



10 August 2021

Alan Raine  
Inquiry Secretary  
Senate Environment and Communications Legislation Committee  
Parliament House, ACT, 2600

Dear Mr Raine

## **TREASURY LAWS AMENDMENT (2021 MEASURES NO 5) BILL 2021 (PROVISIONS)**

Thank you for your letter inviting the ABC to make a submission to the Senate inquiry into the above Bill.

As part of the Federal Government's consultation process the ABC provided some comments on the proposed legislation to Treasury in May 2021.

The ABC is happy to share the contents of that letter with the Committee (please see attached).

While the ABC supports and welcomes the decision to increase the Producer Offset rate, the Corporation raised its concerns regarding some of the changes to the conditions for qualifying Australian production expenditure.

Should it be required I am willing to elaborate on any matters contained in the ABC's original response to the draft legislation.

I can be contacted at [REDACTED]

Yours sincerely

**Michael Carrington**  
**Director of Entertainment & Specialist**  
**Australian Broadcasting Corporation**



31 May 2021

Georgina Prasad  
Individuals and Indirect Tax Division  
Treasury  
By email: [REDACTED]

Dear Ms Prasad,

### **Australian Screen Production Incentive Reforms**

The Australian Broadcasting Corporation (ABC) welcomes the opportunity to comment on the Australian Government's proposed Australian Screen Production Incentive Reforms as set out in the exposure draft "Treasury Laws Amendment (Measures for a later sitting) Bill 2021: Film tax offsets".

The ABC is the leading commissioner of Australian content. It relies significantly on the Australian screen production sector to fulfil its Charter responsibilities under the *Australian Broadcasting Corporation Act 1983*, which include broadcasting "programs that contribute to a sense of national identity and inform and entertain, and reflect the cultural diversity of, the Australian community".

Both content commissioners and audiences benefit from a thriving independent production sector, and the Corporation supports reforms that would sustain and grow that sector.

The ABC welcomes the decision, reflected in the draft Bill, to increase the Producer Offset rate for non-feature content to 30% and supports maintaining the rate of the Offset for feature films at 40%. The Corporation has previously called for an increase in the level of the Producer Offset applying to television productions and is confident this change will have a positive impact on Australian productions.

However, the ABC is concerned that some of the changes to the conditions for qualifying Australian production expenditure (QAPE) fail to take account of differences between documentaries and other genres and, as a result, may dampen the impacts of the Bill in relation to documentary content.

Documentaries are an important source of social and cultural information and provide an opportunity for knowledge-building. Documentaries that promote the arts, music, science, history, natural history, religion and Indigenous culture make vitally important contributions to Australian culture and national identity. Despite its importance, content of this nature is inherently hard to finance, as its appeal is often limited to the Australian market.

The increase in the QAPE threshold for feature films, the capping of "above the line" expenditure for documentaries, the reversal of the so-called "Gallipoli clause" (where expenditure outside Australia could be counted towards a company's QAPE) and the

capping of copyright expenditure are all expected to negatively impact on the finance plans of documentary productions. The Corporation does not have the capacity to fill funding gaps of the kind that will arise and, as a result, anticipates making fewer documentary commissions.

The ABC offers specific commentary below and seeks clarification on several of the reforms.

### **Increase in qualifying Australian production expenditure (QAPE) threshold for feature-length films**

The Bill proposes to increase the minimum QAPE threshold for claiming the Producer Offset in relation to feature-length films from \$500,00 to \$1 million. This will remove the ability to claim the Offset for feature documentaries with a theatrical premiere within the \$500,000 to \$1 million expenditure range. This is a type of documentary that the ABC sometimes provides finance for, offering broad distribution on its platforms after the film's theatrical release.

This change will have a significant impact on producers of single features, in particular single documentary features, that fall just below the \$1 million threshold, as finance will become limited to features of higher budget and scale.

Feature documentaries with a theatrical release that the ABC has supported have often been in the \$800,000 to \$1 million range; such productions would become ineligible under the proposed change. For the Corporation, this will have particular impact on Indigenous, arts and culture feature documentaries.

In addition, the ABC would welcome clarification on the definition of “commercial release” in the Bill, as it is particularly relevant to feature documentaries seeking to attract the 40% offset. The explanatory memorandum refers to eligible feature films having a “genuinely wide, commercial, and public release”, but provides no further indicators for parties seeking to interpret the Bill for eligibility for the offset. There is a risk that a requirement for a very broad commercial release may have the effect of limiting the volume of feature documentaries eligible for the 40% offset, as relatively few documentaries would pass that threshold.

### **Eligibility and integrity changes**

#### **Capping “above the line” expenditure on documentaries**

The proposed Bill will change the rules for documentaries so that the amount of development expenditure and remuneration provided to the director, producers and principal cast (“above the line” expenditure) that can be counted as QAPE will be capped at 20% of the total production expenditure on a film. Prior to the amendments, this limit did not apply to documentary films.

The ABC is concerned that the proposed approach, which seeks to align the QAPE of documentary productions with the requirements of other eligible productions, fails to acknowledge the varying budget and creative team structures between different genres, in particular between drama and documentary.

Often in documentary productions, producers and directors will be attributed to above the line budget and assume several roles (such as crew or editing roles) throughout a long production timeframe. The result will be significant for documentary productions, where the weighting of above- and below-the-line budgets can vary significantly from drama productions.

#### **Expenditure on goods and services provided by Australian residents outside Australia can no longer be counted towards a company's QAPE**

From time to time, the ABC commissions programs that have a relevant overseas element that forms an important part of telling an Australian story. This change will create a funding gap for those productions that may be difficult to overcome, limiting the ability of those stories to be shared. The Corporation expects this change to have a disproportionate impact on documentary productions.

#### **Capping the use of existing Australian copyright material**

The proposed Bill will limit the level of expenditure incurred in acquiring Australian copyright or licensing Australian copyright in a pre-existing work for use in a film that can be counted as QAPE to a maximum of 30% of the film's total production expenditure.

The ABC is concerned that this approach will have a significant negative impact on archival projects, which can draw heavily on pre-existing works. Such productions often strongly reflect a cultural remit, such as historical, arts and music documentaries. Archive content is unique, and can often be an expensive budget element, but is critical to the telling of authentic Australian stories.

#### **A company may only claim expenditure as QAPE on the first copy of a film and one re-version**

There are concerns that the details of this reform have not previously been provided. This impacts on feature documentary commissions, where different cuts may be required, such as the feature-length version for theatrical release and the hour-length version for broadcast, as well as versions potentially required for other markets. The ABC requests clarification on whether re-versioning will exclude the same version of the film or different delivery materials.

I hope these observations are of use in preparing the final draft of the Bill. Please contact me if you have any questions about the above or require further information.

Yours sincerely,

Michael Carrington  
Director Entertainment & Specialist  
Australian Broadcasting Corporation