

8 June 2018

Screen Producers Australia's submission on Senate Economics Legislation Committee Inquiry into Treasury Laws Amendment (Tax Integrity and Other Measures No. 2) Bill 2018 [Provisions]

Screen Producers Australia (SPA) was formed by the screen industry to represent large and small enterprises across a diverse production slate of feature film, television and interactive content.

As the peak industry and trade body, SPA consults with a membership of close to 500 production businesses in the preparation of our submissions. This consultation is augmented by ongoing discussions with our elected Council and appointed Policy Working Group representatives. Our members employ over 20,000 Australians and drive more than \$1.7 billion worth of annual production activity from the independent sector.

On behalf of these businesses we are focused on delivering a healthy commercial environment through ongoing engagement with elements of the labour force, including directors, writers, actors and crew, as well as with broadcasters, distributors and governments at all levels. 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.

SPA welcomes the opportunity to provide a submission to the Senate Economics Legislation Committee Inquiry into Treasury Laws Amendment (Tax Integrity and Other Measures No. 2) Bill 2018 [Provisions] "the Bill".

SPA has two preliminary concerns with the Bill as proposed:

- the absence of any precise identification of a problem that needs to be fixed, and
- a lack of industry consultation.

The Bill proposes to restrict the application of the "Gallipoli clause". The 'Gallipoli Clause' is a reference to a provision in the *Income Tax Assessment Act 1997* which provides that in certain limited circumstances, some expenditure on goods and services provided outside Australia is treated as Qualifying Australian Production Expenditure (QAPE). It takes its name from the example given in the Explanatory Memorandum where it is acknowledged that 'some documentaries, iconic films on Australian events overseas and co-productions may need to shoot outside Australia' and that a film about 'Gallipoli' may need to shoot on location in Turkey.

Currently, a company may claim towards the producer offset expenditure incurred for the purchase of services performed in an offshore location from a company or permanent establishment that has an ABN.

The Bill proposes that a company may claim towards the producer offset expenditure incurred for the purchase of services performed in an offshore location from a company or permanent establishment that has an ABN, *but only if those services are performed by Australian residents*. SPA opposes this change as currently proposed in the Bill.

In short, if implemented, the effect of this Bill would be to reduce Australia's competitiveness in the global market for finance, talent and audience. These three market forces are linked: talent attracts finance, which goes into producing high-quality Australian content that attracts audiences locally and internationally. Any restrictions on access to production talent (directors, actors and crew), affects access to finance. The proposed Bill creates a disincentive to include foreign locations in Australian productions, thereby limiting international sales and audiences.

Unfortunately, the Australian screen industry is not of sufficient size to retain many of our best actors, writers, directors and crew working consistently in Australia. The proposed Bill will further diminish producers' capacity to attract Australian talent of international renown back home to work. The proposed Bill comes at a time when the Australian industry is looking to create more and better content for local and international audiences.

SPA would like to bring to the attention of the committee the following issues.

- 1) Non-resident Australian actors:** Many Australian actors capable of raising international finance for Australian productions are non-resident, living in the US and UK. Under the Foreign Actor Certification Scheme, Australian actors are provided regulatory protection in productions that receive Australian government tax incentives. Under this proposed change, where an Australian actor is a non-resident Australian, for the period of a shoot in an offshore location, their wages are not eligible for QAPE.
- 2) Non-resident Australian directors and crew:** also affected by this change similarly to Australian actors.
- 3) Retrospective application:** The Bill commences on 1 July 2017. This raises constitutional problems through potential acquisition of property and interfering with the value of contracts entered into in good faith. This leaves the Commonwealth potentially liable to pay "just terms" for any property acquired.
- 4) No clear rationale for the change:** the policy argument for the change is "integrity" and "strength" – with no clearly articulated evidence provided of the problem that needs to be fixed. Non-resident wages on Australian locations are eligible for QAPE, why not non-resident wages on offshore locations?

- 5) **Administrative burden:** The proposed change creates an administrative burden on a production company to distinguish between Australian and non-Australian employees in its accounting for offshore locations.
- 6) **Australian and Children's Screen Content Review:** The screen industry is waiting the Government's response to the content review, which is looking at offset reform and this proposed change to the Gallipoli clause may be premature with regard to the Government's response to the Content Review.
- 7) **International obligations:** Screen Australia's guidelines state the Gallipoli clause also applies to co-productions. There is no clarity provided on how this restriction would apply to co-productions; potentially putting Australia in breach of its international obligations.

SPA is available to discuss this submission with the Committee. SPA is willing to work with the Government on sensible reform of any policy issues the Government identifies in the Gallipoli clause. SPA remains committed to ensuring the producer offset is fit for purpose and administered efficiently and fairly.

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