



Australian Screen Composers Guild (AGSC)

and

Australian Performing Rights Association
Australasian Mechanical Copyright Owners Association
(APRA AMCOS)

JOINT SUBMISISON

to

Treasury Laws Amendment
(Measures for a later sitting) Bill 2021: Film tax offsets)

Exposure Draft Bill

31 May 2021

APRA AMCOS
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ULTIMO NSW 2007

AGSC
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30 May 2021

Georgina Prasad
Individuals and Indirect Tax Division
Treasury
Langton Crescent
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By email: film@treasury.gov.au

Re: Exposure Draft Bill and Explanatory Memorandum for proposed legislation to implement the Media Reforms Package.

We refer to the above Draft Bill and present comment from the AGSC and APRA AMCOS. Our comments refer to the proposed changes relating to:

- Increase in qualifying production expenditure threshold from \$500,000 to \$1 million for feature length films seeking the producer offset; and the PDV Offset
- Removal of the 'Gallipoli clause' that allows production costs incurred overseas to be claimed for the Producer Offset
- A cap on expenditure on copyright equal to 30% of total QAPE
- Extension 'above the line' expenditure cap to 20% for documentary
- Exclusion of expenditure on general business overheads from QAPE
- Limit to one re-versioning of a production counted towards QAPE and inclusion of the word 'commercial' before exhibition referred to in the explanatory notes.

Who We Are

AUSTRALIAN GUILD OF SCREEN COMPOSERS (AGSC)

The Australian Guild of Screen Composers (AGSC) is an industry organisation that represents Australian screen composers in film, television, gaming and related industries. The AGSC has been established since 1981 and membership over the past 4 decades has included composers of such iconic and uniquely Australian films that include: *Crocodile Dundee*, *Muriel's Wedding*, *Strictly Ballroom*, *Shine*, *Animal Kingdom*, *Australia*, *Red Dog*, *Phar Lap*, *2040* and *The Australian Dream*; and television shows such as *McLeod's Daughters*, *Picnic at Hanging Rock*, *Rake*, *The Secret Life of Us*, *Offspring*, *The Code*, *Bluey*, *Doctor Doctor*, *Wentworth*, *The Gloaming*, *Bloom*, *Underbelly*, *Miss Fisher's Murder Mysteries*, *Stateless*, *Home and Away* and so many more.

The AGSC has partnered with key organisations such as APRA AMCOS, as well as advocated, lobbied and acted to increase opportunities for screen composers. We work alongside our screen compatriots in directing, producing, editing, design, casting, post-production areas such as digital and visual effects etc, to ensure there is a viable and sustainable screen industry for us all to exist in.

APRA AMCOS

APRA AMCOS has been representing Australian songwriters, composers and publishers since 1926. With over 108,000 members across Australasia, our membership includes the very best and brightest of established and emerging musical talent at home and around the globe. We administer rights on their behalf, supporting screen composers, songwriters and publishers in an industry that is a flagship of Australian culture and creativity, generating billions of dollars each year for the Australian economy.

We are affiliated with similar collective management organisations around the world. So when Australian and New Zealand songs and compositions are played overseas, Australian and New Zealand composers and writers get paid. We also help music customers in Australia and New Zealand access music from the rest of the world. We work in partnership with government to support the development and career paths within Australian music through the cornerstones of live music, digital distribution, local venues, education and the global stage. APRA AMCOS has successfully initiated and led industry and government co-investment strategies, developing highly regarded capacity building programs, most notably: National Aboriginal and Torres Strait Islander Music Office, SongMakers, Live Music Office, SongHubs and Sounds Australia.

We welcome the increase to the producers offset affecting non-feature productions from 20% to 30% and the retention of the producers offset for feature film to 40%.

However, we have a number of concerns about other changes to the legislation that will affect the documentary and low-budget feature sectors particularly, where many of the AGSC members and our fellow screen composers work; contributing to content for cinema, television broadcast, SVOD and other platforms.

1. Producer Offset

We are gravely concerned at the raising of the QAPE threshold from \$500K to \$1million, for all offsets, which will present a very challenging environment for Australian feature-length films and particularly documentaries that are generally with budgets of less than \$1,000,000 in Australia.

To raise the threshold for QAPE to \$1million for the producers offset would cut out nearly 60% of documentaries that receive Screen Australia funding¹, and many more than are not fortunate enough to have this funding and raise budgets through other sources.

One-off, single documentary feature films provide a significant cultural and social benefit to Australia – capturing and preserving our social, historical and political narratives. They occupy a unique place in our screen industry. They are distinct from the broader category of "factual" for television, often finding and telling singular Australian stories.

¹ Data from Documentary Australia Foundation and Screen Australia

Feature documentaries are often made over many years, with much smaller budgets than their drama productions and will be disproportionately impacted by the proposed reforms. On average, over the last three financial years (2017/18 - 2019/20), for theatrical release features, only 42% of Screen Australia funded documentary features had budgets over \$1million. Documentary Australia Foundation data indicates that documentaries in development and production have an average budget of \$618K, well under the proposed \$1million threshold.

Low budget fiction films also form the backbone of our feature film sector and any adjustment to the QAPE threshold threatens the telling of stories that appeal to more than the 'blockbuster' audience, ones that reach our diverse and regional communities as well.

2. PDV Offset

The PDV offset with its existing threshold has been instrumental in the growth and prominence of a diverse and vibrant Australian post and visual effects sector. Our post-production sector is world-class and 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 move towards targeting government support towards projects of size and scale would adversely impact smaller post production businesses competing for work that will employ crew, bring business to our shores and create opportunities for growth and maintain the regard held for our post-production services internationally.

Furthermore reducing the threshold could have a severe flow-through impact to highly successful state-based complimentary initiatives, where current incentives are offered by various state-based governments, that recognize the importance of the federal incentive and match it with additional ones to encourage take-up and production expenditure.

Recommendation: Maintain existing minimum budget threshold of \$500,000 for one-off, Feature-length films for the Producer and PDV offsets.

3. Removal of the ability to claim production costs incurred in other countries towards the Producer Offset (Gallipoli Clause)

We are also concerned about the removal of the "Gallipoli Clause" and the ability to claim production costs incurred in other countries towards the producer offset.

Internationally recognised and award-winning documentaries such as *The Surgery Ship* and *Firestarter* were able to employ Australian crews on their international shoots because of the Gallipoli clause, creating jobs for the Australian screen industry. Similar rebates exist across the globe in other countries because of the proven benefits.

We support the retention of the 'Gallipoli Clause' for productions utilising the Producer Offset and would like consideration to be given to ensuring that use of Australian screen composers and music is supported with it.

Recommendation: Maintain the 'Gallipoli Clause' for productions with the Producer Offset.

3. Copyright Cap for QAPE

We do not support the cap on expenditure on copyright equal to 30% of total QAPE as this works against archival projects covering Australia's economic, social and political history as well as cultural projects that rely on copyright material and music licencing to tell their stories.

Music documentaries could be particularly affected where archival footage and licenced music are involved, making it difficult for producers of world-class stories such as *Gurrumul* to be told. Important stories such as *Brazen Hussies* would also be under threat, with their extensive use of archival material to tell a story for generations who did not experience it.

Recommendation: Remove the 30% of total QAPE cap on copyright expenditure.

4. Above the Line QAPE cap extension

We are equally concerned with the move to cap the value of 'Above The Line' (ATL) costs that can be counted towards QAPE, to 20% for documentary productions.

Typically, documentary budgets have a different structure to drama budgets. Documentaries generally have less crew Below The Line (BTL), and Directors and Producers typically work over extended time periods and often take on or share BTL roles (e.g. camera, sound, editing). These are not usually split out across the ATL/BTL. As a result, documentary ATL and BTL costs are weighted differently than as found in drama. ATL costs are typically higher as a percentage of an overall leaner budget.

Recommendation: Remove the 20% QAPE cap for Above The Line Costs for documentary

5. Removal of General Business Overheads as claimable for QAPE

Recommendation: We believe the proposed legislation to remove the ability to count general business overhead expenses across all three tax offsets should be reviewed and the ability to claim left intact at this point.

6. Additional Unannounced Changes

We note that there are two additional changes referred to in the explanatory notes to the draft exposure bill, and refer to **Subparagraph 376-65(2)(b)(i) Before "exhibition", insert "commercial"**. Despite considerable consultation with the industry in the lead up to this bill, we are not aware of the proposed concept to insert "commercial" into the

wording and at this stage could not support this change with an appropriate definition or policy explanation.

Similarly, we refer to **Subsection 376-170(2) (table item 7, column headed "Type of expenditure", paragraph (c) Omit "re-versioning", substitute "the first re-versioning of"**. Again, this change does not appear to have been proposed or presented during the consultation process and lacks policy clarification. We could not support this change without more detailed definition or policy explanation, as we are concerned that this change would have negative repercussions to independent producers who often need to create additional re-versions to meet finance and sales agreements.

The screen content production and broadcast industry is a highly organised and creative one that is constantly evolving to meet the demands of technological change and content-hungry audiences. To meet these demands, we must have screen production reforms that encourage and incentivise the telling of Australian stories on screen, that use Australian crews and personnel for the telling and that have budgets of all sizes. This allows the sector to maximise those incentives, particularly in the wake of the Covid-19 pandemic that has had a profoundly adverse affect on local production.

Our screen industry is a significant contributor to the Australian economy, it generates jobs, intellectual property and exports of Australian content and music to international markets and if these things are to remain viable and contribute towards our economy, screen content reforms must factor this in.

The AGSC and APRA AMCOS are pleased for the opportunity to make this submission and provide insight from the creators' perspective of the need for legislation that supports a sustainable and strong screen industry

Yours sincerely,

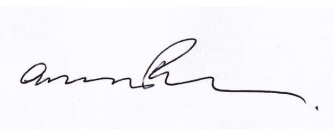
On behalf of the AGSC and APRA AMCOS



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