

Agreement with the Republic of South Africa Concerning the Co-production of Films

Introduction

- 6.1 The *Agreement between the Government of Australia and the Government of the Republic of South Africa concerning the Co-Production of Films* (the Co-production of Films Agreement) was signed in Pretoria on 18 June 2010.¹
- 6.2 Co-production agreements are entered into under Australia's International Co-production Program, the intention of which is to foster cultural and industry development and cultural exchange between co-operating countries. Co-production agreements are individually negotiated with the aim of sustaining and developing Australian creative resources and production.²
- 6.3 Since the inception of the Program in 1986, 127 co-productions with a total budget of approximately \$1.16 billion Australian have gone into production.³
- 6.4 According to the Department of Prime Minister and Cabinet, this Agreement will be Australia's eleventh co-production agreement.

1 *National Interest Analysis* (NIA) [2011] ATNIA 4, Agreement with the Republic of South Africa Concerning the Co-production of Films, done at Pretoria on 18 June 2010 [2010] ATNIF 40, para. 1.

2 NIA, para. 7.

3 NIA, para. 7.

Previous agreements include two non-treaty level memoranda of understanding with France and New Zealand, and eight treaties with:

- the United Kingdom;
- Canada;
- Italy;
- Ireland;
- Israel;
- Germany;
- Singapore; and
- China.⁴

- 6.5 In the context of the Co-production of Film Agreement, a co-production is defined as a film, including a television and video recording, animation and digital format production, which is approved by the relevant authorities and has been made by one or more Australian co-producers in conjunction with one or more South African co-producers (or in the case of a third country co-production, with a third country co-producer).⁵

Film making in South Africa

- 6.6 In the post-apartheid era, South Africa's film industry has been recognised and actively supported by the South African Government as a sector with excellent potential for growth.⁶
- 6.7 Starting with an industry that employed around 4 000 people in 1995, the sector had grown to employ approximately 30 000 people by 2008. The growth has been based on both local and foreign film production levels over that period.⁷

4 NIA, para. 7.

5 *Agreement with the Republic of South Africa Concerning the Co-production of Films*, done at Pretoria on 18 June 2010 [2010] ATNIF 40, Article 1.

6 NIA, para. 9.

7 NIA, para. 9.

6.8 According to the Department of Prime Minister and Cabinet:

The production of South African feature films, for example, increased from one film in 2000 to 24 films in 2009 with a total of 74 feature films produced between 2005 and 2009.⁸

6.9 The Department of Prime Minister and Cabinet attributes the growth in the South African film industry to the range of industry specific incentives offered by the South African Government, which are intended to attract foreign investment and to encourage the creation of local product with both domestic and broader international audience appeal.⁹

6.10 The most successful recent example of South African film co-production is the 2009 science fiction film 'District 9', which was a co-production between South Africa, New Zealand and Canada. The film was shot in South Africa and used South African actors. 'District 9' earned four Oscar nominations, paid for itself in its opening weekend, and went on to accrue \$115.5 million US in the United States alone.¹⁰

6.11 The best known Australian film about South Africa is the 1980 film 'Breaker Morant'. There was no South African participation in this film, which was filmed in South Australia.¹¹ However, Australian film makers have been active in South Africa as far back as the Boer War in 1900.¹²

The Co-production of Films Agreement

6.12 The purpose of the proposed Agreement is to stimulate industry, employment, technical development and cultural exchange by facilitating film co-productions between Australia and South Africa. The Agreement provides a framework within which each country can co-operate to approve the making of feature films, television, video recordings, animations and digital format productions.¹³

8 NIA, para. 9.

9 NIA, para. 11.

10 'District 9' (2009), *Internet Movie Database* < <http://www.imdb.com/title/tt1136608/> > viewed 18 May 2011.

11 'Breaker Morant' (1980), *Internet Movie Database* < <http://www.imdb.com/title/tt0080310/> > viewed 18 May 2011.

12 Kruger, Rayne, *Goodbye Dolly Grey: The Story of the Boer War*, Pan, 1959, p. 231.

13 NIA, para. 3.

- 6.13 The Agreement is based on the notion of reciprocity. In other words, each co-production should have a balance of financial and creative participation by both countries. Balance should extend to production costs, studio and laboratory usage, and the employment of nationals of both parties in major creative, performing, craft and technical positions related to film co productions made under the Agreement.
- 6.14 According to the *National Interest Analysis* (NIA), Australian-South Africa co-productions will:
- increase the output of high-quality productions by sharing equity investment with South Africa;
 - open up new markets both in South Africa and internationally for Australian film, television, animation and digital format productions;
 - share the risk (and cost) of film production;
 - establish links with South African production and distribution interests;
 - facilitate interchange between Australian and South African film makers, particularly those in the principal creative positions;
 - create employment opportunities for Australian industry personnel; and
 - strengthen existing diplomatic ties between Australia and South Africa.¹⁴
- 6.15 The Agreement provides that a project approved as an official co-production will be regarded as a national production of both Australia and South Africa, and will therefore be eligible to apply for any benefits or programs of assistance available in either country.¹⁵
- 6.16 In Australia, the main benefits available for co productions will be their eligibility to be treated as films with a significant Australian content that can therefore access the Australian Screen Production Incentive-Producer Offset under the *Income Tax Assessment Act 1997*, and qualify as 'Australian program content' for the purposes of the Australian Content Standard for commercial television broadcasting.¹⁶
- 6.17 Official co-productions will also be able to access direct film funding through Screen Australia. Similarly, in South Africa an official

14 NIA, para. 8.

15 NIA, para. 5.

16 NIA, para. 9.

co-production will be considered a South African production for the purposes of official financial support and audiovisual regulation.¹⁷

6.18 In addition to the funding and tax benefits, official co-productions will be able to import into each country, free of duties and taxes, cinematographic and technical equipment for the making of co-productions. The Treaty also permits nationals of each country to enter and remain in the counterpart country for the purpose of making or exploiting a co-production.¹⁸

6.19 The Treaty also provides for monitoring of co-productions to ensure a balance of creative and financial participation has been met.¹⁹

6.20 The Department of Prime Minister and Cabinet expected the Agreement to result in a number of ancillary benefits to Australia and South Africa:

The historic and current links between the two countries should facilitate the development of co-productions which have cultural resonance with audiences in Australia and South Africa, and potentially with the international market more broadly. There is ongoing industry interest in the Agreement from both sides, and potential co production projects await its entry into force.²⁰

6.21 In Australia, determining the status of co-productions and monitoring their development will be the responsibility of Screen Australia.²¹ The cost of administering the Agreement and providing grants to co-productions will be met from existing funds.²²

Conclusion

6.22 According to the NIA, the Australian film industry:

...supported the negotiation of the Agreement from the outset, noting that as South Africa's film industry grew, so too would the mutual benefits for production activity and cultural exchange between the two countries. This Agreement will open up new

17 NIA, para. 9.

18 Articles 7 and 8.

19 Articles 9 and 17.

20 NIA, para. 13.

21 NIA, para. 27.

22 NIA, para. 30.

markets for Australian films and enable a creative and technical interchange between film personnel. It also has the potential to increase the output of high-quality productions through the sharing of equity investment.²³

- 6.23 The Committee believes this treaty will be important in restoring the cultural relationship between South Africa and Australia that, prior to the apartheid era, was such a significant part of Australian society.

Recommendation 5

The Committee supports the *Agreement with the Republic of South Africa Concerning the Co-Production of Films* and recommends that binding treaty action be taken.

Kelvin Thomson MP

Chair

23 NIA, para. 4.