

2 May 2024

Treasury
Langton Cres
Parkes ACT 2600

By email: economics.sen@aph.gov.au

RE: Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Bill 2024 [Provisions]

The Australian Writers' Guild represents Australia's performance writers: playwrights, screenwriters for film and television, showrunners, podcasters, comedians, game narrative designers, dramaturgs, librettists, and audio writers. We represent 2,500 performance writers in Australia. Established by writers for writers, the AWG is a democratic organisation run by its members who work together to represent their fellow writers across the industry to negotiate for fair pay and conditions, advocate to government, and serve members' professional needs.

The Government proposes to amend the *Income Tax Assessment Act 1997 (ITAA 1997)* to allow a film production company to qualify for the 'producer tax offset' by spending a minimum of \$35 million for a season of a drama series, over a maximum period of 12 months of production or 36 months for an animated image film series.

Previously, applicants needed to meet a minimum per hour spending threshold for television series, in order to claim the offset.

On 27 March 2024, the Senate referred the provisions of the Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Bill 2024 to the Senate Economics Legislation Committee.

We write to support proposed changes which we understand to be intended to benefit and incentivise long-running serials and lower budget programs that have significant expenditure over their season of the series but do not satisfy the per hour expenditure

requirement due to their lower per hour production costs. Serial drama creates stable work for Australian writers and it is an essential pathway for emerging writers to gain experience in our local industry. Support for longer running and programs and programs on the lower end of the budget scale per episode creates diversity in the kind of Australian screen content being produced and can foster innovation and new opportunities for Australian talent.

We would like to take this opportunity to recommend further modifications to the ITAA, specifically in relation to the “significant Australian content” (**SAC**) test at section 376-70(1).

<u>Current SAC test</u>

<i>Income Tax Assessment Act</i> – section 376-70(1)
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(1) In determining for the purposes of section 376-65 (certificate for the producer offset) whether a *film has a significant Australian content, the *film authority must have regard to the following:
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| (a) the subject matter of the film; |
| (b) the place where the film was made; |
| (c) the nationalities and places of residence of the persons who took part in the *making of the film; |
| (d) the details of the *production expenditure incurred in respect of the film; |
| (e) any other matters that the film authority considers to be relevant. |

The SAC test is a discretionary test which is, in our view, inferior to an objective and more transparent ‘points system’. In our view, a points system such as the one used in Canada is preferable. Canada, like Australia, uses a number of economic incentives

to promote the development of local Canadian content and protect its local screen industry. Like Australia, Canada imposes quotas on broadcasters and tax incentives are available to Canadian production companies that produce Canadian content.

In order to qualify as “Canadian content” screen content must satisfy a number of requirements including employing Canadian creatives in key roles on a production (as writer, director, lead actor, or head(s) of department with each role being worth a number of points and the production company being required to accumulate 6 out of a total 10 points). Please refer to Appendix A below.

We strongly support a points-based SAC test similar to the Canadian model.

Alternatively, we would support the following modification to the existing SAC test.

<u>Modified SAC test</u>
In determining for the purposes of section 376-65 (certificate for the producer offset) whether a *film has a significant Australian content, the *film authority must have regard to the following: (a) the subject matter of the film; (b) the place where the film was made; (c) the nationalities and places of residence of the persons who took part in the making of the film, (d) the extent to which creative control rests with Australian creative talent; (e) the extent to which copyright ownership resides with Australians (f) the details of the production expenditure incurred in respect of the film; (g) any other matters that regulator considers to be relevant.

The current Producer Offset Guidelines as administered by Screen Australia, lists “other matters” that the film authority should take into account.¹ These include

¹ Producer Offset Guidelines, Screen Australia, paragraph 2.2.2.5.

- the extent to which creative control rests with Australian citizens or residents; the extent to which copyright ownership resides with Australians – in particular,
- whether this is commensurate with the proportion of the budget provided by Australians;
- the extent to which there is recoupment and profit participation for Australian nationals or residents, and the extent to which that is commensurate with ownership;
- the policy purposes of the Producer Offset, such as the impact of the project on creating a sustainable Australian film and television production industry, or whether it supports the development and employment of Australian key creatives to make Australian films;
- and anything else that we or you consider relevant.

We submit that “creative control” resting with Australians, and copyright and intellectual property being controlled by Australians, are a sufficiently significant aspect of what it means for a work to have “Significant Australian Content” that it should be a primary consideration in the legislation. Conversely, without an Australian owning the copyright in a work, it is hard to see the argument that Australian taxpayer money should subsidise foreign ownership.

In our view, the nationality of the key creatives involved in the development and production of a television series or feature film is essential to its Australian character. Specifically, the executive producer/showrunner, creator (where the work is a series), writer(s) and director(s) (of each episode, if applicable) **should** be Australian citizens or residents to satisfy the SAC test.

Currently, the regulator need only consider whether there is a “higher the proportion of Australian citizens and residents involved in the project”.² We propose that the involvement and participation of Australians in the above key creative roles become a determining factor as to whether the offset can be claimed.

² Producer Offset Guidelines, paragraph 2.2.2.3(a).

We support a test that requires the majority of lead cast members and **all** key creative heads of department (the director of photography, production designer, editor, costume designer, sound designer and composer; and other cast, crew and service providers: for example, post-production houses) to be Australian.

In keeping with the “policy purposes” of the Producer Offset – i.e. “creating a sustainable Australian film and television production industry [and] the development and employment of Australian key creatives to make Australian films”³ – we argue that the creatives employed on these must be treated fairly and paid, at least, industry agreed minima (where such minima exist) so that a career in screen, in Australia, is a sustainable and viable option compared to pursuing work in other jurisdictions.

Regular compliance checks on offset applicants would be essential to ensure that these requirements for fair treatment of creative talent are met. Government may choose to outsource enforcement duties to relevant industry organisations and the AWG is prepared to take on this duty so long as Government is prepared to cover the reasonable costs.

³ Producer Offset Guidelines, paragraph 2.2.2.5(iv).

Appendix A – Canadian content test

A minimum of 6/10 creative points is required for certification.

The Production must receive a minimum of 6 out of 10 creative points.	
Live Action: The Director OR Screenwriter AND First OR Second Lead Performer must be Canadian (3 points). The remaining 3 points can come from any other key roles.	
Director	2
Screenwriter	2
First lead performer	1
Second lead performer	1
Production Designer/Art Director	1
DOP or Chief Camera Operator	1
Music Composer	1
Picture Editor	1
Animation: Screenwriter OR Storyboard Supervisor OR Director AND First OR Second Voice AND Key Animation must be Canadian (3 points). The remaining 3 points can come from other key roles.	
Director	1
Scriptwriter/Storyboard Supervisor	1
Picture Editor	1
First Voice	1
Second Voice	1
Design Supervisor	1
Camera Operator	1
Music Composer	1
Key Animation (performed in Canada)	1
Assistant Animator and In-Betweening (performed in Canada)	1
Layout Artist and Background Artist (performed in Canada)	1