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24 August 2007

Mr Peter Hallahan
Committee Secretary
Senate Economics Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Confidential

Dear Mr Hallahan,

TAX LAWS AMENDMENT (2007 MEASURES NO. 5) BILL 2007: FILM PRODUCTION OFFSETS

Free TV Australia is the peak industry body representing Australia's commercial free-to-air television broadcasters in Australia.

We would like to make submissions in respect of the Film Production Offsets package in the *Tax Laws Amendment (2007 Measures No. 5) Bill 2007* and thank you for the opportunity to do so.

Free TV strongly supports the Film Production Offsets legislation as drafted and in particular the Producer Offset. We enclose a short submission providing some comments on this aspect of the Bill.

We would welcome an opportunity to appear before the Committee should there be public hearings.

Yours sincerely

A handwritten signature in cursive script that reads "Julie Flynn".

Julie Flynn
CEO

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**Submission by
Free TV Australia Limited**

Senate Economics Committee

Inquiry into Provisions of the Tax Laws
Amendment (2007 Measures No.5) Bill
2007

24 August 2007

Executive Summary

- Free TV strongly supports the Film Production offsets package and in particular the Producer Offset, as currently drafted in the *Tax Laws Amendment (2007 Measures No. 5) Bill 2007*.
- The Film Production Offsets package reflected in the Bill will encourage increased production of Australian content by making production more cost effective.
- Free TV strongly supports the application of the Producer Offset equally across all sources of production of Australian programming.
- For the legislation to achieve its stated aim of stimulating and supporting all forms of Australian production, it is important that all producers are affected equally by it.
- There is, and has been for many years, a healthy balance between in-house and external drama productions for television.
- Concerns that the offset will result in broadcasters choosing to commission in-house over independent productions are unfounded.
- Broadcasters make production and programming decisions based on new and creative concepts which appeal to audiences – irrespective of whether they are generated in-house or externally.
- In-house production makes a significant contribution to the overall health of the broader production sector, of which independent producers are a very small part.
- There are already significant incentives for broadcasters to commission independent productions, under funding sources limited to independent producers and in the Australian Content Standard.
- In addition to commissioning independent productions, broadcasters have had successful production and distribution partnerships with independent production companies.

1 Introduction

Free TV Australia (**Free TV**) is the industry association representing all of Australia's commercial free-to-air television licensees.

Free TV welcomes the opportunity to provide a submission to the Senate Economics Committee in relation to its Inquiry into the *Tax Laws Amendment (2007 Measures No.5) Bill 2007 (the Bill)*.

2 Objectives of the Bill

The Explanatory Memorandum to the Bill sets out the following objectives for the Film Production Offsets.

- To support the Australian screen media industry at a time when it is striving to meet the challenges of a changing global environment.
- To encourage greater private sector investment in the industry.
- To improve the market responsiveness of the industry.

The Film Production Offsets package and in particular the Producer Offset achieves the above objectives since it encourages increased production of Australian content by making production more cost effective.

Increased production will:

- Deliver increased diversity and choice to audiences.
- Encourage stable and sustainable production companies. The more that is produced the more equity and return is available to production companies.

Free TV is aware that some concerns have been expressed that the Producer Rebate will be available to all producers of Australian film and television, including in-house productions made by broadcasters. It is this issue that we intend to address in our submission.

3 Application of the Producer Offset

Free TV strongly supports the application of the Producer Offset equally across all sources of production of Australian programming.

For the legislation to achieve its stated aim of stimulating and supporting all forms of Australian production, it is important that all producers are affected equally by it. The legislation should create a level playing field and should not discriminate between different producers.

There should be no distinction between different production houses such as those housed in entities such as Southern Star, Fremantle, Beyond, the Nine Network, Seven Network and Network Ten. Both independent and in-house productions make a significant contribution to the overall health of the production sector in this country.

Production will be maximised if the market effectively allows and encourages production by all Australian producers. Free TV makes the following points which are discussed below:

- concerns that the offset will result in broadcasters choosing to commission in-house over independent productions are unfounded;
- the origin of programming is not relevant to viewers;
- in-house production makes a significant contribution to the overall health of the production sector;
- independent producers are a very small part of the broader production community;
- other incentives limited to independent producers already exist; and
- direct commissioning is not the only relationship between broadcasters and independent producers.

Concerns that the offset will result in broadcasters choosing to commission in-house over independent productions are unfounded

There is, and has been for many years, a healthy balance between in-house and external drama productions for television. Independently produced programs such as Sea Patrol, Neighbours, McLeods Daughters, Joanne Lees Murder in the Outback, The Wedge, and in past years, Secret Life of Us (10), Last Man Standing (7), Mary Bryant (10), Blue Heelers (7), Young Lions (9), Through My Eyes (7), The Alice (9), Tripping Over (10), Jessica (10) and The Society Murders (10) are balanced by some in-house dramas such as All Saints (currently in its 10th year on 7), Home and Away (7), Always Greener (7) and City Homicide (7).

This balance is driven by the fact that broadcasters make production and programming decisions based on new and creative concepts which appeal to audiences – irrespective of whether they are generated in-house or externally. A minor difference in budget is simply not going to drive a broadcaster to reject a superior concept and risk the project being picked up by a competitor and potentially the loss of thousands of viewers.

If the best idea for a program comes from an independent production company, it belongs to that producer. A broadcaster cannot produce the program without the participation of the owner of the concept. If the concept is considered the one that will deliver the maximum audience, that is the driver for the commissioning decision.

Put simply, the business model for commercial broadcasters is to deliver the highest quality and most popular programs irrespective of origin. This view has also been supported by other independent industry commentators¹

Origin of programming is not relevant to viewers

The standard of Australian productions – whether externally produced or in-house – is determined by viewers. If a production is not of a sufficient standard, viewers will not watch it. This is the case regardless of how a particular production is produced. Nothing in the legislation will change this basic commercial reality. When broadcasters commission productions, they will have most regard to the likely success of that production. In any event, the legislation as drafted sets minimum expenditure thresholds to ensure that only high quality productions are able to benefit from the Producer Offset.

As can be clearly seen from ratings figures, viewers do not differentiate between in-house and independently produced programs. Both in-house and independent

¹ See interview with Richard Harris, Radio National, 16 August 2007, attached at Appendix 1.

programs regularly feature in the top rating programs on Australian television. Currently the top rating dramas on commercial television are All Saints, Sea Patrol, McLeod's Daughters, Home and Away and Neighbours. These programs attract national average audiences ranging from over 1 million people to almost 2.5 million people per episode.²

The purpose of the Producer Offset is to encourage greater levels of Australian production. This will occur through the production of popular and sustainable Australian programming that meets audience needs and not the commercial considerations of a few individuals. Clearly, in-house productions are capable of meeting those audience needs as well as independently produced programs.

In-house production makes a significant contribution to the overall health of the production sector

In-house production departments provide many people with valuable training and an opportunity to increase their skills base. It allows aspiring producers and others to take risks, make mistakes and learn from a wider creative team without the fear of adverse personal financial consequences. Many of today's independent producers got their start working for broadcasters with strong in house production departments such as the Seven Network or the ABC.

The opportunity to move between run of show regular employment with a broadcaster and independent projects is a welcome one for many in the production industry. Many independent producers, directors, writers, cameramen etc take the opportunity to work on in-house productions while they go about securing their next independent project and move between the two sectors throughout their career.

Reliable and steady employment is also valuable to women or those with family responsibilities, who may wish to remain in the production industry but may also need the security of ongoing and regular employment.

Both in-house and external productions draw from the same pool of creative and technical talent and resources. By supporting the availability of a wider talent pool for all productions, in-house productions support the overall health of the production sector.

Independent producers are a very small part of the broader production community

The overwhelming majority of the production team on any film or television project works on the basis of employment contracts, either with a broadcaster or an independent producer. Production teams are made up of large numbers of creative participants, including actors, directors, editors, set designers, writers, composers, cameramen, gaffers and so on. None of these participants have any interest in or entitlement to any funding arrangement such as a tax offset. Only the producer, who sits at the top of the production pyramid, has any interest in funding arrangements. Producers form a small sector of the overall production community.

For most of the production team, it makes little difference whether they are engaged by an independent production company or a broadcaster. It is simply not reasonable to accept the arguments of a few interested parties that only they can deliver the kind of quality Australian programming that the Producer Offset seeks to encourage.

² Source: OzTAM - 5 City Metro & Regional TAM - Combined Agg. Mkts ex Tas; Total Ppl; Weeks 1-33 2007; National figure is the sum of 5 City Metro & Regional.

It is the joint efforts of the whole production team that will deliver sustainable and popular programming, and it is the availability of this wider pool of talent that will ensure that those with creative concepts can make them a reality.

Other incentives limited to independent producers already exist

Funding available to date through the FFC and state film agencies has only been available to independent producers. It is expected that any funding sources available through the new Australian Screen Authority will be similarly limited.

Further, an incentive to source productions externally was introduced in the *Australian Content Standard* in 2003, allowing additional drama quota points for such productions. This is a significant incentive for broadcasters to commission independent productions.

Direct commissioning is not the only relationship between broadcasters and independents

Direct commissioning of product is not the only way for broadcasters and independent production companies to enjoy mutually beneficial relationships. An example of this was Seven's partnership with Southern Star on the production *Always Greener* where Southern Star's distribution division entered as a distribution partner rather than as a producer. A similar relationship exists for *Home and Away*.

Appendix 1

Extract from interview with Richard Harris

“The Media Report”, ABC Radio National, Thursday 16 August

Antony Funnell: Now I'd like to get your perspective on one of the criticisms that's come up. By and large, this package of measures has been well received by the industry, but one of the criticisms that's come up from the independent TV producers is that the new producer rebate will be available to broadcasters, and by that we mean Channel Nine, Channel Seven, the ABC, those specific TV broadcasters, as well as independent production houses. Now just explain to us why that's seen as an issue, and whether you think it's a problem.

Richard Harris: Well I think it was something that the industry generally argued that only independent producers should be eligible for it, and the broadcasters should be kept out, and that's obviously something industry seems to be continuing to lobby about. I think that with all the other changes that were announced to what is now called the offset, but which was announced on budget night as the rebate, outweigh that decision by government, and I also think that government was in a difficult position because some of the other previous tax incentives, such as 10B were actually able to be used by the broadcasters, and they've all been done away with, so the question is Well, those broadcasters are actually in the business of production; what sort of tax rebates are they going to be able to use?

At the end of the day when I look at the business of those broadcasters, most of them, certainly the ones that are involved in engagement in the independent sector in a very big way, such as Channel Ten, and even ABC and SBS increasingly, I don't think they are going to suddenly change their business models, the way that they produce programs, because they suddenly can get access to 20%.

Antony Funnell: So they won't be moving towards going back to doing more in-house?

Richard Harris: I doubt that that would be the case, that they don't suddenly look at this 20% and suddenly decide to shift their entire business model on the basis of that; I just don't think it's enough. And it's also important to bear in mind that organisations like the one I currently work for, the South Australian Film Corporation, will be continuing to have the same sort of guidelines. I'd imagine this new Australian Screen Authority will have the same sort of guidelines which will exclude broadcasters. So in continuing that level of independent sector support, I think what the government has got right on this line is actually to continue to monitor those independent productions who are doing business with Channel Ten or the public broadcasters or even Channel Nine and Channel Seven, to ensure that when they are bringing independent productions that the broadcasters aren't coercing them to essentially hand over the rebate as part of the commercial deal.

How they manage that I don't know, but I think that it's important to recognise that the producers are in a very vulnerable position in that, and that that really needs to be monitored, and if something needs to be done down the track to provide some regulation on that, then they can decide that as things progress.