Environment and Communications Legislation Committee - Treasury Laws Amendment (2021 Measures No. 5) Bill 2021

Department of Infrastructure, Transport, Regional Development and Communications (the Department) Response to Questions at Senate Hearing,
20 August 2021

Questions taken on notice

> **Senator GREEN:** Just for the record, I don't mind the intervention. It is difficult to do this over a teleconference. It is easier to have people in the room or on videoconference to be able to ask these questions. It is concerning. I want to move on because we don't have a lot of time, but we're going to have to come back to this. This committee will need these answers. Whether they are contained in the Treasury files or the department files, we need to know what the cost of each of these measures will be and what the cost of the overall bill will be. We will put those on notice to both of your departments again, additionally, and we need to have those answers.

This question is best directed to the Treasury as the department responsible for costing impacts to tax revenue. The integrated package of measures in the Bill is estimated to provide an additional $75 million to the sector over the forward estimates.

> **CHAIR:** Obviously, as you say, details are confidential, but are you able to provide to the committee a breakdown of the number of companies and the ranges, if you like, of value that they access that program at, to give the committee some confidence that the fears of the sector are not based on fact or not based on the information that you have, which indicates that, in fact, many of them will be able to adapt? At the moment, we've got two conflicting bits of evidence. If you've got that data, can you provide that in a de-identified form?
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> **Dr Arnott:** I'm sure we can provide the number of applications that we receive and I'm sure we can provide the range of requests, and we can provide some de-identified data. As Ms Fulton said, we are only aware of two productions that would be impacted in terms of attracting international footloose PDV production to Australia—only two.
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> **Ms Fulton:** For feature films, yes.
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> **Dr Arnott:** Yes, out of more than 100 we would receive in any one year.
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> **Ms Fulton:** Chair, we will look at what data we can provide you, and, as long as it's not identifiable to a company, we will get you that information.
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> **CHAIR:** Sure. I'm quite concerned that you do provide a good evidence base for this shift, because, with the money to Screen Australia and other things I can see how that could help with the Gallipoli clause and I can see how that could help with documentaries and a range of other measures. But for the work of small firms—and we had a good submission from Ms Kavanagh before, and her concerns at the moment don't appear to be addressed by the evidence that's been given in detail. I would welcome the department being able to come back to the committee and give us the facts and the evidence that have given you assurance that her firm and the 25 people she employs will actually thrive as a result of these changes, because that's certainly not the view that industry have at the moment. If you're expecting the parliament to support these measures, the parliament needs to know why industry's concerns are not valid and how you have thought that through. You've said that this has been carefully thought through and carefully consulted, but we note with some concern that you've not actually consulted the people who will be affected by the threshold change. I'm disappointed by that.

Please refer to additional information below.

CHAIR: I understand your logic. Do you have any evidence from comparable regimes—Canada, the UK et cetera—where setting higher targets has resulted in that footloose work going to those areas in those larger chunks?

Dr Arnott: Not to hand, no.

CHAIR: You could take that on notice to come back to us with. That is the kind of evidence that we're looking for to understand that your assumptions are valid and that the parliament should support the measures that are in this legislation, because there is some evidence base that says this will have a medium- and long-term benefit to SMEs like Blackbird and Ms Kavanagh and her 25 employees. So it would be very useful if you could provide that to us. On that note, I will just clarify that we would need those responses by close of business on 24 August, which is Tuesday. With that, that concludes today's proceedings into the committee's inquiry into the Treasury Laws Amendment (2021 Measures No. 5) Bill 2021. I thank witnesses who've given evidence to the committee today. Thank you to the secretariat, Broadcasting, Hansard and other committee members.

Please refer to additional information below.

Additional information provided by the Department

The Australian Government has introduced a range of reforms to the Australian Screen Production Incentive (ASPI) and is providing additional funding to Screen Australia and the Australian Children's Television Foundation.

These reforms are part of the Government's 2019 commitment, in response to the Australian Competition and Consumer Commission's Digital Platforms Inquiry, to a staged process to reform media regulation that will be fit for purpose in a modern digital environment.

Changes to the ASPI are designed to refocus Government support to the sector, encouraging it to target expenditure towards onscreen quality and incentivising the creation of original Australian stories that can better compete in the global market place. They will also support producers to create content of ambition and scale that will meet audience expectations.

The media landscape for financing, production, distribution and crucially consumption has radically changed. The Government's policy settings need to encourage a range of Australian content that is available to Australian audiences across traditional and emerging distribution platforms.

In a world where streaming video platforms offer new sales and growth opportunities for Australian television production, increased support for production released via platforms other than cinema will provide new opportunities for our sector. This includes for crew and creatives, who work across both film and television in the domestic industry.

In particular, the new settings to the Producer Offset and additional funding to Screen Australia and Australian Children's Television Foundation will support Australian producers/production companies to create projects that will be attractive to commissioners of content as well as finding the most appropriate pathway to audiences.

On 17 July 2020, the Prime Minister announced the expansion of the Location Incentive over seven years, boosting the total funding to $540 million and extending the program's funding out to 2026-27. The additional $400 million will help Australia capitalise on a growing demand to produce films and television series in Australia, attracting an estimated $3 billion in foreign expenditure and creating 8,000 new employment opportunities for Australians each year. One of the requirements of the Location Incentive is that supported projects must undertake post digital and visual effects (PDV) work in Australia. This will provide increased and ongoing work to Australian PDV companies and importantly support their ability to build their networks with international studios.

$30 million in additional funding is being provided to Screen Australia over two years from 2021-22 and 2022-23 to support Australian film and television drama, children's and documentary productions.

This boost in funding to Screen Australia will enable it to target culturally important and engaging Australian film and television content and support producers to find a pathway to audiences, resulting in a positive commercial return.

$20 million in additional funding is being provided to Australian Children's Television Foundation over two years from 2021-22 and 2022-23 to invest in the development, production and distribution of quality Australian children's content.

ACTF has extensive experience in the early development of children's television content, facilitating investment and assisting productions to find the most appropriate market, including existing relationships with streaming services which is where younger audiences are seeking out their content.

The bulk of the sector in terms of spend, income and jobs lies in our crew, followed by cast. The integrated package of changes that the Government is pursuing across the board from increased support to attract a pipeline of inbound production, changes to the ASPI to incentivise the creation of original Australian stories and additional funding to Screen Australia and Australian Children's Television Foundation aims to support people and their livelihoods in greatest numbers.

Careful balancing and targeting of the Australian Government's screen production policy settings, including through the three offset streams, aims to achieve the objective of supporting a mix of domestic and international production, generating jobs and stimulating the economy.

The changes will motivate and encourage the creation of content for the platforms audiences are watching it on. Both Screen Australia and Australian Children's Television Foundation have been working within existing and now increased funding to support projects of all types, shapes and sizes that have the best potential to find an audience and resonate.

Further, these settings provide additional support to our industry to be creative, push boundaries and create high-quality and engaging content as well as be responsive to future challenges and opportunities.

The Department working with Screen Australia will continue to monitor and conduct a review of the impact of changes in this Bill within 18 months.

The reform measures are estimated to provide $128 million in additional support to the sector as per the following impact on the underlying cash balance over the forward estimates period ($m):

	2020-21	2021-22	2022-23	2023-24	2024-25
Australian Screen Production Incentive Reforms	-	5.0	15.0	25.0	30.0
Screen Australia	1.0	16.0	16.0	-	-
Australian Children's Television Foundation		10.0	10.0		

The net impact of the Australian Screen Production Incentive reforms alone will result in a substantial increase in Commonwealth funding to the sector of $75 million over the forward estimates.

<u>Consultation</u>

Consultation was undertaken on the *Supporting Australian stories on screens option paper*. The options paper receive 345 written submissions and 51 stakeholders took part in virtual roundtable discussions. Submission made to the option paper can be found on the Departments website at www.communications.gov.au/have-your-say/supporting-australian-stories-our-screens-options-paper.

It was highlighted in the option paper that threshold eligibility would need to be refined across the ASPI and some Australian content would require further support through other avenues as a result of reforms. Submissions to the options paper were asked to consider the settings for minimum spend, qualifying spend and pathway to audience to appropriately target support. Views varied between removing thresholds, and maintaining and increasing them, depending on the types of reforms the stakeholder was proposing.

Findings of previous reviews and inquiries were also taken into account including:
- the House of Representatives Standing Committee on Communications and the Arts' Report on the inquiry into the Australian film and television industry;
- the Australian and Children's Screen Content Review; and
- the Senate Environment and Communications References Committee inquiry into the economic and cultural value of Australian content on broadcast, radio and streaming services.

Through these processes, some views put forward reflected how businesses currently operate now and the desire to have increased support to continue. However, with the changes experienced by the sector, reforms are necessary to support and encourage practitioners to evolve and create content for Australians that resonates with audiences here and abroad.

The changes to the ASPI were proposed after taking the following into account:
- the information received through the various consultation processes to align the Government's support measures,
- the need to achieve the policy objective of having settings that are fit for purpose;
- that Australian Government's funding is appropriately targeted to content that has a pathway to audience; and
- the goal to support our sector to be competitive in a modern digital environment.

Stakeholders were also given the further opportunity to put forward their thoughts on the proposed changes when the draft legislation was released on 21 May 2021.

<u>Reform Measures and Impacts</u>

Schedule 1 to the Bill details changes to Division 376 of the Income Tax Assessment Act 1997, and is part of an integrated set of reform measures and new funding.

Increases the Producer Offset rebate rate from 20 per cent to 30 per cent for all eligible content that are not feature films released in cinemas[1]

This will encourage the creation of high quality television content. It will assist producers to create content that has strong production values and is of larger scale that meets audience expectations.

As outlined in the *Supporting Australian stories on our screens* option paper, digital disruption and globalisation of content are affecting business models for production and distribution. While spend and costs have increased, these changes affect the ability of the production industry to experience profits. Free to air and subscription broadcasters have been severely disrupted by online platforms and are competing for content and audiences. Audience choice and competition from VOD services has 'raised the bar' for all content. While we acknowledge that cost is no guarantee of quality, competition is driving expectations of production values and therefore budgets.

This change will increase support to the core part of the our sector in terms of the amount of content made, the number of businesses involved, the number of Australians employed and audiences who seek this content across a range of distribution platforms. Many content forms will also benefit from this change, including First Nations' and children's productions.

It is expected that this increased rate will also open up opportunities for our sector to engage further with international streaming services, which will mean Australian content is available to audiences no matter what platform they choose to watch it.

Approximately 100 applications to the Producer Offset would typically be issued a final certificate each year. It is anticipated that increasing the Producer Offset rate to 30 per cent will encourage some new production activity and also increase the scale of some projects claiming the Producer Offset. It is also anticipated that some productions will move from accessing the PDV Offset to the Producer Offset to take advantage of being able to claim a broader range of production expenditure at the new 30 per cent rate in addition to post production expenditure. It is further anticipated that an average of three new productions will be generated per annum through commissions from distribution platforms such as streaming services.

Increases the minimum qualifying Australian production expenditure threshold for claiming the Post, Digital and Visual Effects (PDV) Offset from $500,000 to $1 million

There has been evidence submitted to the Committee by the sector that increasing the threshold would have significant impacts for smaller or emerging PDV/VFX companies

[1] Feature films with a theatrical release are able to access the Producer Offset at a 40 per cent rebate.

undertaking fee for service work on international projects. This does not correlate with the Department's analysis of the applications it has received to the PDV Offset to date.

To clarify, the individual package of PDV work undertaken by each service provider on a production does not need to meet the minimum qualifying Australian production expenditure (QAPE) threshold. Since the commencement of the PDV Offset in 2007, threshold eligibility has been determined on the basis of the total PDV spend in Australia across the production.

This means smaller VFX companies can bid and secure work under the QAPE threshold and still benefit from the PDV Offset as the total spend in Australia on that production is what is required to meet the qualifying threshold. As a result of the threshold change, more substantial international work coming to Australia over the $1 million threshold will provide more opportunities for smaller companies to bid on this work, as larger packages of work require more service providers.

As a result, this change will target Government support to attract post, digital and visual effects activity that is technically ambitious and assists in the growth of our PDV sector.

To demine the impact of the change the Department took into account the following:

- Based on data (2017-18 to 2019-20), an average 107 certificates are issued under the PDV Offset each financial year.
    - An average of 77 certificates are issued to domestic productions.
    - An average of 30 certificates are issued to international productions.

- Up to 28 final certificates per year may be impacted by the threshold change:
    - Of these around 22 applications are for domestic productions.
        - This does not mean these productions will no longer be made or that PDV work will decrease as a result.
        - The data held by the Department indicates productions that fall below the $1 million threshold are lower-budget light entertainment / infotainment and factual type programs, which do not experience the same level of market failure as other content genres. They are more easily monetised through advertising and sold to overseas markets. It is highly likely these productions will continue to be made and the post-production work will continue to be carried out in Australia regardless of changes to the offset.
        - Some productions that would fall below the new threshold were made for many years without support from Government before becoming aware of being eligible for the PDV Offset and have applied to the Offset retrospectively. This indicates that the productions are able to be made without government support.
        - Seven companies are predominately affected by the increased threshold. These companies are large production companies/broadcasters/film studios that undertake a range of production work across a large slate of content of various formats.
            - All of these companies will be major benefiters of the increase to the Producer Offset.

        - This PDV work is often undertaken in-house. If companies choose to no longer create some content on the basis that it will be ineligible to access the PDV Offset, employees are likely to be retained as they work across the slate of the companies' other content.
    - On average, around six applications are for work from the international market.
        - The historical data indicates that on average four productions are lower-budget light entertainment / infotainment and factual type programs. Three of the companies that bring this work to Australia utilise the Australian arm of their international company to undertake the PDV activity. There is one PDV/VFX company that directly engages with an overseas production to attract this work to Australia.
        - Up to two productions per annum may fall below the new threshold which are international live-action feature content. Historic data has showed that the PDV/VFX companies that undertake the work on these productions are the larger companies we have in Australia.
        - There is scope for productions of this nature to bring larger packages of work to Australia. Increasing the threshold is encouraging these productions to do so. Australia's main competitors, including the UK and Canada, are at capacity, and as such Australia has an opportunity to capitalise on its reputation and secure larger packages of work and further build relationships.

It is anticipated that this change to the ASPI will set a benchmark for the PDV work that Australia is undertaking. Australian PDV providers have the expertise and experience to undertake larger and more complex packages of PDV work. The increase in the threshold will place Australian PDV providers in a firmer position to bid for larger packages of production.

Opportunities for Australia's post, digital and visual effects houses will continue to be available and increase as a result of the work undertaken on productions that are secured to Australia through the Location Incentive. It is a requirement for productions receiving the Location incentive to use the services of at least one Australian PDV provider.

Over $175 million in additional activity for Australia's PDV providers will be generated by the Location Incentive productions announced to date. Part of the success of London, Montreal and Vancouver in becoming such successful hubs for PDV work is that they have had a consistent and growing amount of location shooting over a long period of time. It is predicted that the pipeline of work generated through extending the Location Incentive will have the same impact, with increasing opportunities for PDV companies to grow.

It is also anticipated that PDV work will increase in line with additional production resulting from the increase of the rate of the Producer Offset from 20 to 30 per cent.

Increases the minimum qualifying Australian production expenditure threshold under the Producer Offset for feature length content from $500,000 to $1 million

This change will see taxpayers' support provided through the Producer Offset incentivise the creation of projects of scale that can compete for domestic and global audiences.

Screen Australia has advises that this new threshold will result in some productions no longer being eligible to claim the Offset; however, as lower budget content it is expected producers will tap into other direct source financing avenues if there is an audience for this content. Additionally, producers may also shift to meet the growing demand from audiences and distribution platforms for shorter form series content which may be eligible for the increased 30 per cent rebate.

Screen Australia is being provided with additional funding to support content that may be lower budget but is culturally important, so audiences still have access to a range of Australian stories on diverse platforms.

A significant number of documentary productions already seek and receive direct funding from Screen Australia. In the event that productions are affected, Screen Australia can provide additional up front funding to mitigate this.

Usually smaller production companies are involved in creating low budget features, and cash flowing the offset until the rebate is paid can be problematic. Seeking a higher investment from Screen Australia up front is a better mechanism for financially supporting low budget productions and prioritising support to those projects of high merit and cultural significance that have an audience pathway. It will also reduce the burden on production companies needing to apply through two different processes at different times of the production cycle.

Caps claims on expenditure relating to acquiring Australian copyright or licensing Australian copyright in a pre-existing work for use in the production at 30 per cent of the production's total production expenditure under all three tax offsets

Under all three offsets that comprise the ASPI, expenditure on acquiring copyright, or a licence for copyright, in a pre-existing work (such as music and / or images including maps, photographs and / or stock footage) is considered QAPE where the copyright in the relevant work is held by an Australian resident individual or company.

The change that is being implemented will see applicants be able to claim expenditure on Australian held copyright for an eligible project, capped at 30 per cent of the total production expenditure.

To be clear, copyright is capped at 30 per cent of the total production expenditure, not 30 per cent of copyright costs. For the purposes of calculating the cap, the total production expenditure includes a range of production costs as determined in accordance with Division 376 of the *Income Tax Assessment Act 1997*.

Costs associated with the creation of new IP would not be captured in this provision, only pre-existing copyright. To clarify, composition of new music is <u>not</u> captured under this change.

This change only caps the amount of claimable copyrighted material for a production, it does not impact a production's overall eligibility.

Productions that are made predominately from archive footage may still claim all copyrighted material and be under the 30 per cent cap. As the cap is calculated as a percentage of the total production expenditure this includes, and is not limited to, wages for executive producers, producers and directors, pre-production activities, postproduction work including sound/editing/colour grading/graphics and titles. Some also include shoot costs for recording introductions from presenters that is also included in the total production expenditure.

This change will not stop productions from applying and claiming up to the cap for expenditure incurred on Australian held copyright. The full cost of all Australian held copyright expenditure can still be included in the productions total budget and financing plan. Screen Australia and other financing partners such as the national broadcasters will continue to provide support all Australia's music and period shows that audiences are looking for.

It is estimated that only a small number of productions (up to eight) per year will be impacted by this measure. Historical data shows that the productions that exceed the 30 per cent cap for copyrighted material are 'best of' type productions or very low budget factual television series that comprise large volumes of repurposed stock footage – some of which may have already been in receipt of an offset when originally filmed. The data did not indicate that documentary feature film productions that utilise archive footage or pre-existing music would be ineligible as a result of this change as indicated by some stakeholders.

In the event that some productions of cultural significance are impacted, these will be able to be supported with the additional funding provided to Screen Australia. As mentioned above Screen Australia is well positioned to support the small number of productions that may be impacted by this change.

Removes the 65 commercial hour cap on claiming qualifying Australian production expenditure for drama series under the Producer Offset

This will see much loved Australian drama productions continue to be produced and distributed to audiences as they will be able to access the support provided through the Producer Offset on an ongoing basis. Supporting drama that remains in production for longer increases the likelihood that investors and equity partners will get a return.

This change will also assist producers to invest in longer-running series knowing that the Producer Offset support will be available for as long as the series is in production. This change will also apply to children's content so producers can capitalise on a child's loyalty to television characters and create long-running productions that continue to entertain the next generation of Australians.

It is estimated that there will not be an immediate impact to the sector in terms of productions accessing the Producer Offset as there are not many drama series that are nearing the 65 commercial hour cap at present. This is a longer-term benefit for content creators looking to develop drama series and this change offering the prospect of that series continuing past 65 commercial hours if successful.

Removes the eligibility that allows production costs incurred in other countries to be claimed as qualifying Australian production expenditure under the Producer Offset (commonly known as the 'Gallipoli Clause')

This will see the Producer Offset settings incentivise production taking place in Australia. Through incentivising producers to undertake more production in Australia this will assist to maintain jobs in the industry, provide skills development and retain these skills needed to create quality productions. This does not stop productions from shooting in other countries if they wish, but this change will encourage them to look to make it in Australia first.

It is acknowledged that some exceptional projects or those of cultural significance may still require the use of offshore locations, and many of these are likely to be documentaries.

A higher Producer Offset rebate is being offered for television content and this will cover a higher percentage of the costs incurred in Australia for these productions, which will be in most instances the majority of the costs incurred. These productions will therefore be overall better off under the revised arrangements.

Additional funding has been provided to Screen Australia to target culturally important Australian content, and support the creation of content that uses locations other than Australia for its production.

Removes the clauses that allow overhead expenses not related to the making of the production across all three tax offsets

This change will remove the ability to claim costs that are not related to the making of the production and instead encourage taxpayers' investment to be directed towards onscreen expenditure.

Currently, under all three tax offsets productions are permitted to claim a certain percentage of their production spend as overheads made up of expenses that are not directly related to the making of the film. For example, these costs can range from rent and utility expenses to artworks for offices, carpet cleaning, car parking and bonuses to CEO's and executives.

The change will not prevent the claiming of costs typically categorised as overheads such as rent, electricity, phone charges and office stationary, if they are demonstrated to be directly related to the making of the production.

Amends claims for 'above the line' expenses, which include Executive Producer, Producer, Director and Principal cast fees, for non-feature documentary productions under the Producer Offset

This will standardise the provision for all content formats under the Producer Offset.

With the increase in support being provided through the Producer Offset it is appropriate to standardise this provision across all formats. This will not reduce what people can be paid or how much a production spends on its development costs, it simply means that any costs over the 20 per cent cap are not able to be claimed under the Producer Offset.

Clarifies that a company may only claim qualifying Australian production expenditure on the first version of a film, and one-re-version

This clarifies in the legislation that applicants can claim expenditure on the first version of the production and one re-version of that.

Clarifies productions must be commercially released for exhibition

This clarifies the intent of the legislation which is to encourage commercial release of productions to reach as wider audience as possible.