Australian Directors' Guild
Celebrating 40 years

THE AUSTRALIAN DIRECTORS' GUILD SUBMISSION TO THE INQUIRY INTO THE TREASURY LAWS AMENDMENT (2021 MEASURES NO.5) BILL 2021

10TH AUGUST 2021

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Committee Secretary
Senate Standing Committees on Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600

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

Dear Secretary,

RE: ADG SUBMISSION TO THE INQUIRY INTO THE TREASURY LAWS AMENDMENT (2021 MEASURES NO. 5) BILL 2021

The Minister for Communications, Cyber Safety and the Arts, the Hon Paul Fletcher MP, in announcing these reforms last September, said that *a vibrant local screen industry was essential to Australia's cultural identity, while also supporting jobs and economic recovery following the COVID-19 pandemic*[1]. We agree with the minister, indeed the Australian screen industry led the way in getting back to work and rebuilding the national economy. But whilst the proposed 10% increase to the TV offset will provide much needed financial stimulus during these challenges times, now is not the time to implement other reductive reforms that will make it harder for certain genres to be financed and weaken proven and well-supported production incentive legislation that has been the driver for sustained screen sector growth since its inception in 2007

WHO WE ARE:

The Australian Directors' Guild (ADG) is a Registered Organisation under the Fair Work Act 2009 and union representing Australian directors who are engaged in work in the film, television, online, arts and entertainment, music clips, animation, commercial advertising, and related industries. Formed by 18 independent directors in 1982, the ADG grew to over 1,200 members by 2020 including Baz Luhrmann, Peter Weir, Gillian Armstrong, Fred Schepisi and Phillip Noyce to name a few.

Directors are responsible for creatively leading stories on the screen as well as the cast and crew behind them. ADG's members play a significant role in the production process as creators. As a cultural organization the ADG also seeks to advance an understanding of the director's role by sharing and exchanging future-focused knowledge and skills.

[1] https://www.paulfletcher.com.au/media-releases/media-release-new-funding-in-budget-to-deliver-australian-screen-content

The ADG aims to improve professional standards, conditions, and remuneration for Australian Screen Directors, protect and advance the creative rights of our members and promote a cultural voice that is truly representative of Australia's innate diversity.

The ADG is affiliated through the International Association of English-Speaking Directors Organisations (IAESDO) with the Broadcasting, Entertainment Cinematograph and Theatre Union (BECTU), the Directors Guild of America (DGA), the Directors Guild of Canada (DGC), Directors UK, the Screen Directors Guild of Ireland (SDGI) and the Screen Directors Guild of New Zealand (SDGNZ). The ADG is also a member of the Copyright Council

WHY AUSTRALIAN SCREEN CONTENT MATTERS CULTURALLY AND ECONOMICALLY

The benefit to supporting Australian screen content, specifically in the market failure areas, is its significant strong economic and employment contribution coupled with this fundamental necessity of satisfying the need and appetite for our stories on our screens. Investment in the Australian screen sector also has strong flow-through economic and employment benefits for other local industries with wide recognition that Australian screen content is a significant driver for two of Australia's biggest industries, tourism, and international education.

INCREASING THE PRODUCER OFFSET RATE FOR NON-FEATURE FILM PRODUCTIONS FROM 20 PER CENT TO 30 PER CENT.

We strongly support the increase in offset rate for non-feature film productions and take the opportunity to state the need for prompt passage of this 30% rate for TV. Given the significant negative impact on the entertainment sector from the pandemic and as producers have already budgeted and financed based on the proposed increase, there is a genuine risk to further industry contraction if this measure is delayed.

The government stated in its rationale for increasing the offset that *'This increased rate will open up 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.[2]'* However we would note that to a very significant degree, Australians get to see great local stories at home because of the combined forces of financial assistance in the form of tax offsets AND regulation in the form of content quotas.

So we would note the impact of this positive measure is reduced by reduced market-opportunity for independent television production following the government's partial deregulation of commercial free-to-air television from January 1, 2021[3]. Because whilst 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.

[2] https://www.communications.gov.au/what-we-do/television/modernising-australian-screen-content-settings/qa
[3] https://www.communications.gov.au/what-we-do/television/modernising-australian-screen-content-settings

We also bring to your attention the government's current consideration of regulation to ensure popular streaming services such as Netflix, Stan, Amazon Prime and Disney+ are contributing to Australian content. This is a key and urgently needed regulatory setting that will help determine the future of Australian content following the partial deregulation of the commercial free-to-air broadcasters. Currently streamers with a significant audience base in Australia and substantial locally sourced revenue have no regulatory obligation to commission or program Australian content. We would note that recent polling by the Australian Institute shows that the majority of Australians want video-on-demand services to put 20% of revenue toward Australian content, supporting the ADG's and other preeminent screen sector guild's previous recommendations to the government's Media Reform Green Paper 'Modernising Television Regulation in Australia'[4].

As noted above, the entertainment industry is still reeling from the effects of the pandemic, now is not the time to be imposing any contractionary measures on the screen sector which would further stifle an already very challenging recovery. Several of the other measures proposed in the bill will reduce levels of industry investment and therefore production levels and discourage innovation. We submit that they should be removed or delayed. We are also unclear as to which public policy problems the proposed changes below are intended to address.

Increasing the threshold for feature length content supported through the Producer Offset from $500,000 to $1 million.

We are concerned that the government's stated objective that *'Increasing the minimum qualifying Australian production expenditure [QAPE] threshold for feature length content from $500,000 to $1 million will encourage the creation of high-quality productions that are larger in scale[5]'* will have an unintended decimating impact to feature documentary production and stifle innovation and opportunity for new talent which are characteristics of feature production at the lower end of the budget scale.

One-off, single documentary feature films provide a significant cultural and social benefit to Australia – capturing and preserving our social, historical and political narratives. Feature documentaries are often made over many years, on much smaller budgets than their drama counterparts – which means they will be disproportionately impacted by the proposed reforms. According to analysis by Documentary Australia Foundation (DAF)[6], on average, over the last three financial years (2017/18 - 2019/20) only 42% of Screen Australia funded documentary features had budgets over $1million. DAF goes on to note that award-winning documentaries such as *Backtrack Boys, Gurrumul* and *In My Blood It Runs* would not have been able to be made if the proposed increased in QAPE threshold had been in place.

Low budget features have included some of Australia's most memorable films over the last decade such as *Ruin* from Amiel Courtin-Wilson and Michael Cody, *Strange Colours* by Alena Lodkina and Isaac Wall, *Toomelah* from Ivan Sen, *Son of a Lion* and *Jirga* from Benjamin Gilmour, and *Sequin in a Blue Room* from Samuel Grisven and the Australian Film Television and Radio School.

[4] https://australiainstitute.org.au/post/polling-majority-want-video-on-demand-services-to-put-20-of-revenue-toward-australian-content/
[5] https://www.communications.gov.au/what-we-do/television/modernising-australian-screen-content-settings/qa
[6] https://documentaryaustralia.com.au/advocating-for-documentary/

Whilst many of these films do not have wide-scale commercial success, they have immeasurable cultural impact beyond the commercial and beyond our borders and importantly provide skills development and career springboards for Australia's next generation of screen storytellers with relatively minimal impact to overall program expenditure. Screen Australia's Drama report notes 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[7].

We also bring to your attention that the first movie in George Miller's *Mad Max* franchise, the latest iteration of which will support more than 850 local jobs and bring in around $350 million into the economy[8], was made on a ultra-low budget in 1979. This underscores the significant, long-term cultural and economic dividends in government also supporting innovative Australian storytellers at the bottom end of the budget scale.

INCREASING THE THRESHOLD FOR PDV (POST, DIGITAL & VISUAL EFFECTS) CONTENT SUPPORTED THROUGH THE PDV OFFSET FROM $500,000 TO $1 MILLION.

We are concerned that the intended increase in threshold is contrary to the government's stated intent to 'assist in the growth of our PDV sector'.[9] Australia's post-production and visual effects businesses are highly-regarded around the world. Their creativity, skills and expertise are highly sought after and enable local film makers to tell innovative and expansive stories to a world class technical standard. We are concerned that the proposed change would lead to sector consolidation and reduced creative and competitive diversity, with very large projects worked on by fewer select operators.

The PDV offset with its existing threshold has been instrumental in the growth and global prominence of a diverse Australian post and visual effects sector. Fundamental to these creative enterprises maturing from start-up phase to stable footing has been their ability, in the first instance, to secure smaller contracts (under $1m) on very prominent feature and TV projects (given their scale/capacity in start-up phase would not support higher value, large-scale contracts). These smaller contracts provide the ability to attract local and international talent, generate local skills and jobs, provide opportunity for business growth, and provide new entrants and emerging companies with a profile sufficient to secure further, larger contracts. Additionally, we would note that Australian state governments have recognised the strength of the existing rebate with its current threshold, introducing their own compatible PDV rebates. Reducing the threshold would have severe flow-through impact to these highly successful state-based complimentary initiatives: NSW and Queensland each offer a 10 per cent PDV incentive with a minimum spend of $500,000, while South Australia also provides 10 per cent at $250,000. Post-production work in Western Australia is eligible for a 20 per cent rebate on the first $500,000 and a further 10 per cent for all expenditure over that.

We would also bring to your attention that this change could have wider implications to the independent production sector in that, for added revenue diversity and stability, a number of local independent production companies operate a 'mixed model' of production and postproduction selling surplus in-house postproduction capacity after creation of their own in-house IP.

[7] https://www.screenaustralia.gov.au/sa/media-centre/news/2019/10-31-drama-report-2018-19-australian-titles
[8] https://nsw.liberal.org.au/Shared-Content/News/2021/MAD-MAX-PREQUEL-FURIOSA-TO-BE-FILMED-IN-NSW
[9] https://www.communications.gov.au/what-we-do/television/modernising-australian-screen-content-settings/qa

The threshold change would have a detrimental impact to these business models increasing financial stress on businesses already impacted by COVID and the recently announced partial deregulation of free-to-air commercial television.

REMOVING THE ABILITY TO CLAIM PRODUCTION COSTS INCURRED IN OTHER COUNTRIES TOWARDS THE PRODUCER OFFSET.

Where an Australian production requires a foreign location shoot, certain types of expenditure can be claimed as QAPE; the clause takes its name from an example in the legislation's initial explanatory memorandum which acknowledges a film about Australia's involvement in Gallipoli would need to shoot in Turkey. Self-evident in its name is that productions that aspire to tell global stories with global appeal require the inclusion of authentic international elements.

We are concerned that important high profile feature films such as the critically acclaimed *Lion* (which had a very substantial and contextual Indian shoot component) and documentaries such as *Surgery Ship* would not have the international reach and appeal without the inclusion of international elements. They also would not be able to secure co-production finance without these critical story elements being eligible for tax offset.

We would also note that the removal of this clause could have the unintended effect of disincentivising the employment of Australian crew on international locations with a likelihood that producers would look to employ cheaper foreign crews for international story elements. This is counter to the intended effects of the change, which is to provide greater employment opportunities for Australians.

PROPOSED AMENDMENT TO CAP COPYRIGHT EXPENDITURE FOR A PRE-EXISTING WORK FOR USE IN THE FILM AT 30% OF THE TOTAL OF THE COMPANY'S PRODUCTION EXPENDITURE ON THE FILM.

The ADG does not support the proposed 30% cap on the amount of copyright expenditure that can be counted as qualifying expenditure for the Producer Offset. This change stands to have a disproportionate impact on the creation of documentaries which tell Australia's social, political, cultural and economic history, given their reliance on historical archive material. Music and other Documentaries which rely on music licensing will also be adversely affected by this proposed cap. 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.

SUBPARAGRAPH 376-65(2)(B)(I) BEFORE "EXHIBITION", INSERT "COMMERCIAL".

As part of its proposed media reforms, the government has undertaken exhaustive consultation with industry participants dating back to and including is Options Paper in March 2020[10]. We are not aware of the proposed qualifying criterion of 'commercial' having been proposed at any point throughout the consultation process nor has the policy problem this change proposes to address been presented. We cannot support this change without an

[10] https://www.communications.gov.au/sites/default/files/consultation/pdf/supporting-australian-stories-on-our-screens-options-paper.pdf

appropriate definition or policy explanation as we are concerned that this change would have the consequence of narrowing the scope of eligibility leading to a contraction in market.

SUBSECTION 376-170(2) (TABLE ITEM 7, COLUMN HEADED "TYPE OF EXPENDITURE", PARAGRAPH (C)) OMIT "RE-VERSIONING", SUBSTITUTE "THE FIRST RE-VERSIONING OF".

This change, similar to the above, has not been proposed at any point throughout the consultation process nor has the policy problem this change proposes to address been presented. We cannot support this change without more detailed definition or policy explanation as we are concerned that this change would have negative repercussions to independent producers' finance plans, given international finance often comes with a requirement for local producers to finance and create international versions.

Thank you again for the opportunity to provide a submission.

Yours faithfully,
The Australian Directors' Guild

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