



Australian Government

The Treasury

DOCUMENTARIES AND FILM TAX OFFSETS

SUMMARY OF CONSULTATION PROCESS

The Government announced on 8 May 2012 that it would insert a definition of documentary into the legislation governing the producer tax offset. Further detail on the measure was provided in [Media Release No.063](#) (5/7/2012) by the Assistant Treasurer.

This measure was included in Tax and Superannuation Laws Amendment (2013 Measures No.2) Bill 2013, which was introduced into Parliament on 20 March 2013.

Consultation process

Consultation on the draft legislation was conducted between 14 December 2012 and 30 January 2013. Ten submissions were received, of which two were confidential.

Submissions can be viewed on the [Treasury website](#).

Summary of key issues

The amendments are intended to align the meaning of documentary for film tax offset purposes with that used for the Australian Content Standard made by the Australian Communications and Media Authority (the 'ACMA guidelines'), with the effect of re-establishing the meaning of documentary that, prior to the AAT *Lush House* decision, was used for purposes of the producer offset.

Screen Australia, which administers the producer offset, advised that it was satisfied the amendments would have the desired result. Some submissions disputed whether the outcome of the *Lush House* case would have been altered were the amendments in place. Others suggested that greater clarity could be achieved by conceding a broad definition of documentary and then 'carving out' styles of program that the Government wished to exclude. However, concerns were also raised over the possible interpretation of the exclusions that are included in the amendments, in relation to infotainment, lifestyle and magazine programs.

A number of submissions expressed concern over the factors to be considered in determining whether a program is a 'creative treatment of actuality'. Some were concerned that one of the factors might be given excessive or prejudicial emphasis. Others were concerned over how Screen Australia might use its discretion to consider 'other relevant matters'.

The above concerns often also reflected a view that a broader than intended range of documentary genres ought to be eligible for the producer offset.

Some submissions called for the statutory definition of documentary to apply from Royal Assent, rather than from 1 July 2012. Screen Australia argued that the retrospectivity does not produce any



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disadvantage that film makers were unaware of. In addition to the announcement on 8 May 2012, the Government foreshadowed, on 5 July 2012, that the statutory definition would be consistent with the ACMA guidelines. Further, when providing certificates to applicants for the producer offset, Screen Australia has provided them with its view on whether their film is a documentary under the ACMA guidelines as well as under the Administrative Appeals Tribunal's test.

No changes were made to the amendments in response to submissions.

Feedback

Feedback on the consultation process for this measure can be forwarded to consultation@treasury.gov.au . Alternatively, you can contact Ian Douglas on (02) 6263 3189.

Thank you to all participants in the consultation process.