



10 August 2021

Committee Secretary,
Senate Committees on Environment and Communications,
P.O Box 6100, Canberra ACT 2600.
email: ec.sen@aph.gov.au

Dear Secretary,

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

Beyond International welcomes the opportunity to submit to the Committee's inquiry into the Treasury Laws Amendment (2021 Measures No. 5) Bill 2021 (**'the Bill'**).

Beyond International Limited is a leading Australian content creation, production and international distribution business listed on the Australian Stock Exchange (ASX: BYI). Beyond is based in Sydney, Australia, and has offices in Brisbane, Auckland, Los Angeles, Dublin and London. Further background on Beyond International Limited is at **Attachment A**.

We support Screen Producer's Australia's ("**SPA**") submission to the Committee. Beyond is strongly supportive of the increase in the rate of Producer Offset for television to 30%. We have co-financed a scripted television series currently in production on the forecast availability of a 30% rate of Producer Offset therefore agree with SPA in strongly supporting a timely and prompt implementation of the increase to 30% for the Producer Offset for television productions. We do not however support particular elements of the Bill and would like to raise our strong concerns over the negative impacts of some of the suggested reforms on the independent documentary sector. Specifically, we would like to add our concerns on the following 3 issues:

1. The introduction of a cap on the level of copyright expenditure that can be claimed as Qualifying Australian Production Expenditure ("**QAPE**") at 30% of total production expenditure under the Producer and PDV Offsets;
2. The increase in the minimum QAPE threshold for feature length content and the increase in the minimum QAPE threshold for the PDV Offset; and
3. The removal of the "Gallipoli" clause from the Producer Offset.



1. Cap on level of copyright expenditure at 30% of total production expenditure (Schedule 1, Items 13 and 14, section 376-150)

This proposed change to the legislation and Guidelines regarding the levels of third-party copyright material which can be licensed or acquired under the production offsets will have a serious and detrimental impact on Beyond's business, the independent documentary sector and hence employment opportunities in the Australian film and television industry. It will also diminish Australia's ability to record and preserve its history and reflect current social, political and cultural issues.

Beyond currently produces many documentary feature films and television programs/series, all of which are able to be made due to the Producer and PDV Offset provisions. Otherwise, they would not be able to be financed or produced. Those programs and films all incorporate large amounts of copyright and archival material, as this is of the very nature of the subject matter concerned.

The documentary sector produces important programs that reflect Australia's rich history and global achievements. Often such series are reliant on archival footage to visually support the story being told. However, the proposed change to the copyright cap will make it difficult to finance any documentary that utilises significant archival material. Documentary series that celebrate Australian history, that celebrate our sporting stars, musicians, actors, writers, politicians, and our scientific achievements as well as those that celebrate Australia's cultural history would all be affected by this change to the legislation and as a result would be unlikely to be told.

The incorporation of archival material and footage into various forms of documentaries, has also been an agile way of facilitating production of programs during Covid lockdowns, which would not otherwise have been possible and thereby generating much needed employment opportunities in the industry during COVID shutdowns of production and filming. The timing of these contractionary changes during the ongoing disruption of industry caused by the pandemic makes it increasingly difficult to finance production and maintain employment.

As SPA points out in their letter, the documentary feature film produced by Beyond, "***The Hardest Line***" which documents the band Midnight Oil's role in Australia's musical, social, and political history could not have been made if the proposed caps on copyright expenditure were implemented, given that the film comprises approximately 90% of archival footage and licensed music recordings to tell their story. Similarly, various music-based feature documentaries and documentary series currently being produced or co-produced by Beyond which rely on large amounts of licensed music and archival material to tell those stories and have a similarly large percentage of copyright and archival material could not be made under the proposed changes to the Offset legislation.

If the cap on copyright expenditure was applied these feature documentaries and series could not be made, with the impact on Beyond's revenues being a loss of approximately \$20 million for the current financial year and the loss of more than 100 freelance production jobs.

We therefore respectfully request that if this cap is to apply, there be an exception for documentary programming in order to preserve and support Australia's social, political and cultural analysis and history.



2. Proposed increase in the minimum QAPE threshold (feature length content) for the Producer Offset (Schedule 1, Items 9, 10 and 11, section 376-65(6)) and proposed increase in the minimum QAPE threshold for the PDV Offset from \$500,000 to \$1million (Schedule 1, Item 2, Section 376-45(5)(a))

The proposed 100% increases in the minimum QAPE thresholds under both the Producer Offset and the PDV Offset (from the current \$500,000 to \$1 million) will make the barrier to entry for Offset qualification unachievably high for documentary programming.

For example, Beyond currently has two theatrical documentaries in production and two starting production imminently which would not reach the minimum QAPE threshold under the proposed changes. These projects generate \$7.3 million in revenue and 50 skilled jobs, all of which would be lost. Additionally, Beyond has 6 (six) documentary/factual projects slated for the current financial year (2021/2022) all with budgets exceeding \$500,000 in qualifying PDV expenditure, but none of those projects will reach the proposed minimum QAPE threshold of \$1 million.

Based on Beyond's 2019 FY slate - 4 projects with revenue of \$11.3m creating 63 jobs would no longer meet the PDV offset threshold

Based on Beyond's 2020 FY slate - 6 projects with revenue of \$7.3m creating 80 jobs + post finishing personnel would no longer meet the PDV offset threshold

All these projects are only able to be made due to the availability of the current Producer and PDV Offsets. If the minimum threshold is increased as proposed, none of this programming would be able to be financed and produced by Beyond, thereby diminishing the important role that these types of documentaries play in Australia's social, political, and cultural history.

Due to these proposed legislative changes, Beyond is at present actively exploring offshore post production opportunities in Ireland and Canada. These jurisdictions have lower thresholds for tax incentives and will enable us to fully finance and produce our export programs which rely on the PDV Offset, and thus allow Beyond's Australian production company to retain equity in its intellectual property. It would therefore be a travesty if employment and export opportunities were lost to Australia as a result of the proposed legislative changes.

Beyond therefore strongly supports SPA's request for specific consideration to be given to feature documentaries to introduce a bespoke minimum QAPE threshold of \$800,000 and that specific consideration be given to maintain the current \$500,000 minimum qualifying post-production expenditure threshold for the PDV Offset, to preserve jobs and support the important Australian content in this sector which is able to be made in reliance on the PDV Offset.

3. The removal of the "Gallipoli" clause from the Producer Offset

We support SPA's concerns regarding the proposed removal of the "Gallipoli" clause (Item 4, Section 376-370(2) of the Income Tax Assessment Act 1997) from the categories of expenditure which can be claimed as QAPE under the Producer Offset (**Schedule 1, Items 19, 20 and 22, sections 376-170(2)**)



item 4 in the table and 376-170(3A))

For example, Beyond is currently financing a feature documentary film by an internationally acclaimed Australian Director and featuring world famous Australian musicians, part of which are due to be filmed overseas, in the US, Europe and the UK. If the ‘Gallipoli’ clause was removed altogether, none of the expenditure on Australian talent and crew and allowable Australian elements of the foreign shoots could be claimed as QAPE, with the result that it would be extremely difficult to finance and therefore produce this significant Australian story.

We therefore support SPA’s position and respectfully request that a modified “Gallipoli” clause be retained as part of the Producer Offset, which would allow the claiming of foreign expenditure as QAPE where genuine location specific reasons can be demonstrated.

In summary the proposed measures particularly impact the documentary sector, by applying restrictions and thresholds more suitable to high budget scripted drama production. The impact will be fewer Australian jobs and lower export earnings. If these changes are legislated Beyond will need to explore post production in territories such as Canada and Ireland with more favourable tax incentives, in order to sustain its business.

Thank you again for the opportunity to submit to this Inquiry. Should you require further information about these important issues, please do not hesitate to contact me at the address below. We are happy to appear before the Inquiry to explain these issues further if that would assist the Committee.

Many thanks for your consideration.

Yours faithfully,

Mikael Borglund
Chief Executive Officer & Managing Director



Attachment A

Beyond International Limited is a leading Australian content creation, production and international distribution business listed on the Australian Stock Exchange (ASX: BYI). Beyond is based in Sydney, Australia, and has offices in Brisbane, Auckland, Los Angeles, Dublin and London.

Beyond is one of Australia's leading production companies, developing and producing over 5000 hours of scripted and non-scripted content since it began operations in 1984. With development and production offices in Australia, the UK and USA Beyond is internationally regarded for high profile factual series such as seminal science series **Beyond 2000**, **MythBusters** and **White Rabbit Project**, **Deadly Women**, **Chasing Monsters**, as well as **Pooch Perfect** for BBC and ABC America, **Curse of Akakor** for Facebook and the successful Australian series **Selling Houses Australia** and **Love It Or List It Australia** for Foxtel.

Beyond has also collaborated with award-winning producers and directors, such as James Cameron and Scott Hicks to executive produce blue chip documentaries including **Deep Sea Challenge 3D**, **Submarines Sharks of Steel**, **The Great Wall of Iron**, **Atlas: Australia** and **The Space Shuttle**.

Children's programs include Emmy Award winning animated series **Beat Bugs** for Netflix and channel 7, as well as **Nippers (ABC)**, **Milly Molly**, **Labrats**, **Hoopla Doopla (ABC/CCTV China)**, and **Motown Magic (Netflix/Seven)**.

Beyond drama produced The **Halifax FP** drama series with creator Roger Simpson which was broadcast on Nine from 1994-2001 and was "rebooted" in 2020 as 8 x 1-hour premium drama series **Halifax Retribution** for Channel 9 and is currently screening to large audiences on PBS America. Beyond produced the medical drama **Pulse**, based on a true story, for ABC Australia, and is currently in production on **Troppo** for ABC with EQ Media Group and AGC Television. From 1996 – 2004 Beyond produced several well-known Australian drama series including **Stingers** and **Good Guys**, **Bad Guys**, **Big Reef**, **Dogwoman** for the Nine Network, **Something In The Air** for ABC TV .

Beyond Rights Limited is a leading distributor of world class television content representing an extensive program catalogue sourced from third party producers as well as from internal productions. With over 30 years' experience co-producing and distributing high quality content, Beyond's sales and acquisitions teams are based in Dublin, London, and Sydney.