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Committee Secretary
Senate Environment and Communications Committee

By email: ec.sen@aph.gov.au

Dear Secretary

Treasury Laws Amendment (2021 Measures No. 5) Bill 2021

Screen Producers Australia (SPA) welcomes the opportunity to submit to the Committee's inquiry into the Treasury Laws Amendment (2021 Measures No. 5) Bill 2021 (the Bill). SPA confines its comments to the provisions of Schedule 1 to the Bill, relating to film and television production tax offsets.

At the outset, we would like to note our strong support and gratitude for the retention of the 40% rate of Producer Offset for feature film. There was initially an indication that the rate would be reduced to 30%, which was of significant concern to the feature film production industry. However, following constructive engagement between Government and industry, the decision was taken to retain the 40% rate, which will help safeguard Australia's rich tradition of storytelling through film and will also safeguard local Australian jobs and businesess.

Our views and concerns regarding the Bill are somewhat complex. Whilst the industry is strongly supportive of the increase in the rate of Producer Offset for television to 30% (and indeed, many in the industry have financed current projects on the forecast availability of a 30% rate of Offset, so there is a need for prompt passage to end high levels of uncertainty), there will be a range of negative cultural and economic impacts arising from the majority of the remaining changes in Schedule 1.

The measures in the Bill to raise the expenditure threshold for features, cap eligible copyright expenditure, remove the 'Gallipoli clause' and extend the 'above the line cap' will cumulatively have a disproportionate impact on Australia's documentary-makers, and hence on our collective ability to continue to produce the stories that tell Australia's social, political, and cultural history. There are also substantial impacts for Australian businesses, jobs and investment from the increase in the threshold for the Post, Digital and Visual Effects (PDV) Offset. We are especially concerned that these impacts will be worsened by the ongoing impact of the coronavirus pandemic. Given the uncertainty around pandemic containment measures and their economic impact, the timing of these measures (which will have a contractionary impact) is very concerning.

Since the reforms to the film tax offsets were announced in September 2020, SPA has been in dialogue with Government regarding the negative impacts of the changes and has put forward a range of proposed modifications which could be made to mitigate those impacts.

With those modifications not having been accepted by the Government, SPA cannot support the majority of Schedule 1 of the Bill. However, as outlined below, there is a real urgency associated with the need to implement the increase of the Producer Offset for television. We would therefore support passage of those provisions relevant to the increase for television (as well as measures relating to the lifting of the "65 episode cap" for drama projects), but not the remaining provisions of the Bill.

Increased Producer Offset for television

Since its inception in 2007, the Producer Offset has been set at 20% of qualifying Australian expenditure for television (and 40% for features). SPA has long been supportive of an increase for the Offset for television projects, and is therefore strongly supportive of the Bill's provisions which will increase the rate of Offset to 30% for television.[1]

In its September 2020 announcement, the Government indicated the new rate of Offset would apply to projects commencing principal photography on or after 1 July 2021. When it became apparent that legislation to implement the increase would not be in force by 1 July 2021, the Government advised of its intention to ensure that the 30% rate would apply for projects commending principal photography on or after 1 July 2021, even if the legislation did not pass until after that time.[2] (We note the Bill is structured so as to allow for this kind of retrospective application).

On this general understanding, many producers have proceeded to finance and budget productions (those commencing after 1 July 2021) on the basis that they will be supported by a 30% rate of Offset. Hence, if the increase to the television Offset is not passed and implemented, there would be significant financial implications for these productions and production businesses. Most would be left with a 10% gap in their finance, which on a multi-million dollar production could potentially be an insurmountable obstacle, putting productions at real risk of collapse.

SPA therefore strongly supports a timely and prompt implementation of the increase to 30% for the Producer Offset for television productions.

Removal of the '65 epside cap'

SPA also supports the removal of the '65 episode' cap for drama projects accessing the Producer Offset.[3]

SPA has proposed to Government that the cap also be removed for documentary projects. Notwithstanding the Government's decision not to remove the cap for documentary, SPA nevertheless supports the Bill's removal of the cap for drama.

Challenging outlook for documentary and PDV-supported projects

Whilst SPA emphasises its support for the timely implementation of the 30% television Offset, there are a range of significant economic and cultural challenges arising from the remainder of Schedule 1 to the Bill.

The impacts will be felt by Australian audiences, in terms of a loss of access to significant cultural experiences and assets, as documentaries will be particularly impacted by the changes. Documentaries that tell Australia's social, economic and political history will face substantial financial challenges as a result of the cumulative impact of the changes.

There will also be substantial impacts to businesses, investment and employment, with some SPA members informing us they will look to move some operations offshore, and others telling us they will be forced to close substantial parts of their businesses as a result of the changes.

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[1] Item 1 of Schedule 1 to the Bill.
[2] For example see evidence of Dr Stephen Arnott, Environment and Communications Estimates Hearings, 23 March 2021.
[3] Schedule 1, items 3, 4, 7, 8 and 24

SPA's documentary-making members also advise that even with the increased Producer Offset for television, due to the remaining eligibility changes in the Bill, projects will not come out in front.

We are uncertain as to whether these are intended or unintended consequences of the Government's policy decision, however they are avoidable. SPA has on several occaisions proposed to Government a range of modifications which would mitigate the damaging impacts of the reforms. These have included:

- An expenditure threshold of $800K[4] under the Producer Offset for feature documentaries – reflecting that budgets for these projects rarely reach above this level
- An expenditure threshold of $600K[5] under the PDV Offset – to ensure continued support for smaller, leaner Australian projects
- Retention of a modified Gallipoli clause[6] to enable wages for Australian crews incurred overseas to continue to be counted as Australian expenditure
- Amended cap on copyright expenditure of 50%[7]
- Retain current arrangements for 'Above the Line' cap[8]

The Government has chosen not to accept these proposals and hence SPA does not support the elements of the Bill other than the increase in the Producer Offset for television and the removal of the 65-episode cap for drama projects.

The economic and cultural impacts of the remaining changes are explored in further detail below.

<u>Changes to the minimum expenditure thresholds for the Producer and PDV Offsets</u>

Producer Offset

The intended increase in the minimum qualifying Australian production expenditure (QAPE) threshold for feature length content from $500K to a $1 million[9] under the Producer Offset will have a disproportionate impact on feature documentaries, and we question whether the forecast savings to budget will justify the likely damage to this genre, which has such important cultural and social value.

Most feature documentaries have a budget 'sweet spot' of around $700K to $800K and hence will no longer be eligible for the Producer Offset. This is likely to be the difference between a viable and unviable project, as it is not feasible to inflate the budget to surpass the $1 million threshold, as this would make financing an insurmountable challenge. It is extremely rare for feature documentary budgets to surpass $1 million and indeed a significant number of high-quality documentary features have a QAPE below $1 million[10]. As such, the proposed threshold would be largely inconsistent with standard industry practice for this genre.

SPA has conducted a detailed survey of documentary-makers, and the results of the survey indicate a substantial impact from this change in terms of projects made and jobs created.

[4] As opposed to the $1 million threshold for features in the Bill.
[5] As opposed to the $1 million threshold for PDV Offset in the Bill.
[6] The Bill will remove the clause.
[7] The Bill will cap copyright expenditure at 30% of qualifying expenditure.
[8] The Bill will extend the 'above the line' cap to non-feature documentary.
[9] Schedule 1, items 9, 10 and 11
[10] The exclusion of company overheads from QAPE will also make it harder for documentary budgets to reach $1 million.

As an example of the impacts, one documentary maker assessed the impact on the 6 productions they had produced in the past 5 years:

- All 6 accessed the Producer Offset, with a total budget spend of $7.6m, creating 250 jobs.
- If the minimum threshold is increased for features, 3 projects currently in active development with marketplace interest will be unfinanceable, with a cost of 75 jobs as and a loss of $300k in export dollars.

Another documentary-maker has reported that:

- Based on their 2019 FY slate – 4 projects with revenue of $11.3m creating 63 jobs would not meet the threshold.
- Based on their 2020 FY slate – 6 projects with revenue of $7.3m creating 80 jobs + post finishing personnel would not meet the threshold.

Whilst we understand the Government's policy intent was to target Government support towards larger budget projects, we query whether the disproportionate impact on feature documentaries is an unintended consequence, and hence proposed a bespoke threshold level for this genre that more closely aligns with average budget levels and industry conditions for what are high quality projects. This proposal was not accepted by Government.

PDV Offset

The increase in the expenditure threshold for the PDV Offset from $500K to $1 million[11] will mean a substantial number of otherwise eligible projects will no longer be eligible. The PDV Offset is often a critical feature of financing, and the impact of the change will be felt in terms of the loss of existing jobs across the sector at scale.

We are unclear on the justification for the change, given that it will likely see a reduction in PDV activity in Australia. Whilst the Government has indicated it wishes to target its support mechanisms towards higher budget productions, this will be outweighed by the resulting loss in investment, employment, training and skills transfer and content production that the change will result in. Australia should be pursuing more inclusive approach to the screen sector whereby all businesses and productions are supported by tax offsets, especially given that productions of all sizes employ and train industry, and are integral to the overall screen ecosystem.

As an example, *Bondi Rescue* is a successful and popular observational documentary series produced by CJZ for Network Ten, produced on a comparatively lean production budget per episode. It currently accesses PDV support which is critical to financing. The increase in the PDV threshold from $500K to $1 million means that PDV support will no longer be available. The program is unlikely to be able to be made without the PDV due to ongoing downward pressure on the broadcaster licence fee in recent years.

<u>Removal of the 'Gallipoli' clause</u>

The 'Gallipoli' clause is a feature of the Producer Offset which permits overseas expenditure to be counted as QAPE, notwithstanding the expenditure did not take place in Australia. The Bill remove this capacity.[12]

It's existence was an acknowledgement that many chiefly Australian projects may be required to acquit some expenditure overseas for genuine location-specific reasons. An

[11] Schedule 1, item 2
[12] Schedule 1, items 19, 20 and 22

example would be a documentary producer who is making an Australian documentary feature or series, but is required to travel overseas to interview a key figure or to shoot at a location that is integral to the project (eg, a location where real events took place and/or contributors live).

The Government has indicated that "Incentivising producers to undertake more production in Australia will assist to maintain jobs in the industry and develop and retain the skills necessary to create quality productions."[13] However, the removal of the clause is likely to result in a decrease in local jobs, as the removal of the clause will create financing challenges for many local productions that have an overseas element, meaning they will not be viable.

The removal of the clause also acts against the imperative for producers to be able to raise finance from sources outside Australia. This is a practice that has become vital to securing sufficient finance for many projects. The existence of an international element to Australian productions is often the key to these projects attracting international finance and hence becoming viable. Ie, producers are driven to including an international element through market demand.

The clause as it exists now incentivises production that brings financing into Australia from overseas and production that competes on a global level, creating jobs and helping to raise the profile of the Australian industry internationally.

The increase in the expenditure thresholds for the Producer and PDV offsets will make international sources of finance even more crucial, yet the removal of the Gallipoli clause will make securing that finance increasingly difficult.

SPA's survey shows that one production company reports 4 of the 5 productions that accessed the Producer Offset in the last 5 years utilised the Gallipoli clause. Three would have a finance gap without the clause and 80 overseas based jobs would go to international crew rather than Australian crew.

SPA's proposed an amendment to permit expenditure incurred on Australian crew overseas to continue to be permitted as QAPE. This would protect employment of Australians and the flow of wages back into the Australian economy. The proposal was not accepted by Government.

30% cap on the level of copyright expenditure that can be claimed

The Bill's implementation of a 30% cap on the level of copyright expenditure that can be claimed [14]will have a disproportionate impact on documentary, given the importance of archival material to telling the stories of Australia's social, sporting, indigenous, political and musical history.

Telling Australia's history relies on large amounts of archive footage, as well as copyright licensing for music to accompany the footage.

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.

SPA's survey shows that at one production company, five current projects would not have been financed in FY2020 if the proposed cap applied.

[13] https://www.communications.gov.au/what-we-do/television/modernising-australian-screen-content-settings/qa
[14] Schedule 1, items 13 and 14

These projects totalled $5.4 million in revenue and employed 22 people, plus freelance camera crew, and post/finishing staff.

At another production business, 2 of the 5 productions which claimed the Producer Offset in the past 5 years claimed copyright expenditure as QAPE at a level of more than 30% and would be ineligible for the Offset if the cap were brought in.

We also highlight documentaries telling the story of Australia's music industry, such as *Working Class Boy*, based on Jimmy Barnes. These films are primarily archival footage under voice only interviews. This is a common form of storytelling, but risks not being able to be financed under a cap.

During COVID shutdowns, several SPA members pivoted to production techniques that did not necessitate extensive shooting (ie, use of archival material and music). These productions kept many Australians in work during difficult economic conditions but would likely not be possible with the introduction of the 30% cap, putting jobs at risk.

We suggested an exception be applied to the cap for the documentary genre.

This would have ensured no loss of Australia's historical story-telling capability, whilst still addressing any concerns regarding the treatment of copyright expenditure in scripted genres.

<u>Removal of overheads from qualifying expenditure</u>

Currently, under all three tax offsets, productions are permitted to claim a certain percentage of their production spend as overheads not directly related to the making of the film to cover company expenses. The Bill will remove this capability.[15]

The ability to include company overheads in QAPE is essential to the sustainability of many production businesses. The ability to include production company overheads in QAPE effectively enabled production companies to charge a production company fee, a vital element of ensuring sustainability given the lumpy nature of production income and the years-long timeframe for development of projects (undertaken with no fees).

The elimination of overheads from QAPE will likely mean producers will not be able to include a production company fee in a budget, and as a result, producers will not be able to derive a sustainable income for what is a high-risk expenditure of time and resources. This change is likely more significant for smaller production companies which are usually more likely to be located outside of Sydney.

<u>Extend the Above The Line (ATL) cap to non-feature documentary</u>

The Bill's extension of the 20% Above the Line cap to non-feature documentary[16] will also represent a substantial challenge for documentary makers.

Documentary budgets, by the nature of their genre, have a different budget structure to scripted content. Documentaries traditionally have less crew involved ('below the line' (BTL)) and Directors and Producers typically work over extended time periods and often take on or share BTL roles (eg. Camera, sound, editing). These are not usually split out across the ATL/BTL. As a result, documentary ATL and BTL costs are weighted differently than as found in drama. ATL costs are typically higher as a percentage of an overall leaner budget.

SPA proposed retention of the ATL cap for non-feature documentary, or consideration of an alternative cap of 40%.

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[15] Schedule 1, items 12, 15, 16, 17, 18
[16] Schedule 1, items 23 and 25

Concluding remarks

As outlined above, the Australian production industry stands to be impacted by this Bill in a complex way. The increase in the Producer Offset for television has already been factored in to many productions, and it is vital that this welcome measure is implemented as soon as possible for the sake of industry certainty. The period between its announcement and implementation has been marked by a level of uncertainty and concern that has played out in terms of limits on lending and financing. It is critical that this issue is resolved as soon as possible.

However, as outlined in this submission, the majority of the remaining provisions in this Bill will have negative cultural and economic impacts, all of which are avoidable. We are unclear as to whether these are intended outcomes, but we question whether they are outweighed by what must be modest savings to Treasury as a result of the changes. The impacts will be felt in terms of Australian culture and Australian jobs, and we do not support these elements of the Bill.

Thank you again for the opportunity to submit to this inquiry. If you have any queries or would like further information, please do not hesitate to contact me

Yours sincerely

Matthew Deaner

CEO

Screen Producers Australia