



# Film assistance under review

*David Williams, Partner, and Therese Catanzariti, Solicitor, Mallesons Stephen Jaques, outline the features and progress of the Gonski Inquiry into government assistance to the film industry.*

The Review of Commonwealth Assistance to the Film Industry ('the Gonski Inquiry') was commissioned in September 1996 by the Federal Government to review Commonwealth assistance to the Australian film industry and audio visual industry to assess its effectiveness and identify options for the future. It is being chaired by David Gonski, Chairman of Hoyts Cinemas Limited and a former chairman of Film Australia, and is due to report to the government by 31 January 1997.

The review is to consider and make recommendations on:

(1) The efficiency and effectiveness of existing arrangements for Commonwealth support for the film and audio-visual industry, including:

- the extent to which the program promotes the development of the industry, fosters a diverse range of quality film and television product, and meets Commonwealth cultural objectives;
- the extent of any unnecessary overlap or duplication between the Commonwealth's support mechanisms;
- the effectiveness of links between these mechanisms and with other sources of government support, including the ABC, SBS and State film support programs;
- whether any existing elements of the Commonwealth support program would be more appropriately provided by other levels of government;
- the extent to which existing arrangements encourage private sector participation in the industry, and possible improvements to the arrangements in this regard; and
- the possibility of changing the

present 10BA tax arrangements to provide, to an overall level predetermined by the Government, additional incentives for films which are commercially successful - taking into account the examination of the effectiveness of concessional taxation treatments announced in the Budget.

(2) Future options for the Commonwealth's support program in terms of the appropriate nature and level of assistance and the mechanisms through which it is provided, taking account of:

- findings from term of reference (1);
- the impact of factors likely to influence the development of the film and audiovisual industry over the next five years; and
- the nature and size of the Australian industry and its potential for growth.

## Progress to date

David Gonski attended the SPAA Conference in Melbourne in November 1996, chairing the 'Face to Face' question and answer session entitled 'The Gonski Review' and took on board a wide range of comments made during the session.

Submissions have been provided to the Gonski Inquiry. It is understood that those submissions and comments are currently being considered.

## Timing of implementation of recommendations

The original Media Release issued by Senator Alston indicated that 'current funding to the Australian film industry is committed until 1998'. This strongly suggests that the government is un-

likely to implement any measures with costs attached before that timeline.

The current intention would appear to be for the government to consider the recommendation so that, according to Senator Alston, 'the government can announce in the May budget any changes it proposes to make into its film support arrangements'.

## Possible changes to 10BA

Various suggestions directed to changing the operation of the tax concessions contained in Division 10BA of the Tax Act have been raised in the course of the debate.

These suggestions have focused largely on increasing the tax benefits flowing from investing in films qualifying for treatment under Division 10BA, either by increasing the level of deduction or by reinstating some form of income exemption. There have been suggestions effectively restricting the higher level of deductions to the level of film income received, a sort of reward for investing in a successful film.

Suggestions have also been made to widen the category of qualifying films. As the ATO is currently closely investigating most Division 10BA and section 51 film investments, it will be interesting to see whether the Gonski Inquiry receives a submission from the ATO or, alternatively, speaks to relevant ATO officers concerning their collective or individual views.

Given the current ATO focus on the 'at risk' rules, this is an area that needs close attention and clarification.

There are also significant issues as to whether the existing systems are delivering the best possible outcomes. This issue is particularly relevant to the



films that over the past 5 years have been financed by public offering (ie, prospectus) with so-called capital guarantees attached.

---

**Direct government assistance**

It is envisaged by Senator Alston that the Gonski Inquiry will examine and identify 'any unnecessary overlap and duplication between Commonwealth programs or between the activities of Commonwealth and State film bodies'.

One of the areas covered by a number of submissions has been the amalgamation of the AFC and the FFC. Another area is the issue of whether we need separate government film bodies in each State together with a federal film financing body; and whether the government assistance could be delivered more effectively by devolving investment funds and the investment activity from the FFC to the state film bodies. A key issue in all of this - which has been repeatedly expressed by interested groups - is an underlying concern that the decision to invest in/assist a film is ultimately a decision made subjectively. If there is only one funding body, there is a real risk that deserving films will be passed over because of the personal preferences of the decision makers.

This 'one door' issue is both a practical and emotive one, and has potentially restrained producers from making constructive comments concerning funding bodies where there is the possibility that those comments may be considered adverse in some way.

Another area covered has been the future of Film Australia.

---

**Assistance in export activities**

This is an area which is the focus of how to improve 'sales' of films overseas. At present, there is considerable assistance in the production side, but apart from AFC marketing assistance, there is little financial input to this area. This appears to be out of kilter with other government export initiatives.

There needs to be careful consideration of the objectives in other areas (such as tourism) to try and achieve a double benefit, if possible.

---

**Multimedia**

Multimedia presently sits somewhat in limbo as regards attracting private investment. It does not enjoy the concessional tax treatment afforded to normal Division 10BA qualifying films because it does not solely constitute such a film, although that is often (but not always) a component part of the multimedia product.

There appears to be no reason why multimedia products with significant Australian content should not be afforded a similar tax break to that provided to mainstream Division 10BA films. In a developing multimedia market, this would permit an expansion of Australian product utilising retail investment funds rather than loan capital, with investors participating in returns.

At this stage, there needs to be a definite decision made as to what incentives are to be provided in the multimedia area so that longer term planning can be put in place to build a sustainable industry. One of the major risks that we as a nation run is that, while we may be protecting Australian culture on television, it may become a sideline activity as other, more flexible, means of delivery come to the fore.

---

**Corporations Law**

The fund raising provisions of the Corporations Law have been cited as a major problem, especially in relation to the lower end of the film market. It is necessary to review these provisions to see if there is a way of easing up the requirements without losing investor protection.

This might take the form of permitting modified fund raising requirements where government film bodies have substantial equity or other investments in a project, and imposing on the government film body an additional role as overseer of the interests of the minority

investors. This would require (and would constitute) a fundamental change to the role currently perceived by government film bodies as regards minority investors in films.

---

**Inconsistency of requirements**

There is presently an inconsistency of the requirements in relation to:

- qualifying for quota for free-to-air television; and
- qualifying for a Division 10BA certification, which opens up the availability of tax concessions and possible FFC funding.

Yet both procedures are intended to achieve the same general objective of keeping Australia culturally intact.

This inconsistency needs to be addressed. One means of doing so is by giving quota status automatically to any film satisfying the Division 10BA criteria.

---

**Programming for children**

Children will watch interesting programming wherever it comes from. Good quality children's programming is more expensive than cheap formula programming. However, it is an important investment in the nation's future and should be examined to see whether additional funding can be delivered in an efficient manner (by way of either direct subsidy or tax incentives) to improve this area. This is an area where there is a clear export market.

---

**Conclusions**

These comments are merely intended to raise some of the issues being addressed both in public debate and in submissions to the Gonski Review. It is to be hoped that the government will be prepared to take the matter forward and actually improve the effectiveness of the outcomes from the contributions and other assistance provided to the film industry in Australia. □