

Sircar, Sanjay

From: Richards, Stephen
Sent: Thursday, 8 January 2009 11:50 AM
To: Arnott, Stephen
Cc: Glenn, Raelene; Sircar, Sanjay
Subject: Foreign actors certification guidelines - request for spaa input [SEC=UNCLASSIFIED]

Categories: UNCLASSIFIED

Stephen

s47F

What better way to begin the year than by moving forward our informal review of the foreign actor guidelines? We started the process by talking with MEAA late last year and inviting its comments (see attached e-mails) and then generally raised it with attendees at the Trade and Co-production Forum (TCF) in Sydney in mid December.

SPAA and MEAA are the key industry stakeholders we need to deal with re any amendments to the Guidelines and, as we wrote to MEAA last year, I think we should write to SPAA to follow up the verbal invite made during the TCF meeting and formally invite its input to the process. This might also be an opportunity for you to initiate contact with SPAA's CEO, Geoff Brown, if you haven't already done so.

I've prepared the draft e-mail to Geoff (below) for you to send, but I'm happy to send and cc you in if you prefer.

Re the involvement of government industry stakeholders, I've been keeping Screen Australia and DIAC verbally informed but we could follow up with both by e-mail - the one to Screen Australia (to Fiona Cameron & cc-ing Alex Sangston) would be similar to the SPAA and MEAA ones inviting comment; the one to DIAC more an information update but inviting DIAC to comment if it wishes (discussions with action officers I've had to date are very much along the lines that the form of the Guidelines, other than the fact they need to be consistent with the Migration Regulations, is very much a matter for DEWHA and not something DIAC would expect to comment on).

I'd be happy to discuss all of the above further before we send anything to SPAA if you wish.

Cheers

Stephen

To Geoff Brown (SPAA)
 Cc Julie Marlow (SPAA), Stephen R, Raelene G, Sanjay S

Geoff

Under the *Migration Regulations 1994*, the Arts Minister is responsible for issuing certificates to foreign actors entering Australia for the purposes of appearing in film and television productions. The Department is responsible for administering the "Guidelines for the entry into Australia of Foreign Actors for the purpose of employment in film and television productions" (the Guidelines), which give effect to sub-clauses 420.222 (2) and (3) of the Migration Regulations.

The Guidelines have not been substantively revised since the mid 1990s.

It is important that the Guidelines operate in a manner which is consistent with the Government's policy intent of supporting and encouraging a sustainable industry, increased private investment in Australian film and television productions and the provision of opportunities for Australian actors and crew to secure employment. The Guidelines should also recognise the changed global environment in which the Australian film industry now sits while continuing to comply with the requirements of the Migration Regulations

Since the Guidelines were first drafted, the Australian film and television industry has experienced many significant economic and technological changes which has led to changes in the way in which films are financed and made. There have also been very significant changes to the nature of Government assistance to the industry including the introduction of the Producer Offset and the development of the 'significant Australian content' test, in which issues such as financing and copyright ownership are less significant factors than under the previous 10BA scheme.

In this changing global environment the Department believes there is merit in reviewing the Guidelines and potentially amending them to provide greater clarity about their scope and application.

In particular, the Department believes the Guidelines should be reviewed, in consultation with relevant stakeholders, to:

- Provide greater clarity on the treatment of foreign actors seeking to enter Australia to perform or appear in film and television productions
- Provide greater clarity re what forms of direct and indirect government assistance are subsidies
- Provide greater clarity on the scope of the guidelines, which currently indicate they apply to feature films, telemovies and miniseries but are silent on their application or otherwise to a range of other production genres (eg documentaries, reality programs, variety programs, TVCs, etc)
- Ensure consistency with the Migration Regulations which legally determine and limit the scope of the Guidelines
- Determine the extent to which the "Australian content criteria" set out in the Guidelines should be consistent with the "significant Australian content" requirements of the Producer Offset
- Determine whether, for unsubsidised productions, requiring foreign investment to be greater than the level of funds expended on foreign actors while in Australia is a reasonable requirement

The Screen Producers Association of Australia (SPAA) has a direct interest in the operation of the Guidelines given many of its members may, from time to time, consider employing foreign actors to perform certain roles in their productions. We also understand that SPAA, together with Media Entertainment and Arts Alliance (MEAA), was closely involved in the initial drafting of the Guidelines in the 1990s. We would therefore like to get SPAA's views on how the Guidelines currently operate and the potential for amendment. We have also invited MEAA to contribute its views on these matters.

The Department will also engage other stakeholders with an interest in the application of the foreign actor Guidelines including the Department of Immigration and Citizenship and other film/television industry bodies to contribute their views. We raised this issue at the 11 December 2008 meeting of the Trade and Co-Production Forum to inform stakeholders of the review and determine their interest in participating. To date, no other members of the TCF beyond SPAA and MEAA have indicated an interest.

I would be grateful if you would confirm whether SPAA would like to be involved in this review process, and if so, to invite SPAA to put together some thoughts on what areas of the Guidelines it believes might benefit from some amendment. We would be pleased to discuss your views at a meeting or to receive your written comments.

In terms of a process, we would like to gather the comments of SPAA and other interested stakeholders by the end of February 2009 with a view to preparing a revised draft of the Guidelines over the following 1-2 months, with stakeholders having the opportunity to comment further through the drafting process. Once a final draft is settled the Department would submit it to the Minister for consideration and approval.

Should you wish to discuss any of the above in further detail, please contact me or Stephen Richards (tel: 02-62759645; e-mail: stephen.richards@environment.gov.au)

We look forward to receiving your comments and continuing this dialogue with SPAA in the future.

Regards

Stephen Arnott
Assistant Secretary
Film and Creative Industries
www.arts.gov.au
(02) 6275 9557

Stephen Richards
Manager - Film Incentives & International
tel: 61-2-62759645
fax: 61-2-62759659
s47F
e-mail: stephen.richards@environment.gov.au
web: www.arts.gov.au

- invitation for submission
 - Screen Aus
 - SPAA
 - MEAA invited by telephone
 - Vasilidis invited by email his meeting.

Aitchison, Reahn

From: Arnott, Stephen
Sent: Tuesday, 13 January 2009 5:04 PM
To: 'fiona.cameron@screenaustralia.gov.au'
Cc: 'alex.sangston@screenaustralia.gov.au'; 'sophie.harper@screenaustralia.gov.au'; Glenn, Raelene; Sircar, Sanjay; Richards, Stephen
Subject: Foreign Actors Certification [SEC=UNCLASSIFIED]
Categories: UNCLASSIFIED

Hi Fiona

s47F

A request for input.

As you know, under the *Migration Regulations 1994*, the Arts Minister is responsible for issuing certificates to foreign actors entering Australia for the purposes of appearing in film and television productions. The Department is responsible for administering the "Guidelines for the entry into Australia of Foreign Actors for the purpose of employment in film and television productions" (the Guidelines), which give effect to sub-clauses 420.222 (2) and (3) of the Migration Regulations.

The Guidelines have not been substantively revised since the mid 1990s.

It is important that the Guidelines operate in a manner which is consistent with the Government's policy intent of supporting and encouraging a sustainable industry, increased private investment in Australian film and television productions and the provision of opportunities for Australian actors and crew to secure employment. The Guidelines should also recognise the changed global environment in which the Australian film industry now sits while continuing to comply with the requirements of the Migration Regulations

Since the Guidelines were first drafted, the Australian film and television industry has experienced many significant economic and technological changes which has led to changes in the way in which films are financed and made. There have also been very significant changes to the nature of Government assistance to the industry including the introduction of the Producer Offset and the development of the 'significant Australian content' test, in which issues such as financing and copyright ownership are less significant factors than under the previous 10BA scheme.

In this changing global environment the Department believes there is merit in reviewing the Guidelines and potentially amending them to provide greater clarity about their scope and application.

In particular, the Department believes the Guidelines should be reviewed, in consultation with relevant stakeholders,

- Provide greater clarity on the treatment of foreign actors seeking to enter Australia to perform or appear in film and television productions
- Provide greater clarity re what forms of direct and indirect government assistance are subsidies
- Provide greater clarity on the scope of the guidelines, which currently indicate they apply to feature films, telemovies and miniseries but are silent on their application or otherwise to a range of other production genres (eg documentaries, reality programs, variety programs, TVCs, etc)
- Ensure consistency with the Migration Regulations which legally determine and limit the scope of the Guidelines
- Determine the extent to which the "Australian content criteria" set out in the Guidelines should be consistent with the "significant Australian content" requirements of the Producer Offset
- Determine whether, for unsubsidised productions, requiring foreign investment to be greater than the level of funds expended on foreign actors while in Australia is a reasonable requirement

The Department proposes to engage with interested stakeholders including the Department of Immigration and Citizenship and other film/television industry bodies such as the Screen Producers Association of Australia and the Media Entertainment and Arts Alliance on this matter. We raised this issue at the 11 December 2008 meeting of the Trade and Co-Production Forum to inform stakeholders of the review and determine their interest in participating.

I would be grateful if you would confirm whether Screen Australia would like to be involved in this review process, and if so, to invite Screen Australia to submit any comments on areas of the Guidelines it believes might benefit from some amendment. You can access the Guidelines on the department's website at: http://www.arts.gov.au/data/assets/pdf_file/0004/80590/Foreign_actors_guidelines.pdf. We would be pleased to discuss your views at a meeting or to receive your written comments.

In terms of a process, we would like to gather the comments of Screen Australia and other interested stakeholders by the end of February 2009 with a view to preparing a revised draft of the Guidelines over the following 1-2 months, with stakeholders having the opportunity to comment further through the drafting process. Once a final draft is settled the Department would submit it to the Minister for consideration and approval.

Should you wish to discuss any of the above in further detail, please contact me or Stephen Richards (tel: 02-62759645; e-mail: stephen.richards@environment.gov.au)

We look forward to receiving your comments and continuing this dialogue with Screen Australia in the future.

Regards

Stephen

Stephen Arnott
Assistant Secretary
Film and Creative Industries
www.arts.gov.au
(02) 6275 9557

Aitchison, Reahn

From: Arnott, Stephen
Sent: Tuesday, 13 January 2009 5:00 PM
To: 'geoff@spaa.org.au'
Cc: 'julie@spaa.org.au'; Richards, Stephen; Glenn, Raelene; Sircar, Sanjay
Subject: Foreign actors certification guidelines - request for spaa input [SEC=UNCLASSIFIED]
Categories: UNCLASSIFIED

Geoff

I have recently taken over from Peter Young as head of the Film and Creative Industries Branch. I look forward to an opportunity to meet with you early in the new year.

An early task is for me to seek input from SPAA on the guidelines for certification of foreign actors.

As you will be aware, under the *Migration Regulations 1994*, the Arts Minister is responsible for issuing certificates to foreign actors entering Australia for the purposes of appearing in film and television productions. The Department is responsible for administering the "Guidelines for the entry into Australia of Foreign Actors for the purpose of employment in film and television productions" (the Guidelines), which give effect to sub-clauses 420.222 (2) and (3) of the Migration Regulations.

The Guidelines have not been substantively revised since the mid 1990s.

It is important that the Guidelines operate in a manner which is consistent with the Government's policy intent of supporting and encouraging a sustainable industry, increased private investment in Australian film and television productions and the provision of opportunities for Australian actors and crew to secure employment. The Guidelines should also recognise the changed global environment in which the Australian film industry now sits while continuing to comply with the requirements of the Migration Regulations

Since the Guidelines were first drafted, the Australian film and television industry has experienced many significant economic and technological changes which has led to changes in the way in which films are financed and made. There have also been very significant changes to the nature of Government assistance to the industry including the introduction of the Producer Offset and the development of the 'significant Australian content' test, in which issues such as financing and copyright ownership are less significant factors than under the previous 10BA scheme.

In this changing global environment the Department believes there is merit in reviewing the Guidelines and potentially amending them to provide greater clarity about their scope and application.

In particular, the Department believes the Guidelines should be reviewed, in consultation with relevant stakeholders, to:

- Provide greater clarity on the treatment of foreign actors seeking to enter Australia to perform or appear in film and television productions
- Provide greater clarity re what forms of direct and indirect government assistance are subsidies
- Provide greater clarity on the scope of the guidelines, which currently indicate they apply to feature films, telemovies and miniseries but are silent on their application or otherwise to a range of other production genres (eg documentaries, reality programs, variety programs, TVCs, etc)
- Ensure consistency with the Migration Regulations which legally determine and limit the scope

of the Guidelines

- Determine the extent to which the "Australian content criteria" set out in the Guidelines should be consistent with the "significant Australian content" requirements of the Producer Offset
- Determine whether, for unsubsidised productions, requiring foreign investment to be greater than the level of funds expended on foreign actors while in Australia is a reasonable requirement

The Screen Producers Association of Australia (SPAA) has a direct interest in the operation of the Guidelines given many of its members may, from time to time, consider employing foreign actors to perform certain roles in their productions. We also understand that SPAA, together with Media Entertainment and Arts Alliance (MEAA), was closely involved in the initial drafting of the Guidelines in the 1990s. We would therefore like to get SPAA's views on how the Guidelines currently operate and the potential for amendment. We have also invited MEAA to contribute its views on these matters.

The Department will also engage other stakeholders with an interest in the application of the foreign actor Guidelines including the Department of Immigration and Citizenship and other film/television industry bodies to contribute their views. We raised this issue at the 11 December 2008 meeting of the Trade and Co-Production Forum to inform stakeholders of the review and determine their interest in participating. To date, no other members of the TCF beyond SPAA and MEAA have indicated an interest.

I would be grateful if you would confirm whether SPAA would like to be involved in this review process, and if so, to invite SPAA to put together some thoughts on what areas of the Guidelines it believes might benefit from some amendment. We would be pleased to discuss your views at a meeting or to receive your written comments.

In terms of a process, we would like to gather the comments of SPAA and other interested stakeholders by the end of February 2009 with a view to preparing a revised draft of the Guidelines over the following 1-2 months, with stakeholders having the opportunity to comment further through the drafting process. Once a final draft is settled the Department would submit it to the Minister for consideration and approval.

Should you wish to discuss any of the above in further detail, please contact me or Stephen Richards (tel: 02-62759645; e-mail: stephen.richards@environment.gov.au)

We look forward to receiving your comments and continuing this dialogue with SPAA in the future.

Regards

Stephen

Stephen Arnott
Assistant Secretary
Film and Creative Industries
www.arts.gov.au
(02) 6275 9557

Sircar, Sanjay

From: Richards, Stephen
Sent: Friday, 20 March 2009 1:12 PM
To: Sircar, Sanjay
Cc: Glenn, Raelene
Subject: RE: Draft request email re FACS review [SEC=UNCLASSIFIED]
Categories: UNCLASSIFIED

Sanjay - that looks good to me; I added in a bit of a timeframe so we'd be seen to keep this moving and changed "comments" to "submission" in the last para; could you send these off on my behalf? Cheers - Stephen

From: Sircar, Sanjay
Sent: Friday, 20 March 2009 12:35 PM
To: Richards, Stephen
Subject: Draft request email re FACS review [SEC=UNCLASSIFIED]

Vasiliadis
MEAA
SPAA

s45

Screen Aus

Dear x

Thank you for providing comments on the Guidelines on the Entry of Foreign Actors into Australia. We are now waiting on one final submission that has been foreshadowed, before this stage of the review process is complete.

We have put together a summary table of the various concerns and suggestions made by the stakeholders which we intend to distribute when it is complete, which we expect will be in the next 1-2 weeks. In the meantime, I am writing to seek your agreement to your submission on the Guidelines being made available to other stakeholders.

Yours sincerely

Stephen

Stephen Richards
Manager - Film Incentives & International
tel: 61-2-62759645
fax: 61-2-62759659
s47F
e-mail: stephen.richards@environment.gov.au
web: www.arts.gov.au

Sircar, Sanjay

From: Richards, Stephen
Sent: Friday, 17 April 2009 9:35 AM
To: Sircar, Sanjay; Glenn, Raelene
Subject: FW: Review of foreign actors guidelines - can we discuss where to from here?
 [SEC=UNCLASSIFIED]

Categories: UNCLASSIFIED
Attachments: foreign actor-stakeholder summary-14april.doc; Foreign Actors-MEAA.zip; Virus detected.; foreign actors-in motion media.zip; foreign actors-screen aust.zip; FACS Review Discussion Paper-9april.doc

I spoke to Stephen yesterday and he is happy with this approach.

When you are both in and available can we discuss what needs to happen next, please? (eg venues, date & time, finalising discussion paper, etc)

From: Richards, Stephen
Sent: Tuesday, 14 April 2009 12:49 PM
To: Arnott, Stephen
CC: Glenn, Raelene; Sircar, Sanjay
Subject: Review of foreign actors guidelines - can we discuss where to from here? [SEC=UNCLASSIFIED]

Stephen

Can we discuss where things are at with the review of foreign actor guidelines and where things might go from here in the next few days please?

We have received 5 submissions with expected positions (ie MEAA looking for limited change and strict compliance, producers looking for greater degree of change and increased flexibility; interestingly, Screen Australia has provided some comparisons of how the issue is handled in UK, Canada and NZ that goes to providing more flexibility). One stakeholder **s45** has requested **s45** submission be kept confidential while the other 4 are happy for theirs to be made available to others.

As a way forward, we have drafted a discussion paper setting out the key issues identified in the submissions (ie flexibility v strict compliance; whether a tax offset is a "subsidy"; whether appropriate to have single test rather than separate SAC and foreign actor tests; treatment of budget threshold tests for subsidised productions; appropriateness of criteria for non-government subsidised productions; clarifying "scope" of guidelines). It is close to final although we may make 1-2 more tweaks to it over the next couple of days.

We propose to convene a meeting of stakeholders up in Sydney in the next couple of weeks to discuss further (MEAA, PAA and Screen Australia are all located there). I see this meeting as being an opportunity to try and reach some consensus on these main issues. Currently stakeholders have only submitted their preferred positions and done so in isolation of other views. While we may not achieve consensus on everything I hope we can find positions on which the gap between MEAA and the unions is less pronounced than it is at the moment.

Following the meeting I think DEWHA should prepare revised draft guidelines for stakeholder comment (I'm assuming by e-mail exchanges but would be open to a further meeting if all parties felt this would be useful) which would be informed by the broad principles discussed and potentially agreed during the meeting of stakeholders together with the other more detailed/less substantive amendments picking up other comments made by stakeholders in their submissions.

Following is a draft e-mail I'd propose to send out to stakeholders along the lines set out above. I've kept this fairly objective, but would think that in the course of the meeting we begin to make known our views on the key issues (eg that we favour more rather than less flexibility, etc).

Embedded in the text of the e-mail you'll find: the 4 submissions for public release; a summary of all issues raised in the submissions; and the discussion paper.

Cheers

Stephen

To: relevant stakeholders

CC: DIAC, Catherine McDonnell, Stephen Arnott, Raelene Glenn, Sanjay Sircar
BCC: stakeholder who requested submission is confidential

Dear all

Thank you for your submissions to the Department's review of the "Guidelines for the entry into Australia of Foreign Actors for the purpose of employment in film and television productions" (the Guidelines), which give effect to sub-clauses 420.222 (2) and (3) of the Migration Regulations 1994.

Submissions have been received from 5 stakeholders including:

- the Media Entertainment and Arts Alliance (MEAA)
- Screen Australia,
- the Screen Producers Association of Australia (SPAA); and
- In-Motion Media Group, a company which has sponsored the entry of a number of foreign actors in recent years.

A summary of issues raised by stakeholders in their submissions is attached.



foreign
-stakeholder sur

Each of the stakeholders listed above has agreed to their submissions (attached below) being circulated to other stakeholders for information. A 5th stakeholder made a submission but has requested it remains confidential.



Foreign
s-MEAA.zip (1
foreign
s-spaa.zip (2
foreign
s-in motion mers-screen aust.z
foreign
s-spaa.zip

In addition to these stakeholders, another regular sponsor of foreign actor entries in recent years, Catherine McDonnell, while not making a submission at this time has indicated an interest in following the progress of this review. The Department is also working with the Department of Immigration and Citizenship (DIAC) to ensure it is aware of progress and its implications for the Guidelines and, potentially, the Migration Regulations. For these reasons Ms McDonnell and DIAC have been cc'd on this e-mail.

In terms of moving forward, the Department has prepared a discussion paper which sets out the main issues raised by stakeholder submissions. A copy of this paper is attached.



FACS Review
discussion Paper-5

We now propose to convene a meeting of interested stakeholders to discuss the issues set out in the discussion paper with a view to reaching consensus where possible. The meeting will be held at Screen Australia on [Wednesday 29 April at 10:30am - to be confirmed]. Screen Australia is located at 150 William St (cnr Forbes St) Woolloomooloo.

If you or your organisation is interested in attending this meeting please contact Sanjay Sircar (sanjay.sircar@environment.gov.au; 02-62759633) to confirm your attendance.

Following this meeting the Department will prepare a revised draft of the Guidelines and circulate it for comment over the ensuing weeks. Depending on the response to the initial draft this process may involve the circulation of a number of successive drafts and a further meeting of stakeholders as necessary.

Once a final draft is settled, the Department will provide it to the Minister for his consideration. In doing so, the Department will also brief the Minister on progress to date with the review, including stakeholder views on the final draft.

Should you wish to discuss any of the above in further detail, please call me or Raelene Glenn (02-62759645).

Cheers

Stephen

Stephen Richards
Manager - Film Incentives & International
tel: 61-2-62759645
fax: 61-2-62759659

MEAA submission - Summary
Rationale for FACS and Guidelines remaining basically unchanged

Apart from America and India, no film and television industry in the world survives without protections. America protects its industry robustly through their Citizenship and Immigration Services. Access for overseas performers is considerably more constrained for Australian performers working in the U.S. than it is for American performers working here.

The FACS and current Guidelines have guaranteed opportunities for Australian performers but not at the expense of industry viability (MEAA recognises the demands of investors and the need to secure their investment against "bankable elements", inevitably actors rather than directors or other personnel). They remain an essential mechanism to foster the Australian industry, playing a critical role in the development of the careers of Australian actors who are "bankable" (their attachment to a project able to leverage finance). The Guidelines have afforded Australian actors opportunities to develop their talent in Australia, whether on Australian productions or offshore productions. Without available roles, and particularly lead roles, Australian actors will not be in a position to demonstrate their talent. This is key to many Australian actors now being considered actors of international distinction.

- Before *Shine* unknown Australian Geoffrey Rush was unknown. Yet the struggle to finance it with Rush in the role lasted years.
- Heath Ledger secured a lead role in the American television series *Roar*, filmed in Australia, that first brought him international attention. Etc.

From the 1970s, Australian actors have not had to leave Australia in order to try and carve out a career in the British or American industry. Once, it was assumed that only overseas actors could attract foreign investment to a production. Today's Australian actors can build a career in Australia and also if they wish, embark on an international career. Australia benefits both ways. (Long list of examples: Judy Davis, Bryan Brown, Mel Gibson, Nicole Kidman, Toni Colette etc.) These actors largely define the individual Australian "voice" of the film and television product of Australia (*Strictly Ballroom*, *Muriel's Wedding*, *Crocodile Dundee*).

The Guidelines functions are : (a) to safeguard the Australian character of Australian made film and television programs to meet the Government's cultural objective in providing subsidy (and other support mechanisms) to the industry, and (b) to implement immigration policy for foreign personnel to ensure net employment benefit for the Australian entertainment industry. The Guidelines give meaning to the net employment benefit test in the Migration Regulations for film and television actors. (MEAA)

[Comment: NB. The Migration Regulations do not mention net employment benefit in the paragraphs relating to foreign actors.]

Definition of Subsidy

Location Offset

Non-government subsidised productions eligible for the Location Offset – principally overseas productions financed offshore – should continue to have applications for overseas actors considered within current Guidelines parameters for non-government subsidised productions. (MEAA)

To attract offshore productions to Australia, the 12.5% Refundable Film Tax Offset (2001) was introduced for large-budget productions which met certain budget thresholds. The RFTO was renamed the Location Offset and made 15 % of qualifying Australian production expenditure (QAPE). Consistent with the distinction made between 10BA and 10B, the RFTO and LO were treated by the Department and by industry as a mechanism not considered to be subsidy for FACS. Tax-based assistance mechanisms like Division 10BA of ITTA were treated as subsidy and so the Guidelines specifically excluded tax concessions ordinarily available such as Division 10B from the definition of subsidy.

Producer Offset

Productions eligible for the Producer Offset **only** [i.e. and not receiving other Government funding] should continue to be subject to the same requirements that currently apply to government subsidised productions, including the budgetary and foreign investment criteria, but **at the very least the Australian Content Standard** – that at least 50 per cent of the lead roles and 75% of support roles be cast with Australians (MEAA).

It needs to be recognised that the Producer Offset, a rebate of 40% of QAPE, was specifically established by government as the principal mechanism to deliver federal government assistance to the Australian industry in line with its cultural objectives, to foster the production of Australian film and television programs, regardless of whether it is considered to be subsidy or not. The expectation was that the distinction that had existed between 10B and 10BA would be carried over to the Location and Producer Offsets [and hence should be].(MEAA)

s42

s42 The same position could have been, but was not, taken with respect to 10BA investment.(MEAA)

The current definition of "government subsidised" includes loans, so those productions needing to access a state government cash-flow facility for a portion of the production budget in anticipation of the PO rebate are Government subsidised for FACS purposes [and should remain so].(MEAA)

Government Subsidised Productions

The Guidelines strike the right balance in safeguarding the Australian character of Australian-made productions. The obligation in this regard needs to be higher where government subsidy is used. (MEAA)

The criterion requiring at least 50 % of leading and 75 % of major supporting roles to be cast with Australians is in line with the Australian content standard for free-to-air commercial television Broadcasters (MEAA)

FACS Australian content criteria consistency with PO Significant Australian Content requirements

The ACC and the SAC are separate and not easily aligned [implication: they should stay separate].

The Migration Regulations threshold test, [like] the net employment benefit test, is met for government subsidised productions by compliance with the Guidelines. [Comment: For actors, MR mention Aus content only, and do not define it, not NEB]. The Significant Australian Content test looks at the entirety of the production. (MEAA)

Govt-Sub s45 met FACS AC (but might not have met PO SAC), and a Children's television animated mini-series could all roles could be taken by foreigners, no imports, would not pass FACS AC (but might pass SAC). (MEAA)

Budgetary Criteria

The budgetary criteria recognise and defer to the financial reality that if a production has secured a certain level of overseas investment, overseas investors are likely to demand an element in the production that will be marketable in their particular territory to offset the risk of their investment [and so these should remain].(MEAA)

A review of the budget thresholds, unchanged for 18 years since 1991 is overdue. (MEAA)[Comment: (a) raise or lower budget thresholds?]

Non Government Subsidised Productions (other than series and serials)

In Non-government subsidised programs (other than series and serials), may import as many actors as they deem necessary, providing employment opportunities are maximised for Australians. The Guidelines ensure this by requiring 'reasonable opportunity for Australians' and foreign investment being greater than the foreign actor fee.

For a production to demonstrate that reasonable opportunities have been provided to Australians at all levels of the production, the measure of "reasonable" opportunities provided is a non-onerous requirement that, if appropriate, a casting exercise be conducted in Australia in accordance with the casting guidelines.

The need for foreign investment to exceed the spend on foreign actors reflects the fact that within the Australian industry regard should be had firstly to this industry. If private-sector investors, distributors, sales agents feel the need to import a person from overseas, this need should be reflected by the extent to which the imported person will make a difference in the overseas market for which they might be considered necessary. (MEAA)

The only circumstance in which this might be considered inappropriate might be exceptional circumstances of ethnicity or special skills required. (MEAA)

Genres Covered

The Guidelines should be amended to be technologically neutral and cover all recorded audio-visual programs, including new media programs. (MEAA)

So far no new media programs have contemplated using overseas performers. The (possibly small) number of future applications could be considered with the exceptional cases provisions. (MEAA)

The Mig Regs (Schedule 2, 420.222 (2) and (3)) and hence the Guidelines mandate the need for a certificate except in co-productions, offshore television commercials and documentaries filming in Australia but produced exclusively for overseas release (423 visa) and therefore the Guidelines apply to all film and television productions other than these three genres. (MEAA)

For certain program types, the Guidelines set specific thresholds that must be satisfied – feature films, mini-series, telemovies and bona fide unofficial co-production series and serials. The majority of applications for overseas actors are for drama productions and broadly fall within the major categories canvassed by the Guidelines. All others are treated on a case-by-case basis. (MEAA)

[Comment: True, but Guidelines insufficiently clear on what does and does not need certification. What objection is there to (a) spelling out “paid professional performers in a paid professional performance” in all genres and (b) naming the other (Non-Gov Sub) genres: reality, variety, comedy involving performers AND possibly Aus series and serials?]

Reality

Applications for reality television have been managed without disputation within the provisions for exceptional cases [implies should remain within exceptional cases] (MEAA)

[Comment: what objection to (a) specifying performers as hosts need certification in all genres and (b) ordinary Non-Gov S rules apply?]

[Comment: not entirely true: MEAA was unaware re s45 [REDACTED] of the distinction between a presenter and a performer]

Reality television series now have very large budgets and often international elements. Australian reality programs requiring overseas onscreen personnel remain small and typically, driven by the rights acquisition agreement (MEAA)

[Comment: Irrelevant, FACS concerned only with performers, not participants, judges etc.]

Documentary

The issue with documentaries has been capturing all those productions that should be travelling to Australia on 420 visas, not problems of consideration within the exceptional cases provisions [implies: should remain within exceptional cases]. (MEAA)

Local Documentary programs can attract government subsidy, but need to be considered within the exceptional cases provisions of the Guidelines. In 1991 as today, it was rare for Australian documentaries – subsidised or otherwise – to need to import an overseas person, either an actor in dramatised re-enactments, or as an on-screen presenter.

Offshore documentary productions seeking to shoot part or wholly in Australia have increased (either an upward trend or increased compliance utilising the appropriate visa. DIAC has moved to ensure consistent advice via overseas posts, so this inconsistency should eventually be resolved). (MEAA)

But many travelling to Australia on short-stay business or 423 visas did so on Australian Government advice s45 [REDACTED] has once used a 420 visa). (MEAA)

[Comment: arguable that s45 [REDACTED] is a presenter, not a performer and hence certification is not necessary.]

In 2002, the DIAC Review of Temporary Residency Visas concluded that the portions of 423 visa on *offshore documentaries and television commercials* exclusively for overseas use should be collapsed into the 420 visa. This overdue amendment to the Regulations should be implemented.

Commercials

The Department has chosen to not have a role in certifying any commercials, but Australian television commercials need to be considered within the exceptional cases provisions of the Guidelines on a case by case basis. The television commercial quota is set as part of the Government's desire to see Australians reflected on Australian television screens and to underpin a viable production industry. (MEAA)

In 1991, the Australian content quota for television commercials on free-to-air commercial television was 100 per cent, with minor exceptions. In 1992, the quota was lowered to 80 per cent. Only a handful of television commercials seek to use overseas actors each year. (Offshore commercials for offshore use need the 423 visa, but time constraints occasionally result in overseas persons to travel to Australia on 420 visas.) (MEAA)

Children's Programs

Today, typically, budgets for children's programs comfortably exceed the thresholds and there is no need for special case by case consideration (MEAA) [Comment: implies remove CP provision]

Sircar, Sanjay

From: Richards, Stephen
Sent: Tuesday, 21 April 2009 9:41 AM
To: 'Bethwyn Serow'
Cc: Glenn, Raelene; Sircar, Sanjay
Subject: RE: Review of foreign actors guidelines - meeting on 1 May to discuss submissions and next steps [SEC=UNCLASSIFIED]

Categories: UNCLASSIFIED

Bethwyn - Further to this, MEAA has agreed to circulate its submission to stakeholders who also agreed their submission is shared with MEAA. As s45 requested s45 submission remain confidential we have not included s45 on the distribution list for this e-mail. You will also note we have deleted s45 submission (and reference to it) in the SPAA submission to respect s45 wishes. (We note though that most of the concerns s45 raised were picked up in SPAA's submission so they will be considered as the review moves forward). Please note, s45 would be welcome to attend the meeting on 1 May if s45 wishes - s45 should contact the Department to advise if s45 will attend - and to participate further as the process moves ahead. Cheers- Stephen

s22





Sircar, Sanjay

From: Richards, Stephen
Sent: Tuesday, 21 April 2009 10:04 AM
To: 'Bethwyn Serow - SPAA'
Cc: Glenn, Raelene; Sircar, Sanjay
Subject: RE: Review of foreign actors guidelines - meeting on 1 May to discuss submissions and next steps [SEC=UNCLASSIFIED]
Categories: UNCLASSIFIED

Bethwyn - thanks; we'll see you there. Cheers - Stephen

From: Bethwyn Serow - SPAA [mailto:bethwyn@spaa.org.au]
Sent: Tuesday, 21 April 2009 10:00 AM
To: Richards, Stephen
Subject: RE: Review of foreign actors guidelines - meeting on 1 May to discuss submissions and next steps

Thanks Stephen I would like to attend on behalf of SPAA.

s22



No virus found in this incoming message.
Checked by AVG - www.avg.com
Version: 8.0.238 / Virus Database: 270.12.0/2068 - Release Date: 04/20/09 17:56:00

3/06/2009

Sircar, Sanjay

From: Richards, Stephen
Sent: Tuesday, 21 April 2009 10:35 AM
To: 'Anthony@redcarpetfilms.com.au'
Cc: Glenn, Raelene; Sircar, Sanjay
Subject: Review of foreign actors guidelines [SEC=UNCLASSIFIED]

Categories: UNCLASSIFIED
Attachments: FACS Review Discussion Paper-final-21april.doc

Anthony

I understand you represent an organisation called the Independent Producers Initiative (IPI) which may have an interest in a review the Department is currently conducting on the "Guidelines for the entry into Australia of Foreign Actors for the purpose of employment in film and television productions" (the Guidelines), which give effect to sub-clauses 420.222 (2) and (3) of the Migration Regulations 1994.

As you may be aware, under the Migration Regulations the Arts Minister is responsible for issuing certificates to foreign actors entering Australia for the purposes of appearing in film and television productions. The Department provides administrative support for the Minister and manages the foreign actor certification process.

The review is being undertaken because the Guidelines have not been substantively revised since the mid 1990s.

The Department has invited industry stakeholders including the Screen Producers Association of Australia, the Media Entertainment and Arts Alliance and Screen Australia to participate in the review process. In addition, a number of producers who from time to time seek to bring foreign actors to Australia to perform in their productions and a number of sponsors of foreign actors are also involved in the review. The Department is also consulting with the Department of Immigration and Citizenship throughout the review process given its responsibility for processing all visa applications.

To date, a number of industry stakeholders have made submissions to the Department identifying where they believe there might be merit in amending the Guidelines. These comments are summarised in the attached discussion paper. We are organising a meeting of stakeholders in Sydney on 1 May to discuss the key issues set out in the paper further.



FACS Review
 Discussion Paper-1

Should you wish to discuss any of the above in further detail or the possible participation of the IPI in the review as it moves forward, please contact me on 02-62759645 or via e-mail (stephen.richards@environment.gov.au).

Yours

Stephen

Stephen Richards
 Manager - Film Incentives & International
 tel: 61-2-62759645
 fax: 61-2-62759659

e-mail: stephen.richards@environment.gov.au
 web: www.arts.gov.au

REVIEW OF FOREIGN ACTOR CERTIFICATION SCHEME (FACS) – DISCUSSION PAPER

Legislative Basis

The *Migration Act 1958* is intended to regulate the entry into, and presence in, Australia of non-citizens. The Migration Regulations 1994 prescribe classes of visas; criteria for visas of specified classes; whether visas are for the purpose of travelling to and entering, or remaining in Australia, or both; and the conditions of entry.

Subclass 420 entertainment visas set out the requirements for the entry of entertainers into Australia, including foreign actors seeking to enter Australia for the purpose of taking part in a film or television production, which is covered by subclauses 420.222(2) and (3).

Regulation 420.222(2) applies to productions subsidised in whole or in part by a government of Australia. It reads as follows:

An applicant meets the requirements of this subclause if:

- (a) *the applicant seeks to enter Australia as an entertainer under a performing contract for one or more specific engagements (other than non-commercial engagements of a cultural or educational nature) in Australia to take part in a film or television production that is subsidised in whole or in part by a government in Australia; and*
- (b) *entry is sought to perform:*
 - (i) *in a leading, major supporting or cameo role; or*
 - (ii) *to satisfy ethnic or other special requirements; and*
- (c) *the application is supported by a certificate given by the Arts Minister, or a person authorised by the Arts Minister, confirming that relevant Australian content criteria have been met.*

Regulation 420.222(3) applies to productions not subsidised in whole or in part by a government of Australia. It reads as follows:

An applicant meets the requirements of this subclause if:

- (a) *the applicant seeks to enter Australia as an entertainer under a performing contract for one or more specific engagements (other than non-commercial engagements of a cultural or educational nature) in Australia to take part in a film or television production that is not subsidised in whole or in part by a government in Australia; and*
- (b) *entry is sought:*
 - (i) *to perform in a leading, major supporting or cameo role; or*
 - (ii) *to satisfy ethnic or other special requirements; and*
- (c) *the application is supported by a certificate given by the Arts Minister, or a person authorised by the Arts Minister, confirming that:*
 - (i) *citizens or residents of Australia have been afforded a reasonable opportunity to participate in all levels of production; and*
 - (ii) *the foreign investment, or the private investment guaranteed against the foreign returns by a distributor, in the production, is greater than the amount to be expended on entertainers sponsored for entry.*

The Arts Minister is responsible for issuing certificates to foreign actors entering Australia for the purposes of taking part in film and television productions.

The Department of the Environment, Water, Heritage and the Arts (DEWHA) supports the Minister through its administration of the "Guidelines for the entry into Australia of Foreign Actors for the purpose of employment in film and television productions" (the Guidelines), which set out the Australian Content Criteria (ACC) and generally give effect to sub-clauses 420.222 (2) and (3) of the Migration Regulations.

Progress to date

In late 2008, in recognition of the fact that the Guidelines have not been substantively updated since the mid 1990s, DEWHA initiated a review of the Guidelines and invited submissions from interested stakeholders.

Submissions have been received from: the Media Entertainment and Arts Alliance (MEAA), Screen Australia, the Screen Producers Association of Australia (SPAA) and In-Motion Media Group, a company which has sponsored the entry of a number of foreign actors in recent years. One further submission was received from a stakeholder who has requested the submission remain confidential. DEWHA is also working with the Department of Immigration and Citizenship (DIAC) to ensure it is aware of progress with the review and its implications for the Guidelines and, potentially, the Migration Regulations.

Based on comments received to date there appears to be general agreement among most stakeholders that the Guidelines serve a useful purpose but could be improved with some amendments.

Issues

The submissions have raised a number of key issues that will be considered through the review process together with more detailed comments that will inform the process of re-drafting the Guidelines.

A summary of the issues raised by the submissions is at Attachment A.

Following is an outline of the key issues raised by the submissions.

1. Flexibility

The Guidelines are based on a fairly formulaic mechanism for determining whether foreign actors should be granted entry into Australia to take part in film and television productions.

The ACC, which apply to subsidised productions (see pp 3-4 of the Guidelines) cover the portrayal of Australian characters, including "traditional" Australian characters, portrayed in productions and minimum percentage allocations of lead and support roles that should be taken by Australian actors. It also links the number of foreign actors employed to perform lead, support and cameo roles to the size of the production budget and the level of foreign investment.

The criteria for non-subsidised productions are set out in the Migration Regulations [subclause 420.222(3)(c)] and require that entry is sought to perform in leading, major supporting or cameo roles or are necessary to satisfy ethnic or other special requirements; that Australians are afforded a reasonable opportunity to participate in all levels of production; and that foreign investment is greater than the amount spent on the foreign actors.

MEAA's submission indicated it believes the Guidelines in the current form are working reasonably well and do not require significant amendment. SPAA and Screen Australia indicated in their submissions that the Guidelines, and the ACC in particular, could benefit from greater flexibility and should take account of the overall benefit the employment of marquee foreign actors in certain productions can have for the local industry.

Screen Australia's submission outlined the foreign actor entry arrangements that operate in the UK, Canada and New Zealand, noting that all three systems, like Australia's, share responsibilities for aspects of foreign actor entry between government and the relevant actors' union. They also all require efforts to be made to cast locally before foreign actor importation is considered.

In the UK, assessment criteria do not consider the level of British content in a production or apply production budget and foreign investment thresholds. They represent a qualitative assessment of the contribution of a particular foreign actor to a production and recognise a range of circumstances where entry of foreign actors is appropriate. Work permits are granted in various circumstances, including when actors are needed for continuity, have international status, are tied to the finance of the production, or do not meet the criteria but are commercially important (recognising the range of commercial interests that impact on the international industry).

In Canada, the ratio of Canadian to foreign actors and the nationality of roles are also not included in the assessment criteria. The Alliance of Canadian Cinema, Television and Radio Artists (ACTRA) provides work permits for 'stars' upon request, while requests for other roles are subject to greater scrutiny and proof that reasonable efforts have been made to engage local personnel with an expectation that producers will make genuine efforts to hire in Canada.

In New Zealand, foreign actors must obtain approval from NZ Equity prior to applying for a work visa. Before agreeing to entry, NZ Equity must be satisfied that the engagement of the actor satisfies a number of conditions that protect opportunities for New Zealand performers, including that:

- the foreign actor is of international distinction or merit, or particular ethnic significance, or is manifestly essential to the presentation or production, and
- the wider benefits to be obtained from the employment of the foreign actor outweigh the loss of job opportunities for New Zealanders (in which case details of the opportunities for locals resulting in 'overall benefit to the New Zealand industry' are to be provided).

Currently, the Australian Guidelines have very limited flexibility. While they do contain a provision for 'exceptional cases' (see p5), there are no stated criteria indicating how this provision will be applied or the factors that will be taken into account when making an assessment. This can lead to uncertainty among applicants and has the potential for inconsistent application of the provision.

The Australian system might benefit from a more flexible and transparent process for assessing foreign actor entry which is based on similar concepts to those set out in the UK, Canadian and New Zealand systems.

If there is agreement to this approach then the Guidelines could be amended to clearly define the factors that must be considered by the Arts Minister, DEWHA and MEAA

in their consideration of applications. The criteria might include requiring a sponsor to demonstrate:

- that foreign actor employment in the production is necessary for reasons of continuity, to perform highly specialist or unusual roles,
- that appropriate consideration has been given to employing equivalent status Australian actors,
- that foreign actor employment in the production is commercially important (eg domestic and/or foreign investment is dependent on employment of the actor),
- the overall benefit that employment of a foreign actor would provide to the Australian film and television industry (eg acting and other jobs generated by the production; likely job losses if production does not proceed, that the scale of the production in terms of budget and associated local employment opportunities will be significantly lessened if a foreign actor(s) does not take part in the production, etc).

2. Government subsidised productions criteria: treatment of tax offsets

The Guidelines currently define 'government subsidised' as 'any form of government subsidy other than developmental funding, including but not limited to investment, loans, distribution guarantees, pre-sale and tax concessions (other than tax concessions ordinarily available to any business enterprise e.g. Division 10B of the *Income Tax Assessment Act 1936*). For the purpose of this definition government shall be deemed to include State, Commonwealth and Territory and shall include statutory authorities and companies wholly owned by a government, for example, Australian Film Finance Corporation' (FFC). (Please note, the definition is out of date and needs to be amended to reflect that fact that Division 10B has been repealed and the FFC replaced with Screen Australia).

Effectively the definition means that all productions in receipt of any form of direct financial support from either the Commonwealth or a state/territory government are subsidised and, if they wish to employ foreign actors, are required to meet the ACC set out in the Guidelines.

Submissions indicate there is broad agreement that subsidised productions should continue to be subject to the ACC (although there are different views on the criteria's level of flexibility, as discussed under Issue 1, above).

However, there are more diverse views on the treatment of productions that may receive indirect assistance from government through film tax offsets. Such offsets have been in place since 2001. In 2007, three complementary film tax offsets were established (ie Producer Offset, Location Offset, PDV Offset).

DEWHA does not consider these film tax offsets to be forms of subsidy for the purposes of the Foreign Actor Certification Scheme (FACS). There are a number of reasons for this including that at the time applications for foreign actor certificates are made a production company will not have received any assistance (tax offsets are paid following completion) and there is no guarantee any assistance will ever be provided (ie a production company would need to satisfy all eligibility requirements before it could access the offsets and this is not determined until after completion of production).

Submissions identified the following options for treating indirect assistance for the purposes of FACS:

- not treating any film tax offsets as forms of government subsidy;
- treating all film tax offsets as forms of government subsidy (s42 s42 Please note, this is likely to lead to a situation where large budget offshore productions that have located to Australia in anticipation of accessing the Location Offset would be subject to the ACC. The constraints of the ACC would likely mean that some, if not all of these productions would no longer locate to Australia as they could not attach the marquee foreign actor 'star' power necessary to justify the large budget expenditure. Such an outcome would have significant adverse consequences for the local industry,
- not treating the Location Offset as a form of government subsidy while treating the Producer Offset as a government subsidy. However, because they are similar forms of taxation-based industry assistance there is a logical inconsistency in this approach that is difficult to justify.

3. Government subsidised productions criteria: Australian Content Criteria and Significant Australian Content requirements

For subsidised productions foreign actors can only enter Australia if they satisfy the ACC.

For a production to receive either a provisional or final certificate to access the Producer Offset, it must demonstrate it has Significant Australian Content (SAC), which includes consideration of the nationality of actors taking part in the production together with other factors.

DEWHA requested the views of stakeholders about the extent to which the ACC set out in the Guidelines should be consistent with the SAC requirements of the Producer Offset.

Submissions indicate that:

- Producers appear to wish to satisfy one test of 'Australianness' rather than two.
- Screen Australia and MEAA are of the view that the SAC and ACC tests are entirely different tests serving different purposes, and should be retained as distinct entities.

Due to the different assessment criteria, it is possible for a production to satisfy one test and not the other. Would it be in the best interests of the local industry for a production which receives provisional certification for the Producer Offset to be unable to proceed because it is unable to meet the ACC?

Options for addressing this issue might include:

- Recognising the ACC and SAC are separate tests and raising the awareness of filmmakers about the need to satisfy both sets of criteria.
- For relevant productions, incorporating provisional certification for the Producer Offset into the ACC criteria.
- Providing greater flexibility as discussed under Issue 1 (above) by considering the overall benefit a production brings to the local industry rather than strict compliance with the ACC.

4. Government subsidised productions criteria: Threshold tests

Paragraph 2 of the ACC (see p 4 of the Guidelines) sets out an indicative framework linking the number of foreign actors who can be employed to perform lead, support and cameo roles to the size of the production budget and the level of foreign investment.

The framework may be applied when considered appropriate, so it provides some flexibility. However, there has been no adjustment to the production budget figures or the proportion of the budget represented by foreign investment since the mid 1990s.

Submissions from producers questioned whether the prescribed production budget and foreign investment parameters were still appropriate or necessary. In this regard some submissions noted:

- Foreign investors were usually necessary to fill the final 'gap' in a production budget and the level of investment varied from production to production. Foreign investments of 10-15% were not uncommon, meaning the Guidelines in their current form did not adequately cover all foreign investment scenarios.
- Foreign investors made their investments on the basis of expected commercial returns – in many cases they had strong views about the need to employ particular “marquee” foreign actors and could make their investments dependent on attaching those marquee actors to the production.
- The greater the level of foreign investment potentially the greater the need to be allowed to engage a greater number of foreign actors – this would be consistent with the approach taken in respect of large budget productions attracted to Australia by the Location Offset.

The range of options to address this issue appears to include the following:

- If an indicative framework of production budgets and foreign investment contributions is considered useful and retained:
 - the level of budget and foreign investment to actor quotas, which have remained unchanged for over a decade, are left as they are,
 - the level of budget and foreign investment could be indexed to take account of inflation – inflation adjustments from 1995-2009 inclusive would equate to an increase of approximately 48%,
 - the budgets and foreign investment contributions could be adjusted to better reflect present day production budgets and foreign investment contributions,
- the threshold tests could be removed from the Guidelines and each production assessed on its own merits,
- as discussed under Issue 1 (above), greater flexibility in the application of the threshold test could be introduced by specifying other factors that could reasonably be taken into account when assessing an application with a production budget and/or foreign investment parameters that did not fit the threshold test.

5. Non-Government subsidised productions criteria

For non-subsidised productions subclause 420.222(3)(c) of the Migration Regulations provides that “the application is supported by a certificate given by the Arts Minister, or a person authorised by the Arts Minister, confirming that:

- (i) citizens or residents of Australia have been afforded a reasonable opportunity to participate in all levels of production; and

- (ii) the foreign investment, or the private investment guaranteed against the foreign returns by a distributor, in the production, is greater than the amount to be expended on entertainers sponsored for entry.

The Guidelines require a sponsor to show that reasonable efforts have been provided to Australians to take part in all levels of the production; provide DEWHA with an explanation as to why foreign actors are required; if required by the Arts Minister or DEWHA to show compliance with the casting guidelines; provide evidence to DEWHA verifying foreign investment is greater than the amount expended on foreign actors; and consult MEAA.

Submissions to the review raise issues in relation to each of these criteria:

Australians afforded reasonable opportunity to participate

The provision of reasonable opportunities being provided to Australians has been taken to mean the participation of Australian cast and crew in the production. In relation to cast, particular attention is also given to the nature of the role and whether the casting of a foreign actor is required to satisfy ethnic or other special requirements (eg continuity for productions doing location shooting in Australia, etc).

In their submissions producers have indicated they have a strong preference to engage as many Australian cast and crew in their productions as they reasonably can, and note this has been demonstrated in their casting of past productions. However, they have also noted that the availability of marquee Australian actors can be limited due to a range of factors including requirements of the proposed role and the availability and interest of Australian marquee actors. Where marquee Australian actors are either not available or are not considered suitable for the role, producers have indicated they want to be able to employ marquee foreign actors.

The Guidelines provide that a casting exercise may be required for a role before it is allocated to a foreign actor. However, please note that DEWHA has rarely, if ever, asked a production to undertake a casting exercise.

MEAA's submission indicated it believes casting exercises are not onerous and offer a reasonable opportunity to Australian performers.

An alternative view, set out in some producer submissions, is that casting exercises can be humiliating for actors and a waste of time and resources for producers. They note that key creatives with marquee appeal would probably not need or submit to casting exercises.

Options would seem to be:

- o retaining the discretion for the Arts Minister or DEWHA to require a casting exercise to be undertaken, or
- o identifying other practical mechanisms for determining if reasonable opportunity has been afforded to Australians.

Foreign investment greater than foreign actor fees

The Migration Regulations require that foreign investment must be greater than the foreign actor fees. If a production cannot demonstrate that it meets this requirement, it cannot proceed.

Stakeholders must determine whether this provides the best outcome for the industry or whether some flexibility would be in order; and if the latter, the nature of that flexibility.

If there is agreement that greater flexibility is desirable, it would be necessary to determine in what circumstances this should be applied. Examples might include situations where:

- the employment of foreign actor would enhance the reputation and appeal of an Australian production and/or provide employment for the Australian industry in general, or
- the script requires a foreign actor, or
- the funding depends on foreign actors being cast.

Consideration could also be given to whether different standards should be applied for 100% Australian funded productions, 100% offshore funded productions, and productions with a mixture of funding.

Please note, any amendment to this criterion may also require amendment to subclause 420.222(3) of the Migration Regulations. Any amendments to the Migration Regulations would have to be discussed in the first instance with DIAC, and be subsequently approved by the Minister for Immigration and Citizenship.

6. Clarification of FACS Guidelines scope

Since their inception, DEWHA has regarded the Guidelines as being focused on foreign actor involvement in drama productions. It is for this reason that the "Scope" section of the Guidelines (see p2) indicates that "the guidelines set out the circumstances under which applications can be considered for the import or foreign actors for the following forms of film and television programs: feature films, telemovies, mini-series, and bona fide unofficial co-production series and serials".

The Guidelines go on to state that "applications for other forms of film or television production will be considered as exceptional cases on a case by case basis" but provide no further information on what those other forms of production might be. Accordingly, it is unclear if, and if so, exactly how, other production genres such as documentaries, reality programs, television commercials, and so on should be treated by the Guidelines.

In considering this issue it would also be reasonable to consider which on-screen personnel might be reasonably considered to be "actors" and therefore subject to the Guidelines, and whether productions made for delivery formats other than film and television (eg for download to mobile phones or the internet) should also be covered by the Guidelines.

Looking at each of these in turn:

Production genres – Which should be included?

Subclauses 420.222(2) and (3) of the Migration Regulations require foreign actor certificates to be issued for actors entering Australia to take part in a film or television production. The Regulations also provide three exemptions to this rule which cover official co-productions which are covered by subclause 420.222(6), and offshore television commercials and documentaries filmed in Australia but produced exclusively for overseas release which are covered by subclause 423.222(3).

The Guidelines state that they apply to "feature films, telemovies, mini-series, and bona fide unofficial co-production series and serials" and that "applications for other forms of film or television production will be considered as exceptional cases on a case by case basis".

Over the years, DEWHA and MEAA have developed some conventions for the treatment of “other forms of film or television production” such as documentaries, reality television programs, TVCs and so on. In some cases the conventions apply the “exceptional cases” provision of the Guidelines (see p5). While this has been practical, it is possible that the failure to more transparently explain how all productions are treated under the Guidelines has led to uncertainty among film and television producers about when they may need to obtain foreign actor certificates for these “other forms” of production.

In its submission MEAA indicates that the Guidelines should apply to all production genres. Other submissions did not specifically address this issue. DEWHA remains of the view that the scope of the Guidelines should apply primarily to drama productions.

Whatever the outcome of discussion about which genres should be covered by the scope of the Guidelines, it would be helpful to industry stakeholders to clarify which production genres are covered by the Guidelines.

To commence the discussion, and using the definition of what constitutes a “film” for the purposes of the film tax offset legislation as a starting point, it is suggested that the Guidelines should apply to actors performing in the following production genres:

- feature films,
- telemovies,
- miniseries,
- series and serials,
- television comedy and sketch comedy programs (excluding live or delayed broadcast of “live “ performance stand-up comedy programs),
- reality programs (in relation to hosts or presenters only),
- documentary programs (in relation to hosts or presenters and actors performing in dramatised roles only).

The genres included would be assessed under ‘Government subsidised’ and ‘Non-Government subsidised criteria’ as applicable.

It is also suggested that the Guidelines should not apply to the following production genres:

- official co-productions (covered by subclause 420.222(6) of the Migration Regulations),

and such ‘non-fictional/dramatic’ genres as:

- television commercials,
- documentaries filmed in Australia but not for broadcast in Australia (covered by subclause 423.222(2) of the Migration Regulations),
- discussion programs,
- quiz programs,
- panel programs,
- variety programs,
- films of public events,
- news or current affairs programs, and
- training films.

Onscreen personnel – Who are the “actors”?

The Guidelines define an “actor” as a “screen performer, whether in a leading, supporting or cameo role, a stunt performer, a puppeteer, voice over or other person

who performs in a film". The definition clearly covers acting performances in drama productions. It less obviously covers performances in other genres, particularly when no acting may be involved in the role.

In these circumstances DEWHA and MEAA have also adopted a number of conventions in response to the variety of on-screen roles that sponsors have indicated require foreign actors, performers or presenters.

The vast majority of foreign actor entries to Australia are for actors and stunt performers taking part in drama productions. All such actors and performers require foreign actor certificates.

Foreign actors performing dramatic roles in a dramatised documentary are also required to obtain foreign actor certificates.

In addition, on some occasions foreign actor certificates have been issued for the presenters of documentaries and hosts of reality television programs, and for celebrities (some of whom are actors) hosting a series of documentary-style programs about their travels around Australia.

Foreign actors and celebrities appearing as themselves in brief cameo roles in drama productions have also been required to obtain foreign actor certificates. Is this appropriate, particularly for non-actors who are portraying themselves rather than "acting"?

Foreign actors certificates have generally not been required for foreign competitors and judges (including 'celebrity' competitors and judges) taking part in reality television programs.

Some foreign documentary hosts have not been required to obtain foreign actor certificates because they have not been regarded as "actors" but rather as expert presenters who are necessary to explain and present specialist knowledge.

Foreign actors appearing in TVCs have not been required to obtain foreign actor certificates because DEWHA has not considered TVCs to fall within the scope of drama productions.

The above examples indicate there is a variety of circumstances in which DEWHA may be approached by sponsors or potential sponsors about the entry of foreign actors – mostly when it is appropriate and necessary and on some occasions when it is not. Equally, DEWHA is aware that in some cases the producers of some productions have not approached DEWHA to obtain foreign actor certificates when it is arguable that they should have. In part, this may be due to lack of clarity in the Guidelines about when foreign actor certificates are required.

To address this issue it may be appropriate to review the definition of "actor" and provide more clarity in respect of the treatment of on-screen personnel taking part in productions that are not drama productions.

Formats

The Migration Regulations and Guidelines apply to foreign actors taking part in film and television productions. Similar productions are now being made for delivery through other formats and delivery platforms (eg download to mobile phones and the internet).

MEAA's submission indicated that it believes productions for all formats should be subject to the Guidelines. Other submissions did not specifically address this issue.

It would be useful for the Guidelines to make it clear that they apply to productions made for all formats and delivery platforms. This could be done by including a definition of 'Film or television productions' which indicates that it covers productions for exhibition in cinemas, for broadcast and productions of a like nature intended for distribution beyond cinemas and television screens (e.g. mobile phones).

7. Administrative Process for FACS

In the FACS application form, DEWHA asks for budgetary and fee details for productions. This information is necessary in order to make judgements on whether, for non-subsidised productions, the level of foreign investment is greater than the amount expended on foreign actors. Some sponsors have experienced difficulties in providing this information on the basis of deal memos not being available or studios not being able to provide definitive production budget details. If this requirement in respect of non-subsidised productions is retained are there other ways of demonstrating foreign investment is greater than expenditure on foreign actors? If not, what should happen if a sponsor is unable to provide the information required by DEWHA?

Screen Australia has suggested that DEWHA permit Screen Australia's Research and Statistics Unit access to budgetary information collected for specific foreign actor applications. It is understood this information would be used by Screen Australia to assist compilation of its regular statistical reports such as the annual survey of drama production. Due to the requirements of Federal privacy legislation DEWHA is only able to provide Screen Australia with aggregated data which does not enable individual productions or the personal information of individuals associated with those productions to be identified. This may constrain Screen Australia's ability to access accurate data. One option to address this concern would be to include a "request for consent" statement on the FACS application form seeking the agreement of relevant actors and the production company executive for relevant information to be passed between DEWHA and Screen Australia. Is this a reasonable request to put to a sponsor? Is this a concern that should be considered further as part of this review or separately?

8. Other Issues

Stakeholders have raised other issues in their submissions. These have been summarised in the attached spreadsheet (Attachment A).

Imported artists . . .

. . . the international perspective

Why can't actors be free to work anywhere they like in the world?

Why can't we adopt the imported artists regulations which apply in America and Britain?

Won't overseas unions retaliate against members of Australian Equity?

Questions like these derive from a fundamental misunderstanding of Australia's place in the world film economy. Our imported artist policies were not introduced as a response to the restrictive policies of unions in other countries. Rather they are designed to meet the particular circumstances of Australian performers.

In essence, America and Britain will permit entry to performers of "international distinction and merit". That is, they hold that the best performers, those with unique and special talent, should be free

to work. They take the view, however, that other performers will bring nothing to a host country which is not already available locally. That is, they ask the question, why should a foreign performer of no great standing be preferred to a local performer of similar standing?

Such a policy affords a very high level of protection to resident performers in America and the UK, given the low levels of program importation in those countries. Take the US, for example: less than 2 percent of television programming originates overseas. It is difficult to imagine many Australian programs ever achieving significant penetration of that market. If Australian actors are never seen there, they will never achieve "international distinction and merit". Perhaps half a dozen Australians have achieved any kind of recognition in America —

whatever the apparent success of our film and television industry.

The situation in Australia is almost exactly the reverse. With our high levels of foreign mass media penetration, hundreds if not thousands of American performers are household names in this country. The adoption by us of the US import policy would open our shores to very large numbers of overseas artists.

Well then, why not persuade America and Britain to drop their policies entirely and we will do likewise? The effect of such a move would be quite disproportionate for Australians. Australian producers could cast American performers who were well recognized in both Australia and the US. That influx of Americans would not be balanced by a similar wave of Australians working in America! American producers have little use for Australian performers who are largely unknown in America. They can effect sales to Australian television stations by casting Americans who enjoy a high recognition factor amongst world audiences as well as, of course, their own home market. They don't need actors known only in Australia.

Given these facts, the possibility of retaliation against Australians, by overseas unions, is put into perspective. Even if they wanted to, retaliation would have little effect given that the transfer of performers between countries is inevitably one way.

In any event, retaliation is unlikely given that overseas unions, in contrast to Australian producers, understand the limited effect of Australian Equity's policies. The fact is that entry is granted to very large numbers of American and British performers, and refused to very few.

On a positive note, we do have an obligation to pursue equitable exchange arrangements between other countries and ourselves.

In recent times we have achieved some success in this area. Two artists were exchanged between the Melbourne and London productions of *Cats*. Revcom and the ABC agreed to an exchange between six French and Australian performers in a series of telemovies.

Given the differing levels of access to foreign programming in Australia, it is unlikely that exchange programs will ever replace our own imported artists policy.

The fact is that, as a small country, Australia's culture and its performing artists are likely to be swamped by the sheer weight and marginal cost of overseas production. The only possible response is to protect our local distribution market — primarily television — so that the work of Australia's performers and writers is at least seen. Moreover, we must ensure that Australia's performers are given the chance to work in Australian productions.

Michael Crosby
Federal Secretary

December 1987 EQUITY — 3



(L to R) Rebecca Smart, Bryan Brown and Noni Hazlehurst in *The Shiralee* produced in 1986 by the SAFC featured an all Australian cast. Originally produced in 1957, it starred Peter Finch and featured a large cast of overseas performers. (Photo: Greg Noakes)

Sircar, Sanjay

From: Richards, Stephen
Sent: Tuesday, 3 February 2009 4:48 PM
To: 'george@in-motion.com.au'
Cc: Glenn, Raelene; Sircar, Sanjay
Subject: Review of foreign actor certification guidelines [SEC=UNCLASSIFIED]

Categories: UNCLASSIFIED

George

s22

As I mentioned during our meeting, DEWHA is currently reviewing our "Guidelines for the entry into Australia of Foreign Actors for the purpose of employment in film and television productions" (the Guidelines), which give effect to sub-clauses 420.222 (2) and (3) of the Migration Regulations.

The review is taking place because the Guidelines have not been substantively revised since the mid 1990s. Since they were first drafted, the Australian film and television industry has experienced many significant economic and technological changes which has led to changes in the way in which films are financed and made, and the level of interest in using foreign actors.

In particular, the Department believes the Guidelines should be reviewed, in consultation with relevant stakeholders, to:

- Provide greater clarity on the treatment of foreign actors seeking to enter Australia to perform or appear in film and television productions
- Provide greater clarity re what forms of direct and indirect government assistance are subsidies
- Provide greater clarity on the scope of the guidelines, which currently indicate they apply to feature films, telemovies and miniseries but are silent on their application or otherwise to a range of other production genres (eg documentaries, reality programs, variety programs, TVCs, etc)
- Determine the extent to which the "Australian content criteria" set out in the Guidelines should be consistent with the "significant Australian content" requirements of the Producer Offset
- Determine whether, for unsubsidised productions, requiring foreign investment to be greater than the level of funds expended on foreign actors while in Australia is a reasonable requirement
- Ensure consistency with the Migration Regulations which legally determine and limit the scope of the Guidelines

In terms of a process, we expect to receive comments from industry stakeholders including the Media Entertainment and Arts Alliance (MEAA) and the Screen Producers Association of Australia (SPAA) by the end of February 2009 and we aim to prepare a revised draft of the Guidelines over the following 1-2 months, with stakeholders having the opportunity to comment further through the drafting process. Once a final draft is settled the Department would submit it to the Minister for consideration and approval.

Whatever amendments might be made, we recognise the Guidelines must continue to comply with the requirements of the Migration Regulations. We will therefore keep DIAC informed throughout this review process, pass on the comments provided by stakeholders (particularly if there are any suggesting possible amendments to the Migration Regulations themselves, or which cover matters beyond the scope of the foreign actor guidelines such as visa processing arrangements for foreign crew).

Given the matters you raised yesterday, you may wish to provide some comments. If so, please send them to me or Sanjay Sircar (tel: 02-62759645; e-mail: sanjay.sircar@environment.gov.au) before the end of February 2009.

I would be happy to discuss any of the above in further detail if you wish.

Cheers

Stephen

Stephen Richards
 Manager - Film Incentives & International
 tel: 61-2-62759645
 fax: 61-2-62759659

S47F

e-mail: stephen.richards@environment.gov.au

web: www.arts.gov.au

Sircar, Sanjay

From: Sircar, Sanjay
Sent: Friday, 20 March 2009 1:20 PM
To: 'bethwyn@spaa.org.au'
Subject: FW: Request re FACS review [SEC=UNCLASSIFIED]
Categories: UNCLASSIFIED

From: Sircar, Sanjay
Sent: Friday, 20 March 2009 1:19 PM
To: 'Geoff Brown'
Subject: Request re FACS review [SEC=UNCLASSIFIED]

Dear Geoff

Thank you for providing comments on the Guidelines on the Entry of Foreign Actors into Australia. We are now waiting on one final submission that has been foreshadowed, before this stage of the review process is complete.

We have put together a summary table of the various concerns and suggestions made by the stakeholders which we intend to distribute when it is complete, which we expect will be in the next 1-2 weeks. In the meantime, I am writing to seek your agreement to your submission on the Guidelines being made available to other stakeholders.

Yours sincerely

Stephen

Stephen Richards
Manager - Film Incentives & International
tel: 61-2-62759645
fax: 61-2-62759659
s47F
e-mail: stephen.richards@environment.gov.au
web: www.arts.gov.au

Sircar, Sanjay

From: George Vasiliadis [george@in-motion.com.au]
Sent: Friday, 20 March 2009 6:22 PM
To: Sircar, Sanjay
Cc: Richards, Stephen
Subject: RE: Request re FACS review [SEC=UNCLASSIFIED]

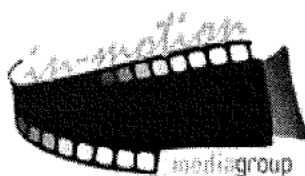
Hello Sanjay

You have my permission to provide other stakeholders a copy of my submission.

s22

Cheers

George Vasiliadis



Australia:	Office Telephone:	617 5539 5436	Post:	P.O. Box 887, Southport B.C.
	Office Facsimile:	617 5539 5735		Queensland Australia 4215
Mobile - Cell	Australia:	614 1627 9078	Skype:	in-motion1
	Singapore:	65 9895 5187	Email:	george@in-motion.com.au
	India:	91 98194 44794	Web:	www.in-motion.com.au

This email message is intended only for the addressee and contains information which is considered confidential. If you are not the intended recipient of this mail, please do not read, save forward, disclose or copy the contents of this email. If you are not, if this email has been sent to you in error, please delete this email and any copies, links or attachments to this email completely from your system.

From: Sircar, Sanjay [mailto:Sanjay.Sircar@environment.gov.au]
Sent: Friday, 20 March 2009 12:16 PM
To: george@in-motion.com.au
Subject: Request re FACS review [SEC=UNCLASSIFIED]

Dear George

Thank you for providing comments on the Guidelines on the Entry of Foreign Actors into Australia. We are now waiting on one final submission that has been foreshadowed, before this stage of the review process is complete.

We have put together a summary table of the various concerns and suggestions made by the stakeholders which we intend to distribute when it is complete, which we expect will be in the next 1-2 weeks. In the meantime, I am writing to seek your agreement to your submission on the Guidelines being made available to other stakeholders.

Yours sincerely

Stephen

Stephen Richards
 Manager - Film Incentives & International

23/03/2009

tel: 61-2-62759645
fax: 61-2-62759659

s47F

e-mail: stephen.richards@environment.gov.au
web: www.arts.gov.au

If you have received this transmission in error please notify us immediately by return e-mail and delete all copies. If this e-mail or any attachments have been sent to you in error, that error does not constitute waiver of any confidentiality, privilege or copyright in respect of information in the e-mail or attachments.

Please consider the environment before printing this email.

Sircar, Sanjay

From: Fiona Cameron [fiona.cameron@screenaustralia.gov.au]
Sent: Sunday, 22 March 2009 10:54 AM
To: Catherine Griff
Cc: Sircar, Sanjay
Subject: Re: Request re FACS review [SEC=UNCLASSIFIED]

Fine by me.

Fiona Cameron
 Executive Director Strategy and Operations
 Screen Australia
 Ph: +61 2 8113 5837

Catherine Griff/NSW/SAU

21/03/09 01:52 PM

To "Sircar, Sanjay" <Sanjay.Sircar@environment.gov.au>
 cc Fiona Cameron/NSW/SAU
 Subject Re: Request re FACS review [SEC=UNCLASSIFIED] [Link](#)

Hi Stephen, I'm sure it would be fine to pass on our comments to other stakeholders. Would like to just confirm first with Fiona, who I've copied here.
 best wishes

Catherine Griff
 Policy Manager
 Screen Australia
 02 81135809; 

"Sircar, Sanjay"
 <Sanjay.Sircar@environment.gov.au>

20/03/09 01:22 PM

To catherine.griff@screenaustralia.gov.au
 cc
 Subject Request re FACS review [SEC=UNCLASSIFIED]

Dear Catherine

Thank you for providing comments on the Guidelines on the Entry of Foreign Actors into Australia. We are now waiting on one final submission that has been foreshadowed, before this stage of the review process is complete.

We have put together a summary table of the various concerns and suggestions made by the stakeholders which we intend to distribute when it is complete, which we expect will be in the next 1-2 weeks. In the meantime, I am writing to seek your agreement to your submission on the Guidelines being made available to other stakeholders.

23/03/2009

Yours sincerely

Stephen

Stephen Richards
Manager - Film Incentives & International
tel: 61-2-62759645
fax: 61-2-62759659
s47F
e-mail: stephen.richards@environment.gov.au
web: www.arts.gov.au

-----If you have received this transmission in error please notify us immediately by return e-mail and delete all copies. If this e-mail or any attachments have been sent to you in error, that error does not constitute waiver of any confidentiality, privilege or copyright in respect of information in the e-mail or attachments.

Please consider the environment before printing this email. -----

Please note that your email address is known to us for the purposes of communicating with you. The information transmitted in this e-mail is for the use of the intended recipient only and may contain confidential and/or legally privileged material. If you have received this information in error you must not disseminate, copy or take any action on it and we request that you delete all copies of this transmission together with attachments and notify the sender. This footnote also confirms that this email message has been swept for the presence of computer viruses.

*Review file***Sircar, Sanjay**

From: Richards, Stephen
Sent: Tuesday, 28 April 2009 9:21 AM
To: Glenn, Raelene; Sircar, Sanjay
Cc: Arnott, Stephen
Subject: Media inquiry re foreign actor certification review [SEC=UNCLASSIFIED]

Categories: UNCLASSIFIED

Note for file

Sandy George (Screen International) left messages on my landline and mobile over the weekend wanting to talk (a) about the foreign actors review and (b) seeking advice if the stakeholder submissions were public.

This morning I referred the inquiry to Eleanor Dean (Public Affairs) who undertook to contact George and discuss her request. I advised Eleanor that we had received the approval of stakeholders to share their submissions with other stakeholders who had made submissions, but that beyond that we did not consider the submissions to be "public".

Stephen Richards
Manager - Film Incentives & International
Tel: 61-2-62759645
fax: 61-2-62759659

s47F
e-mail: stephen.richards@environment.gov.au
web: www.arts.gov.au

22

Sircar, Sanjay

From: Richards, Stephen
Sent: Wednesday, 22 April 2009 2:09 PM
To: 'Suzie Clark'
Cc: Sircar, Sanjay
Subject: RE: Review of foreign actors guidelines - meeting on 1 May to discuss submissions and next steps [SEC=UNCLASSIFIED]
Categories: UNCLASSIFIED

Suzie - thanks; she's on the list
Sanjay - can you add Catherine's name to list of acceptances, please?

Cheers

Stephen

From: Suzie Clark [mailto:suzie.clark@foxaus.com]
Sent: Wednesday, 22 April 2009 12:55 PM
To: Richards, Stephen
Cc: Glenn, Raelene
Subject: RE: Review of foreign actors guidelines - meeting on 1 May to discuss submissions and next steps

Dear Stephen,
Please be advised that Catherine McDonnell will be attending the **Review of Foreign Actors Guidelines** meeting on Friday 1 May.
Kind regards,
Suzie

Suzie Clark
Business Affairs Coordinator
Fox Production Services Pty Limited
Unit 6, Building 103
38 Driver Avenue
Moore Park NSW 2021

Ph: + 61 2 9383 4037
Fx: + 61 2 9383 4004

s47F

E: suzie.clark@foxaus.com
W: www.foxstudiosaustralia.com

The information in this email and in any attachment is confidential and intended solely for the attention and use of the named addressee (s). This information may be subject to legal, professional and other privilege. If you are not the intended recipient, you are not authorised to and must not disclose, copy, distribute, or retain this message or any part of it. If you have received this message in error please contact us at once on (02) 9383 4200 and destroy the original message. We apologise for any inconvenience.

s22



s22



s22



s22



Sircar, Sanjay

From: Richards, Stephen
Sent: Wednesday, 29 April 2009 3:14 PM
To: 'Colleen.Santinson@immi.gov.au'
Cc: james.rea@immi.gov.au; Glenn, Raelene; Sircar, Sanjay
Subject: RE: Review of foreign actors guidelines - change of meeting date to 15 May [SEC=UNCLASSIFIED]

Categories: UNCLASSIFIED

Colleen - thanks; we look forward to seeing you on the 15th. Cheers - Stephen

-----Original Message-----

From: Colleen.Santinson@immi.gov.au [mailto:Colleen.Santinson@immi.gov.au]
Sent: Wednesday, 29 April 2009 3:08 PM
To: Richards, Stephen
Cc: james.rea@immi.gov.au
Subject: Re: Review of foreign actors guidelines - change of meeting date to 15 May [SEC=UNCLASSIFIED]

Dear Stephen

I would be able to attend on the 15 May

regards

Colleen Santinson

Director
Specialist Entry Section
Education and Tourism Branch
Migration and Visa Policy Division
Department of Immigration and Citizenship

Telephone: 02 6264 2781

Fax: 02 6264 1399

s47F

Email: Colleen.Santinson@IMMI.gov.au

s22



s22



s22



Sircar, Sanjay

From: Richards, Stephen
Sent: Tuesday, 28 April 2009 9:04 AM
To: 'George Vasiliadis'
Cc: Glenn, Raelene; Sircar, Sanjay
Subject: RE: Review of foreign actors guidelines - change of meeting date to 15 May [SEC=UNCLASSIFIED]
Categories: UNCLASSIFIED

George - thanks; we'll see you in Sydney on the 15th. Cheers - Stephen

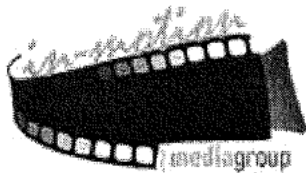
From: George Vasiliadis [mailto:george@in-motion.com.au]
Sent: Monday, 27 April 2009 8:16 AM
To: Richards, Stephen
Subject: RE: Review of foreign actors guidelines - change of meeting date to 15 May [SEC=UNCLASSIFIED]

Hi Stephen

I am available for the 15th.

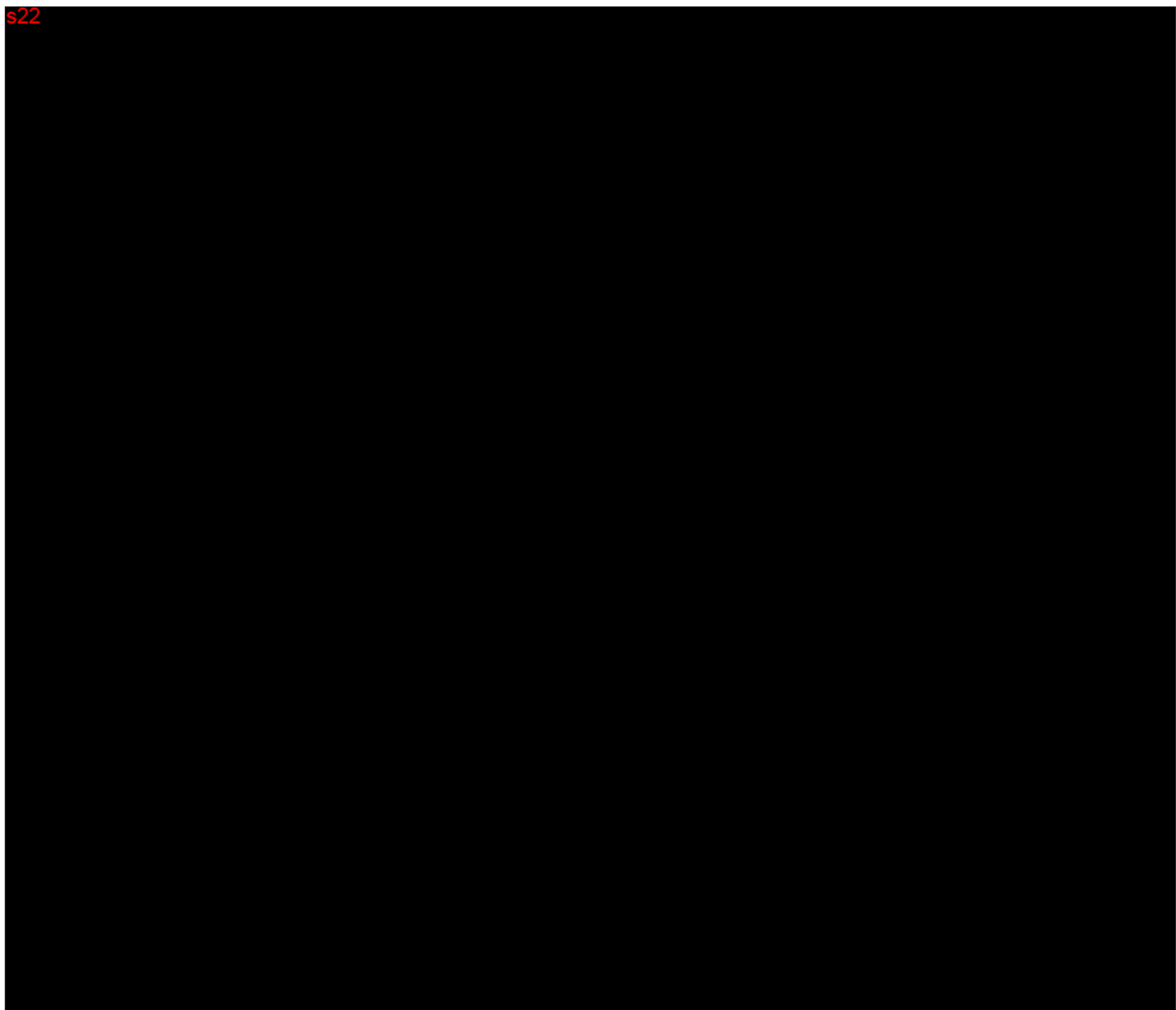
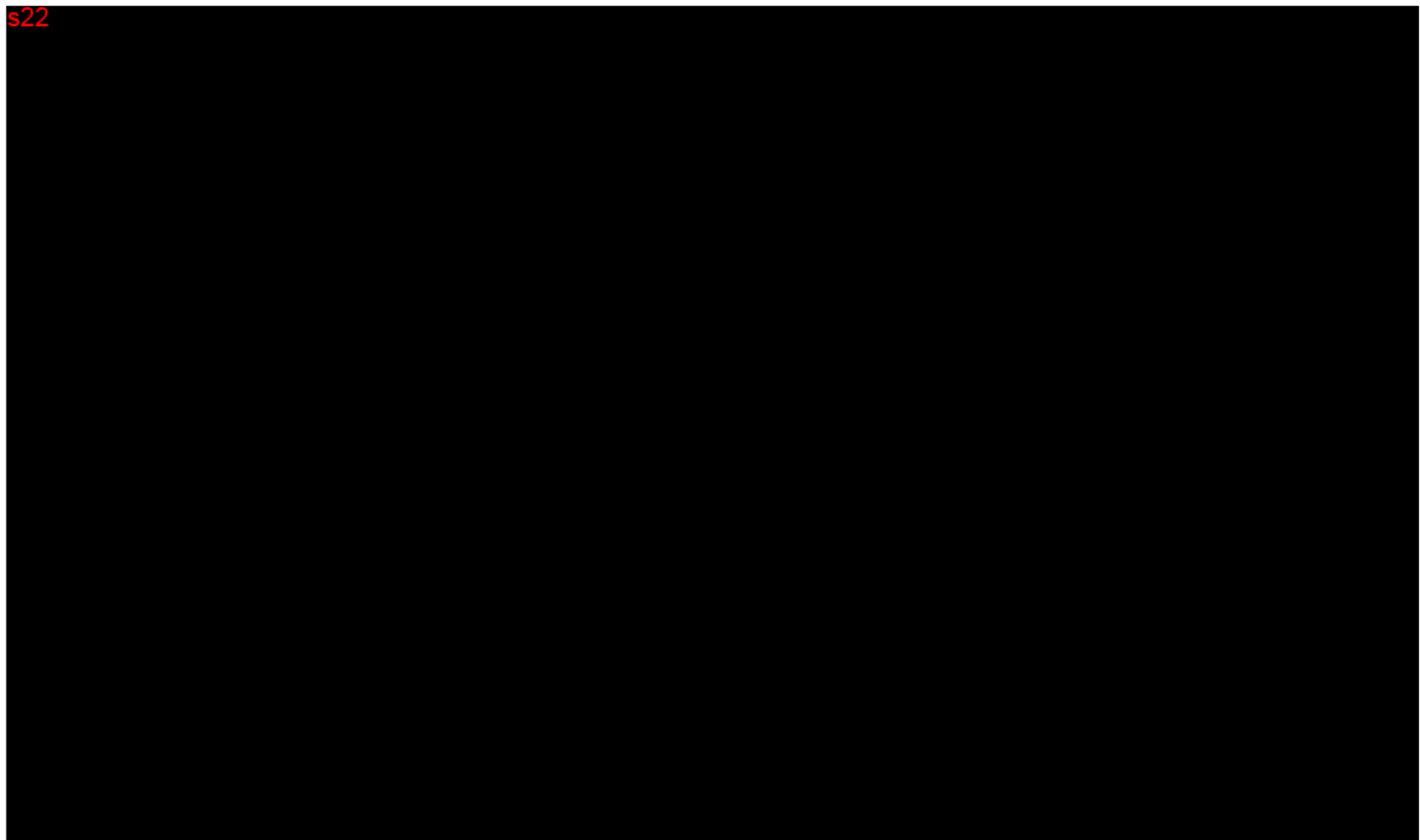
Regards

George Vasiliadis



Australia:	Office Telephone:	617 5539 5436	Post:	P.O. Box 807, Southport B.C., Queensland Australia, 4215
	Office Facsimile:	617 5539 5735		
Mobile - Cell	Australia:	614 1627 9078	Skype:	in-motion1
	Singapore:	65 9895 5187	Email:	george@in-motion.com.au
	India:	91 98194 44794	Web:	www.in-motion.com.au

This email message is intended only for the addressee and contains information which is considered confidential. If you are not the intended recipient of this mail, please do not read, save, forward, disclose or copy the contents of this email. If you are not, if this email has been sent to you in error, please delete this email and any copies, links or attachments to this email completely from your system.



Sircar, Sanjay

From: Richards, Stephen
Sent: Friday, 24 April 2009 3:30 PM
To: 'Sue Milliken'
Subject: RE: Review of foreign actors guidelines - change of meeting date to 15 May [SEC=UNCLASSIFIED]
Categories: UNCLASSIFIED

Sue - Thanks; look forward to seeing you there. Cheers - Stephen

From: Sue Milliken [mailto:suem@samsonprod.com.au]
Sent: Friday, 24 April 2009 3:28 PM
To: Richards, Stephen; Drew MacRae; Bethwyn Serow; Catherine Griff; George Vasiliasis; james.rea@immi.gov.au; Colleen.Santiron@immi.gov.au; specialistentry@immi.gov.au; Catherine McDonnell
Cc: jane.griffiths@screenaustralia.gov.au; Glenn, Raelene; Sircar, Sanjay
Subject: Re: Review of foreign actors guidelines - change of meeting date to 15 May [SEC=UNCLASSIFIED]
Importance: High

At this stage I am available.

Kind regards

Sue Milliken
Samson Productions Pty Ltd
The Entertainment Quarter
205/122 Lang Road,
MOORE PARK, NSW, 2021
TEL: ???612.8353.2600
FAX: ???612.8353.2601

On 24/04/09 2:54 PM, "Richards, Stephen" <Stephen.Richards@environment.gov.au> wrote:

Dear all

I've just been advised that MEAA officers are unable to attend the scheduled meeting on Friday 1 May.

As MEAA is an important stakeholder in this process we propose to re-schedule the meeting to Friday 15 May commencing at 10:30am and running through till 12:30pm at the latest.

Screen Australia's offices at 150 William St will again be the venue for the meeting.

As before, could you please contact either me, Raelene Glenn or Sanjay Sircar to advise if you will be attending the meeting?

If you need to discuss any of the above in further detail please give me a call.

I apologise for any inconvenience and look forward to seeing as many of you as possible on the 15th.

Cheers

Stephen

Stephen Richards
Manager - Film Incentives & International
tel: 61-2-62759645
fax: 61-2-62759659

s47F

e-mail: stephen.richards@environment.gov.au
web: www.arts.gov.au <file://www.arts.gov.au>

s22



Sircar, Sanjay

From: Richards, Stephen
Sent: Friday, 24 April 2009 3:21 PM
To: 'Catherine McDonnell'
Cc: Sircar, Sanjay; Glenn, Raelene
Subject: RE: Review of foreign actors guidelines - change of meeting date to 15 May [SEC=UNCLASSIFIED]
Categories: UNCLASSIFIED

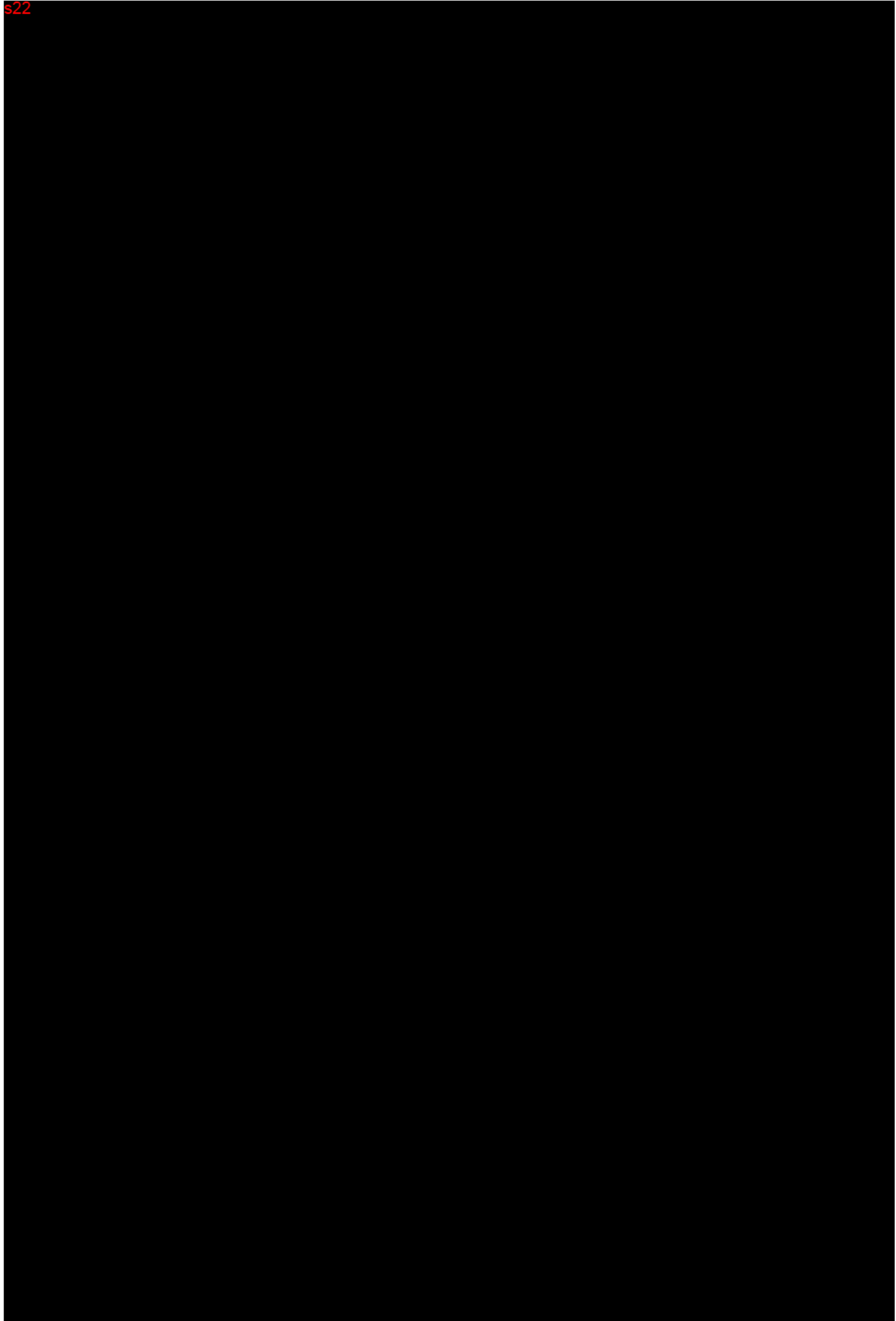
no worries; c u there and then

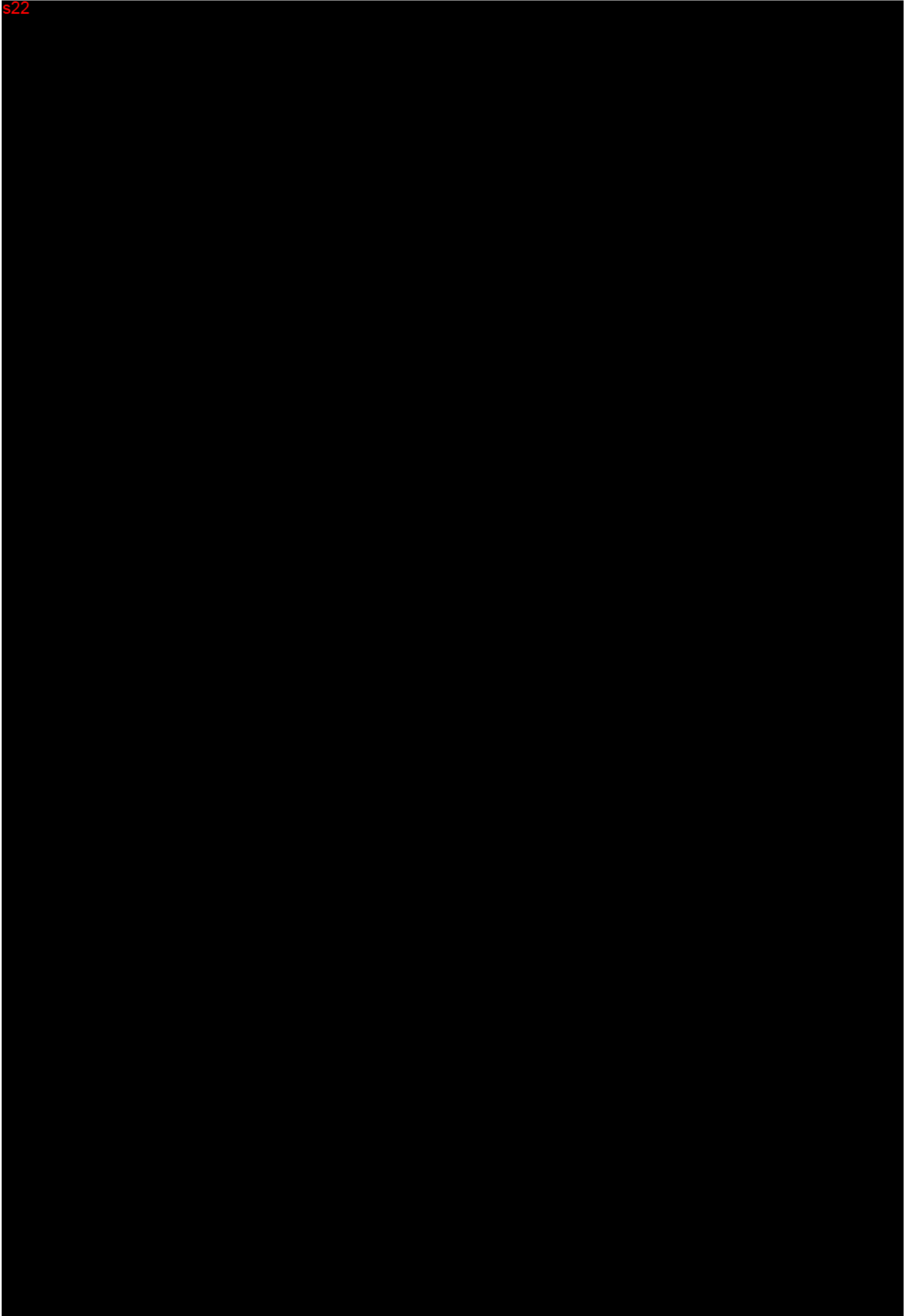
From: Catherine McDonnell [mailto:catherine.mcdonnell@foxaus.com]
Sent: Friday, 24 April 2009 3:19 PM
To: Richards, Stephen
Subject: RE: Review of foreign actors guidelines - change of meeting date to 15 May [SEC=UNCLASSIFIED]

That's fine with me Stephen and thank you very much for including me.

s22







15 May 2009
Meeting outcomes
draft + final

Sircar, Sanjay

From: Richards, Stephen
Sent: Friday, 26 June 2009 11:51 AM
To: 'Caroline Pitcher'; Alastair McKinnon
Cc: Sircar, Sanjay; Glenn, Raelene
Subject: FW: Review of foreign actor guidelines - update on progress [SEC=UNCLASSIFIED]

Importance: High

Categories: UNCLASSIFIED

Attachments: Progress Report on 15 May Meeting Outcomes - as at 26 June 2009.doc;
Meeting Outcomes - FINAL - 5 June 2009.doc

Caroline
Alastair

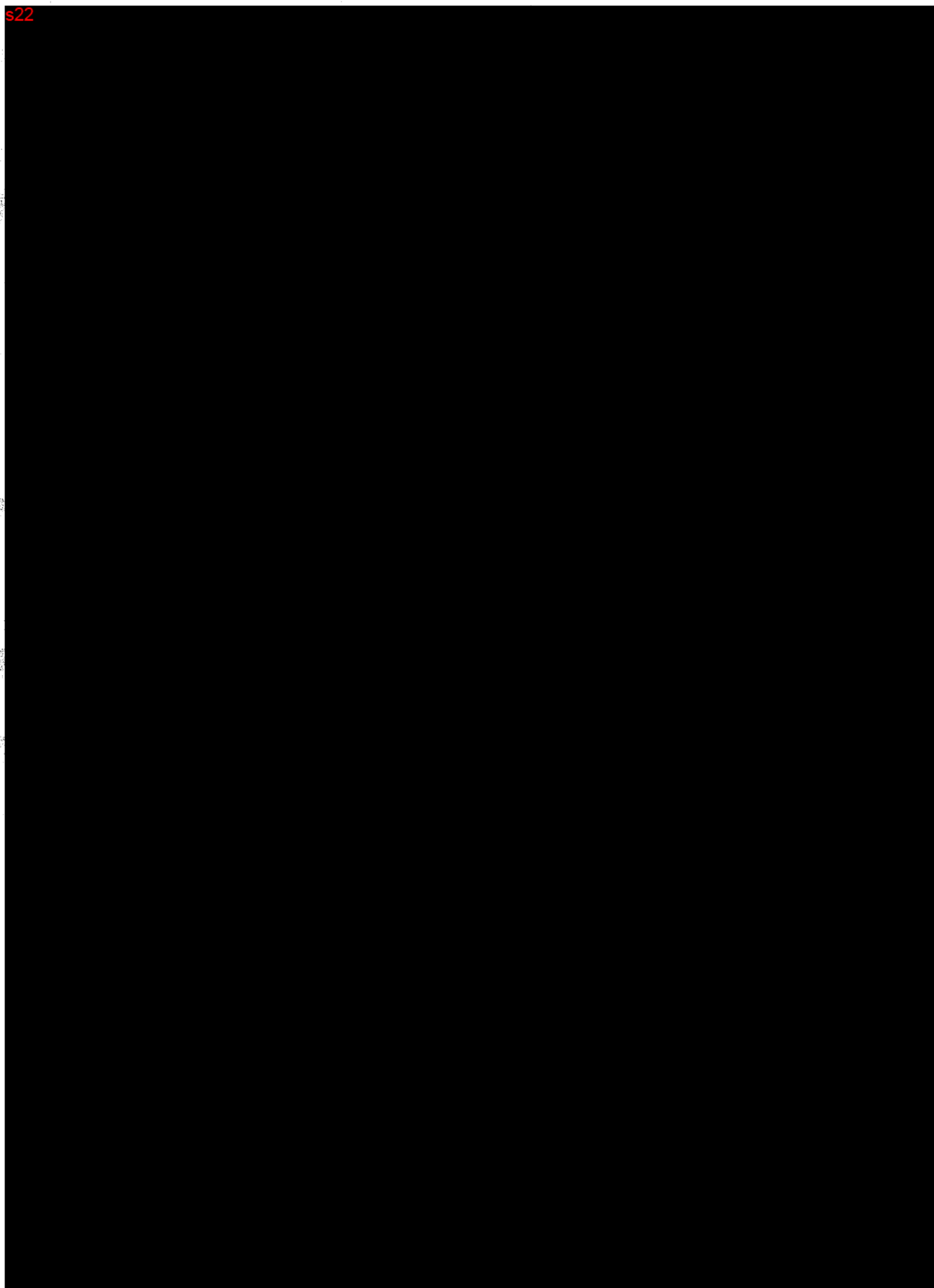
For information. Just wanted to keep you across where things are at given any changes to the guidelines might have some implications for your visa fact sheets. Should we convene another meeting of the working group, we'll include Ausfilm on the invite list.

Cheers

Stephen

s22





DEPARTMENT OF THE ENVIRONMENT, WATER, HERITAGE AND THE ARTS

Minister for the Environment, Heritage and the Arts (Decision)

cc: Secretary, Deputy Secretary, FAS – Culture

Brief No: C09/9076

Division/Agency: CD

Public Affairs Consulted: Yes

REVIEW OF FOREIGN ACTOR GUIDELINES – RESPONSE TO MEAA

Timing: Routine brief in response to ministerial correspondence (C09/9076) of 25 May 2009.

Purpose: For you to sign the letter to the Media, Entertainment and Arts Alliance (MEAA) at Attachment A.

Background: The *Migration Regulations 1994* prescribe that foreign actors seeking to enter Australia to take part in film or television productions must receive certification from the Arts Minister or their delegate. Each year 100-150 foreign actors receive certification to enter Australia for this purpose. Entry visas are only issued once foreign actor certification has been provided.

The Department administers the foreign actor certification scheme, consulting with the Department of Immigration and Citizenship (DIAC) and MEAA as necessary. The administrative arrangements followed by the Department are set out in the *Guidelines on the Entry into Australia of Foreign Actors for the Purpose of Employment in Film and Television Productions* (the Guidelines).

The Guidelines were drafted in the early 1990s and have not been substantively updated since then. The Guidelines need to be reviewed to provide greater clarity on the treatment of foreign actors seeking to enter Australia to take part in film and television productions. As currently drafted, the Guidelines do not explicitly cover a range of production genres (eg documentaries, reality programs, etc), do not reflect current production budgets, and do not take account of significant changes to the nature of Government assistance (eg introduction of the Producer, Location and PDV Offsets, phase out of 10B/10BA schemes, etc).

Following your approval, the Department initiated a review of the Guidelines in late 2008. The review process involves all relevant industry stakeholders including MEAA, the Screen Producers Association of Australia, Screen Australia, and a number of independent producers and past sponsors of foreign actor entry. The Department is also liaising closely with DIAC. You wrote to MEAA on 9 December 2008 encouraging MEAA to work with the Department through the review process (C08/23892 refers).

Issues/Sensitivities: To date the Department has invited and received submissions from all stakeholders on potential amendments to the Guidelines, prepared a discussion paper summarising stakeholder views, and, on 15 May 2009, convened an initial meeting of all stakeholders to discuss their views and potential Guideline amendments.

Consultation has revealed that stakeholders have strongly held and in some cases opposing views on how the Guidelines should be revised. MEAA supports minimal amendments and strict compliance in all instances to protect the employment opportunities of Australian actors. Producers, while supporting engagement of Australian actors wherever possible, support incorporating greater flexibility into the Guidelines to acknowledge the difficulties they can face from time to time in raising finance for productions without marquee (Australian and/or foreign) acting talent.

We are seeking to fairly reflect the views of all stakeholders and to achieve a consensus on any amendments to the Guidelines. The admission of foreign actors into Australia is a highly sensitive issue for MEAA and the performers it represents. The Department is seeking to improve transparency and clarity in the Guidelines and to ensure the requirements of the accompanying legislation are appropriately and accurately reflected.

The review process, including extensive further consultation with MEAA and other stakeholders, will proceed over the next few months. When it is completed, we will provide you with a comprehensive brief setting out any proposed amendments, the rationale for those amendments and a detailed summary of stakeholder views.

Following the 15 May meeting, MEAA organised for a group of 31 prominent Australian actors to write to you (C09/9076 dated 25 May 2009) to express their concerns about the review process and the need to preserve the efficacy of the Guidelines in order to protect the employment opportunities of Australian actors and Australia's broader cultural interests.

It is proposed that you respond by reassuring MEAA that its views are extremely important and will be taken into consideration, reiterating your support for there to be greater clarity and transparency in the Guidelines, and encouraging MEAA to continue to work with the Department through the review process. A letter to this effect is at Attachment A for your consideration. Please note MEAA has advised that the letter should be addressed to MEAA's Actors Equity Section because this section of the organisation is responsible for issues affecting actors.

Recommendations: That you:

1. note progress to date with the review of the foreign actor entry Guidelines, and
2. sign the letter to MEAA at Attachment A.

1. Noted/ Please discuss
2. Signed/ Not signed


 Stephen Arnott
 Assistant Secretary
 Film & Creative Industries
 Branch/Culture Division
 02 6275 9557/s47F
Stephen.Arnott@environment.gov.au

Secondary Contact
 Stephen Richards
 02 6275 9645/s47F

Email:
Stephen.Richards@environment.gov.au

MINISTER
 / /2009

5/6/2009

Consultation: DIAC, Screen Australia

Attachments: A Letter to MEAA responding to C09/9076

*MEAA/Equity letter
to Minister - draft response*

Sircar, Sanjay

From: Richards, Stephen
Sent: Tuesday, 2 June 2009 4:35 PM
To: Arnott, Stephen
Cc: Glenn, Raelene; Sircar, Sanjay
Subject: C09/9076 for clearance [SEC=UNCLASSIFIED]

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: UNCLASSIFIED

Attachments: C09-9076 - MEAA corro-cover brief.doc; C09-9076-MEAA re foreign actors-june 2009.doc; C09-9076 MEAA letter of 25 May.tif

Stephen - covering brief & response to MEAA re its concerns over FACS review. Original letter initiating this response is also attached. Cheers - Stephen



C09-9076 - C09-9076-MEA C09-9076
AA corro-cover lre foreign actorA letter of 25 M

From: Dean, Eleanor
Sent: Tuesday, 2 June 2009 4:29 PM
To: Richards, Stephen
Subject: RE: Clearance of brief [SEC=UNCLASSIFIED]

Thanks Stephen, no comments from me on the brief ... might keep an eye out for this one in the clips as things roll out

From: Richards, Stephen
Sent: Tuesday, 2 June 2009 2:38 PM
To: Dean, Eleanor
Subject: Clearance of brief [SEC=UNCLASSIFIED]

Eleanor - I'd be grateful if you could clear the attached brief from a public affairs perspective. Cheers - Stephen

Stephen Richards
Manager - Film Incentives & International
tel: 61-2-62759645
x: 61-2-62759659

s47F

e-mail: stephen.richards@environment.gov.au
web: www.arts.gov.au

DEPARTMENT OF THE ENVIRONMENT, WATER, HERITAGE AND THE ARTS

Minister for the Environment, Heritage and the Arts (Decision)

cc: Secretary, Deputy Secretary, FAS – Culture

Brief No:	B09/xxx
Division/Agency:	CD
Public Affairs Consulted:	Yes

REVIEW OF FOREIGN ACTOR GUIDELINES – RESPONSE TO MEAA

Timing: Routine brief in response to ministerial (C09/9076). 26 June 2009.

Purpose: For you to sign the letter to the Media, Entertainment and Arts Alliance (MEAA) at Attachment A.

Background: The Migration Regulations 1994 prescribe that foreign actors seeking to enter Australia to take part in film or television productions must receive certification from the Arts Minister. Each year 100-150 foreign actors receive certification to enter Australia for this purpose. Entry visas are only issued once foreign actor certification has been provided.

The Department administers the foreign actor certification scheme, consulting with the Department of Immigration and Citizenship (DIAC) and MEAA as necessary. The administrative arrangements followed by the Department are set out in the *Guidelines on the Entry into Australia of Foreign Actors for the Purpose of Employment in Film and Television Productions* (the Guidelines).

The Guidelines were drafted in the early 1990s and have not been substantively updated since then. The Department believes the Guidelines need to be reviewed to provide greater clarity on the treatment of foreign actors seeking to enter Australia to take part in film and television productions. As currently drafted, the Guidelines do not explicitly cover a range of production genres (eg documentaries, reality programs, etc), do not reflect current production budgets, and do not take account of significant changes to the nature of Government assistance (eg introduction of the Producer, Location and PDV Offsets, phase out of 10B/10BA schemes, etc).

The Department initiated a review of the Guidelines in late 2008. The review process involves all relevant industry stakeholders including MEAA, the Screen Producers Association of Australia, Screen Australia, and a number of independent producers and past sponsors of foreign actor entry. The Department is also liaising closely with DIAC. You wrote to MEAA on 9 December 2008 encouraging MEAA to work with the Department through the review process (C08/23892 refers).

Issues/ Sensitivities: To date the Department has invited and received submissions from all stakeholders on potential amendments to the Guidelines, prepared a discussion paper summarising stakeholder views, and, on 15 May 2009, convened an initial meeting of all stakeholders to discuss their views and potential Guideline amendments.

Consultation to date has revealed that stakeholders have strongly held, and in some cases opposite, views on how the Guidelines should be revised. MEAA supports minimal amendments and strict compliance in all instances to protect the employment opportunities of Australian actors. Producers, while supporting engagement of Australian actors wherever possible, support incorporating greater flexibility into the Guidelines to acknowledge the difficulties they can face from time to time in raising finance for productions without marquee (Australian and/or foreign) acting talent.

s47C

s47C

We are seeking to fairly reflect the views of all stakeholders. We are also seeking to achieve a consensus among stakeholders wherever possible. However, given the strongly held views of stakeholders it may not be possible to achieve complete agreement on all potential amendments to the Guidelines.

The review process, including extensive further consultation with stakeholders, will proceed over the next few months. When it is completed, we will provide you with a comprehensive brief setting out any proposed amendments, the rationale for those amendments and a detailed summary of stakeholder views.

Following the 15 May meeting, MEAA organised for a group of 31 prominent Australian actors to write to you (C09/9076 dated 25 May 2009) to express their concerns about the review process and the need to preserve the efficacy of the Guidelines in order to protect the employment opportunities of Australian actors and Australia's broader cultural interests.

It is proposed that you respond to the MEAA letter by noting that the review is an iterative ongoing process, indicating your support for there to be greater clarity and transparency in the Guidelines, and encouraging MEAA to continue to work with the Department through the review process. A letter to this effect is at Attachment A for your consideration and approval.

Recommendations: That you:

- | | |
|--|--------------------------|
| 1. Note progress to date with the review of the foreign actor entry Guidelines | 1. Noted/ Please discuss |
| 2. Sign the letter to MEAA at Attachment B | 2. Signed/ Not signed |

Stephen Arnott
Assistant Secretary
Film & Creative Industries
Branch/Culture Division
02 6275 9557 s47F
Stephen.Arnott@environment.gov.au

Secondary Contact
Stephen Richards
02 6275 9645 s47F
Email:
Stephen.Richards@environment.gov.au

MINISTER
/ /2009

...../...../2009

Consultation: DIAC, Screen Australia

Attachments: A Letter to MEAA responding to C09/9076

