

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

Australian Writers' Guild

10 August 2021



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Committee Secretary

Senate Standing Committees on Environment and Communications

PO Box 6100

Parliament House

Canberra ACT 2600

The Australian Writers' Guild (**AWG**) welcomes the opportunity to comment on the Treasury Laws Amendment (2021 Measures No. 5) Bill 2021 (**the Bill**) to the Environment and Communications Committee.

The Australian Writers' Guild (**AWG**) is the professional association for Australian screen and stage writers principally in film, television, theatre, audio and digital media. We represent over 2,000 members who create 90% of the content on our screens. The AWG has fought for nearly 60 years to improve professional standards, conditions and remuneration for Australian stage and screenwriters, to pursue a thriving stage and screen industry environment, and to protect and advance the creative rights of our members.

Non-feature film Producer Offset rate – Section 376-2(3)(a)

The government proposes to increase the offset rate for non-feature film from 20% to 30%. The AWG supports this increase.

However, we note that its legislative impact is substantially weakened by reduced market-opportunity for independent television production following the government's relaxation of commercial free-to-air television quotas from 1 January 2021. While the government's new local content sub-quotas give broadcasters more flexibility, they also permit significant reductions in output overall leading to fewer new commissions of Australian TV drama content and fewer hours of programmed content on our screens.

The government has argued that by increasing the offset, there will be increased "opportunities for the screen sector to engage further with international streaming services, which will enhance the availability of Australian content to Australian audiences no matter on what platform they choose to

watch it.”¹ We submit that Australians are able to see high-quality Australian stories at home not only because of the offset but also due to local content regulation (in the form of content quotas) which the international streaming services are not subject to. As we have argued in previous submissions – and particularly in our submission to the Media Reform Green Paper consultation – if the government wants to see a robust and sustainable local screen industry and if it wants high-quality and internationally competitive screen content, then it must regulate the international streaming-video-on-demand and advertising-video-on-demand platforms. Qualifying service providers must be required to spend 20% of their Australian revenue on local productions and this regulation needs to be implemented by 1 January 2022. This timing is imperative to compensate for the \$100m contraction in the industry annually (as estimated by Screen Producers Australia), caused by the government’s relaxation of drama, documentary and children’s content quotas for commercial broadcasters, effective from 1 January 2021.

While AWG supports the uplift of the non-feature film offset to 30%, we oppose sections of the Bill that propose to repeal the Gallipoli clause and raise the QAPE threshold for Producer Offset to \$1m for feature-length content. The Australian film and television sector has suffered tremendously since the onset of the COVID-19 pandemic. Many productions were forced to close down last year due to border closures and lockdowns. The government’s announcement of simplified regulations for commercial broadcasters in September 2020 further impacted the local industry, with the immediate cancellation of several new productions. Many AWG members lost income and future opportunities as a result of these measures, particularly in the children’s television market. The AWG cannot support clauses to the Bill that will negatively affect a sector already weakened by COVID-19 and the ongoing regulatory disparity between commercial television and streaming services.

QAPE threshold for Producer Offset – Section 376-65

Section 376-65 of the *Income Tax Assessment Act 1977* (**the Act**) sets the qualifying Australian production expenditure (**QAPE**) threshold for feature length films at \$500,000. The government proposes to increase this threshold to \$1 million. The stated purpose of this change is of course to encourage high-quality productions with bigger budgets. However, the AWG believes that it will have an unintended **negative impact on documentary and low budget feature film**.

¹ Department of Infrastructure, Transport, Regional Development and Communications, [‘Q and As: Modernising Australian screen content settings’](#).

It's essential that Australians continue to have access to new, diverse programming on multiple and evolving platforms. If the government wants to ensure that the Producer Offset encourages high-quality and competitive screen products, the solution is not to increase the threshold and thereby preclude the creation of high-quality feature documentary and low budget feature. **Instead, the government could retain the current \$500,000 threshold and include a further requirement on qualifying projects to have a bonafide distribution agreement in place.**

One-off, single documentary feature films provide a significant cultural and social benefit to Australia by capturing and preserving our social, historical and political stories. Feature documentaries are often made over many years, on much smaller budgets than their drama counterparts. They will be disproportionately impacted by the government's proposed changes. According to analysis by Documentary Australia Foundation (DAF), on average, over the last three financial years (2017/18 - 2019/20) only 42% of Screen Australia funded documentary features had budgets over \$1 million. DAF goes on to note that award-winning documentaries such as *Gurrumul* (2017), *Backtrack Boys* (2018) and *In My Blood It Runs* (2019) would not have been able to be made if the proposed increased in QAPE threshold had been in place.

Documentary filmmaking is a vulnerable genre since commercial broadcasters are no longer required to produce a prescribed number of hours of local drama, documentary and children's content annually. The new points system introduced by the government from 1 January 2021 caps documentary content at 50 hours per year for free-to-air networks. Until streaming services are regulated, documentary filmmakers are facing diminished pathways to production. The genre will be further impeded and weakened if the qualifying threshold for feature-length content is increased from \$500,000 to \$1 million.

The change will also stifle innovation and opportunity for new talent which are characteristics of feature production at the lower end of the budget scale. Low budget features have included some of Australia's most memorable films over the last decade including *Ruin* (2013), *Strange Colours* (2017), *Toomelah* (2011) and *Jirga* (2018). Low budget films allow emerging creatives to sharpen their skills and develop their careers. In some cases, they may end up generating wildly successful and internationally-recognised franchises such as George Miller's *Mad Max* (1976). This film was made on a budget of \$200,000 and – adjusted for inflation – would not have qualified for the proposed offset. Now the latest instalment in the *Mad Max* franchise will support more than 850 local jobs

and bring in around \$350 million to the economy.² There are long-term cultural and economic dividends in government supporting innovative Australian storytellers at the bottom end of the budget scale and there is relatively minimal impact to overall program expenditure in doing so. Screen Australia's Drama Report states that of the 33 features that started production in 2018/19 with total budgets of \$316 million, only 6% of films were made for under \$1 million.³

'Gallipoli clause' – Section 376-170

The government proposes to repeal the so-called 'Gallipoli clause' at section 376.170 of the Act. The AWG strongly disagrees with this change.

The 'Gallipoli clause' allows feature film producers to claim for expenditure on Australian story elements shot offshore. It facilitates international co-productions. Without the 'Gallipoli clause', iconic films like *Balibo* (2009), *Mao's Last Dancer* (2009) or even *Gallipoli* (1976) would not have been made. The international elements and offshore locations were critical to the commercially successful and critically-acclaimed *Lion* (2016).

We request the retention of the Gallipoli clause and propose a modification that only allows claims from productions that employ the services of Australian residents to shoot international story elements.

We understand that the government wants to repeal this provision in order to stimulate local production but, once again, we note the unintended negative consequences that these changes will have. The cost of recreating an international location in Australia – for example the busy streets of Calcutta for *Lion* – may be prohibitively expensive for some productions. There is also the potential risk of these 'recreations' of other cultures being seen by audiences as inauthentic and culturally appropriative.

There will also be an unintentional narrowing in the diversity of the kinds of stories Australians will be able to tell. Australian creatives should not lose government support if an offshore location is required to tell an Australian story authentically and well. Australian stories should have no boundaries. David Williamson, delivering his State of the Industry address at the 50th anniversary of the AWG, said that

² NSW Liberal Party, '[Mad Max Prequel *Furiosa* to be filmed in NSW](#)' (19 April 2021).

³ Screen Australia, '[Drama Report 2018/19: Spend on Australian titles hits all-time high](#)' (31 October 2019).

our Australian stories “are universal, they don’t need to look like our street, or our landscape to be Australian stories – but they do need to have emanated from an Australian perspective on the world. It is Australian perspectives, Australian voices, Australian ways of seeing the world that form the heart of what Australians want to see.”⁴

⁴ David Williamson, ‘State of the Industry Address at the AWG 50th Anniversary’ (April 2012).