



A U S T R A L I A

# Growing pains

by Loreen Pindera

On Sept. 19, 1982, more than seven hundred writers, producers, directors, tax lawyers and technicians—organized by the nucleus of the Australian film industry, the Film Action Group—gathered at the Theatre Royal in Sydney to debate the current state of the national film industry. The meeting was a call to arms within the industry, to investigate the reasons for the sudden downturn in film financing and to take immediate measures to steer this fledgling industry, which has engendered so much national pride, back on course.

Until 1980, 95% of film rental totals within Australia were for U.S. films. In 1981—after the May introduction of the 150% tax write-off (Section 10B [All of the Tax Act])—three Australian movies, *Galipoli*, *Mad Max II*, and *Puberty Blues*, became the three top box-office successes nation-wide. And in 1982 *Man From Snowy River* became the top grossing movie in Australian history. Yet only two features are underway currently.

Despite the growing audience support, both in Australia and abroad, and despite the emergence of willing investors, the boom is busting. New problems for producers have grown out of the rapidly changing scenario. An examination of these new issues set the agenda for the Sept. 19 industry forum. At the Sydney forum, three position papers were presented: the first on the emergence of a "twelve-month rule" due to the constraints of the 10B (A) legislation, prepared by producer John Weiley; the second on the loss of investment capital through the gearing of loans for American-controlled features, prepared by Uri Wiendt of Actors' Equity; and the third on the need for more stringent Australian content requirements for the new tax legislation, presented by Janette Parramore of Actors' Equity and Julie James Bailey of the Australian Theatrical and Amusement Employees' Association.

The intent of the 10B (A) tax legislation was to direct a flow of risk capital into the production of high-quality and economical Australian films; in fact, the realities of the investment marketplace have forced the completion of films, from pre-production to release, to take place within one financial year. According to producer John Weiley, "that reality imposes a twelve-month cycle on a process that normally takes 16 to 20 months." The result: the loss of quality as films are slapped together for release before the end of the financial year; the appearance of second-rate "tax movies" made with incompetent personnel, produced solely as a tax-avoidance scheme; the bunching of

production, resulting in sky-rocketing labour and equipment costs due to increased seasonal demand; and the consequent bunching of releases which "discredits and disadvantages the good product along with the bad." Weiley's proposal was that investors be allowed their tax deduction as soon as their capital was in the production account, with the stipulation that penalties be paid if the film was not completed within two years. This would not only ease the short-term cyclical production situation which now exists, but would ensure that investors take care to invest in genuine projects whose completion and release is guaranteed.

When the 10B (A) legislation was introduced in 1981, the Australian government instigated a number of safeguards to protect the law from abuse. The most significant of these was the Home Affairs' Department's certification of any film seeking eligibility as genuinely Australian. Certification was based on content, on the nationalities of creative personnel, the place of the shoot, and the source of financing. However, money-market moguls have found a way around the "Australian content" stipulation through the use of section 51(1) of the Tax Act, which covers tax deductibility in non-film industries. Two companies, the United Australian and Australasian Film Productions Pty. Ltd. (UAA) and Trans-Pacific Media

Productions Pty. Ltd., have used this scheme to invest Australian capital in American film ventures. Through the gearing of loans made by American production companies such as Warner Brothers, the entire budget of an essentially American film can be put through the participating Australian company's books, allowing the budget to be wholly deductible in Australia. Capital raised in Australia has been used in just this way to help finance *Arthur* and *Superman III*.

The use of the section 51(1) legislation for investment in foreign films has already resulted in the loss of investment capital for Australian-made films. In August, 1982, \$1 million was withdrawn from the budget of *The Umbrella Woman* to be reinvested in UAA, with its promise of fewer risks and higher returns. In addition to this loss of potential investment capital, the Australian industry fears a repeat of the Canadian situation: films shot in Australia posing as Anywhere, U.S.A., and the loss of creative control to American studios.

The issue of Australian content was by far the most hotly debated topic at the industry forum. At stake is the long-term future of the *Australianness* of the national film industry, and producers fear a loss of autonomy if foreign-owned scripts are simply "Australianised" to ensure Australian certification. Hand-in-hand with foreign distribution deals

comes the importation of well-known actors and directors as has been the case in the making of *The Pirate Movie* and *Now and Forever*.

The resolutions put forward at the industry forum and the political lobbying that has taken place since point to one essential area of agreement within the industry: There is no interest in participating in filmmaking which does not continue to promote and distinguish the Australian cultural identity, both at home and abroad. The crux of the Australian content debate is that "benefits from government funding must be conditional on genuine Australian production." Since the September meeting, film lobbyists have pushed the Home Affairs Minister Tom McVeigh to ensure that the following requirements be strictly implemented:

- The producer and control of production must be Australian.
- The finance attracting the rebate under Section 10B (A) of the Tax Amendment Act must be Australian.
- The beneficial ownership of the copyright must be Australian (as per existing provision in the Act).
- The source of the script must be Australian unless the source is an original novel or play, in which case the scriptwriter must be Australian.

McVeigh is currently reviewing these guidelines, as well as the contentious issue that the role of director be limited



Counting votes at the Sydney forum as a resolution is passed



to an Australian except in special circumstances.

On the tax incentive front, Federal Treasurer John Howard has been pressured to re-examine the existing 10B (A) legislation, and the announcement of a two-year completion clause is expected.

Many of the problems which have emerged are to be expected in a film industry which is only beginning to get on its feet. The boom could not last forever. It has not taken investors long to grow wise. Those who lost out the first time around, in not recouping their investment, are hesitant to invest in another film without the guarantee of a

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pre-sale. According to Australian Film Commission tax lawyer Michael Frankel, many of the problems producers now face are due to their own inexperience in an industry that has not been around very long and which is changing rapidly as Australian films grow in stature. Since July, 1982, and the legislation of the New Companies Act, for example, producers are required to draw up a trust deed and register their company, at a cost of twenty to one hundred thousand dollars. With the forthcoming ministerial announcement of the two-year completion clause, such pre-pro-

duction headaches will become surmountable. This year, the cost and time involved in formulating a legal prospectus has stopped many producers dead in their tracks.

Optimism in the industry is increasing as industry people, led by the Film Action Group and assisted by the AFC, are finding the support necessary in government Ministers Howard and McVeigh. The support of the Australian government in ensuring the continued viability of the film industry is not surprising, for with the birth of Australian cinema comes a pride in Australian



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culture which goes hand in hand with the "Advance Australia" theme being trumpeted on every front.

Whatever the current state of the

Australian film industry, there are lessons to be learned from the Australians in their continuing perseverance for political support, their self-recognition as a powerful lobby group, and their collective sense of integrity. There is a refusal to accept that international recognition necessitates Americanisation of the Australian cinema, either in terms of funding, content or creative control. The genuine belief of the industry at large is that the current downturn in its fortunes is a temporary one, for the industry knows where it is heading. And there is nowhere to go but up. ●

On the eve of the new amendments to Australian tax legislation, director Fred Schepisi was well into pre-production on *The Iceman*, an American picture produced by Norman Jewison, and preparing to shoot on location in British Columbia. Schepisi has long taken one of the strongest stands on the issue of national cinema; his *Devil's Playground* and *The Chant of Jimmy Blacksmith* were pioneer pictures on the Australian film scene, both strongly representative of that sense of "national self" he views as intrinsic to any country's film industry. His American-financed *Barbarosa* received high critical acclaim, and he is the only one of the Australian feature directors to take up long-term residence in the States. He nevertheless remains passionate about the situation back home, and met with Cinema Canada in Los Angeles last December to offer his thoughts on government film incentives, movie con men, and the "Canadian experience."

**Cinema Canada:** How do you view last year's "slump" situation in Australia?

**Fred Schepisi:** I think what happened is fairly clear. The government tried to protect itself against abuses of the taxation incentive by people both inside and outside Australia, but it didn't listen enough to what the industry was telling it. So it set up impossible restrictions: things had to be started and completed within a financial year. That's folly. If all the pictures are being shot within a specific period of time, you've got to have more crews than if production was spread out over the whole year. So you're forced to look into other areas for production and post-production people. That alone had to cause production of a lot of pictures that weren't necessarily up to normal technical standards; a lot of directors had to be used who hadn't directed before, or couldn't direct very well, and that went all the way down through the crews. You can see it in the films.

And that combined with the fact that every lawyer and accountant who wanted to follow the "Canadian example" started to become producers. They got scripts that were very amateurish, very below standard, and they thought they could rewrite, or produce them. So you got a lot of people who were not at the core of the film industry trying to make money out of it, and put deals together. And the deals and manipulation of the tax money were much more important than the pictures that were being produced - similar to what happened in Canada. We had a rush to production: 35 pictures

in one year. It has to fall over. No one's going to release the junk. So that's going to affect distribution attitudes to films, because they'll be able to say: "Well, it's not working." It's going to affect investors' attitudes, because they might want a tax write-off, but they also wouldn't mind making money; part of the clever aspect of the Australian tax incentive is the other 50% holiday on revenues... So you could predict the whole thing. Unfortunately, you can't stop people taking advantage of it. It has to be structured in such a way so that those people take a back seat. They may provide the money, but they don't control the picture.

**Cinema Canada:** Can that kind of thing be legislated?

**Fred Schepisi:** It should be. I think you can do it, to a certain extent. I think that maybe the experience itself will have sorted that out anyway; a lot of people have had their fingers burned, and will look at going about the process in a different way. But you have to spread production over a couple of years. A proper picture



takes two years from inception to the time it gets into the theatres, and that's if you're lucky. The intense period of production takes a year. But you don't say: "I want to do a movie," and then have the script written in three days, or a month, and then rush into pre-production at the same time. That's completely nonsensical.

I think it should be worked around some kind of penalty. Something that catches up with people if they don't sell or distribute the picture: a retroactive penalty. There's got to be ways around it, but not a time factor. Because if I'm going to invest in a movie, and then hang onto my money until the twenty-eighth day of June, I'm going to force you to produce in a very bad way. That's not what the incentive was set up for. It was set up to encourage propagation of our culture in a very popular medium. The whole "industry" thing is really supplementary.

There's only a certain capacity you can reach in Australia: personally, I think it's about 15 good theatrical movies a year, and probably 26 tele-movies, and whatever other "fodder" is produced for television. And by "fodder," I don't mean to dispense with mini-series, for which Australia seems to be getting quite a reputation. - the quality stuff.

The whole legislation thing was a reaction against what happened in Canada. It certainly kept out the Americans, much to their horror; they came away abusing us, saying "What stupid people, they didn't want to take advantage of our knowledge." But it didn't protect against the same charlatans from within Australia. In fact, it seemed to promote them. I hope they frame the amendments in a sensible way. Given the experience of every other country in the world, there are some sensible ways to do it. There is probably no way to completely eliminate the charlatans, or the "get-rich-quickers," but I think you can keep them to a minimum.

**Cinema Canada:** So you feel that one way or the other the industry will make it over this hump?

**Fred Schepisi:** Oh, yeah. If not, they'll just go back to the government

## Fred Schepisi:

### Boom, bust and the "tax trap"

system they had before. But I'm sure it'll pull through. It means too much to the Australian government in international publicity value. Apart from everything else, the popularity of Australian pictures has made it easier for embassies in other areas, like the introduction of manufactured goods into markets. The glamour has opened doors. There's an understanding now that Australia isn't a large desert with a lot of kangaroos bounding around. There are intelligent, thinking people there.

And I think Canada could be the same. I think your mistake - apart from taxation incentive mistakes - was this move to make bloody American pictures. Make Canadian pictures. I used to say this in Australia: make Australian pictures. Have international themes, but make Australian pictures, indigenous pictures about yourselves. And they'll be the pictures that succeed. All this "mid-Pacific" or "mid-Atlantic" stuff; it goes nowhere. You don't fool anyone.

**Cinema Canada:** But there are some differences. To our mind, the Australians have a much stronger sense of self than we do; the "Anglo-Canadian experience" doesn't seem to coalesce into anything... a fragmented people with a bewildering proximity to the United States. We like to form committees to lead "national cultural debates," like Applebert.

**Fred Schepisi:** Yeah, I heard about that. And if they drop the National Film Board, they're off their heads. The image those shorts give of Canada around the world is absolutely extraordinary. And if they drop that, they're destroying the greatest piece of "propaganda" equipment they could ever get.

But that whole business about Canadians not having any national identity: it's just not true. You are an entirely different race of people from the Americans. You're affected by the nationalism within the country, the split between French and English. You're affected by your ties to England, by the fact that you are frequently independent of the U.S. in political matters, such as Cuba. You're incredibly chauvinistic about how clever you are in business, and how you come down to the States and manipulate American money. Believe me, Canadians have a great sense of themselves, a great pride. And those are all the things that can be in your films. Then you wouldn't be kidding anyone. The films would be made with a soul and a purpose, and they'd probably be a lot more acceptable. That's my belief.

Barbara Samuels ●