

26 April 2024

Screen Producers Australia's submission to the Inquiry into Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Bill 2024

About Screen Producers Australia

Screen Producers Australia (SPA) was formed by the screen industry businesses representing large and small enterprises across production all forms and formats of screen content.

As the peak industry and trade body, we consult with a membership of around 800 production businesses in the preparation of our submissions. This consultation is augmented by ongoing discussions with our elected Council and members. Our members employ hundreds of producers, thousands of related industry practitioners and drive over \$2 billion worth of annual production activity from the independent sector.

SPA's members are drawn from all elements of the Australian production ecosystem, including emerging and established producers, production businesses, services and facilities businesses. Our members vary in size from large internationally owned entities, to partnerships, to sole traders and other corporate entities, and are found in every region, state and territory of Australia.

On behalf of these businesses, we are focused on delivering a healthy commercial environment for the entire screen industry through ongoing engagement with elements of the labour force, including directors, writers, actors and crew, as well as with broadcasters, distributors and government in all its various forms. This coordinated dialogue ensures that our industry is successful, employment levels are strong and the community's expectations of access to high quality Australian content have been met.

Screen Producers Australia welcomes the opportunity to make a submission to the Senate Economics Committee Inquiry into the *Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Bill 2024*.

For further information about this submission please contact Jane Mulligan, Director of Policy (jane.mulligan@screenproducers.org.au)

EXECUTIVE SUMMARY

- SPA welcomes the increase to the Location Offset to 30% and changes to the Producer Offset but notes the existence of a number of anomalies, detailed below, that should also be addressed by the Australian Government to ensure that documentary projects in particular are not disadvantaged through policy reform neglect and the lack of impetus to address these.
- SPA in particular welcomes the strengthened and formalised training and infrastructure obligations that will be attached to the Location Offset through these amendments. These recognise in part that international projects filming in Australia have contributed to the difficult capacity issues being experienced in the industry and that these projects should have an obligation to contribute to the easing of this issue.
- SPA also expresses the concerns that arise by dealing with ad hoc changes to policy settings for the screen industry such as those in this Bill. Our industry would benefit enormously from a considered stocktake of these measures, that also outlined the overall goal of the Australian Government, considered all the relevant policies, incentives and supports and examined how and if Australia is achieving its objectives for the industry.
- Irrespective of the issues referred to above, SPA believes that on balance this Bill provides important benefits to the Australian screen industry and recommends that it be dealt with and passed by the Australian Parliament as swiftly as possible in order to provide financial certainty to a number of screen projects.

SUMMARY OF RECOMMENDATIONS

As detailed below, SPA makes the following recommendations:

1. The 65-hour cap for documentary for access to the Producer Offset should be abolished;
2. The PDV Offset should be available for feature documentaries;
3. The Location Offset threshold should remain at \$15 million;
4. The Australian Government should review the settings, cost and benefits of both the Location Offset and Producer Offset to ensure that home-grown Australian screen projects can more easily access taxpayer support and that the cap on costs does not unduly disadvantage these projects.

BACKGROUND

This submission focuses exclusively on the proposed changes outlined in Schedule 6 of the Bill for changes to Location offset and Producer offsets for the screen sector.

By way of context, SPA is an organisation representing screen producing members from across the spectrum of the Australian industry, from globally-owned businesses to small boutique operations, encompassing all types of work including film, television and games, across all genres. As such, SPA necessarily takes a broad and wholistic view of the implications of policy decisions on our industry and seeks to find a balance between the international and local business interests of its members.

The screen industry, both domestic and international, receives considerable support from Australian taxpayers through tax rebates, incentives and direct funding. This funding, combined with Government policy settings around Australian content, is vital to ensuring that Australia maintains a sustainable industry and that Australian audiences benefit in a myriad of ways, from access to Australian culture.

Earlier this year SPA had the opportunity to provide feedback to the Office of the Arts on an Exposure Draft of the proposed changes to the Location Offset and Producer Offsets set out in this Schedule. This response was informed by detailed consultation with members and which raised a number of anomalies that have crept into policy settings.

As a result of this consultation with members, SPA has identified a number of critical issues affecting Australian screen businesses, particularly pertaining to documentary projects. Some of these are directly relevant to the changes proposed in this Bill and others arise from the lack of opportunity to take a broader look at the effective operation of our screen industry.

SPA is pleased to have this opportunity to provide the Committee with some context to the measures proposed in this Bill as well as putting forward the range of views expressed by our members on these policy settings.

SPA believes that the Australian screen industry is overdue for a more wholistic review, in particular to ensure that policy and public funding settings are achieving an appropriate balance between support for international projects and ensuring a robust local industry that delivers Australian stories to Australian audiences.

LOCATION OFFSET CHANGES INDICATE A NEED FOR FURTHER PRODUCER OFFSET REFORM

General comments

As noted above, SPA consulted with its members on both the changes proposed in this Bill and also the broader operation of the offsets across the industry in order to gauge how well this taxpayer support is perceived to be working across the industry.

While welcoming the certainty that the Location Offset increase will bring, some SPA members are concerned that these changes have come about due to pressure from powerful offshore interests and their representatives and that local screen storytelling faces restrictions that do not apply to international projects.

For many Australian screen businesses, the increase to the Location Offset tilts the balance of taxpayer support increasingly towards international productions as the new Location Offset rate more closely matches the 30% Producer Offset for Australian television and the 40% for Australian feature films. When the additional state-based top ups of 10%-15% are included – which are provided to international projects as grants rather than equity investments (and which is the form of funding generally provided to local productions by the state agencies) even with new training requirements attached, the Location Offset is now highly favourable.

Reform of the Producer Offset in Response

Australian projects seeking to access the Producer Offset face several hurdles that do not apply to international ones accessing the Location Offset, the latter being a straightforward tax rebate on “qualifying Australian production expenditure” (QAPE). These hurdles include meeting the “significant Australian content” (SAC) test and stringent guidelines on the importation of international artists, neither of which apply to the Location Offset.

SPA members have also questioned why they are subject to a 20% cap on the “above the line” costs that they can claim for Australian projects accessing the Producer Offset compared to the unlimited above the line costs that can be claimed by international projects accessing the Location Offset. This means that Australian projects are disadvantaged by having a cap placed on the fees paid to high-profile actors, writers and directors which Location Offset projects are not subject to.

Comments made to SPA by members on the effect of the above the line (ATL) cap on their businesses and Australian screen projects include the following:

“Increasing the overheads cap would ensure a more sustainable business model, allowing us to employ more staff and therefore generate more productions.”

“Being able to claim the Offset on an increased ATL figure would greatly increase the financeability, calibre and saleability of project.

“The cap of 20% above the line to enable the financing needs of Australian production needs to change to NO CAP. If the production has a screenplay that can attract a high-level actor then they need to be rewarded not punished. The team to finance a film at this level needs to be rewarded not punished. It is assumed that the directors/writers/producers fees are not worthy of the offset, that high-level actors are not worthy of the offset, and that executive producers (who are often the names that have enabled the production to be financed) are not worthy of the offset.

“It is now imperative for films to have cast attached who can trigger the financing, and this is regardless of budget. This means that the fee for a lead actor alone could take out more than 25% of ATL. And when you add in Writer/Director/Producer that can take the ATL to over 40% of total budget. Under the current rules this means a significant loss of Offset returned and this deficit has to be made up from Federal or State Funding bodies if the film is to get made. If this funding, which is a lottery at best, is not forthcoming it’s very hard to finance the gap.

There is no question that for Australia to remain internationally competitive with other countries offering similar inducements for large screen projects to locate themselves in their own country that the Location Offset is an important component of our overall screen growth strategy. It should be noted that Australia does not rely on financial incentives alone to attract these projects, as we also offer a highly skilled workforce, stunning locations and supporting infrastructure.

This creeping imbalance in our industry should not be viewed in isolation: it is a combination of the lack of support and overarching strategy for growing and championing Australian screen exports and expanding Australia’s co-production partnerships when compared to the efforts to import international projects to Australia, as well as a delay in bringing forward legislation to regulate digital streaming platforms.

Australia’s cultural trade imbalance should not come as a surprise to Government, when Australia’s efforts for attracting inbound screen work is not balanced by a commensurate

effort towards developing export market opportunities. This trade imbalance is clear when reportedly, for every dollar of cultural products exported we import eight.¹

Given this, SPA believes that there is a need for the Australian Government to take a more holistic approach to screen incentives to examine this perceived imbalance in more detail and ensure that Australia is achieving the desired outcomes for the future of our industry.

Recommendation: the Australian Government should review the settings, cost and benefits of both the Location Offset and Producer Offset to ensure that home-grown Australian screen projects can more easily access taxpayer support and that the cap on costs does not unduly disadvantage these projects. It is recommended as an immediate step that the cap in the Producer Offset on 'above the line' costs is removed.

Specific issue: Training Obligations

SPA welcomes the strengthened training and infrastructure obligations that will now attach to the Location Offset and that will help to address the capacity issues being experienced in the Australian screen industry associated with the increase in offshore productions filming in Australia.

For some time producers on local screen projects have struggled to compete with international productions for crew and studio space. Efforts to address these capacity issues take time to materialise and build momentum but it is hoped that the Australian Government's strong commitment to addressing skills and training will soon see an improvement in this area.

Many businesses supporting international projects have already established training schemes and strong relationships with Australian training providers. These new training measures should have the effect of further developing the range of training programs and capacity for local providers to meet the needs of the industry, by being able to access a strong pipeline of resources and commitment.

While it is welcome that addressing the capacity and training issues in the screen industry will be through an industry-led approach, SPA notes that this needs to be done in partnership with and coordinated by government to ensure that training takes place in areas of skills shortage and that the training meets the needs of the entire screen industry and not just specific international productions and that all of these measures are managed in a co-ordinated and non duplicative way to lessen the opportunities for inefficiencies and wastage from this investment.

Specific issue: Location Offset threshold

The Bill contains an increase in the Location Offset threshold from \$15m to \$20m. A number of SPA members have queried this increase and this was raised in SPA's response to the Exposure Draft of the Bill. No policy rationale has been provided for this changed threshold.

SPA believes that the current threshold of \$15m is working well and that the higher threshold of \$20m may become problematic if the AUS/USA exchange rate becomes less favourable for USA financiers.

¹ Cited in A New Approach, [Australia's Cultural and Creative Economy](#), 2020, page 71

The increase to the threshold means that it is likely more challenging for smaller Australian businesses – who are comparable in terms of size and scale with smaller international productions – to receive the opportunities afforded by international productions that will have access to the Location Offset.

A number of Australian screen businesses work across creating Australian screen stories as well as international projects and the combination of work, including on smaller-scale international projects as well as higher budget ones, helps them to sustain their business across the peaks and troughs of a volatile industry.

Recommendation: the Location Offset threshold should remain at \$15 million;

PRODUCER OFFSET CHANGES TO SUPPORT DOCUMENTARIES

SPA notes that the new and alternative means of access to the Producer Offset through production expenditure of \$35 million per season of television drama has had a mixed response from the Australian screen industry.

Although outside of the scope of these amendments, a number of SPA members have noted that the Government’s reform agenda here is focused almost exclusively on drama and that there is an equally important opportunity that should be seized to include documentaries in screen industry reform thinking.

Specific issue: Abolition of 65-hour cap for documentary

A number of SPA members have noted that this measure is focused on expanding the already existing additional flexibilities and coverage provided for in the Producer Offset that are afforded to drama and legitimately question why the same benefits are not being extended to documentary works. This includes the 2021 reform to the Producer Offset that removed the 65-hour cap for drama but not for documentary.

SPA agrees that it would be preferable for the Australian Government to think beyond just the needs of drama production and also consider the equally important needs of documentary production in Australia.

Abolishing distinctions between drama and documentary production in areas such as the 65-hour cap for documentary would be of benefit to documentary-makers and SPA believes that this is an issue that requires immediate consideration by the Australian Government.

The 65-hour cap for access to the Producer Offset that was removed in 2021 for scripted content should also be removed for documentaries.

Recommendation: the 65-hour cap for documentary for access to the Producer Offset should be abolished;

PDV OFFSET CHANGES TO SUPPORT DOCUMENTARIES

Specific issue: access for feature documentary?

Currently the Post, Digital and Visual Effects (PDV) Offset (a 30 per cent rebate for work on post, digital and visual effects production in Australia, regardless of where a project is filmed) is not available for feature documentaries. This exclusion has been raised with SPA by members who are unable to grow their feature documentary business because of this issue.

SPA has raised this with the Department and been advised that historically, producers making this format were not considered to be a likely applicant to the PDV Offset given the relatively high expenditure threshold of \$5m put in place at the time of its introduction in 2007. Since then, the threshold for the PDV Offset has been reduced to \$500,000 and the Department is aware that this exclusion is an issue for Australia's feature documentary makers.

SPA raises this issue as another anomaly that has crept into Australia's system of screen incentives that disadvantages parts of the Australian screen sector and which remains unaddressed. SPA therefore brings this to the attention of the Committee and asks that consideration be given to correcting this anomaly.

Recommendation: the PDV Offset should be available for feature documentaries;