



## **Australian and Children's Screen Content Review**

### **Ausfilm response to the Consultation Paper**

**September 2017**

## Introduction

Ausfilm welcomes the opportunity to comment on the Consultation Paper. This submission is divided into two parts. In the first part Ausfilm comments on what it sees as the main issue for its members in this review – the level of the Location Offset. In the second part Ausfilm addresses the questions asked in the Consultation Paper.

## About Ausfilm

Ausfilm markets all that Australia has to offer to filmmakers internationally, to find what they need in Australia to bring their stories to life. Ausfilm is a member organisation and a unique partnership between private industry and government. This partnership comprises Australia's federal and state governments, the major studio complexes, production service providers and leading post, visual effects, animation and sound/music studios.

Ausfilm promotes Australia's film and television production incentives (federal, state and local); diverse locations; sound stages; sound and music studios; post-production and visual effects companies; and award-winning filmmaking talent and crew. Ausfilm provides information and referrals to international filmmakers about all of the above including official co-productions, travel, freight and legal services and immigration requirements. Ausfilm provides budget comparisons and general project advice, tracks international production and incentives programs of competing territories and provides such advice to government, its members and the screen industry.

Ausfilm markets Australia's Screen Production Incentive Scheme which comprises the 16.5% Location Offset, 30% PDV (post, digital and visual effects) Offset and 20-40% Producer Offset. The Location and PDV Offsets are administered by the Department of Communications and the Arts. The Producer Offset is administered by Screen Australia. Ausfilm is supported by the Australian Government through the Department of Communications and the Arts. Ausfilm's head office is in Sydney and our subsidiary organisation, Ausfilm USA is based in Los Angeles.

Ausfilm's annual program includes international missions to promote Australia and its members; Australian familiarisation tours for international filmmakers; one to one business meetings for Australian businesses, government and screen industry professionals with studio executives and producers internationally and in Australia; running ongoing global marketing and digital campaigns, maintaining an office in Los Angeles and Sydney; supporting LA based Australians In Film and the Australian Government's annual G'Day USA program.

In 2016/17 Ausfilm conducted three international missions to promote Australia: two in Los Angeles (Ausfilm Week USA and Partner with Australia) and one in partnership with the Australian Embassy in Beijing (the Sixth Australia China Film Industry Forum). Ausfilm had 367 meetings in the US with studio executives and producers and attended 26 global events. Ausfilm ran eight global marketing campaigns and 21 global direct digital client campaigns and maintained its ongoing social media strategy. Ausfilm is tracking a total of 82 projects with the potential to come to Australia. Ausfilm brought seven US executives and four Chinese film producers to Australia for familiarisation tours in partnership with screen agency members.

A list of Ausfilm members is attached.

## Part One

### 1. The importance of international production

Successive Australian governments have recognised that the expression of Australia's culture is a vital element of our strength as a nation and is a key element in projecting Australia to the world. Those governments have also recognised that given the nature of market forces a small nation like Australia cannot give full expression to that culture without assistance from government, both federal and state. This rationale underlies the various support measures, such as direct funding, tax rebates and regulation that are available to the film and television sector in Australia.

These measures support both domestic and foreign production that occurs in Australia. The existence of foreign or "footloose" production in Australia is both a sign of a sophisticated domestic production sector and a factor in the continuing growth and development of that sector. And both depend upon a high level of integration into the global production industry and the unrestricted movement of people between the national and the global.

Australia has built up an enviable screen production industry, initially on the basis of domestic productions, and from the 1980s as a pioneer in attracting production work from overseas to take advantage of Australia's talented cast and crews and world-class infrastructure. Since then, it has continued to invest in its facilities and training, leading to Hollywood blockbusters such as *The Wolverine*, *Pirates of the Caribbean: Dead Men Tell No Tales* and *Thor: Ragnarok*, choosing to film in Australia.

International production in Australia is an important part of the local industry. Over the past 12 years international production has represented an estimated 25% of the value of all film and television drama production. In 2016/17 four international feature films and three international television series were attracted to Australia. In addition 40 International PDV projects were attracted. The estimated foreign direct investment was \$240 million.

The impact of this activity in Australia has been profound - bringing direct economic benefit, building vital infrastructure and attracting additional new investment. It provides continuity of employment for crews, skills development on advanced projects and marketing of capabilities to the international production industry.

It has allowed Australian companies that service domestic and international production to invest in research and development, infrastructure and talent. This in turn has helped the domestic screen production industry tell Australian stories as diverse as *The Sapphires* and *Samson and Delilah* to a worldwide standard and make sure that Australians continue to have a strong cultural voice at home and in a competitive global media landscape.

International production has sustained world-class facilities in State capitals but Australia's regions have also benefited. Projects like *San Andreas*, *Unbroken* and *Pirates of the Caribbean: Dead Men tell No Tales* have seen millions of dollars spent in regional locations and towns across Australia. For example a breakdown of expenditure and employment by two recent large budget foreign productions across electorates saw vendors contracted and cast and crew employed from all states (NSW, Queensland, South Australia, Western Australia, Victoria, Tasmania) and the ACT.

The international productions attracted to Australia have benefited many industries beyond the film and television sector, including employment and activity in industries related to tourism, construction, foreign investment attraction and trade.

The high level of services, infrastructure, skills and employment opportunities provided by the foreign production sector enhances the domestic screen industry in multiple ways.

Most significantly by providing a strong technical production base and the underpinning of the business base which allows those businesses to provide considerable support to the domestic industry.

In the areas of digital effects, sound and digital visual production these service based industries have also enhanced the development of the digital arts in Australia and of the creative industries more generally. As we move out of the investment phase of the mining boom, the creative economy has become a leading component of economic growth, employment, trade and innovation. International screen production in Australia has significantly contributed to and assisted this process.

The international production sector is an industry that generates substantial inward investment to the Australian economy and is a significant driver of economic growth. The cost to Government in the delivery of tax incentives is substantially outweighed by inward investment from offshore and is further offset by various additional tax revenues.

This cost positive benefit has been recognised by many territories around the world and with competitor territories now offering incentives up to and beyond 40% of qualifying spend, Australia's 16.5% Location Offset is not competitive enough to attract film and high end television production to Australia, and must be 'topped up' to 30% with one off grants to be effective. In order to maintain competitiveness and provide certainty to the international market place the Location Offset should be raised to 30% on a permanent basis.

#### **The impact of incentives in the UK**

Figures released in July 2017 by the British Film Institute<sup>1</sup> show that in the first half of 2017 spending in the UK on feature production was £981 million. Compare that to the whole of 2016, which was a record year for the UK industry with feature production spending of £1.3 billion. As with other years a large part of the spending for 2017 was by inward investment feature films at £880. High end television drama contributed another £302, of which just over half was spent by inward investment and co-productions.

The motion picture industry in the UK is now the second highest contributor to GDP growth in the UK economy.

The fall in the pound since the Brexit vote has helped, but the period of consistent growth over the last decade started with the change to the UK incentive in 2007. According to Her Majesty's Revenue and Customs since 2007 there have been claims on the incentive made by 2,070 films, resulting in £2.3 billion being paid out on £8.9 billion in spending.

An economic impact study conducted by Olsberg SPI, and published in 2015, found that for each pound of Film Tax Relief granted across the period 2006-07 to 2013-14, £12.49 in additional Gross Value Added was created through direct and multiplier effects. This equates to a taxation return for the Exchequer of £3.74 in additional tax revenues for each pound of relief granted.

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<sup>1</sup> <http://www.bfi.org.uk/sites/bfi.org.uk/files/downloads/bfi-film-other-screen-sector-production-in-the-uk-h1-2017-v1.pdf>

The Australian screen industry is culturally vital and one that is tied to the future of Australia through communications technology and content, specialised skills and infrastructure, cultural identity and international relationships, profile and promotion. Foreign production in Australia contributes to all aspects of that cultural vitality and forward direction.

## 2. What needs to be done to keep Australia Competitive?

### 2.1 Increase the Location Offset

The current base rate for the Location Offset of 16.5% is not competitive internationally. Modelling undertaken for Ausfilm by Price Waterhouse Coopers estimated that footloose feature production from Hollywood was estimated at \$US 4.1 billion in 2012. Australia competes for a small part of that with Canada, the UK, NZ, South Africa and US states Louisiana and Georgia, all of which offer more competitive incentives. Australia now has the lowest rate of location incentive in the world.

The Government accepts that the rate of 16.5% is not competitive and has acted to provide one off grants that raise the rate on the projects receiving them to an effective 30%. But, Australia has also lost projects that were unable to get such grants in time to make a decision about where to locate production. While Ausfilm members are extremely grateful for the support of the Government that has brought such projects as *Alien: Covenant*, *Thor: Ragnarok* and *Aquaman* to Australia, we submit that this policy does not provide the certainty that our competitors can provide.

Responding to an Ausfilm client survey a Hollywood studio executive recently commented, *'If it goes to 30%, that will mean at least \$100m to \$200m of additional production from projects we are involved in each year. Talent, facilities, crew and locations [in Australia] are all at the top of the "best of" lists globally'*. Increasing the Location Offset to 30% provides that certainty and means the industry and the economy will receive the benefit of an increase in production activity immediately.

#### The cost of an increase

Between 2009/10 and 2105/16 the amount spent on foreign drama in Australia totalled \$1,277 million. This translates into an average of \$182 million a year and a median of \$160 million a year. Most of that spending would have been on projects that accessed the Location Offset and also received either a top up grant or accessed the Location Incentive Fund, while it lasted. Accurate data on the cost to the Government of these measures is not publicly available. However, if an effective rate of 30% is assumed the average annual cost would have been \$54.6 million and the median cost would have been \$48 million.

**Table 1 Foreign Drama –Spending in Australia (\$A)**

<b>94/95</b>	<b>95/96</b>	<b>96/97</b>	<b>97/98</b>	<b>98/99</b>	<b>99/00</b>	<b>00/01</b>	<b>01/02</b>	<b>02/03</b>	<b>03/04</b>
95	91	81	108	166	74	191	216	218	279
<b>04/05</b>	<b>05/06</b>	<b>06/07</b>	<b>07/08</b>	<b>08/09</b>	<b>09/10</b>	<b>10/11</b>	<b>11/12</b>	<b>12/13</b>	<b>13/14</b>
262	49	134	239	3	170	85	98	130	160
<b>14/15</b>	<b>15/16</b>								
418	216								

Source: Screen Australia

As the data in Table 1 shows the spending on foreign drama has been 'lumpy', not only over the period 2009/10 and 2105/16, but also since 1994/95, which is why it is instructive to look at the average and the median spend. If increases in the Location Offset to 30% led

to the annual average spend to increase in future years to \$200 million then the average annual cost of the Offset would increase to \$60 million. If the average annual spend increased to \$250 million, the average annual cost of the Offset would increase to \$75 million. That is, the Government would in future be paying between \$6.6 million and \$10 million a year more than they have been prepared to spend over the last seven years through top up grants and the Location Incentive Fund.

While the certainty of a Location offset at 30% will steadily grow the industry, the number of studios and the availability of highly skilled and experienced crew still needs to be taken into account when assessing the timing and cost to government, as the limitations put a 'natural cap' on the capacity to service international production, so that we anticipate the impact on forward estimates is very manageable and predictable. Australia cannot currently service more than 2 and possibly 3 (depending on size and timing) footloose large budget productions each year.

Also, because the Location Offset is a stimulus that is not paid until the production spending has been completed it typically takes two to three years from the date of first spend before the Government is required to make Location Offset payments. For example, one Location Offset project commenced its spend in FY2011/2012 and was paid no earlier than FY2014/2015.

This investment in Australia generates economic activity that also generates tax revenue for the government including the payment of significant amounts of Non-Resident tax. To support this submission Ausfilm undertook analysis of two large budget Location Offset features of roughly equivalent budget level in relation to the taxes paid to both the Commonwealth and the States. These are Example A and B in the table below:

**Table 2 Examples of taxes paid**

<b>Taxes paid as a percentage of Qualifying Australian Production Expenditure</b>	<b>Example A</b>	<b>Example B</b>
<b>PAYGW</b>	<b>9.3%</b>	<b>16.3%</b>
<b>GST</b>	<b>3.4%</b>	<b>3.1%</b>
<b>State Payroll Tax</b>	<b>2.5%</b>	<b>3.3%</b>

Ausfilm submits this reflects the range of tax revenue generated by inward investment in high budget films accessing the Location Offset. It indicates that the tax revenue generated by this inward investment offsets the cost of an increase to the Location Offset.

## **2.2 The effect of the Location and PDV Offsets being at different rates**

The Location and PDV Offsets are at different rates. The present Offset rules mean that if a production accesses one offset it is precluded from accessing another one. The intention was that the Location Offset would attract projects that could do both physical production and PDV work at the same rate (both originally at 15%). The PDV Offset was also intended for projects that undertook physical production elsewhere, but brought PDV work to Australia. The PDV Offset is working well in that regard.

However, the current rate differential between the Location Offset and the PDV Offset creates problems when projects access the Location Offset at 16.5%. Most of these are projects that have received a top up grant to an effective rate of 30%. The issue is that, any PDV work is only eligible at 16.5% (the Location Offset level) and not the PDV level of 30%. Even if the project receiving the top up grant, budgets for some post production and VFX work to be done in Australia within the grant received, once the grant is expended it is only eligible for such work in Australia at 16.5%, which undermines the original intention of the

incentive. The project will then look to another jurisdiction with a higher rate for VFX work, such as Canada or the UK. Australian vendors thus miss the opportunity to bid for that work.

The one off top-up grant policy has worked to attract location shooting to Australia, but the relevant incentives now at different levels has worked as a cap on the further use of the Location Offset for PDV work. The obvious solution to address this issue is to increase the Location Offset to 30%. Then there would be no disincentive to stay in Australia to do PDV work.

If the Government continues to do one off grants (which Ausfilm maintains will not deliver the certainty required to attract the projects as explained above) for Location Offset projects at 16.5% they should be able to also access the PDV Offset at 30% for the additional PDV work on the same project.

### **2.3 Clarifying the eligibility of productions for streaming services**

Subscription Video On Demand (SVOD), also known as streaming over the internet has grown substantially over the last half decade as delivery platforms for television. The availability of internet enabled television sets, or devices such as Apple TV connected to other television sets, has enabled the growth of services such as Netflix, Amazon Prime or the Australian service Stan.

These services may have started as aggregators of content originally produced for other platforms, but when Netflix commissioned the first series of *House of Cards* the trend began for these services to commission exponentially increasing amounts of original content. As indicated above Netflix has become a major commissioner of new scripted drama, spending \$US6 billion in 2017, as has Amazon Prime, spending \$US5 billion. As evidenced by Emmy nominations and awards the SVOD services are now major providers of content. They produce content in a range of jurisdictions and Australia wants to compete to attract that production.

However, Ausfilm has been advised by the Department of Communications and the Arts that the wording of the Income Tax Assessment Act makes content intended only to be shown on a streaming service ineligible for the Location and PDV Offsets.

Ausfilm understands the legal argument is to do with references to “miniseries of television drama” and “television series” in the relevant sections of the Income Tax Assessment Act dealing with the eligibility for the Location and PDV Offsets. Ausfilm has been advised that the legal view is that the meaning of television in these sections is that such television drama production must be broadcast by either ‘free to air’ broadcast television or by subscription television to be eligible. Such productions only shown on a streaming service will not be eligible.

It is inconceivable that *House of Cards*, for example, is deemed a television drama series when shown on Foxtel, but not when shown on Netflix.

Ausfilm submits that the provisions relating to the eligibility of television drama production under the Location Offset and the PDV Offset should be platform neutral, so as to reflect the changing dynamics of distribution. Therefore, the Act should be amended to reflect this.

### **2.4 Other matters**

A further issue raised by Ausfilm members relates to the eligibility of scripted drama pilots. Each year between January and April, pilots are produced of shows the US broadcast networks are considering for the next season. Cable networks also produce pilots, but they do so year round.

In 2015/16 there were 201 pilots produced. Approximately half of these were one hour programs.

Production costs are estimated to be \$US2 million for a half hour comedy pilot and \$US5.5 million for an hour long scripted drama.

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.<sup>2</sup>

Currently drama pilots are not eligible for the Location Offset, mainly because of the requirement of a minimum spend of \$15 million could not be met.

Ausfilm submits that the Location Offset could also be amended to make it more attractive for US TV live action drama pilots to access the Offset. This can be done by making it clear the pilot episode of a television drama series was an eligible format and that the minimum QAPE is set at \$1 million for a one hour scripted drama pilot. If the pilot led to a series and that wanted to access the location incentive, then minimum QAPE would be \$1 million per episode, as is currently required for television series under the Offset. This incentive could attract 2-3 pilots per year.

### **3. Conclusion**

In the current global marketplace, incentives are an essential aspect of international production attraction. Australia cannot compete internationally or expect to bring large scale international production, essential for the viability of the whole industry, without providing an incentive that enhances our competitive advantages in talent, locations and facilities.

The Location and PDV Offsets not only have direct impacts on employment and activity in the Australian film industry itself, but indirect and induced impacts on many industries beyond the film and television sector, including on employment and activity in industries related to tourism, construction, promotion and trade.

It is the international productions that have developed our world-class level of technical and craft skill and experience that boost capability within the local industry. The sector's contribution, not only to industry, but to the wider Australian economy, justifies action to maintain Australia's global competitiveness in the lucrative international production sphere.

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<sup>2</sup> Film LA, Pilot Production Report, [http://www.filmla.com/wp-content/uploads/2016/08/2016\\_TV\\_Production\\_Study\\_v3\\_WEB.pdf](http://www.filmla.com/wp-content/uploads/2016/08/2016_TV_Production_Study_v3_WEB.pdf)

## Part Two

### Responding to the Questions

#### Are the policy objectives and design principles articulated in the discussion paper appropriate? Why do you say that?

Ausfilm submits that the policy objectives and design principles as set out in the box below are appropriate, because they reflect the manner in which successive Australian governments have sought to ensure that Australian content is available and that the industry has the ability to produce such content.

#### *The policy objectives and design principles*

- *Securing quality content that promotes Australian identity and culture—implement measures that encourage the creation, delivery and export of diverse and high quality Australian content*
- *Securing quality Australian content for children—ensure content is developed for Australian children to help them understand the world around them and Australian values and culture*
- *Driving more sustainable Australian content industries—develop the right policy settings to enable Australia's creative sector and talent to thrive, locally and internationally.*

*It is proposed that, as far as possible, market solutions and competition should be harnessed to deliver these policy outcomes. If market failures exist that necessitate government intervention, then appropriate interventions should achieve the following policy principles:*

- *Service clearly identified public policy goals—Government intervention should serve transparent objectives*
- *Be clear, simple and transparent—regulations and support measures should be easy, efficient and practical for industry to access and comply with*
- *Be platform agnostic—Content regulation should be driven by policy objectives rather than platform type*
- *Produce benefits that outweigh the costs—funding and regulatory imposts come at a cost to both government and regulated entities – the public benefits generated should exceed those costs*
- *Be flexible enough to cope with changing environments—a future system should be forward-looking and nimble enough to adapt to future changes in technology and audience trends.*

#### What Australian content types or formats is the market likely to deliver and/or fail to deliver in the absence of Government support?

Without assistance from the Government the market would most likely fail to deliver high quality television drama and documentaries, as well as high quality programs for children.

Ruth Harley, who was CEO of both the New Zealand Film Commission and Screen Australia, reflected on this in an address to the NZ Screen Production and Development Association in 2014:

*Local content regulation (by this I mean quota and the expenditure levy on the pay channels) is central to the success of the Australian TV industry. In NZ we lost that argument. I remember back in 1989 believing that the changes in the television landscape such as spectrum becoming a commodity rather than being a scarce resource and the vision of multi-channelling meant that quota as an instrument was a dinosaur. I was wrong. We were all wrong. In the meantime the Australian industry fought a trenchant battle in the GATS negotiations that saw their quota protected. It has proved resilient and the Australians have a robust commercial market for cultural drama as a result. They also have a minimum broadcaster licence fee that in the current climate acts as a floor not a*

*ceiling. Networks compete for audiences and creative talent and ideas. This drives creative enterprise and capability.*<sup>3</sup>

### **What types of Australian screen content should be supported by Australian Government incentives and/or regulation?**

Ausfilm submits that drama, documentary and children's programs (including drama) should be supported by Australian government incentives and regulation because they are subject to market failure.

**The current system of support for screen content involves quotas, minimum expenditure requirements, tax incentives and funding. What are the strengths and weaknesses of the current system? What reforms would you suggest?**

**What types and level of Australian Government support or regulation are appropriate for the different types of content and why?**

The Consultation Paper invites these two questions to be considered together.

The current system of support for screen production is the result of an evolution over the past 47 years, since the revival of the screen production industry in Australia. In that time various policy initiatives have been tried and some have been abandoned. Ausfilm submits that there should be a calculated approach to reform and a willingness to **learn** from what has gone before and to **keep** what appears to be working well.

Ausfilm's response to these questions is to outline the way that policy has evolved to the present.

#### **Quotas**

Quotas as an instrument of national film policy have been around in the international context since just after the First World War, with the explicit aim of supporting local cultural expression. They have taken two forms: a quota on the importation of foreign films or a quota on the screening of national films. For example, China has a quota on the importation of foreign films, while Korea has a quota on the screening of Korean films.

Quotas were first introduced into Australian television in the early 1960s for both programming and advertising content. The impetus for the quotas was the dominance of early television by mainly American programs. Essentially, the elements of the first quota system were an overall transmission quota for Australian programs of any type, a transmission quota for Australian television commercials and a minimum number of hours for Australian drama. The system of quotas has been reviewed from time to time and made stronger by the process of review.

The current system of quotas is essentially based on that devised in the late eighties by the Australian Broadcasting Tribunal. It starts from the proposition that drama and documentary are the forms of programming that are of most value in reflecting a sense of Australian identity and Australian programs are those made under the creative control of Australians. The standard was last reviewed in 2016 and applies to both the main broadcast channel and additional digital channels.

The quota system sets minimum levels of overall content, with sub quotas for drama and documentary. The format factor linked to licence fees introduced in 1990 is designed to

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<sup>3</sup> <https://www.aucklandactors.co.nz/news/tv/spada-2014-the-john-oshea-address>

not only accord greater weight to the more expensive to produce drama formats, but act as an encouragement to the independent production sector.

The strength of the quota system is that it has been proven to work over many decades. It acts as a safety net to ensure minimum levels of Australian content are available to the Australian public.

It is worth noting that many countries use a quota system to ensure minimum levels of national content. For example, the European Union has since 1986 required member states to have quotas for national and European content. More recently EU has extended the quota system for European content to streaming services.

The weakness of the quota system in Australia is that if it is changed it can only be to reduce the requirement, under the terms of the US-Australia Free trade Agreement.

### **Minimum expenditure requirements**

The requirement for a minimum expenditure on Australian drama channels on subscription television was introduced in the 1990s as that form of television started in Australia. The reason that a quota system was not introduced for subscription television goes to a principle underlying the framing of the Broadcasting Services Act 1992. That was that the level of regulation should be proportionate to the impact that the service had upon the public.

The strength of minimum expenditure requirements is that it requires channels carrying large quantities of foreign drama to spend minimum amounts on the production of Australian drama. The disadvantage is that it required very complex legislative provisions to make it work.

An alternative would have been to establish something like the Canadian Television Fund (now the Canadian Media Fund), which was set up in 2005 with an allocation from the Canadian government and a requirement that Canadian subscription broadcasters contribute a set percentage of their annual revenue to the Fund. The Fund then provides support to all forms of Canadian television production.

### **Tax incentives**

Prior to 1978 the only tax concessions available to screen production were those available to any investment activity; however they did not apply to actual production itself. Expenses of a revenue nature, such as financing, promotion and distribution were able to get a 100% deduction in the year the expenditure was made. In 1978 the first specific film production amendment was made to the Tax Act that allowed for accelerated depreciation on films certified as being Australian films. However, the only way this attracted private investment was by means of gearing up an investment by use of non-recourse loans to the investor, which inflated their deduction.

In 1980 the Government stopped this practice and replaced it with the so called 10BA tax concession. This offered a deduction of 150% on the investment in film and television production and 50% deduction on any revenue returned from the investment. This led to an immediate boom in the production of feature films, telemovies and mini-series. There was no requirement for theatrical release and some of the films went straight to video or were hardly seen at all, but it brought a distinct increase in production of television drama. For example, in the 1980s there were 116 mini-series produced in Australia, more than in any decade before or since.

The availability of tax concession investment at this time undoubtedly proved attractive to investors, but it also brought to the industry a level of funding that allowed much more

ambitious and better resourced projects to be made. The tax concessions meant that they could be largely funded from Australia, stimulating export revenue.

Because of concerns that the tax concessions were costing too much in 1983 the level of deduction was reduced to 133% on capital expenditure and 33% on revenue. Nevertheless the cost to revenue from 10BA continued to grow and by the time of the 1985 Tax White Paper the Treasury was advocating that the scheme be scrapped entirely. This did not occur, but the level of deduction was reduced to 120/20 in September 1985.

This move was set against a more general tax reform that occurred in 1987/88 in which the production industry successfully argued against the entire elimination of the tax concession. However, the policy change was also a reaction to the perceived inefficiency of the tax concession model as the basis for a sustainable market based industry.

Although this scheme was not dissimilar to tax concessions offered in places like Canada and the UK, the distinct disadvantage was that the people making investments to get a tax deduction most often had no other connection with the screen industry and had no stake in whether the production was a success.

To address this in 1999 the Howard Government introduced the Film Licensed Investment Scheme (FLICS), as a result of a recommendation from the Gonski review of the film industry. The result of the Gonski review of Commonwealth assistance measures was to support the existing 'many doors' approach and leave the Commonwealth agencies in place. Gonski's recommendation was to establish the FLICS as a replacement for the 10BA concessions, however FLICS was implemented as a pilot project.

Under this scheme the Government licensed two companies – Content Capital and Macquarie Films – to raise capital that earned investors in the two companies a 100% tax deduction. Each company could raise up to \$20 million over two years. By investing in a slate of projects it was thought the level risk could be mitigated for investors.

The two companies probably invested in 10-20 projects over a 3 year period, some of which were successful and some not. Often they co-invested with the Film Finance Corporation. The scheme was renewed in 2005, but further action was overtaken by the introduction of the Producer Offset.

The Producer Offset shifted the tax advantage from the investor to the producer of film and television under Australian creative control. It works as a rebate on Qualifying Australian Production Expenditure, providing a refundable tax offset of 40% for feature films and 20% for television drama. The producer thus has a substantial equity in their production, which they can use to borrow against the future payment of the offset, instead of having to sell all rights in order to finance the production.

This was not the first use of tax offsets to support production in Australia. In 2001 the Commonwealth introduced the Refundable Tax Offset for Film Production in Australia. Under the scheme productions completed after 4 September 2001 that spent between \$15 and \$50 million on qualifying expenditure were eligible to claim 12.5% as an offset against any tax owing and to claim the remainder as a rebate. The production had to spend at least 70% of the total production budget in Australia. Productions spending more than \$50 million were also eligible for the rebate, but had no minimum spend requirements. Qualifying expenditure was defined as the cost of production and post-production. The scheme was also not capped. Productions that accessed this scheme were also not eligible for any other film tax concession being offered.

The scheme came about for two reasons. One was that Ausfilm had been advocating for it as the international market became more competitive. The second was the aggressive stance of the Australian Tax Office (ATO) towards the use of tax schemes to assist in the finance of foreign productions in Australia. The attitude of the ATO became a political issue

in 2001 after the ATO disallowed deductions for the films *Red Planet* and *Moulin Rouge!*. The industry and the premiers of Queensland, New South Wales and Victoria lobbied the Commonwealth for a solution that would make Australia competitive.

The percentage level of 12.5% was chosen because all available evidence at the time indicated that that percentage was high enough to attract large budget production. This ushered in a period between 2001 and 2006 when Australia was very competitive as a location and the Offset attracted \$1.2 billion of inward investment. In 2006 the Location Offset was extended to television drama series.

However, by 2007 competition for footloose production was increasing. By then in the USA, 32 states had introduced some form of incentive. The following is how some of Australia's competitors moved:

- In 2007 the UK government introduced a 20-25% rebate on production in the UK. Within 3 years inward investment in feature film production increased by 80%.
- In 2008 Georgia increased its incentive from 9% to 30%. By the end of 2009 spending in the state had increased by 167%.
- In 2009 Louisiana increased from 25% to 30%. Within a year production expenditure increased by 85% and kept growing.
- Canada already had competitive incentives and inward investment continued to grow by 30% between 2008 and 2010.

In 2007 when the government introduced the Producer Offset at 40% (20% for TV), it also introduced the Post-Production and Digital Visual Effects (PDV) Offset at 15% and increased the Location Offset from 12.5% to 15%. But with increased competition and a rising Australian dollar the value of foreign production between 2006 and 2010 declined.

In 2010 and 2011 no US feature film shot in Australia, the first time this had happened for 18 years. Only the TV pilot *Frontier* (which did not go to a series) and the TV mini-series *Terra Nova* shot in Australia. The Australian dollar was also approaching parity with the US dollar.

In 2011 the PDV Offset was increased to 30% and the Location Offset increased to 16.5% (to take account of changes to the GST in qualifying expenditure). This has worked well for PDV, which averaged about \$60 million worth of inward investment per year from 2010 to 2015.

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%.

In March 2013 the then government also announced the establishment of a Location Incentive Fund of \$20 million "as a precursor to an increase in the Location Offset should the Australian dollar remain high". The Fund topped up the 16.5% to 30% and with the support of the current Government three productions accessed the Fund – the feature films *The Moon and the Sun* (now titled *The King's Daughter*), *Unbroken* and *San Andreas*.

Also, in April 2013 the then government announced an agreement with the Walt Disney Company for a top up payment of \$21.6 million for *20,000 Leagues Under the Sea*, an equivalent additional incentive of 13.5%. The current government agreed to Disney applying this contracted amount to *Pirates of the Caribbean: Dead Men Tell No Tales*.

In October 2015 the current Government also announced a combined grant of \$47.5 million to The Walt Disney Company/Marvel Films for *Thor: Ragnarok* and 20<sup>th</sup> Century Fox for *Alien: Covenant*, which again effectively took the Location Offset to 30%.

In November 2016 the current government announced a grant to Warner Bros for the feature *Aquaman* to shoot in 2017 at an effective rate of 30%.

These one off top up 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%.

### **Direct funding**

Direct funding for screen production in Australia dates from 1921 when the Cinema and Photographic Unit of the Development and Migration Commission was established to undertake documentary and informational filmmaking for the Government. In 1940 the Commonwealth Film Unit was established in the Department of Information, then from 1950 as part of the Australian News and Information Bureau. In 1973 the Unit became Film Australia.

In 1967 Prime Minister Holt began setting up the Australian Council for the Arts, which by 1968 had a Film and Television Committee whose membership included Phillip Adams and Barry Jones. In 1969 the Committee reported and recommended the establishment of a national film school, an organisation to fund film and television production and an experimental film fund to support low budget production. This latter fund was created within the Australian Council for the Arts and the Australian Film and Television School established.

In 1970 the Australian Film Development Corporation (AFDC) was established with an initial allocation of \$1,000,000 (about \$11,000,000 in today's dollars) and a remit to provide direct investment, loans or guarantees to Australian film and television production. It was not a grant giving body and the expectation was that it would earn revenue on its investments and that loans would be repaid.

The investment by the government provided a kick start to feature film production in Australia on a more regular basis, but it was still difficult for producers to get distributors interested in taking on their films and many had to do it themselves.

In 1972 the Tariff Board, which was charged with managing tariffs to protect Australian industry from foreign competition, was directed to conduct an inquiry into the film and television industry. The Board's main recommendations in 1973 involved a restructure of the cinema business through forced divestiture of cinema ownership by Hoyts, Greater Union and Village Roadshow to create more competition. A new agency, the Australian Film Authority, was to be established to administer not only direct subsidy for production, but also centralized supervision of distribution in government hands. This included taking control over importation of all television programs away from the broadcasters.

The only thing to come from these recommendations was the establishment of the Australian Film Commission (AFC) in 1975 which did what the Corporation did, but also supported script development, marketed Australian screen production internationally and supported screen culture organisations, like the Australian Film Institute. The AFC was the primary source of investment in Australian films until the introduction of tax concessions in 1980, from which time it stood alongside private investment.

The establishment of the Film Finance Corporation (FFC) in 1988 moved away from a focus on raising private investment from investors who were not directly connected to the production industry towards encouraging investment by market place participants –

distributors, sales agents, broadcasters etc. The FFC was there both to cap the costs to the Commonwealth and to function as a film bank investing on sound commercial principles. The hope was that this would be a more sustainable model for development of the industry.

With the FFC becoming the main source of funding for screen production the focus of the AFC changed to the support of development, marketing and screen culture. However, in 1994 the Commercial Television production Fund was established with an allocation from the Commonwealth, which was administered by the AFC. The scheme ran for three years and was designed to support the production Australian drama, documentary and children's programs additional to that produced by the commercial broadcasters to meet their Australian content standard requirements.

The FFC utilised three main funding models over the years of its existence. The first and most long lasting was the 'market place attachment' model in which FFC investment is designed to match hard commitments from market place participants. The second was the Film Fund model (c. 1990-95) in which the FFC partnered with bankers to finance a slate of films chosen by the FFC. The Film Fund was also used to help the growth of local distributors/sales agents, such as Southern Star and Beyond International.

The third was the 'Evaluation Door' in which the FFC makes assessments of the creative, market and audience potential of projects, deciding which it is prepared to support when matching finance has been raised. The introduction of this process represented the attempt by the FFC to gain a greater level of control over the creative quality of the films that it was supporting and a lack of faith in the ability of the market to identify good projects.

In 2007 the FFC, AFC and Film Australia were amalgamated to become Screen Australia.

**What factors constrain or encourage access by Australians and international audiences to Australian content? What evidence supports your answer?**

The history of the Australian screen production industry tells us that the main factor that constrains access by Australians to Australian content is the lack of resources to make Australian content in the first place. Australia is a small country and many types of Australian content are subject to market failure absent the application of incentives and regulation. Australia is not unique in this regard, so that many other countries support their national industries through the application of various mechanisms to stimulate production and access.

**What would the Government need to consider in transitioning to new policy settings?**

The underlying principle in transitioning to new policy setting should be to provide certainty.

**Is there anything else that you would like the Government to consider that has not been addressed in your responses already?**

There is nothing else at this stage that has not been addressed in Ausfilm's response. However, Ausfilm would be pleased and would wish to address or comment on any proposals or options being considered by the government as the review progresses, particularly on how such proposals will impact our members in delivering screen production businesses and services.

**ATTACHMENT**  
**Ausfilm members as at September 2017**

Adelaide Studios  
Adelaide Post & Sound  
Animal Logic  
Animal Logic Entertainment  
Beyond International Ltd  
Big Bang Sound Design  
City of Gold Coast  
Create NSW  
Cutting Edge  
Cutting Edge Technical Services  
Deluxe  
Docklands Studios Melbourne  
Film Victoria  
Fin  
Fox Production Services  
FOX Studios Australia  
Iloura  
Kojo  
Luma Pictures  
Panavision Asia  
Plastic Wax  
Resin Pty Ltd  
Rising Sun Pictures  
Screen Australia  
Screen Queensland  
Screenwest  
Show Film Travel Services  
ShowFreight  
Slatevfx Pty Ltd.  
Soundfirm Melbourne  
Spectrum Films  
Stage and Screen Travel  
South Australian Film Corporation  
The Appointment Group  
The Post Lounge  
Trackdown  
Village Roadshow Studios  
Warner Bros. Australian Productions Pty Ltd  
XM2