

SUBMISSION
BY
MEDIA ENTERTAINMENT AND ARTS ALLIANCE
TO THE
JOINT STANDING COMMITTEE ON TREATIES
INQUIRY INTO AUSTRALIA'S RELATIONSHIP WITH THE WTO

MARCH 2001

Media Entertainment and Arts Alliance

Established in 1992 following the amalgamation of the Australian Journalists Association, Actors Equity and the Australian Theatrical and Amusement Employees Association, the Media Entertainment and Arts Alliance (the Alliance) is the industrial and professional organisation representing the people who work in Australia's media and entertainment industries. Its membership includes journalists, artists, photographers, performers and film and television technicians.

Introduction

The Alliance welcomes the opportunity to make submission to the Joint Standing Committee on Treaties' Inquiry into Australia's relationship with the World Trade Organisation.

The Alliance urges the Committee to recommend that the Australian Government seek a reservation for Australia's arts, entertainment and audio-visual industries. The Alliance takes this position not to protect these industries as an employment sector that might be adversely affected by trade liberalisation but because the viability of these industries is crucial to Australia's cultural identity. It is through these industries that Australians are able to tell their own stories, see their own culturally diverse lives reflected on screens and stages and are able to inform the world of something of what it is to be Australian – now and into the future.

That these industries are crucial in fostering and reflecting identity has long been recognised by Government. Indeed, successive governments have provided a range of support mechanisms to ensure that space is quarantined for an Australian industry whilst nonetheless ensuring Australians have adequate and appropriate access to the cultural products of other societies.

The Alliance also appreciates that the Government is on record as recognising that these industries are deserving of special consideration in any and all trade negotiations if the Government is able to continue to deliver on its cultural and social objectives. However, the Alliance is concerned that increasing international pressure for greater trade liberalisation may result in the yielding of what has been a long held principle in the interests of achieving results in other areas of the negotiations. The Alliance therefore urges the Government to adopt a strong position and negotiate a reservation for these industries.

Film and television

The Government has sought to foster film production in Australia since the beginning of the 20th century.

Since Federation, the Commonwealth Government recognised the power of cinema and sought to use the medium to the advantage of the nation. From 1901, the Government commissioned companies such as Pathé Frères and the Limelight Department of the Salvation Army to produce documentaries and record events of significance. In 1911, the Government engaged a full-time Commonwealth Government Cinematographer and Stills Photographer with a general brief to travel Australia and record anything of interest. During the following 40 years, responsibility for the Commonwealth's film production output changed from one department to another. After World War II, the Government established the Australian National Film Board, an entity that many years later became Film Australia.

Various governments have endeavoured to promote Australian film production especially after the advent of the 'talkie' in 1928. In NSW, the Cinematographic Act was introduced to afford the industry some protection from the onslaught of British and American distributors. That that Act proved ineffective (largely because of the way it conflicted with states' rights prescribed in the Constitution) is immaterial – what is material is that successive governments have recognised the cultural significance of the medium and have acted to support a viable indigenous industry for social and cultural reasons.

The Gorton Government established the Australian Film Development Corporation (AFDC), the precursor to today's Australian Film Commission, to provide support to an indigenous industry. In South Australia, Don Dunstan established the South Australian Film Corporation and other state governments followed suit.

In the 1980s the Federal Government introduced subsidy by way of Division 10BA of the Income Tax Assessment Act and in the late 1980s established the Australian Film Finance Corporation (FFC) with a view to that organisation becoming the principal vehicle through which government subsidy is made available to the industry. Most recently, the Government introduced the Film Licenced Investment Companies (FLICs) as a pilot scheme designed to investigate an alternative and complementary mechanism of support to the direct subsidy provided via the FFC.

Similarly, governments have "sought to harness the power of broadcasting to achieve social, cultural and educational objectives, and to minimise its scope to do harm, particularly to children"¹.

From the time television was introduced, the Government gave consideration to ensuring a certain percentage of transmission hours were available for Australian programs. Over the past 40 years, the Australian content quota has been refined and progressively increased.

In the terms of reference for the Productivity Commission's Inquiry on Broadcasting, the first comprehensive, independent, public inquiry into broadcasting in Australia's history, the Treasurer, Peter Costello, made the importance of social and cultural objectives quite clear:

"The Commission is to advise on practical courses of action to improve competition, efficiency and the interests of consumers in broadcasting services. In doing so, the Commission should focus particular attention on balancing the social, cultural and economic dimension of the public interest ..."²

Peter Costello noted that the Broadcasting Acts "seek to provide a regulatory environment that varied according to the degree of influence of certain services upon society . . . [and] seek to protect certain social and cultural values, including promoting a sense of Australian identity, character and cultural diversity".³

Consistently throughout the 20th century, Government initiatives to support the film and television industry have been predicated on a recognition of the social and cultural significance of the media and the need to foster an indigenous industry with space quarantined to enable Australian stories to be told by and for Australians.

The audio-visual sector is a perfect example of the way in which developments can take place in a manner and at a pace difficult to forecast. In the past fifty years, the

¹ Broadcasting Inquiry Report, Productivity Commission, Report No 11, 3 March 2000, page 7.

² Terms of Reference for the Productivity Commission Inquiry into Broadcasting as reprinted in the Productivity Commission's Draft Report, October 1999, page X11

³ *ibid.*

delivery of performance and information has been revolutionised. The 1950s saw the introduction of television. The 1980s saw the advent of video tape recorders and during the same decade computers entered the home environment. The 1990s has seen the growth of information transfer and retrieval via the internet, the introduction of pay television, the growth of interactive multi-media and on-line services and in recent years the first drama programs available on the net. Most recently, we have seen the introduction of digital television. A similar revolution has occurred in the music industry – from records, to tape recorders, cassettes, to compact discs (CDs), music can now be downloaded from the internet.

The pace of change has been dramatic. Not surprising then, that when amending the Broadcasting Services Act to accommodate the transition from analog to digital television, the Government put in place a schedule of reviews to ensure that the transition is monitored, recognising that the impact of the introduction of digital terrestrial television broadcasting on the community cannot be predicted with any certainty. Consequently, four yearly reviews will monitor the progress of implementation, allowing for amendment to the implementation program as may be deemed appropriate between now and 2008.

This commitment to ongoing review and assessment recognises that all developments in a rapidly changing commercial and technological environment cannot be predicted and consequently cannot be legislated for in advance. It recognises the need to respond, legislatively if necessary, in a rapidly changing environment.

Unless international trade agreements are negotiated in a manner that allows the Government the legal right to do so, its social and cultural agenda will be compromised and Parliament left powerless.

To accurately predict what changes will occur in the audio-visual industry in the next twenty years and beyond is to foretell the future and to risk inadvertent consequences that could range from the insignificant to the catastrophic.

The Government delivers a carefully constructed package of support mechanisms put in place by legislation to protect, nurture and develop the film and television industries. Support includes:

- direct subsidy
- Australian content rules in respect of free to air and pay television
- taxation concessions for investments in feature films, television miniseries and documentaries
- regulation of the temporary entry of non-Australian residents into the entertainment industry in Australia
- international coproduction arrangements
- funding for the national broadcasters

This delicately balanced and interwoven cobweb of support mechanisms would be compromised if not protected in trade agreement negotiations.

The government needs maximum flexibility to introduce new kinds of measures to support activities which might not occur in the market place alone and to ensure protections can be put in place as and when needed.

Live Performance and Music Industries

Australia has a thriving and internationally recognised dynamic live performance industry including dance, music, theatre and physical performance.

It has taken years to develop a uniquely Australian industry in these areas and for Australia to overcome its cultural cringe and accept that the talent residing in the

country is equal to any in the world. This changing awareness has paralleled a change in cultural awareness. From a time when many Australians believed they had no stories of their own to tell, today all Australians recognise the importance of telling and seeing their own stories. They also recognise that there is a wealth of stories to be told and, importantly, most are of interest to international audiences.

The history of dance in Australia over the past thirty years typifies changes in the cultural industry in many sectors.

In the 1960s, Australia did not have a national ballet company. Today, the reputation of the Australian Ballet precedes it around the globe and Australian dancers are recognised as among the best in the world.

As Cheryl Stock, former principal dancer with the Australian Ballet and currently President of Ausdance, said, "On the international stage, Australia is well known as a dancing nation, for its innovative and gutsy contemporary dance artists, as well as for the finesse of its classical dancers and the richness of its indigenous dance heritage. Such artists are in great demand on the world stage."

Indeed, if Australia has any significant problems in the dance sector (other than the perennial problem of sufficient funding), it is in keeping the best of its dancers in Australia – their talent and skill making them so desirable to overseas companies.

Australian dance companies from the Australian Ballet to Bangara Dance Theatre, the Sydney Dance Company to the Australian Dance Theatre regularly perform to packed houses in cities around the world.

Today it hardly seems possible that it was only a little over 20 years ago the entertainment industry celebrated because, finally, an imported production was mounted with an all Australian cast – that production was *A Chorus Line*.

A huge turnaround has been achieved in little over three decades. There is no doubt that this turnaround has been achieved in large part by subsidy made available by federal and state governments and by the protection afforded by the Migration Regulations which require demonstration of the need to import artists and technicians on a case by case basis and in consultation with the Alliance.

Support through both subsidy and protection through the Migration Regulations could be compromised unless appropriate exceptions are incorporated in trade agreements that guarantee ongoing protection of these mechanisms.

Live Theatre

Similarly, in live theatre it has only been through subsidy and protection under the Migration Regulations that Australia has been able to develop the world class theatre that we see on stages around the country today.

The conservative nature of investment in the arts is best demonstrated by commercial theatre. In the non-subsidised sector, the vast majority of productions are imported, having proved their commercial viability usually on either Broadway or the West End.

At least now, and thanks principally to the protection afforded by the Migration Regulations, imported performers are a rarity rather than the norm. Whilst the productions may be imported [sometimes along with the original director and sometimes key creative personnel], the casts are generally Australian. Australia has now demonstrated that Australian performers are more likely to attract audiences and pull box office than imported stage actors. Today, imported actors are more likely to be required because of ethnically specific requirements - for instance, for some, but

not by any means all, of the Afro American roles in *Show Boat*. *Beauty and the Beast* was but one of many long running, successful musicals that drew audiences without the need for imported performers.

However, productions in commercial theatre that emanate from Australia remain unusual. As indicated above, investors prefer to minimise their financial exposure by importing productions that have demonstrated their viability. It is interesting to note that when a producer was sufficiently bold to mount an Australian musical – *The Boy From Oz* – it broke box office records three times within weeks of opening and now looks set to transfer to Broadway.

With the success of *The Boy From Oz* it may be appropriate for government to consider developing support strategies that would encourage other commercial theatre producers and entrepreneurs to embark upon wholly Australian productions, strategies that might offset the perceived commercial risk associated with developing intrinsically Australian work.

The recent Nugent Inquiry into Australia's Major Performing Arts Companies (those companies in receipt of direct Government subsidy) demonstrated that across the board in all live performance art forms, Australian companies are performing at international best standards. But crucially, the report recognised that on-going direct subsidy is essential, now and into the future. The Federal Government and all the state governments recognised this and came together in a unique collaboration to provide additional financial assistance to the sector.

The recent public debate triggered by Richard Wherrett's opening address to the Fourth National Performance Conference on the state of live theatre in Australia raised interesting issues about the future of that art form. However, what was clear during that debate is that the standards of performance in live theatre are indeed very high. The shortcomings are most often the result of inadequate resources. Productions such as *Cloudstreet*, the extraordinary output of theatres like the Sydney Theatre Company, the Melbourne Theatre Company, Playbox and Black Swan are dependent on ongoing assistance from state and federal governments. Those companies all regularly produce original Australian works that speak directly to Australians from all walks of life.

Increasingly, Australian subsidised theatre is producing work that reflects the cultural diversity of this country. It has taken years for theatre to transcend an Anglo-Celtic body of work and explore stories and issues that derive from a nation as diverse as Australia. That reflection of a diverse nation must be nurtured and supported – it is increasingly becoming fundamental to the health of a multicultural harmonious society. This is true of film and television as well as music and live performance.

Broadcasting

Investment and profit notwithstanding, broadcasting in Australia plays a crucial role in defining Australia. Along with a broadcasting licence comes certain obligations. The objects set out in the Broadcasting Services Act reflect the outcomes Parliament intends to achieve with the regulation of broadcasting and include:

- promoting the role of broadcasting services in developing and reflecting a sense of Australian identity, character and cultural diversity (section 3(e))
- promoting the provision of high quality and innovative programming by providers of broadcasting services (section 3(f))
- encouraging providers of commercial and community broadcasting services to be responsive to the need for fair and accurate coverage of matters of public interest and for an appropriate coverage of matters of local significance (section 3(g))

The concept of national interest protection and the right to legislate to ensure access to programs from a specific territory – in this case the right of Australians to see Australian programs – is contradictory to the thrust of trade liberalisation.

The role of television in defining how a society views itself has considerable social repercussions. In Australia, free to air commercial television programs have long been predominantly a reflection of an Anglo-Celtic society. That is changing, albeit it slowly.

Where television programming does not reflect the society, contrary to perceived wisdom, viewers turn it off. Levels of local content on American television and British television are considerably higher than they are in Australia. However, even with an almost 100% diet of American programs, African Americans and Hispanic Americans have been voting with their remote controls. They want to see their America reflected on their television screens. The same is true in Britain where African Britons are likewise turning off their televisions.

In Australia, the ratings consistently demonstrate that Australians like and want to see Australian drama programs. Australians from non-English speaking backgrounds want to see their way of life reflected more often than is currently the case. What is clear is that, around the world, people want to see programs that reflect their own way of life on their own screens. And governments need the ongoing ability to ensure that access to programs emanating from their own cultures are available.

Australia New Zealand Closer Economic Relations Trade Agreement and the Trade in Services Protocol to that Agreement

In considering the possible impact of not seeking an exemption for arts, entertainment and audio-visual industries, the lesson contained in the High Court decision regarding Australian content on television is salutary.

In 1998, the High Court handed down its decision on *Project Blue Sky vs the Australian Broadcasting Authority (ABA)*. Project Blue Sky, a coalition of New Zealand interests in television argued that New Zealand programs should be considered Australian for purposes of Australian content quota on commercial television stations. The High Court found that the Australian content standard contained in Section 9 of the Broadcasting Services Act was unlawful because it did not accommodate Australia's obligations under the Closer Economic Relations Trade Agreement with New Zealand (CER).

By ruling that a content standard must ensure New Zealand programming is given the same treatment as Australian programming, the High Court noted the difficulty of so doing, given that Australia is currently signatory to some 900 international agreements. Drafting a standard that takes account of New Zealand programming makes the concept of an Australian standard farcical. However, that is what Australia now has – an Australian/New Zealand content standard.

The Government has undertaken to confine the impact of CER and to ensure that the standard is not be further compromised by other treaties to which Australia is a party.

Ironically, the New Zealand industry, where an equivalent content standard does not exist, is now seeking to reverse the situation. They have now recognised that New Zealand needs a standard but one that affords equal treatment to Australian programs will not deliver any increased level of New Zealand programs on New Zealand television.

Summary

The Alliance believes that one of the Government's key objectives in all multilateral and bilateral trade negotiations must be to preserve its capacity to maintain, adapt and introduce any and all such measures as it sees fit to develop, foster and support its arts, entertainment and audio-visual industries.

The GATS should include a recognition of the role these industries play in the cultural and social life of nation states and a recognition of the right of members to quarantine policy making in these sectors.