these arrangements to better reflect the current marketplace for Australia's screen industry.

Producer offset

Background

2.14 The producer offset provides a refundable tax offset of **40 per cent** of QAPE on feature films with a first release in a cinema and **20 per cent** of QAPE on all other productions such as television programs.[9]

2.15 Only production companies that are permanently resident in Australia or with a permanent establishment in Australia are eligible for the producer offset.[10]

2.16 Eligibility for the producer offset requires certification from Screen Australia to the ATO that the expenditure qualifies for this rebate. In the first instance, productions must meet SAC rules which assess:

- the subject matter of the film;
- the place where the film was made;
- the nationalities and places of residence of the persons who took part in the making of the film;
- the details of the production expenditure incurred in respect of the film; and
- any other matters that the film authority considers to be relevant.[11]

9 Screen Australia, *Guidelines: what is the producer offset?* <https://www.screenaustralia.gov.au/funding-and-support/producer-offset/guidelines/about-the-producer-offset> viewed 18 August 2017.

10 Screen Australia, *Guidelines: eligible entity* < https://www.screenaustralia.gov.au/funding-and-support/producer-offset/guidelines/eligibility/eligible-entity> viewed 30 August 2017.

2.17 In the second instance, the QAPE associated with the project must meet a minimum threshold depending on the format of the production as outlined in Table 2.1.[12]

Table 2.1 QAPE and duration thresholds for the producer offset

Format	Minimum duration	Total QAPE threshold	Per hour QAPE threshold
Feature films, including theatrical documentaries, animation and IMAX (offset=40 per cent)			
Feature	80 mins	$500 000	n/a
Large format (e.g. IMAX)	45 mins	$500 000	n/a
Non-feature programs other than documentaries or animations (offset=20 per cent)			
Single-episode	Commercial hour	$500 000	n/a
Season of a series (at least 2 episodes)	Commercial ½ hour per episode	$1 million	$500 000 per actual hour
Non-feature documentaries (offset=20 per cent)			
Single-episode or season of a series	Commercial ½ hour per episode	$500 000	$250 000 per actual hour
Non-feature animation (offset=20 per cent)			
Season of a series (at least 2 episodes)	Commercial ¼ hour per episode	$1 million	$500 000 per actual hour
Single-episode	Commercial hour	$500 000	n/a
Or, if the project is not a season of a series or single episode:			
Short-form animation (single episode or series)	Commercial ¼ hour in total	$250 000	$1 million per actual hour

Source *Screen Australia, Guidelines: Eligibility, Format <https://www.screenaustralia.gov.au/funding-and-support/producer-offset/guidelines/eligibility/format> viewed 28 September 2017. n/a, not applicable.*

2.18 In addition to these QAPE requirements, the 20 per cent offset available for television series is capped at a maximum of 65 commercial hours.[13]

2.19 The formats that are **not** eligible for the producer offset include commercials, discussion or game shows, training films, news and current affairs shows, and computer games.[14]

2.20 The numbers of producer offset certificates issued by Screen Australia in 2015-16, and their value, are listed in Table 2.2.

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11 SPA, *Submission 86*, p. 10.

12 Screen Australia, *Guidelines: Eligibility, Format* <https://www.screenaustralia.gov.au/funding-and-support/producer-offset/guidelines/eligibility/format> viewed 28 September 2017.

13 Screen Australia, *Guidelines: Eligibility, Series* <https://www.screenaustralia.gov.au/funding-and-support/producer-offset/guidelines/eligibility/series> viewed 27 September 2017.

14 Screen Australia, *Guidelines: Eligibility, Format* <https://www.screenaustralia.gov.au/funding-and-support/producer-offset/guidelines/eligibility/format> viewed 28 September 2017.

Table 2.2 Producer offset certificates issued in 2015-2016

Producer offset certification			
Certificates issued in 2015-2016			
	Provisional	**Final**	
	Number	**Number**	**Offset value ($m)**
Features	57	43	172.75
Non-feature documentaries	38	68	20.21
TV and other	31	36	49.66
Total	**126**	**147**	**242.62**

Source Screen Australia, Annual Report 2015-2016, p. 99.

2.21 Screen Australia advised how the producer offset has benefitted the industry since its introduction:

> Massively. I think anyone appearing [before] the committee will say that the producer offset has fundamentally changed the sector. I think we had a 50 per cent increase in inward investment.[15]

Harmonising the offset for cinematic and non-cinematic features

2.22 A producer offset of 40 per cent is available for Australian films if they are first released in a cinema. All other Australian productions including television programs and films that are not released in a cinema can receive a 20 per cent offset only.

2.23 The evidence to the inquiry indicates however that this distinction should no longer exist as the reasons for giving the higher offset to cinema features are no longer valid.

2.24 The committee learned that technological advances in the industry have significantly changed the way screen content is accessed and cinema is no longer as dominant a medium other than for large Hollywood productions. Many Australian films are now viewed through a variety of digital platforms and not in a cinema.

2.25 The current Australian and Children's Screen Content Review notes that the market for cinema audiences in Australia is now much more competitive and is changing, due in part to the availability of other viewing platforms:

> Access to cinema audiences has also become much more competitive as the market for independent films has become more crowded and, at the same time, blockbusters with ever-wider

15 Mr Graeme Mason, Chief Executive Officer (CEO), Screen Australia, *Committee Hansard*, Sydney, 19 July 2017, p. 3.

> releases have increased their box office share. While cinema can still be seen as the apex of a feature film release, some audiences are drawing a diminishing distinction between a feature film viewed in cinemas and content viewed on other platforms.[16]

2.26 Screen Australia states in its 2015 report *Issues in Feature Film Distribution* that digital distribution has had profound impacts on the feature film business and on audience behaviour:

> Digital distribution is radically rewriting the rules of the feature film business in much the same way it did with other creative industries such as music and publishing, altering not only established release patterns and revenue models but causing (as well as responding to) seismic shifts in audience behaviour and expectations.[17]

2.27 Screen producers affiliated with the Blue Mountains Economic Enterprise (BMEE) advised the committee that there are now different models of delivery for films, many of which are no longer being viewed in cinemas but on electronic devices or on television.[18]

2.28 White Hot Productions also questioned whether the higher producer offset for cinema was appropriate given the emergence of alternative viewing platforms for film:

> Feature films have a higher rebate because of the time taken to mount and complete them, and when cinema and television dominated as methods of distribution, it was sensible to use cinema as the determining factor for the different levels of rebate. Now that Netflix, Amazon and others are in the market, and some want world exclusivity, I think the time has come to review this approach, as some films may be better served with effort being concentrated in a channel of distribution other than cinema.[19]

2.29 SPA states that the current producer offset arrangements were introduced at a time before streaming services had disrupted the dominance of cinemas and television for film distribution.[20]

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16 Department of Communications and the Arts, *Australian and Children's Screen Content Review Consultation Paper*, Canberra, August 2017, p. 4.

17 Screen Australia, *Issues in Feature Film Distribution*, July 2015, p. 4.

18 Mr Matthew Drummond, Director/Filmmaker, *Committee Hansard*, Katoomba, 12 July 2017, p. 5.

19 Mr Ian Kirk, Chairman, White Hot Productions, *Committee Hansard*, Melbourne, 26 July 2017, p. 47.

20 SPA, *Submission 86*, p. 24.

2.30 Iloura pointed to the changing environment for films that are currently released through cinemas and indicated that this will change significantly over the next decade.[21] Iloura stated:

> Right now, nearly all films that come out—and again I would defer to Ausfilm on this—do get released straight to cinema. Netflix are the big streaming giant, and they are totally changing the game. There are Amazon and Hulu, and there are a couple of others. But, over the next five to 10 years, more and more major films are going to bypass cinemas.[22]

2.31 The committee was advised that it is very difficult for Australian filmmakers to access the 40 per cent offset because they simply do not have the budget to release their productions in a cinema and cannot make money if they do.

2.32 The committee also heard that even if a theatrical release is possible, most Australian producers cannot compete with large studios from the United States to access the most valued timeslots in an Australian cinema.

2.33 White Hot Productions submits that cinemas are reluctant to screen Australian films due to expectations of low commercial returns.[23] White Hot Productions stated:

> A cinema release is still thought to be a fundamental requirement for a movie to come to the attention of its potential audience and hence to achieve its full commercial potential even though there has been a proliferation in the ways to watch movies.[24]

2.34 Screen Australia commented that although cinema audiences have grown for 'blockbuster' films, the smaller budget productions find it hard to gain audience share.[25] Screen Australia stated:

> In terms of film, we are going through a moment where your big films—your blockbusters—still have an enormous audience. Audiences are going up in cinema year on year, but it is harder in the independent, smaller space to get traction, interestingly, unless you are skewing to an older demographic who have time and money to do so.[26]

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21 Mr Thomas Wild, National Head of Production, Iloura, *Committee Hansard*, Melbourne, 26 July 2017, p. 31.

22 Mr Wild, Iloura, *Committee Hansard*, Melbourne, 26 July 2017, p. 31.

23 White Hot Productions, *Submission 7*, p. [2].

24 White Hot Productions, *Submission 7*, p. [2].

25 Mr Mason, CEO, Screen Australia, *Committee Hansard*, Sydney, 19 July 2017, p. 2.

26 Mr Mason, CEO, Screen Australia, *Committee Hansard*, Sydney, 19 July 2017, p. 2.

2.35 Australian Film and TV Bodies comments that there is strong competition for time slots in Australian cinemas due to their finite capacity and that distributors rely on costly marketing to attract audiences.[27]

2.36 Filmmakers affiliated with BMEE advised that in the current framework, including Screen Australia funding rules, it is very difficult for filmmakers to make money through a cinematic release.[28]

2.37 There was consistent support in the inquiry for a harmonised producer offset of 40 per cent for all qualifying Australian film and television productions. There would be no requirement under such a harmonised system to obtain a cinematic release to obtain a higher offset.

2.38 The commercial broadcasters informed the committee that television should not be discriminated against with a lower offset because it provides far more value to Australian audiences, employs far more people and now essentially costs the same to produce as films made for cinema.

2.39 Free TV Australia advises that the reasons behind the higher offset for cinematic features, primarily the higher costs of production, are no longer valid as the production costs for television are now much higher, premium television content makes an equally valuable contribution to the sector as feature films, and television broadcasters are a major source of employment and training for the industry.[29]

2.40 The Victorian Film and Television Industry Working Party recommends that 'due to the "critical mass" importance of TV production underpinning the entire screen sector, the 40 per cent producer offset for film be extended to Australian television projects'.[30]

2.41 The Australian Screen Sound Guild submits that its members are becoming more reliant on television for employment opportunities and that increasing the offset for qualifying television production is vital for this sector to remain competitive and grow.[31]

2.42 The Media, Entertainment and Arts Alliance (MEAA) commented that 'to maintain the current rebate differential would ignore the new reality in terms of the renewed role of television in producing quality content.'[32] MEAA stated:

> Frankly, the tax offset disadvantages and discriminates against television production and online digital streaming platforms,

27 Australian Film & TV Bodies, *Submission 90*, pp. 9-10.

28 Mr Michael Joy, Private Capacity, *Committee Hansard*, Katoomba, 12 July 2017, p. 6.

29 Free TV Australia, *Submission 135*, p. 17.

30 Victorian Film and Television Industry Working Party, *Submission 54*, p. [4].

31 Australian Screen Sound Guild, *Submission 102,* pp. [1]-[2].

32 The Media, Entertainment and Arts Alliance (MEAA), *Submission 125*, p. 14.

> which is the cutting edge of storytelling in Australia at the moment. So one of our key submissions to you is that the producer offset should be increased to 40 per cent across the board.[33]

2.43 Seven West Media commented that the public benefit from the producer offset will probably be greater for television programs as they are likely to be more widely viewed than cinematic features.[34] Seven West Media stated:

> Broadcasters employ large numbers of Australians on in-house productions, in many cases providing valuable training that is used later throughout the industry and importantly providing permanent employment opportunities (which are otherwise rare in the arts/media sector). For this reason, the offset for television content should be brought into line with the current rate for feature films, to reflect the level of investment made by the producer, regardless of whether the content is intended for cinematic release or broadcast.[35]

Other changes to producer offset eligibility

2.44 The committee was also advised that the 65 hour limit on the producer offset for a television series was arbitrary and should be removed and that the QAPE levels are too high as they do not capture valuable lower budget productions.

2.45 SPA comments that the 65 hour cap for television series accessing the producer offset is 'a perverse disincentive for success'.[36]

2.46 SPA remarks in this regard that a sustainable industry requires certainty in terms of employment, training and investment and that this cap should therefore be removed. SPA also advocates for a reduction in the minimum QAPE threshold for drama of $500 000 per hour to capture lower budget productions and provide more entry-level opportunities.[37]

2.47 Free TV Australia concurs with the SPA view regarding the 65 hour cap and questions the reasoning behind its introduction:

> There is not a lot of detail documented on why the cap was introduced – the Explanatory Memoranda and other documents only say that at 65 episodes the drama should be 'self-sufficient' and should no longer require the offset. However, the challenges

33 Ms Zoe Angus, Director of Equity, MEAA, *Committee Hansard*, Sydney, 20 July 2017, pp. 10-11.

34 Seven West Media, *Submission 128*, p. 8.

35 Seven West Media, *Submission 128*, pp. 8-9.

36 SPA, *Submission 86*, p. 24.

37 SPA, *Submission 86*, p. 24.

> of funding a drama series do not change or ease in any way at year 5 even if the drama is successful. As a result, there are very few examples of dramas that have continued beyond the 65 episode cap.[38]

2.48 SBS further remarked that the current QAPE thresholds are an issue for lower budget productions:

> We have also noted that the minimum expenditure thresholds that must be satisfied under a number of funding arrangements are too high and are an impediment for mid-level productions and production companies, and are limiting diversity within the production sector.[39]

2.49 Members of the Australian Subscription Television and Radio Association (ASTRA) also remarked that a QAPE threshold of $500 000 is prohibitive for younger, innovative producers operating with lower budgets.[40] Foxtel's representative further stated:

> Our point really is that the funding arrangements have to have sufficient flexibility that you allow for people at different parts of that spectrum [low and high budget productions] and particularly allow people to develop skills at the low end and work their way up to the higher end.[41]

2.50 It was also argued during the inquiry that the offset should include genres outside of drama and documentaries.

2.51 Seven West Media also commented that there is no clear rationale for limiting the producer offset to the drama and documentary genres as productions outside of these areas are 'just as expensive to produce, and provide employment and training for large production crews, utilizing Australian production and post-production facilities.'[42]

2.52 ASTRA members concurred noting that the offset be available across multiple genres. ASTRA stated:

> The model has changed. We used to lead audiences; now, they lead us. I want the ability to successfully create content in whichever genre they want. I also feel that the job creation across those genres, whether the cost bases are different, is relatively

38 Free TV Australia, *Submission 135*, p. 17.

39 Ms Clare O'Neil, Director, Corporate Affairs, SBS, *Committee Hansard*, Canberra, 16 June 2017, p. 30.

40 Mr Bruce Meagher, Group Director, Corporate Affairs, Foxtel, *Committee Hansard*, Sydney, 19 July 2017, p. 61.

41 Mr Meagher, Group Director, Foxtel, *Committee Hansard*, Sydney, 19 July 2017, p. 62.

42 Seven West Media, *Submission 128*, p. 9.

> similar in my experience. We have very different production models, but that has been my experience.[43]

Conclusions

2.53 The producer offset provides a tax rebate for part of the cost of making Australian dramas and documentaries and was designed 10 years ago to enhance the financial viability of Australia's domestic screen industry and ensure that Australian stories would continue to be told in cinemas and on television.

2.54 The producer offset provides a refundable tax offset of 40 per cent of qualifying Australian production expenditure (QAPE) on feature films with a first release in a cinema, and 20 per cent of QAPE on all other non-feature productions such as television programs.[44]

2.55 Only production companies that are permanently resident in Australia or with a permanent establishment in Australia are eligible for the producer offset.[45] In addition, the producer offset can only be claimed for eligible QAPE.

2.56 QAPE is a subset of production expenditure that can be considered for tax incentives such as the producer offset, and includes goods and services provided in Australia and the use of land located in Australia.[46]

2.57 In addition, there are minimum levels of QAPE that must be reached to access the producer offset under each qualifying genre. This minimum is $500 000 for a feature film and a single-episode drama.[47]

2.58 In addition to these QAPE requirements, the 20 per cent offset available for television series is capped at a maximum of 65 commercial hours.[48]

2.59 There was consistent and strong support during the inquiry for harmonisation of the two producer offset levels so that a single rebate would be applied to all types of qualifying production. The evidence

43 Mr Ben Richardson, Senior Vice President and General Manager, Viacom International Media Networks Australia and New Zealand, *Committee Hansard*, Sydney, 19 July 2017, p. 59.

44 Screen Australia, *Guidelines: what is the producer offset?* <https://www.screenaustralia.gov.au/funding-and-support/producer-offset/guidelines/about-the-producer-offset> viewed 18 August 2017.

45 Screen Australia, *Guidelines: eligible entity* < https://www.screenaustralia.gov.au/funding-and-support/producer-offset/guidelines/eligibility/eligible-entity> viewed 30 August 2017.

46 Screen Australia, *Guidelines: Qualifying Expenditure*, <https://www.screenaustralia.gov.au/funding-and-support/producer-offset/guidelines/qualifying-expenditure> viewed 18 August 2017.

47 Screen Australia, *Guidelines: Eligibility, Format* <https://www.screenaustralia.gov.au/funding-and-support/producer-offset/guidelines/eligibility/format> viewed 28 September 2017.

48 Screen Australia, *Guidelines: Eligibility, Series* <https://www.screenaustralia.gov.au/funding-and-support/producer-offset/guidelines/eligibility/series> viewed 27 September 2017.

indicates that this distinction is out of date as films are now released through a number of different platforms and cinematic distribution is out of reach to most Australian producers.

2.60 The committee accepts that the rationale used 10 years ago for providing the higher offset for a cinematic release makes less sense in today's marketplace. Given the evidence for the high barriers against obtaining a theatrical release for domestic film makers in Australia and the significant changes in how viewers now access all types of screen content, the committee believes that reforms to this incentive are warranted.

2.61 Cinema is still an important medium for Australia's screen industry but the committee acknowledges the important and fundamental role that television will continue to play, and that online streaming services are increasingly playing, in telling Australian stories. Television channels and streaming services will play a vital role in the future sustainability and competitiveness of the domestic screen industry in terms of training and jobs, and in producing high quality Australian content.

2.62 The committee concludes that there should no longer be any distinction between theatrical releases and other types of screen production when applying the producer offset. However, the committee does not believe that a harmonised offset of 40 per cent is possible in the current budgetary climate.

2.63 Advice from the Parliamentary Budget Office (PBO) indicates that the foregone revenue from this change would be considerable at $65 million per year (Table A1; Appendix D). The PBO also projected in this analysis that there would be no changes in spending on eligible television production as a result of an increased producer offset.

2.64 The committee does however support some increase in the offset for non-feature productions. Advice from the PBO indicates that a harmonised producer offset of 30 per cent will be revenue neutral over the forward estimates (Table A1; Appendix E). The committee supports this reform which will better reflect the changing landscape of how screen content is accessed. It will also reflect the fact that the dominance of cinema for accessing feature content is reduced and that this medium is largely inaccessible to smaller independent filmmakers in Australia.

2.65 Advice from SPA is that the industry would have the ability to increase production if the right financial conditions were in place. SPA comments:

> Many production companies have projects ready to go, what prevents the ideas going into production is a lack of finance. The

industry is essentially an R&D industry in which only a few ideas enter into production.[49]

2.66 The committee agrees that the 65 hour cap on television series accessing the producer offset should be removed and that a successful production that achieves longevity should not be penalised in this way. PBO costings indicate that the impact of this to the budget would be $5 million per annum (Table A5; Appendix E).

2.67 The current QAPE thresholds for the producer offset are appropriate however and will help to ensure that the standard and quality of Australian productions are sufficient to gain an audience.

2.68 The committee is also satisfied that the current rules governing format eligibility for the producer offset are appropriate and that this incentive should be focussed on promoting the telling of Australian stories through dramas and documentaries.

Recommendation 1

2.69 **The committee recommends that the Australian Government makes the following changes to the producer offset:**

- **Introduce a single offset level of 30 per cent for all types of qualifying production, which includes film and television. This will remove the distinction between theatrical and non-theatrical features.**
- **Remove the 65 hour cap on television series accessing the offset.**

Location and PDV offsets

Background

2.70 The location offset provides a rebate for the production of large-scale film and television productions in Australia, generally by foreign production companies. The current rate of the location offset is 16.5 per cent (raised from 15 per cent in 2011). The QAPE level must be at least $15 million to access the location offset.[50]

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49 SPA, *Supplementary Submission 86.1*, p. [1].

50 Department of Communications and the Arts, *Guidelines to the Australian Screen Production Incentive: Location and PDV Offsets*, Canberra, 2015, p. 9.

2.71 To be eligible for either the location offset or PDV offset, a company must be an Australian resident company or a foreign resident company with an ABN that is operating through a permanent establishment in Australia.[51]

2.72 The formats that are eligible for the location offset include feature films, telemovies, and television series.[52] As with the producer offset the formats that are **not** eligible for the producer offset include commercials, discussion or game shows, training films, news and current affairs shows, and computer games.[53]

2.73 The Government also currently provides 'top-ups' on a case-by-case basis to encourage large feature projects to come to Australia. For example, a top-up of $22 million was provided to Warner Bros Pictures to film the movie blockbuster *Aquaman* on the Gold Coast, which commenced production in 2017.[54]

2.74 The PDV offset provides a 30 per cent rebate on post, digital and visual-effects work done in Australia (ie, not principal photography) regardless of where the production was shot.[55]

2.75 The QAPE threshold for accessing the PDV offset is $500 000.[56] Eligible formats for the PDV offset are the same as those for the location offset.[57]

2.76 The current legislation provides that a television series would have to be shown on free-to-air or subscription television to qualify for the location or PDV offset.[58]

2.77 Films and single episode dramas commissioned for online services qualify for either of these offsets under the current rules.

51 Department of Communications and the Arts, *Guidelines to the Australian Screen Production Incentive: Location and PDV Offsets*, Canberra, 2015, p. 11.

52 Department of Communications and the Arts, *Guidelines to the Australian Screen Production Incentive: Location and PDV Offsets*, Canberra, 2015, p. 10.

53 Department of Communications and the Arts, *Guidelines to the Australian Screen Production Incentive: Location and PDV Offsets*, Canberra, 2015, p. 10.

54 The Hon Scott Morrison MP, The Treasurer, and Senator The Hon. Mitch Fifield, Minister for the Arts, joint media release, 15 December 2016, < http://sjm.ministers.treasury.gov.au/media-release/132-2016/> viewed 18 September 2017.

55 Department of Communications and the Arts, *Guidelines to the Australian Screen Production Incentive: Location and PDV Offsets*, Canberra, 2015, p. 16.

56 Department of Communications and the Arts, *Guidelines to the Australian Screen Production Incentive: Location and PDV Offsets*, Canberra, 2015, p. 18.

57 Department of Communications and the Arts, *Guidelines to the Australian Screen Production Incentive: Location and PDV Offsets*, Canberra, 2015, p. 18.

58 Department of Communications and the Arts, *Guidelines to the Australian Screen Production Incentive: Location and PDV Offsets*, Canberra, 2015, p. 19.

2.78 The location and PDV offsets are administered by the Department of Communications and the Arts (the department) which states in its 2015-16 annual report:

> Under the Australian Screen Production Incentive, the Minister for the Arts issued final certificates for the Location Offset and Post, Digital and Visual Effects (PDV) Offset to 55 productions, which represented qualifying Australian production expenditure of $241,524,205.[59]

2.79 The number and value of the applications for these two offsets from 2010 to 2015 are listed in Table 2.3.

Table 2.3 Number and value of the location and PDV offsets granted from 2010 to 2015

Location and PDV tax offset	2010-11	2011-12	2012-13	2013-14	2014-15
Location and PDV offset provisional applications	1	9	14	16	32
Location and PDV offset final applications	5	10	12	19	56
Estimated location and PDV offset rebate payable to productions certified in financial year ($)	16.8m	23.4m	12.9m	43.6m	69.4m

Source Screen Producers Australia, Submission 86, p. 11. Data originally from the Attorney General's Department.

The location offset is not competitive

2.80 There was considerable evidence to the inquiry that the current location offset in Australia is now too low compared with similar incentives offered in other countries. Table 2.4 provides a comparison of the incentives for location shooting in different competitor jurisdictions.

59 Department of Communications and the Arts, *Annual Report 2015/16*, Canberra, September 2016, p. 43.

Table 2.4 Incentives for location shooting in 2006 and in 2016 among different jurisdictions

Country/Jurisdiction	Tax Credit/Offset Rate 2006	Tax Credit/Offset Rate 2016
Australia	12.5%	16.5%
New Zealand	12.5%	20-25%
United Kingdom	16%	25%
Ireland	20%	32%
Ontario	18%	21.5%+37% production labour
British Columbia	18%	43.72% production labour
Quebec	20%	20% 37% production labour
Louisiana	10-20%	30%
Georgia	9-12%	30%

Source Ausfilm Submission 114, p. 13.

2.81 Ausfilm has responsibility for promoting Australia as a destination to international filmmakers, and is supported in part by the Australian Government, and submits that location offset is no longer competitive.[60] Ausfilm states:

> At 16.5% the Location Offset has not been competitive for some time. In April 2012 the then Labor government attracted *The Wolverine* to shoot in Australia with a top up commitment of $12.8 million to effectively take the incentive to 30%.
>
> …
>
> These one off payments and the marketing activities of Ausfilm have helped to keep Australia under active consideration and demonstrates that the competitive level for the Location Offset is 30%.[61]

2.82 Ausfilm comments also in its submission that 'footloose productions', ie, productions that are not made in their country of origin, bring considerable economic benefit.[62]

2.83 MEAA concurs that the location offset is currently insufficient, commenting that the government appears to recognise the lack of competitiveness of this incentive through its ad hoc funding. MEAA also remarks that the uncertainty around these individual grants means that

60 Ausfilm, *Submission 114*, p. 4.

61 Ausfilm, *Submission 114*, pp. 10-11.

62 Ausfilm, *Submission 114*, p. 11.

Australia will likely miss out on productions in the short term and be unattractive for investment by producers in the long term.[63]

2.84 Screen Queensland comments that 'Australia currently has the lowest incentive in the world to attract international productions' and that the uncertainty created by the top-ups has lost business for both Australia and Queensland.[64]

2.85 There was consistent support for the location offset to be increased to 30 per cent to ensure Australia's international competitiveness in attracting large overseas productions. This would also remove provide more certainty of funding for foreign studios and remove the need for individual top-up grants.

2.86 Village Roadshow Limited recommends a location offset of 30 per cent, commenting that although Australia has facilities and infrastructure that is comparable to other countries, it is no longer attractive to foreign production companies because of the lower tax incentive:

> Australia is considered by the major global film production studios as one of the four only 'full service' locations for film production, along with the United States, Canada and the United Kingdom. In spite of this, major Hollywood productions have steered clear of Australia over the past 5 or more years because of the uncompetitive level of the location offset at 16.5%.[65]

2.87 Australian Film & TV Bodies comments that the uncertainty of the top-up grants to individual international productions to enhance the current location incentives will not serve Australia's screen industry in the long-term.[66] Australian Film & TV Bodies states:

> The size of the potential opportunity is clearly illustrated by examining an example of the outlays provided by just one major international content producer in 21st Century Fox (Fox). In the past four years, Fox has invested US$1.65 billion dollars in international film & TV productions outside of Australia. Australia would have a real opportunity to secure a substantially bigger share of that investment if it were to raise the location offset to 30%, especially given that Fox owns a world-class production facility in Australia.[67]

63 MEAA, *Submission 125*, pp. 14-15.

64 Screen Queensland, *Submission 136*, p. 4.

65 Village Roadshow Limited, *Submission 29*, p. 2.

66 Australian Film & TV Bodies, *Submission 90*, p. 17.

67 Australian Film & TV Bodies, *Submission 90*, p. 18.

2.88 Fox Studios Australia also submits that the current policy around location incentives is too ad hoc as it is unclear what productions will be eligible for a top-up. Fox Studios Australia further comments that without a consistent policy, Australia will have a more difficult time competing and encouraging companies like Fox to make Australia its preferred production location.[68]

2.89 Fox Studios Australia further stated:

> Film and television production is a global business. Every competing production centre that hosts primary production offers film and television incentive programs. A permanent increase to the location offset to 30 per cent from the current 16½ per cent is required for Australia to compete internationally and maintain export contribution of foreign production in Australia.[69]

2.90 Warner Bros informed the committee that the location offset not only drives investment but is the primary driver of the growth of Australia's screen industry:

> Not only is the direct investment easy to identify but we believe the foreign investment is a catalyst for a number of positive inward results. I will outline a few of them: training the current and next generation of Australian cast and crew to create a creative workforce that is able to work on a variety of different production types; providing continuity of local employment; early exposure and adoption of cutting-edge production technologies; expanding the country's infrastructure capacity in production and also in postproduction facilities; increased tourism surrounding the locations used for international productions; and raising the international profile of Australian cast and crew.[70]

2.91 Warner Bros further commented that Australia is still considered a very desirable location due to the availability of world class infrastructure, experienced crew, and the quality of the post-production studios, but with an uncompetitive location offset of 16.5 percent Australia cannot effectively compete with the other top-tier jurisdictions.[71]

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68 Fox Studios Australia, *Submission 92*, p. 2.

69 Mr Wayne Borg, Managing Director, Fox Studios Australia Pty Ltd, *Committee Hansard*, Sydney, 19 July 2017, p. 13.

70 Ms Danielle Dajani, Senior Vice President, Physical Production, Warner Bros, *Committee Hansard*, Sydney, 19 July 2017, p. 19.

71 Ms Dajani, Warner Bros, *Committee Hansard*, Sydney, 19 July 2017, p. 19.

2.92 The Victorian Government agrees that the Australian location offset is too low and that footloose productions are being attracted to countries with better incentives such as the UK, New Zealand and Hungary.[72]

2.93 Submissions to the inquiry also argue that the QAPE threshold of $15 million for the location offset prevents Australia from competing for some of the many pilot features that are produced every year, particularly in the United States. Ausfilm submits that many hour long scripted pilot dramas commissioned in Los Angeles, with an estimated production cost of about US$5.5 million, are now being filmed in other countries such as Canada. Ausfilm states:

> Studio based half hour pilots for sitcoms generally do not leave Los Angeles, but increasingly hour long dramas are going elsewhere in the USA and to Canada. In 2015/16 some 61 hour long drama pilots were shot elsewhere than Los Angeles, 31 of them in Canada.[73]

2.94 The Victorian Government also argues that footloose television such as pilot shows is a growing market that Australia is well placed to capitalise on:

> Footloose television pilots from US networks and cable programs do not qualify for the Location Offset. Attracting a television pilot will usually mean that the series will be produced in the same country, if the pilot is greenlit… We would welcome changes to the offset legislation to introduce television pilots as an eligible format and adjust the Australian expenditure threshold accordingly.[74]

2.95 The department also stated that the current location offset was not sufficiently attractive and further commented that 'the 16.5 per cent on its own is not sufficient to attract productions, to compete with other jurisdictions.'[75]

The location and PDV offsets should apply to all platforms

2.96 A number of contributors to the inquiry advised that the current eligibility requirements for the location and PDV offsets need to be reformed to allow access by online streaming services which were not available when the scheme was devised.

72 Victorian Government, *Submission 138*, p. 9.

73 Ausfilm, *Submission 114*, p. 16.

74 Victorian Government, *Submission 138*, p. 10.

75 Ms Lyn Allan, Assistant Secretary, Creative Industries Branch, Department of Communications and the Arts, *Committee Hansard*, Canberra, 16 June 2017, p. 8.

2.97 Fox Studios Australia commented that the streaming sector did not exist when the rules were introduced but is now growing rapidly and must be allowed to access these incentives:

> Today, Netflix and their like are some of the most prolific producers of content. Netflix alone are spending in excess of US$6 billion per annum to make content… The current legislation around streaming prohibits eligibility for the location offset and the post, digital and visual effects offset for the likes of Netflix, Amazon and other streaming services to produce content here in Australia. This is a significant sector that is exploding exponentially, and we are missing out on millions in export dollars and handing an advantage over to our competitors because of this historic anomaly.[76]

2.98 SPA submits also that the restriction of PDV offset to cinema and television broadcasting is outdated as these formats are no longer the dominant distribution channels and streaming services have now established a significant portion of the market.[77] SPA comments:

> Netflix has announced it is has a $6 billion war chest for content acquisitions and commissions. Amazon has also established a presence in Australia with a large acquisitions and commissioning budget. The technology-specific, outdated restriction limits the growth of the PDV sector by closing off streaming content from qualification.[78]

2.99 Animal Logic also submits that streamed television series should qualify for the location and PDV offsets as their exclusion is an unintended consequence of the legislation that was drafted in 2007.[79] Animal Logic comments:

> Since 2007, streaming services such as Netflix, Amazon and Stan have emerged, and films and television series made for streaming services are eligible for the Producer Offset and films are eligible for the Location Offset and PDV Offset. However, "television" series produced for those services are currently considered ineligible for the Location Offset and PDV Offset. This anachronism is an unintended drafting consequence for a format

76 Mr Borg, Managing Director, Fox Studios Australia Pty Ltd, *Committee Hansard*, Sydney, 19 July 2017, p. 14.

77 SPA, *Submission 86*, p. 24.

78 SPA, *Submission 86*, p. 24.

79 Animal Logic, *Submission 113*, p. 7.

> not contemplated at the time the legislation was drafted and the distinction does not exist in other countries.[80]

2.100 Screen Queensland also advises that eligibility for the location offset needs to include streaming platforms:

> … we also need to include content made for other platforms such as streaming video on demand that would otherwise meet the spend thresholds for the location offset to be included in the location offset. As the legislation was written before SVODs existed they are not eligible and as such we cannot attract work to this country unless it is created by Australians.[81]

The PDV offset should be decoupled from the location offset

2.101 There was considerable support for the decoupling of the location and PDV offsets to allow the same production to claim a rebate under both incentives. This is not allowed under the current rules.

2.102 Fox Studios Australia remarked that preventing access to both offsets for the same production is putting Australia at a competitive disadvantage versus virtually all other jurisdictions.[82]

2.103 Ausfilm noted that decoupling would not actually be required if both offsets were at the same level as post-production expenditure can be claimed against the location offset.[83]

2.104 Animal Logic recommends however that the location and PDV offsets be decoupled in the event that these offsets remain at different levels.[84] The proposition to decouple the location and PDV offsets is supported also by Australian Film & TV Bodies, MEAA, and the Victorian Government.[85]

2.105 The department informed the committee that it is very aware of the issues that have been raised regarding the location and PDV offset rules and that the effectiveness of these incentives in the current environment will be examined as part of the ongoing content review.[86]

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80 Animal Logic, *Submission 113*, p. 7.

81 Ms Tracey Vieira, CEO, Screen Queensland, *Committee Hansard*, Brisbane, 13 July 2017, p. 2.

82 Mr Borg, Managing Director, Fox Studios Australia Pty Ltd, *Committee Hansard*, Sydney, 19 July 2017, p. 14.

83 Ms Debra Richards, CEO, Ausfilm, *Committee Hansard*, Sydney, 20 July 2017, pp. 52-53.

84 Animal Logic, *Submission 113*, p. 5.

85 Australian Film & TV Bodies, *Submission 90*, p. 3; MEAA, *Submission 125*, p. 2; Victorian Government, *Submission 138*, p. 10.

86 Mrs Basser, Department of Communications and the Arts, *Committee Hansard*, Canberra, 16 June 2017, p. 4.

Conclusions

2.106 The location offset provides a rebate for the production of large-scale film and television productions in Australia, generally by foreign production companies. The current rate of the location offset is 16.5 per cent (raised from 15 per cent in 2011).[87]

2.107 The PDV offset provides a 30 per cent rebate on post, digital and visual-effects work done in Australia (ie, not principal photography) regardless of where the production was shot.[88] Hence, the PDV offset can also be accessed for production work by foreign production companies.

2.108 The eligible production formats are the same for the location and PDV offsets and include feature films, telemovies, and television series.[89] However, these two offsets cannot be claimed together for the same production nor applied for in conjunction with the producer offset.[90]

2.109 Notably however, for a television series to be eligible for a location or PDV offset under the current rules, it must be produced for free-to-air or subscription television.[91] Television series produced for online streaming platforms do not qualify at present.

2.110 There are no significant Australian content requirements to access the location or PDV offsets but there are minimum qualifying Australian production expenditure (QAPE) levels that must be reached.

2.111 The minimum QAPE level for the location offset is $15 million[92] and for the PDV offset is $500 000.[93]

2.112 The Australian Government also sometimes provides 'top-ups' to the location offset on a case-by-case basis to encourage large feature projects

87 Department of Communications and the Arts, *Guidelines to the Australian Screen Production Incentive: Location and PDV Offsets*, Canberra, 2015, p. 9.

88 Department of Communications and the Arts, *Guidelines to the Australian Screen Production Incentive: Location and PDV Offsets*, Canberra, 2015, p. 16.

89 Department of Communications and the Arts, *Guidelines to the Australian Screen Production Incentive: Location and PDV Offsets*, Canberra, 2015, pp. 9, 18.

90 Department of Communications and the Arts, *Guidelines to the Australian Screen Production Incentive: Location and PDV Offsets*, Canberra, 2015, p. 14.

91 Department of Communications and the Arts, *Guidelines to the Australian Screen Production Incentive: Location and PDV Offsets*, Canberra, 2015, p. 10.

92 Department of Communications and the Arts, *Guidelines to the Australian Screen Production Incentive: Location and PDV Offsets*, Canberra, 2015, p. 9.

93 Department of Communications and the Arts, *Guidelines to the Australian Screen Production Incentive: Location and PDV Offsets*, Canberra, 2015, p. 18.

to come to Australia. A recent example is the $22 million grant provided to Warner Bros Pictures in late 2016 to film *Aquaman* on the Gold Coast.[94]

2.113 The committee agrees that Australia's current location offset of 16.5 per cent is no longer internationally competitive when compared with offsets of 25 per cent in the UK and over 40 per cent in some parts of Canada among others. The committee also agrees that some of the eligibility requirements for the location and PDV offsets are now out-of-date.

2.114 The top-up funding that is sometimes provided by the Australian Government to supplement our lower location offset and attract large-scale international productions such as *Aquaman* is simply too ad hoc and uncertain.

2.115 The committee concludes that certainty of funding through an internationally competitive location offset will be required for Australia to be a financially viable destination for foreign production companies and agrees that this should be 30 per cent.

2.116 The format requirements that were enacted a decade ago to be eligible for the location and PDV offsets did not take account of the emergence of online platforms for screen content for obvious reasons. This now needs to be corrected however given the emergence of major multinational SVOD providers such as *Netflix* and *Amazon* and dominant role that they and others will continue to play in producing and distributing screen content.

2.117 The committee learned during the inquiry that the investment in new content planned by *Netflix* alone is enormous at $6 billion. Australian production companies should not be prevented from competing for some of this work because of out-of-date rules.

2.118 Many submitters to the inquiry also argued for a decoupling of the location and PDV offsets so that both could be claimed for the same production on the basis that it would enhance Australia's international competitiveness for overseas production work.

2.119 The committee agrees that this is a reasonable proposition and could attract post-production work to Australia on films that had already been shot here under the location offset. The committee understands that this decoupling measure would be redundant if the two offsets became equivalent but still regards it as a sensible reform in case the PDV offset was increased in the future.

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94 The Hon Scott Morrison MP, The Treasurer, and Senator The Hon Mitch Fifield, Minister for the Arts, joint media release, 15 December 2016, < http://sjm.ministers.treasury.gov.au/media-release/132-2016/> viewed 18 September 2017.

2.120 The committee is satisfied that the current PDV offset of 30 per cent is competitive with other jurisdictions and that the current QAPE minimum of $500 000 to access the PDV offset is appropriate.

2.121 It is vitally important to attract overseas production and post-production work to Australia on a continuing basis to sustain our screen industry into the future. Reforms to the location and PDV offsets will help to achieve this by placing Australia on a level playing field with other countries seeking to attract production work from overseas.

2.122 Analysis by the PBO has indicated that the foregone revenue to government from a 30 per cent location offset would be about $35 million per year over the forward estimates (Table A3 in Appendix D). This PBO advice also indicates a relatively small increase in QAPE resulting from the increased certainty of a higher location offset (Appendix D).

2.123 The PBO costings also indicate a negligible impact to the budget if a $5 million QAPE threshold was introduced for the location offset (Table A3, Appendix D). The committee believes that this measure should be introduced specifically for pilot shows as attracting these types of non-feature productions from the overseas, and the United States in particular, will be of great future benefit to the domestic industry.

Recommendation 2

2.124 **The committee recommends that the Australian Government makes the following changes to the location and post, digital and visual effects (PDV) offsets:**

- **Increase the location offset to an internationally competitive level of 30 per cent. This will eliminate the need for top-up grants and provide more financial certainty to overseas production companies considering Australia as a destination.**
- **Decouple the location and PDV offsets so that both can potentially be claimed for the same production.**
- **Provide in the legislation that productions commissioned for any content platform will be eligible for the location and PDV offsets if qualifying Australian production expenditure (QAPE) requirements are met.**
- **Reduce the minimum QAPE threshold for the location offset to $5 million specifically for pilot features.**