

**Sircar, Sanjay**

**From:** Richards, Stephen  
**Sent:** Wednesday, 29 July 2009 11:29 AM  
**To:** Glenn, Raelene; Sircar, Sanjay  
**Subject:** FW: Background for meeting with Minister Evans' office staff on 3 August [SEC=UNCLASSIFIED]

**Importance:** High

**Categories:** UNCLASSIFIED

For information & file

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**From:** Richards, Stephen  
**Sent:** Wednesday, 29 July 2009 11:29 AM  
**To:** Palfreyman, Andrew  
**Cc:** Arnott, Stephen  
**Subject:** Background for meeting with Minister Evans' office staff on 3 August [SEC=UNCLASSIFIED]  
**Importance:** High

Andy

Some background for your meeting with officers from Minister Evans' office re the Migration Regulations which will be held in Minister Evans' office on 3 August follows:

- The adviser from Minister Evans' office you will be meeting with is Anne Clarke. DIAC officers attending will be Christine McFall (AS, Education and Tourism Branch, Migration and Visa Policy Division) and Colleen Santinon (Director, Specialist Entry Section).

s22



DEWHA review of foreign actor entry arrangements

- The 420 visa class includes an additional requirement for foreign actors entering Australia to appear in film and TV productions – they must obtain a Foreign Actor Certificate (FAC) from the Arts Minister or his delegate (ie SES officers in the Culture Division) before DIAC will issue a visa.
- DEWHA administers the FAC scheme. We are currently reviewing the FAC guidelines to improve their clarity (see C08/23892 for further background).
  - The review process includes consultation with all relevant industry stakeholders and DIAC.
  - We expect the review to be completed before the end of the 2009 calendar year.

s22



Stephen Arnott and I will meet you at Minister Garrett's office at around 9:30am on 3 August.

Let me know if you need anything further prior to the meeting.

Cheers

Stephen

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Stephen Richards  
Manager - Film Incentives & International  
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s47F



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web: [www.arts.gov.au](http://www.arts.gov.au)

**Sircar, Sanjay**

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**From:** Arnott, Stephen  
**Sent:** Wednesday, 9 September 2009 11:59 AM  
**To:** Richards, Stephen  
**Cc:** Glenn, Raelene; Sircar, Sanjay  
**Subject:** RE: SPAA RESPONSE TO DEWHA DRAFT RE FOREIGN ACTORS IMPORTATION GUIDELINES [SEC=UNCLASSIFIED]

**Categories:** UNCLASSIFIED

Thanks Stephen. I am happy to be involved if needed. Please check with Reahn re diary.

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

**From:** Richards, Stephen  
**Sent:** Wednesday, 9 September 2009 8:51 AM  
**To:** Arnott, Stephen  
**Cc:** Glenn, Raelene; Sircar, Sanjay  
**Subject:** FW: SPAA RESPONSE TO DEWHA DRAFT RE FOREIGN ACTORS IMPORTATION GUIDELINES [SEC=UNCLASSIFIED]

Stephen

SPAA's response to some drafts sections of the guidelines it was agreed by our working group that DEWHA should prepare for comment.

The SPAA request includes a request for a meeting to discuss further next week. I propose to accept and discuss in much the same way we did with MEAA official re the drafts on 31 August. Would you like to sit in on the discussion? If so, what days/times next week are you available?

Re MEAA, it also submitted its written response on 4 September - copy attached.

s47C

Sanjay is preparing a summary of working group member submission response as they come in (we may receive another few more in the next week or so). Once we have a summary together we will brief you on the working group member positions and options for moving forward.

Cheers

Stephen

s22

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

**From:** Geoff Brown [mailto:geoff@spaa.org.au]  
**Sent:** Tuesday, 8 September 2009 5:41 PM  
**To:** Richards, Stephen  
**Cc:** Bethwyn Serow; Julie Marlow; IFM Films; Brian Rosen; Vincent Sheehan; Daniel Scharf  
**Subject:** SPAA RESPONSE TO DEWHA DRAFT RE FOREIGN ACTORS IMPORTATION GUIDELINES

Dear Stephen

Please find attached SPAA's response to latest draft guidelines re importation of foreign actors with a request for follow up meeting in Canberra next week.

Regards

Geoff

File - Review

**Sircar, Sanjay**

**From:** Richards, Stephen  
**Sent:** Friday, 18 September 2009 10:42 AM  
**To:** 'Lynn Paetz'; 'Catherine McDonnell'  
**Cc:** Glenn, Raelene; Sircar, Sanjay  
**Subject:** Summary of comments [SEC=UNCLASSIFIED]

**Importance:** High

**Categories:** UNCLASSIFIED

**Attachments:** teleconference summary-mcdonnell & paetz-16sep.doc

Lynn  
Catherine

Thanks for your time on Wednesday to go over some of your reactions to the foreign actor guidelines and some of the suggested amendments DEWHA put forward in my e-mail of 7 August.

Attached is a quick summary of what I took to be the main points you raised. Let me know if I've misinterpreted or misrepresented any of your views, or if you have any further comments you would like to add. I'd be happy to amend the summary to better reflect your views.



teleconference  
summary-mcdonnell

As for the next steps:

- We are awaiting a couple of comments about the 7 August drafts from other members of the working group who originally came together on 15 May. Once those are in, we will circulate written submissions so working group members can see one another's comments. If OK with you both, I'd like to circulate the summary of our phone conversation as part of that. Let me know if you have any concerns on that front.
- DEWHA will prepare a full revised draft of the guidelines taking account of the views expressed at the 15 May meeting and subsequently provided in response to the 7 August drafts. We will then circulate this to working group members for further comment. We may even organise a meeting of the working group to go through the draft and their further comments.
- DEWHA will then prepare a final draft of the guidelines for consideration by the Minister. I am hoping we can provide this to him before Christmas. The brief accompanying the draft will clearly outline the views of working group members on the draft.

Anyway, in the first instance, I look forward to your comments on the summary document and whether or not you are happy for it to be circulated.

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

Cheers

Stephen

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**Sircar, Sanjay**

**From:** Richards, Stephen  
**Sent:** Thursday, 12 November 2009 11:47 AM  
**To:** Arnott, Stephen  
**Cc:** Sircar, Sanjay  
**Subject:** FOR CONSIDERATION - Foreign actor guidelines - draft for comment  
 [SEC=UNCLASSIFIED]

**Importance:** High

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** UNCLASSIFIED

**Attachments:** Guidelines - Draft - 11 November 2009 for stephen arnott.doc

Stephen

Attached is a revised draft of the foreign actor guidelines, which we are now calling "foreign performer guidelines" because we are proposing to slightly expand the range of roles specifically covered by the guidelines to include presenters/hosts of documentaries, for your consideration and discussion.



Guidelines -  
 aft - 11 Novemt

While using the current guidelines as a bit of a model, we have moved a little away from that structure and some of the formulations of words. We're proposing that once the policy framework in the guidelines is settled (hopefully with consensus support from stakeholders) we will then talk with DIAC about the need for any subsequent amendments to the Migration Regulations so the guidelines and regs are consistent.

s42

We will also be discussing Section E of this draft with DIAC and MEAA in the next week or so to finalise the administrative process for sponsors submitting applications and DEWHA issuing certificates.

I'm not proposing we discuss the draft with MEAA (in any further detail beyond the admin process) or SPAA until after we've worked through all the policy issues and options with you. Once we've worked through that, one on one meetings may be the best way of proceeding. Hopefully, we may be able to start having those discussions pre-Xmas.

You'll note there are some comments in the border of the draft where we've identified some of the main policy issues and the views of MEAA and SPAA on these issues.

Can Sanjay and I discuss with you after you've had a chance to read through the draft?

Cheers

Stephen

PS If you want to compare the draft with the current guidelines, you can find them at:  
[http://www.arts.gov.au/film/film\\_foreign\\_actors\\_for\\_film\\_or\\_television](http://www.arts.gov.au/film/film_foreign_actors_for_film_or_television)

**Sircar, Sanjay**

**From:** Richards, Stephen  
**Sent:** Friday, 13 November 2009 2:06 PM  
**To:** Arnott, Stephen  
**Cc:** Sircar, Sanjay  
**Subject:** Foreign actors review - MEAA corro & briefs to Minister [SEC=UNCLASSIFIED]

**Categories:** UNCLASSIFIED

Stephen

As discussed, we've briefed Minister 3 times on this issue, twice in response to corro from MEAA.

The briefs and their status is as follows:

- C08/23892 - which covered a response to MEAA letter dated 5 September 2008 complaining about DEWHA's application of the guidelines and stimulated the review, which we outlined in the Minister to this brief. The Minister signed the letter of response on 9 December 2008 indicating DEWHA and MEAA should review the guidelines and look to reconcile their differences of opinion.
- C09/9076 - which covered a response to the letter dated 25 May 2009 from the group of 30 or so actors complaining about DEWHA's approach in our discussion paper kicking off the guidelines review. The brief and a letter of response was sent up through slipstream on 9 June 2009. It is still marked in Slipstream as "MO processing".
- B09/2839, which was sent up on 21 October to outline the differences of opinion between stakeholders being consulted and MEAA's views on the key issues. We asked for the Minister to note the brief by 27 November. It is still marked in Slipstream as "MO processing".

Cheers

Stephen





**DEPARTMENT OF THE ENVIRONMENT, WATER, HERITAGE AND THE ARTS****Minister for the Environment, Heritage and the Arts** (Information)**Brief No:** B09/2839**Division/Agency:** Arts - Culture**Public Affairs Consulted:** Yes**cc:** Secretary, Deputy Secretary, FAS – Culture**REVIEW OF FOREIGN ACTOR GUIDELINES - PROGRESS REPORT****Timing:** 27 November 2009 – Routine brief**Purpose:** To update you on progress with the review of the foreign actor certification guidelines and issues raised by stakeholders through the consultation process.**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. Visas are issued by the Department of Immigration and Citizenship (DIAC) once foreign actor certification has been provided.

The Department administers the foreign actor certification scheme, consulting with DIAC and the Media Entertainment and Arts Alliance (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).

We have previously advised you that through 2009 the Department has been reviewing the Guidelines, which have not been substantively updated since the early 1990s (C08/23892 and C09/9076 refer). The objectives of the review are to ensure the Guidelines are clear, transparent and take account of changes to the way in which productions are financed (eg introduction of the Producer Offset, changing levels of foreign investment, etc).

The review is being undertaken in consultation with relevant industry stakeholders including DIAC, Screen Australia, MEAA, local producers, and industry stakeholders who have sponsored foreign actor entries in the past. The Department met with all industry stakeholders in May and has had subsequent discussions with a number of them since. In addition, stakeholders have been provided with opportunities to comment on the issues they believe need to be addressed in the revised Guidelines and on draft revisions. Further opportunities will be provided as the Department continues the drafting process over the next few months.

**Issues/Sensitivities:**

Consultation has revealed that stakeholders have strongly held, and in some cases opposing, views on how the Guidelines should be revised. It is nonetheless important that the Guidelines be revised to ensure they are consistent with the Government's objectives for the film and television industry.

MEAA supports minimal amendments and strict compliance in all instances to protect the employment opportunities of Australian actors and provide them with opportunities to showcase their skills to national and international audiences. MEAA also maintains that the Australian Government's cultural policy objectives require a strict application of the Guidelines so that local film makers tell Australian stories using Australian voices.

Producers, while supporting the engagement of Australian actors wherever possible, also 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. Producers maintain that greater flexibility will also allow them to make films with stronger domestic and international audience appeal. They argue this is consistent with the Australian Government's film policy objectives of encouraging a commercially sustainable industry.

The Department, working with Screen Australia, is seeking to achieve consensus on the policy objectives underpinning the employment of foreign actors in film and television production and then to reflect the policy intent in the Guidelines. However, given the strongly held views, it is likely there will not be a consensus on all issues. The Department's priority is to ensure that the Foreign Actor Guidelines strike the right balance between a commercially sustainable film and television industry, and employment opportunities for Australian actors. s22

s22 s22 s22 s22 For an outline of key areas of opposing stakeholder views see Attachment A.

At the completion of the consultation and drafting process in late 2009/early 2010 we will provide you with a draft of the revised Guidelines for your consideration and approval. The accompanying brief will provide you with a comprehensive outline of proposed amendments, the rationale for those amendments and a detailed summary of stakeholder views.

Once the revised Guidelines are agreed, the Department will then seek any necessary consequential amendments to the Migration Regulations. If amendments are required, you will need to write to the Minister for Immigration and Citizenship to advise proposed amendments.

s22

**Recommendation/s:** That you:

1. note the information provided.

SIGNED

Stephen Arnott  
Assistant Secretary  
Film & Creative Industries  
Branch/Culture Division  
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[Stephen.Arnott@environment.gov.au](mailto:Stephen.Arnott@environment.gov.au)  
20/10/2009

Secondary Contact  
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Noted/ Please discuss

MINISTER  
10/10/2009

**Consultation:** Screen Australia, Department's Policy Coordination Division (Legal Section),

**Attachments:** A Summary of issues on which stakeholders have divergent views

**DEPARTMENT OF THE ENVIRONMENT, WATER, HERITAGE AND THE ARTS**

**Minister for the Environment, Heritage and the Arts (Information)**

**cc: Secretary, Deputy Secretary, FAS – Culture**

<b>Brief No:</b>	B09/2839
<b>Division/Agency:</b>	Arts - Culture Division
<b>Public Affairs Consulted:</b>	Yes

**REVIEW OF FOREIGN ACTOR GUIDELINES - PROGRESS REPORT**

**Timing:** 27 November 2009 – Routine brief

**Purpose:** To update you on progress with the review of the foreign actor certification guidelines and issues raised by stakeholders through the consultation process.

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s22

**Recommendation/s:** That you:

1. note the information provided.

Noted/ Please discuss



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MINISTER  
/ /2009

20 / 10 / 2009

**Consultation:** Screen Australia, Department's Policy Coordination Division (Legal Section),

**Attachments:** A Summary of issues on which stakeholders have divergent views

## **SUMMARY OF ISSUES ON WHICH STAKEHOLDERS HAVE DIVERGENT VIEWS**

### **Genres and roles covered by the Guidelines**

The Migration Regulations (the Regulations) apply to all foreign entertainers entering Australia to take part in a film and television production. The Regulations also require applicants to consult MEAA in relation to the employment of foreign actors in film or television productions.

The Guidelines indicate they apply to foreign actors taking part in feature films, telemovies, miniseries and *bona fide* unofficial co-production series and serials, with other forms of film and television production to be treated as 'exceptional cases' and considered on a case-by-case basis. The exceptional case provision has only been applied occasionally in relation to some presenters of documentaries and reality television series.

MEAA maintains the Guidelines should apply to all foreign entertainers appearing in all forms of film, television and new media productions including feature films, television series and telemovies, discussion, quiz and variety programs, television commercials, electronic games and so on. MEAA levies a 'consultation fee' of \$550 per actor on each application for foreign actor entry on which it is consulted.

Producers believe the Guidelines should only apply to foreign actors employed to appear in drama productions.

Ongoing discussions on this issue have seen neither stakeholder concede any ground. There is likelihood that whichever stakeholder view is not adhered to on this issue will generate some public criticism of the decision.

### **Subsidised and unsubsidised productions**

The Regulations set different criteria for the entry of foreign actors depending on whether it is proposed they take part in a government subsidised or a non-government subsidised production. In this instance, 'government' means the Commonwealth or any state/territory government.

Subsidised productions are required to satisfy the requirements on the 'Australian Content Criteria' (ACC) which are prescribed in the Guidelines. By comparison, the Regulations prescribe that non-subsidised productions must only ensure that Australian citizens and residents are provided with a 'reasonable opportunity to participate in all levels of the production' (demonstrated by a casting exercise when considered appropriate) and that foreign investment is greater than the sum expended on the foreign actors.

The ACC sets a number of requirements in relation to the nature of the role(s) to be performed, the number of other major roles that should be performed by Australian actors and the level of foreign investment that should be met before employment of a foreign actor is permitted. The ACC's requirements for assessing the appropriateness of foreign actor involvement are different to those Screen Australia considers in its assessment of the Producer Offset's Significant Australian Content (SAC) test.

MEAA believes all productions in receipt of direct and indirect government support should be required to satisfy the ACC standard.

Producers generally accept that the ACC is appropriate for productions in receipt of direct government assistance, or a combination of direct and indirect assistance. However, they are opposed to the ACC being applied to productions which are eligible to apply for the Producer Offset and receive no other form of government subsidy. Rather they believe these productions should only be required to comply with the SAC test.



### Australian productions not in receipt of any form of government subsidy

The Regulations do not differentiate between 'Australian' and 'non-Australian' productions. They are only concerned with whether a production is subsidised or not.

MEAA believes all 'Australian' productions should be required to satisfy the ACC standard whether they are subsidised or not. MEAA regards Australian productions as being any project in which Australians exercise creative control. Such a definition would include feature films and television productions in receipt of direct government subsidies and/or the Producer Offset. It would also include local productions financed without any form of government assistance (eg television serials such as *Neighbours*, variety and entertainment programs appearing on free to air television such as *Rove*, *20:1* and *Masterchef*). MEAA believes the ACC will ensure 'Australian' productions tell Australian stories using Australian voices.

Producers are strongly of the view that any 'Australian' productions not in receipt of government subsidy and/or the Producer Offset should only be required to comply with the criteria for non-subsidised productions. They argue if they are to build sustainable businesses and make productions with strong commercial appeal they should not be constrained from making commercial decisions.

### Appearances where primary purpose of foreign performer's visit to Australia is for some other purpose than appearing in a film and television production

The Regulations require all foreign performers entering Australia to obtain an entertainment visa. Visas are valid for a specific purpose and no more than one visa is valid at any time. DIAC processes all applications. Only foreign actors are required to obtain additional certification prior to submitting their visa application to DIAC.

Apart from actors, the foreign performers who visit Australia to undertake paid performances include singers, musicians, dancers, comedians, magicians, circus performers and so on. The primary purpose of their visits is usually to conduct tours involving a series of live performances.

There are two basic instances in which foreign performers who are not actors may take part in film and television productions in Australia. These are:

1. Incidental filming or televising of live performances (eg broadcasts of ballet, opera or stand-up comedy festivals; musical 'half time show' performances at sporting events; etc).
2. Very occasionally, television producers have sought to include foreign performers who are in Australia for another purpose (eg concert tour) to making very brief appearances as themselves in television serials such as *Neighbours*.

To date no foreign actor certificates have been issued in relation to either (1) or (2).

MEAA is strongly of the view that foreign actor certificates should be required for all foreign entertainers covered by (1) and (2) above even though they have a valid entertainment visa for the primary purpose of their visit. It maintains that all such performers are performing roles that would otherwise be performed by Australians.

DIAC is opposed to foreign actor certificates being required for (1) and (2) because such a requirement would complicate the visa process for the foreign performers and create the potential for foreign performers to be in Australia without a valid visa. Producers are also opposed to such an arrangement because they see it is unwieldy and unnecessary.

In relation to (2), producers also argue that such roles do not deny Australian actors jobs – only a foreign performer can play him/herself – and are valuable in maintaining and building audience interest in the Australian market and in foreign markets where the foreign performer is well known.

## of Foreign investment

ACC sets out a matrix of production budgets which provides guidance on the number of foreign actors who may be employed. Broadly, as a production budget increases the capacity to employ foreign actors in lead, support and cameo roles increases. However, the matrix also requires productions to have a minimum 30 per cent of foreign investment.

MEAA argues this is a necessary level of foreign investment to ensure it is appropriate to consider employing 1-2 foreign actors in prominent roles. It does not believe this level of foreign investment should be lowered.

Producers maintain that film financing models are changing and that foreign investment rarely reaches 30 per cent for most Australian feature films (Screen Australia's "Get The Picture" indicates that over the last 10 years the average level of foreign investment in feature films is in the 15-20 per cent range) and consideration should be given to certifying the employment of foreign actors where foreign investment makes up at least 15 per cent of a production's finances, or where private investment (either foreign or Australia) is dependent on the employment of a foreign marquee actor.





**Sircar, Sanjay**

**From:** Richards, Stephen  
**Sent:** Tuesday, 17 November 2009 12:37 PM  
**To:** Arnott, Stephen  
**Cc:** Sircar, Sanjay  
**Subject:** Summary of foreign actor certifications [SEC=UNCLASSIFIED]

**Categories:** UNCLASSIFIED

**Attachments:** DEWHA & MEAA annual number of foreign actors summary.doc

Stephen

The attached document summaries:

- The number of foreign actors certified by DEWHA from 2003-04 through 2008-09
- The number of foreign actors MEAA maintains should have been certified if all film & television productions are included from 2006-2008



DEWHA &  
annual number

Unfortunately DEWHA collates data on a financial year basis and MEAA on a calendar year basis so figures not directly comparable.

The grey highlighted sections of the table of MEAA figures indicates the production categories that would be excluded from the scope of the guidelines if the limited scope we are considering for the revised Guidelines is adopted.

NB: While it would be desirable to limit the scope of the Guidelines, this is not the highest priority for proposed amendments to the Guidelines. Of greater importance would be inclusion of (1) the flexibility provisions allowing sponsors to make a case for entry under defined special circumstances such as ethnic requirements, private investment dependent on engagement of foreign actor, etc, and (2) levels of criteria for subsidised productions seeking foreign actor involvement which differentiate between productions in receipt of direct government assistance, Producer Offset assistance only and Location Offset support. s47C

s47C

Cheers

Stephen

## 2003/04-2008/09 Numbers of Foreign Actors Certified (DEWHA figures from 2008-09 Annual Report)

	2003/04	2004/05	2005/06	2006/07	2007/08	2008/09
Number of foreign actors certified	120	167	114	154	137	103

s22

Migration Regulations provide that foreign actors entering Australia to take part in film and TV productions should be certified.

MEAA wants strict compliance with current Migration Regulations so that all forms of film and television production are covered by the Guidelines.

DEWHA interprets current scope of the Guidelines as limited to drama productions and documentaries. Have been some unwritten 'conventions' with MEAA where some foreign actors on reality TV programs have been certified. DEWHA has not certified foreign actors in the TVC, sports, promotions, music, light entertainment or miscellaneous categories

Highlighted genres in MEAA table would be the productions excluded under limited scope DEWHA proposes under the revised Guidelines.



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*Sanjay - for info +  
 review file  
 Seph 30/11*

# WORK ON FOREIGN COMMERCIALS DRIES UP

## Dollar smashes ad production

**SIMON CANNING**

AUSTRALIAN actors and production companies are paying a high price as a result of the global financial crisis and the strength of the Australian dollar because once lucrative overseas work on television commercials is slowing to a trickle.

With the film industry in the doldrums, commercials made for overseas markets have historically been an important method for actors and production houses to plug gaps between movie shoots.

During the late 1990s and early 2000s, Australia became a preferred destination for brands wanting top directors and production facilities at cut-price rates, the streets of Sydney and Melbourne regularly being dressed up as downtown New York or some sleepy midwest US town, for ads to be aired in the US and Britain.

And Australian actors became adept at mimicking US accents.

The industry does not keep official statistics on the number of overseas ads shot in Australia, but research suggests a massive loss in a once buoyant export industry.

Research conducted by Penny Parker, of advertising industry monitoring company Portfolio & Reel, shows that by the end of last year the number of ads being shot for overseas destinations had slowed massively.

In 2000, when the dollar was trading in the 50c range, there were more than 150 TV commercials shot in Australia, but by last year, when the dollar was trading at an average of 77c, just 93 were produced.

Ms Parker said she expected that figure to be down even further this year.

Lizzy Nash, founder of Walkabout Films, which for almost 15 years has specialised in making ads in Australia for overseas cli-

ents, said there had been a profound downturn in demand and that the strength of the Australian dollar was a major cause.

"The drop in current production, which is a combination of the global economic crisis, the low US dollar and some negative press on the offshore agreement (with actors) could be as high as 60 to 75 per cent for most companies," Ms Nash said.

The offshore agreement was a blow to the local production industry when members of the Media Arts and Entertainment Alliance voted to refuse to work on commercials being shot for overseas markets after the Screen Producers Association of Australia scrapped a minimum conditions deal.

SPAA argued the Australian production industry could no longer compete against other emerging markets, including New Zealand and Canada, because of the cost of actors.

In the 12 months to June, SPAA claimed Australian production companies had lost out on more than \$60 million worth of business.

Since the minimum conditions were scrapped, however, economic conditions have kept the market depressed.

SPAA production executive Bethwyn Serow said the strong dollar had posed major problems for the industry that had overshadowed the MEAA's action.

"Overseas and local TV commercials are what keep people ticking over between the cultural highlights of movies," Ms Serow said.

"The Australian dollar has been so high for so long at a time when the global financial crisis has put the screws on the budgets underneath.

"America is not working and so we are doing it tough."

Ms Nash said the ending of the SPAA agreement had helped

marginally, but agreed that issues with the dollar were the key factor.

"We are not seeing the scripts coming in," she said.

"We are seeing inquiries and there has been a little bit of a lift since SPAA resigned from the agreement."

Still, Ms Nash said that in the past year, Walkabout had created work for about 68 actors working for overseas commercials.

"We have contributed over \$820,000 in income to local actors over the past two years," she said.

The advertising industry is now entering the period when, traditionally, overseas ad agencies and brands have flocked here to shoot their commercials.

"It normally cranks up between now and February," she said.

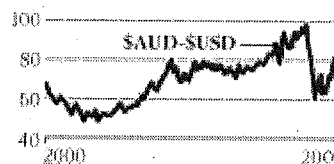
Ms Nash said that although she did not expect the number of ads being shot in Australia to again reach the heights of earlier in the decade, the company was seeing many overseas companies negotiating to continue to use footage already shot for the use in new ad campaigns.

Over the past year, the number of overseas commercials being shot in Australia has been reduced to just two a month.

Walkabout Films recently shot a campaign for US restaurant chain Outback Steakhouse, ironically an Australian-themed business.

### Dollar woes for ad industry

Year	Ads filmed in Australia	SAUD-SUSD*
2000	150	57.6c
2008	93	85.2c
2009	37	77.7c



\*Assumes Source: Portfolio & Reel/ABC.com.au





**Australian Government**

**Department of the Environment,  
Water, Heritage and the Arts**

## **Foreign Performers Certification Scheme**

**Comment [A1]:** On-screen?

# **Guidelines for the entering into Australia of foreign performers for the purpose of performing in Film or Television Productions**

**Comment [A2]:** Or “taking  
part”

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**Deleted:** film and television  
productions

**Australian Government**

**[insert month] 2010**

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## FOREIGN PERFORMERS CERTIFICATION SCHEME

### Guidelines on the entering into Australia of foreign performers for the purpose of performing in Film or Television Productions

#### 1. INTRODUCTION

1. This revised version of the *Guidelines on the Entry into Australia of Foreign Performers for the Purpose of Employment in Film or Television Productions* was adopted on [?? 2010].
2. The Guidelines deal exclusively with the employment of specified on-screen performers entering Australia to take part in specified Film and Television Productions. They are the basis on which the Arts Minister, or a person authorised by the Arts Minister, determines whether to certify that specified requirements identified in the Migration Regulations have been met.
3. The Migration Regulations require that a subclass 420 visa, which is assessed against the criteria in sub-paragraphs 2.72D(4) and (5), not be approved unless the visa application is supported by a Foreign Performers Certificate issued by the Arts Minister.
4. In addition, the Migration Regulations require that the sponsorship of the proposed visa applicant cannot be approved unless the sponsor has consulted the relevant Australian unions. For the purposes of these Guidelines, the relevant union is the Media Entertainment and Arts Alliance (MEAA). This consultation process is undertaken as part of the process of applying for a Foreign Performers Certificate from the Arts Minister.
5. The Guidelines support key Government objectives for the film and television industry including providing Australian industry personnel with a fair chance of securing employment in Film or Television Productions shot in Australia, ensuring Australian voices are heard in Australian productions, and building a commercially sustainable film and television industry.
6. The Guidelines are administered by the Department of the Environment, Water, Heritage and the Arts (DEWHA).

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Comment [A3]: Or "taking part"

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## 2. SECTION A - SCOPE

1. The Foreign Performers Certification Scheme applies to the import of foreign on-screen performers taking part in the following specified forms of Film or Television Production intended for distribution via platforms such as cinema, television broadcast, DVD, and Internet and mobile devices:
  - a. Feature Films
  - b. Telemovies
  - c. Series, Serials and Sketch Comedy programs
    - i. excluding foreign performers/celebrities who take part or make brief, one-off appearances as themselves in Film or Television Productions, when this participation is incidental to their main purpose for entering Australia (which might include live performance concert tours and other promotional activities)
  - d. Documentaries and dramatised Documentaries
    - i. excluding all on-screen performers other than foreign hosts and foreign performers in dramatic roles
2. The Guidelines set out the circumstances under which applications can be considered for the import of foreign performers to take part in the Film or Television Productions and roles specified above.
3. The Guidelines do not apply to:
  - a. foreign performers in roles or forms of Film or Television Production other than those specified above. Visa applications for such performers will be considered by the Department of Immigration and Citizenship (DIAC) under sub-paragraph 2.72D(7) of the Migration Regulations; or
  - b. foreign performers seeking visas to enter Australia under an agreement between Australia and another country, such as Australia's bilateral film co-production agreements. In such cases, the application will be considered by DIAC under sub-paragraph [\*\*\*TBC\*\*\*] of the Migration Regulations. Screen Australia administers the Commonwealth Government's International Co-production Program and determines applications for projects to be approved as Official Co-productions.

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**Comment [DEH4]:** MEAA believes the guidelines should apply to all performers and all forms of production; based on DEWHA's past application of the Guidelines we propose to limit to discreet major roles in drama productions and documentaries; concept of drama production is based on 2005 Australian Content Standard.

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**Comment [DEH5]:** This exclusion is to cover the recent s45 s45 type appearance in MEAA will strongly oppose

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**Comment [DEH7]:** Getting reference from DIAC



### 3. SECTION B - TERMS AND DEFINITIONS

**'Australian Content Criteria' or 'ACC'** means the criteria set out in "Subsidised Productions: Category 1, Category 2, and Category 3" in these guidelines.

**'Cameo Actor Role'** means a brief but important role in a Film or Television Production, usually performed by a well-known screen performer.

**'Documentary'** means a program which is a creative interpretation of actuality, provides a detailed study of real people and/or events, presenting an issue, subject or theme of social, political or general interest, and often deals with travel, science, and historical subjects but excludes news or current affairs, sports coverage, magazine, infotainment, light entertainment, and reality programs.

**'Feature Film'** means a film, including animations, commonly screened as the main attraction in commercial cinemas that is no less than 60 minutes, or in the case of a larger format (IMAX) film no less than 45 minutes, and shot and processed to commercial standards for cinema exhibition, television broadcast or distribution via other platforms.

**'Film or Television Production'** means a production intended for cinema exhibition, television broadcast, or distribution via other platforms (such as DVD, and internet and mobile phone downloads) but does not include computer games.

**'Foreign Investment'** includes overseas sourced funds where such investment is secured against returns from foreign markets, regardless of whether the funds are equity investment or not, including direct investment and revenue raised through pre-sales and distribution in overseas markets.

**'Government Subsidy'** means and includes any form of government financial support other than developmental funding and including:

- (i) direct subsidies such as direct investment, loans, distribution guarantees and pre-sales;
- (ii) indirect subsidies such as tax concessions (e.g. Producer Offset, Location Offset, Post, Digital and Visual Effects Offset in Division 376 of the *Income Tax Assessment Act 1997*).

For the purposes of this definition 'government' includes Commonwealth and state and territory governments.

**'Host'** means the central performer in a documentary who introduces and presents the material to a viewing audience and who may also be referred to as "compere", "presenter", "commentator" or "narrator".

**'Leading Actor Role'** means the role of protagonist or one of the central or main roles in a Film or Television Production.

**'Motion-capture Performer'** means a performer in a computer animation production in a role which involves a performance from which points can be tracked on a moving face or body in order to get a simplified image of motion, e.g. the animation of the penguins in Happy Feet.

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<#>direct subsidies such as direct investment, loans, distribution guarantees and pre-sales:¶  
<#>indirect subsidies such as tax concessions (e.g. Producer Offset, Location Offset, Post, Digital and Visual Effects Offset in Division 376 of the *Income Tax Assessment Act 1997*):¶

For the purposes of this definition 'government' includes Commonwealth and state and territory governments. ¶

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**‘Official Co-production’** means a production for which a performer seeks to enter Australia under an agreement between Australia and another country, under the International Co-production Program administered by Screen Australia, for which visa applications are considered by the Department of Immigration and Citizenship (DIAC) under sub-paragraph **\*\*\*CHECK\*\*\*** of the Migration Regulations.

**‘On-screen Performer’** means:

- (i) a performer in a Feature Film; Telemovie; drama Series, Serial or Sketch Comedy program; or Dramatised Documentary who is performing:
  - (a) a Leading, Supporting or Cameo Actor role;
  - (b) as a Dancer, Motion-capture Performer, Puppeteer, Stunt performer or Voice-over Performer; or
- (ii) a host in a Documentary or Dramatised Documentary.

**‘Puppeteer’** means a manipulator of any variety of puppet, whose work appears in a Film or Television Production.

**‘Serial’** means a Film or Television Production which is a narrative series made up of two or more episodes that:

- (i) are produced wholly or principally for public exhibition under a single title, for both free-to-air (broadcast network) and subscription television (cable or satellite); and
- (ii) comprise a potentially unlimited number of episodes, relating a number of equally important and overlapping plots, without an apparent single major plot necessarily moving towards a resolution and arranged into consecutive episodes for screening purposes.

**‘Series’** means a Film or Television Production which is a narrative series made up of two or more episodes that:

- (i) are produced wholly or principally for public exhibition under a single title, for both free-to-air (broadcast network) and subscription television (cable or satellite);
- (ii) have a common theme or themes that draws the episodes of the series into a cohesive whole;
- (iii) contain dramatic elements that form a narrative structure; and
- (iv) are intended for exhibition together in a national market or markets.

**‘Sketch Comedy Program’** means a Film or Television Production of a comedy program comprising sketches that are short, self-contained stories or plots; but does not include a stand-up comedy program or an incidental sketch that is a component in a program of another kind.

**‘Sponsor’** means an Australian producer applying for a Foreign Performers Certificate or an Australian sponsor acting on behalf of a foreign producer in making this application.

**‘Stunt Performer’** means a performer engaged to perform dangerous scenes in a Film or Television Production and/or who doubles for one of the actors chosen for a particular role.

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**'Supporting Actor Role'** means a role which is more than a cameo but not a central role in a Film or Television Production.

**'Telemovie'** means a drama program of a like nature to a Feature Film, which is not less than one commercial television hour in length and shot and processed to commercial release standards for television broadcast or distribution via other platforms (such as DVD and internet and mobile phone downloads).

**'Traditional Australian Character'** means an Australian character that appears in Australian literature (e.g. *Man from Snowy River*, *The Shiralee*, etc) or is part of Australia's history and/or folklore (e.g. Dame Nellie Melba, Ned Kelly, etc).

**'Voice-over performer'** means a performer who provides recorded dialogue or narration, that comes from an unseen, off-screen voice in a Film or Television Production.

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**Deleted: 'Serial'** means a narrative series made up of two or more episodes that: ¶  
<#>are produced wholly or principally for public exhibition on television under a single title, for both free-to-air (broadcast network) and subscription television (cable or satellite); and ¶  
<#>comprise a potentially unlimited number of episodes, relating a number of equally important and overlapping plots, without an apparent single major plot necessarily moving towards a resolution and arranged into consecutive episodes for screening purposes. ¶

¶  
**'Series'** means a narrative series made up of two or more episodes that: ¶  
<#>are produced wholly or principally for public exhibition on television under a single title, for both free-to-air (broadcast network) and subscription television (cable or satellite); ¶  
<#>have a common theme or themes that draws the episodes of the series into a cohesive whole; ¶  
<#>contain dramatic elements that form a narrative structure; and ¶  
<#>are intended for exhibition together in a national market or markets. ¶

¶  
**'Sketch comedy program'** means a comedy program produced for television comprising sketches that are short, self-contained stories or plots; but does not include a stand-up comedy program or an incidental sketch that is a component in a program of another kind. ¶

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#### 4. SECTION C - TREATMENT OF SUBSIDISED AND UNSUBSIDISED PRODUCTIONS

In accordance with the requirements of the Migration Regulations, the Guidelines set different criteria for assessing the appropriateness of foreign performers taking part in specified Film or Television Productions in Australia based on whether or not a production is, or will be, subsidised by an Australian government (i.e. Commonwealth, state or territory government).

Sponsors are required by the Migration Regulations to consult with the MEAA in relation to each application for a Foreign Performers Certificate before submitting the application to DEWHA. Details of the application process, including consultation requirements, are at Section E.

In seeking to import foreign performers, sponsors will need to identify the type of production proposed and satisfy the corresponding criteria as outlined below. Since every production that proceeds in Australia provides at least some benefit to the Australian screen industry through employment opportunities for performers, crews and other film production service providers, the onus is on the sponsor to mount a convincing argument in its application to DEWHA which demonstrates that the import of a foreign performer is necessary for a particular production [and that it serves cultural and commercial Government policy objectives?].

##### SUBSIDISED PRODUCTIONS

- 1) Productions are subsidised if they receive:
  - a) direct Government Subsidy
  - b) the Producer Offset
  - c) the Location or PDV Offsets
- 2) For a foreign performer to take part in a subsidised Film or Television Production, the application for a Foreign Performers Certificate must satisfy the requirements set out in the Australian Content Criteria (ACC) detailed below.
- 3) However, please note the ACC requirements vary depending on whether or not the production in which the foreign performer is to appear receives a direct Government Subsidy.

##### Category 1 - ACC for Film or Television Productions in receipt of direct Government Subsidy

- 1) Reasonable opportunity must be given to employing Australian performers at all levels of the production, and:
  - a) the casting of Leading and major Supporting Actor Roles must accurately reflect the Australian characters portrayed;
  - b) at least 50 per cent of performers in Leading Actor roles and 75 per cent of performers in major Supporting Actor Roles must be Australian; and
  - c) where applicable, an Australian performer must be cast to play each Traditional Australian Character.

**Deleted:** film and television productions

**s42**

**Comment [DEH13]:** Previously no distinction was made re form of subsidy and we excluded the tax offsets. MEAA & SPAA both wanted LO productions excluded from the higher standard requirement for direct government funded projects. MEAA also wanted a higher standard to apply to PO productions.

This is a compromise we've developed which sets highest standard for any production in receipt of direct government assistance (eg grants, investment, etc).

**Comment [A14]:** or - will receive - ?

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**Comment [DEH15]:** Area of SPAA concern; believe this needs to be more tightly defined; propose to leave as is; see definition for further detail

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- 2) The level of Foreign Investment in a production's budget will be a factor considered in assessing applications for the importation of foreign performers on a case by case basis. As a general guidance, the greater the level of Foreign Investment in the production over 20 per cent, the greater the possible opportunity for the employment of foreign performers in Leading, Supporting and Cameo Actor Roles within the above parameters. For example, where a minimum of:
- 20 per cent of a production's budget is Foreign Investment and the budget in the case of a Feature Film is less than \$4.0 million, in the case of a Telemovie less than \$2.0 million, or in the case of a Series or Serial less than \$0.75 million per television hour, the employment of one foreign performer may be appropriate;
  - 20 per cent of a production's budget is Foreign Investment and the budget in the case of a Feature Film is \$4.0-12.0 million, in the case of a Telemovie more than \$2.0 million, or in the case of a Series or Serial is \$0.75-1.0 million per television hour, the employment of one foreign performer in a Leading Actor Role and one foreign performer in a Supporting or Cameo Actor Role may be appropriate;
  - 20 per cent of a production's budget is Foreign Investment and the budget in the case of a Feature Film is more than \$12.0 million, or in the case of a Series or Serial, more than \$1.0 million per television hour, the employment of one additional foreign performer may be appropriate to play a Cameo Actor Role.
- 3) Where a sponsor seeks to import a foreign performer on the basis that a suitable Australian performer cannot be found, the sponsor must demonstrate that a genuine attempt has been made to locate a suitable Australian performer. DEWHA Casting Guidelines are at Section F.
- 4) When no Australian performer can be cast to satisfy the requirements of a role, the employment of a foreign performer may be appropriate in the following circumstances:
- highly specialist/unusual roles; or
  - ethnicity; or
  - continuity; or
  - unexpected change in the level of Foreign Investment; or
  - private investment being dependent on the engagement of a foreign performer; or
  - overall benefit to the Australian film and television industry.
- 5) If a sponsor seeks consideration on the basis of factors listed above, the sponsor will be required to provide additional evidence in support of their application as detailed in Section D.

**Category 2 - - ACC for Film or Television Productions**

**NOT in receipt of direct Government Subsidy**

**but eligible to access the Producer Offset**

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Comment [DEH21]: O ... [4]

- 1) The sponsor must provide evidence that the production has obtained provisional certification to access the Producer Offset. Evidence must include a copy of the Provisional Certificate and covering letter from Screen Australia.
  - a) Note. Further information regarding the Producer Offset application process is available on Screen Australia's website at [http://www.screenaustralia.gov.au/producer\\_offset/prov\\_certification.asp](http://www.screenaustralia.gov.au/producer_offset/prov_certification.asp)
  - b) Note. Productions in receipt of direct Government Subsidy in addition to accessing the Producer Offset must apply for Foreign Performers Certification under Subsidised Productions 'Category 1' above.

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### **Category 3 - - ACC for Film or Television Productions**

#### **eligible to access the Location or PDV Offsets**

- 1) The sponsor must provide evidence that the production intends to access the Location or PDV Offsets. Evidence may include a letter of intent from the relevant production company and/or demonstration that the production budget exceeds the Location or PDV Offset eligibility criteria for minimum expenditure thresholds.
  - a) Note. The fact that a production eligible to access the Location or PDV Offset may also be in receipt of direct Government Subsidy does not impose any additional requirements in this instance.

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### **UNSUBSIDISED PRODUCTIONS**

- 1) Unsubsidised productions, including those fully funded offshore, must satisfy the following criteria:
  - a) Australian citizens/residents have been provided with a reasonable opportunity to participate in all levels of the production; and
  - b) the sum of Foreign Investment exceeds the amount to be expended on the foreign performers while they are in Australia to take part in the unsubsidised production.
- 2) In making an application to import foreign performers, the sponsor must demonstrate that reasonable efforts have been made to cast Australian performers at all levels of the production. DEWHA Casting Guidelines are at Section F.
- 3) In relation to Foreign Investment, the sponsor must provide DEWHA with documentation demonstrating that the Foreign Investment component of the production's budget is greater than that expended on the proposed foreign performers while they are in Australia to take part in the unsubsidised production. Expenditure on foreign performers in Australia includes salary, living allowances, travel and other expenditure associated with their stay in Australia.

**Comment [DEH22]:** MEAA and SPAA both of view that flexibility is required for LO/PDVO productions and don't want small amounts of state govt support to impose higher standard re approach to foreign actors appearing in offshore productions (where it is not uncommon for 4-6 foreign actors to be cast)

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**Comment [DEH23]:** Retains current arrangement for unsubsidised productions. However, MEAA will strongly oppose treatment of 'Australian' productions such as Neighbours being treated in this way – it will regard this as a lowering of the standard.

**Comment [A24]:** Spent in Australia?

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**Comment [A25]:** spend in Australia?

**5. SECTION D - FLEXIBILITY CIRCUMSTANCES  
AND EVIDENCE REQUIRED  
FOR SUBSIDISED PRODUCTIONS :CATEGORY 1**

As noted in Section C, where the sponsor demonstrates that an Australian performer cannot be found to fill a role for a production in receipt of direct Government Subsidy (Subsidised Productions 'Category 1'), importation of a foreign performer may be considered in the circumstances outlined below on the basis of additional evidence provided by the sponsor in support of the application.

Please note that proof of a genuine search of the Australian labour market to fill the role with an appropriately qualified or experienced Australian performer will be required in the first instance. The evidence required is set out in the DEWHA Casting Guidelines at Section F.

Sponsors who intend to make an application for importation of a foreign performer in the following circumstances must mount a convincing case supported by the documentary evidence. The simple assertion that foreign performer participation is critical will not be sufficient.

Please also note that the circumstances detailed below are not intended to lead to exploitation as a minimum standard applied to all productions.

If a sponsor believes there are other compelling reasons to import a foreign performer beyond those circumstances detailed below they should contact both MEAA and DEWHA to present a case. Such approaches will be considered on their merits on an individual basis.

**1. Highly specialist/unusual roles**

- 1) The foreign performer is necessary to perform a highly specialist or unusual role which requires specific or specialist attributes including, but not limited to, physical appearance, physical talent and linguistic or vocal skills. Please note that foreign language and accent requirements\* for a particular role are not necessarily sufficient grounds for importing a foreign performer.
- 2) Evidence:
  - a) script or synopsis demonstrating that the role requires certain highly specialist attributes; and
  - b) documentation such as a listing of personal attributes or specialist skills from a resume or curriculum vitae that supports the claim that the proposed foreign performer possesses the attributes necessary to perform the role.

**2. Ethnicity**

\* Australia is a multicultural country. Many Australian performers are competent in a variety of languages other than English, and can speak an extensive range of English language and non-English language accents.

**Comment [DEH26]:** The following evidentiary requirements are based on UK system for entry of foreign performers appearing on film & TV productions

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**Comment [A27]:** and become in effect the default minimum standard which applies to all Film and Television Productions - ?

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**Comment [DEH28]:** MEAA and SPAA both support

**Comment [DEH29]:** MEAA and SPAA both support

- 1) The foreign performer is necessary for reasons of ethnicity required by the role.  
Please note that foreign language and accent requirements\* for a particular role are not necessarily sufficient grounds for importing a foreign performer.
- 2) Evidence:
  - a) script or synopsis demonstrating that specific ethnic characteristics are required by the role; and
  - b) documentation verifying that the proposed foreign performer is of the ethnicity required.

### **3. Continuity**

**Comment [DEH30]:** MEAA opposed; SPAA support

- 1) The foreign performer is necessary for reasons of continuity.
- 2) Evidence:
  - a) documentation, such as a performer contract, cast list or press clippings, supporting the claim that the foreign performer has worked on, or will be working on, the same production outside Australia for at least one month.

### **4. Unexpected change in the level of Foreign Investment**

**Comment [DEH31]:** MEAA (grudgingly) and SPAA both support

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- 1) Where the initial level of Foreign Investment in a production's budget allows for the importation of foreign performers, but decreases unexpectedly, consideration will be given to approving the importation of foreign performers already attached to the production. For example, if a foreign investor withdraws support due to financial pressures and is replaced by an Australian investor at short notice.
- 2) Evidence:
  - a) details of the production budget;
  - b) documentation from private investors committing to the production;
  - c) documentation verifying the genuine withdrawal of a foreign investor and the reasons for the withdrawal; and
  - d) documentary proof that a genuine attempt has been made to secure replacement foreign investors.

### **5. Private investment being dependent on the engagement of a foreign performer**

**Comment [DEH32]:** MEAA strongly opposed; SPAA support

**Deleted:** foreign investment

- 1) The foreign performer is commercially necessary to secure Australian and/or Foreign Investment in the production or overseas pre-sales and distribution deals.
- 2) Evidence:
  - a) details of the production budget;
  - b) one or more of the following documents as necessary:



- i) letter of confirmation from the production's principal private investor that finance in the production is dependent on the foreign performer's participation;
  - ii) letter of confirmation from the production's distributor that distribution is dependent on the foreign performer's participation;
  - iii) contracts indicating that overseas pre-sales are dependent on the foreign performer's participation;
- 3) where the foreign performer is internationally known, documentary proof of their box office appeal through international box office figures for productions in which they have undertaken lead or major supporting acting roles; and/or
  - 4) where the foreign performer is an emerging on-screen performer, or cast to appeal to a particular overseas audience, documentation in support of their potential box office appeal such as resume/filmography details including previous work, reviews, awards/accolades, and/or other evidence of audience appeal.

#### **6. Overall benefit to the Australian film and television industry**

- 1) The foreign performer is necessary to ensure that the production proceeds in Australia, and proceeds on the scale originally envisaged rather than being significantly diminished, and the size of the production's budget is such that associated local employment opportunities constitute an overall net economic benefit for the Australian film and television industry. Net economic benefit could include additional employment opportunities for Australian performers and crews, longer employment contracts as a consequence of a larger production budget and longer production schedules, and significant commercial opportunities for other film production service providers in Australia.
- 2) Please note that where a sponsor claims there is a financial imperative to engage a foreign performer which is not demonstrated by a higher level of Australian and/or Foreign Investment in the production budget a detailed explanation of that financial imperative will be required.
- 3) Evidence:
  - a) details of the estimated production budget including estimated expenditure in Australia if the production proceeds with the foreign performer's participation;
  - b) one or more of the following documents as necessary:
    - i) letter of confirmation from the production's principal private investor that investment in the production is dependent on the foreign performer's participation;
    - ii) letter of confirmation from the production's distributor that distribution is dependent on the foreign performer's participation;
    - iii) contracts indicating that overseas pre-sales are dependent on the foreign performer's participation;
  - c) number and description of the specific roles to be filled by Australian performers and the positions to be filled by Australian crew, all including employment contract details, if the production proceeds with the foreign performer's participation;

**Comment [DEH33]:** MEAA very strongly opposed. SPAA support

Concept we are seeking to cover is likely to be very rare but one that DEWHA approved as a one-off production **s45** years ago. Production with budget of **s45** wanted to employ foreign actors to play **s45** lead roles on basis that name foreign actors were necessary to support the level of foreign and Australian investment. One dimension of over consideration was that if foreign actors were not attached production might proceed but only with a budget of **s45** (ie significantly diminished with significantly reduced employment opportunities for actors, crew and service providers

**Deleted:** foreign investment

- d) estimated production budget (including expenditure in Australia) and the number of Australian performers and crew to be employed if the production proceeds without the foreign performer's participation.

**Deleted:** <#>number and description of positions to be filled by Australia crew including employment contract details; and¶

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DRAFT

## **6. SECTION E - APPLICATION PROCESS**

Applications for Foreign Performers Certificates should be made by Australian producers on behalf of performer applicants or by sponsors acting on behalf of foreign producers.

Applying for certification of the foreign performer through to the provision of the entertainment visa is a four part process as follows:

1. Initial contact with DEWHA and MEAA, and in special cases DIAC, to indicate sponsor is commencing application for a Foreign Performers Certificate;
2. Consultation with MEAA to obtain letter of opinion;
3. DEWHA assessment and decision on application for Foreign Performers Certificate; and
4. DIAC processing of application for entertainment visa.

To allow adequate time for consideration of applications, sponsors should commence the application process at least 10-12 weeks prior to the proposed date of entry into Australia of the foreign performer. Processing times may be accelerated to accommodate one-off applications where the sponsor has demonstrated exceptional circumstances apply.

### **1. Initial contact with relevant agencies**

- 1) Sponsors must advise DEWHA and MEAA of their intention to apply for a Foreign Performers Certificate required to import a foreign performer into Australia. This will provide an opportunity for information exchange and to clarify any initial questions the sponsor may have regarding the application process including relevant application forms and MEAA consultation requirements.
- 2) Sponsors should provide initial e-mail advice to  
DEWHA (E-mail: [foreignactors@environment.gov.au](mailto:foreignactors@environment.gov.au)) and  
MEAA (E-mail: [imports@alliance.org.au](mailto:imports@alliance.org.au))  
which sets out:
  - a) Name and contact details of sponsor;
  - b) Name of the production;
  - c) Number and nationalities of foreign performers for whom entry is being sought; and
  - d) Estimated arrival and departure dates.
- 3) Sponsors seeking to import 10 or more foreign personnel (including performers and crew) in a single application should also provide the above advice to DIAC by e-mail (E-mail: [entertainment.visas@immi.gov.au](mailto:entertainment.visas@immi.gov.au)).
- 4) For full contact details for agencies see Section G.

### **2. Consultation with MEAA to obtain letter of opinion**

**Comment [DEH34]:** To be finalised in concert with DIAC and MEAA; should be relatively straightforward

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**Deleted:** performers

- 1) Sponsors should consult with MEAA in advance of submitting their application for a Foreign Performers Certificate to DEWHA. MEAA considers the circumstances of each application and provides a letter of opinion to the sponsor and DEWHA based on its assessment of whether the proposed foreign performer importation complies with the Migration Regulations and DEWHA Guidelines.
- 2) MEAA requires the sponsor to provide a range of information in order to make this assessment including the following documentation (unless otherwise agreed with MEAA):
  - a) script or synopsis;
  - b) letter outlining the reasons for the proposed foreign performer import, including details of the production budget and level of Foreign Investment;
  - c) evidence of compliance with the DEWHA Casting Guidelines when the basis of the application is an inability to cast the role with an Australian performer;
  - d) details of the performer's itinerary;
  - e) foreign performer's resume; and
  - f) copy of the deal memo/contract with the foreign performer.
- 3) For further information and a comprehensive list of MEAA's requirements see: [http://www.alliance.org.au/imports\\_information/1/](http://www.alliance.org.au/imports_information/1/)
- 4) Where a sponsor approaches MEAA well in advance of submitting its application to DEWHA for a Foreign Performers Certificate, MEAA may provide an 'in-principle no objection letter' in relation to the proposed import.
- 5) MEAA is required to provide a written response (letter of opinion) to the sponsor and DEWHA in relation to their application within 14 calendar days. The 14 day period commences from the date upon which all relevant documentation is submitted to MEAA for consideration.

**Deleted:** foreign investment

### **3. DEWHA assessment and decision on application** **for Foreign Performers Certificate**

#### ***1) Submitting an application***

- a) The DEWHA Guidelines and Foreign Performers Certificate application form are available for download from <http://www.arts.gov.au/foreignactors>.
- b) Applications should contain evidence of compliance with the requirements set out in Sections C and D of the Guidelines as necessary. DEWHA may also seek further information and/or statutory declarations in relation to supporting documentation provided by the sponsor where appropriate.
- c) In determining whether to issue a Foreign Performers Certificate, the Arts Minister or person authorised by the Arts Minister, will take comments provided by MEAA into consideration. A copy of the letter of opinion from MEAA should be provided by the sponsor as part of the application submitted to DEWHA.

**Comment [DEH35]:** NB: we will update the webpage & generic e-mail addresses when we get agreement to text from our working group

- d) Applications should be addressed and faxed or emailed as follows:

Assistant Secretary  
Film and Creative Industries Branch  
Department of the Environment, Water, Heritage and the Arts  
Fax: +61 2 6275 9320  
Email: [foreignactors@environment.gov.au](mailto:foreignactors@environment.gov.au)

- e) Receipt of applications will be acknowledged and all enquiries regarding the application process should be directed to the Desk Officer at the above generic email address or by phone on Tel: +61 2 6275 9633.
- f) Please note that a single application form may cover a number of performers. Alternatively, applications may be made for performers in a sequence as details become available.

## **2) Application assessment**

- a) DEWHA considers the circumstances of each application, taking into account the views of the sponsor and MEAA's letter of opinion, and makes a decision based its assessment of whether the proposed foreign performer importation complies with the Migration Regulations and the Guidelines.
- b) DEWHA commences its assessment of an application for a Foreign Performers Certificate once the completed application form and supporting documentation (including a letter of opinion from MEAA) has been received. DEWHA requires five working days to process an application, and may seek further information at any point in the application assessment process in order to establish whether certification should occur.
- c) Where MEAA has been consulted but has not provided a written response to the sponsor within the required 14 day period, DEWHA will seek to elicit the requested letter of opinion from MEAA. DEWHA will proceed with the assessment of the application based on the information provided by the sponsor if MEAA is unable to meet this request within a reasonable timeframe.
- d) Should MEAA object to the application, the sponsor will be invited to make a written submission to DEWHA addressing the reasons for the objection set out in MEAA's letter of opinion, together with any additional relevant information in support of the application. The sponsor's submission should be provided to DEWHA and copied to MEAA by email or fax within three working days of DEWHA's request.
- e) Upon receipt of the sponsor's submission, MEAA will be invited to provide any additional comments it may wish to make in response in writing to DEWHA. These comments should be provided to DEWHA and copied to the sponsor by email or fax within three working days of DEWHA's request.
- f) The sponsor will subsequently be invited to provide any final written comments in support of the application to DEWHA, again within three working days of DEWHA's request.
- g) Every effort will be made to come to a determination as expeditiously as possible, and DEWHA takes the timeframe of the production and proposed arrival date of the performer into consideration. Hence in some circumstances

input from the sponsor and MEAA may be required within a shorter timeframe than that indicated above.

3) **Decision on certification**

- a) Upon completion of the assessment process, DEWHA makes its recommendations regarding the issuing of a Foreign Performers Certificate to the Arts Minister, or person authorised by the Arts Minister, for consideration and final decision.
- b) DEWHA will notify the sponsor, MEAA and DIAC regarding the certification decision, and where a certificate has been issued, provide signed copies to all three parties by email (or by fax upon request). The sponsor will also be sent the original hard copy of the certificate by regular post.
- c) Please note that a Foreign Performers Certificate is valid for the entire length of the production for which it is issued. A new certificate is not required in the case of subsequent visa applications for re-entry of the same performer in the same production.

**4. DIAC processing of application for entertainment visa**

- 1) Applications for entertainment visas for foreign performers entering Australia to take part in productions covered by these Guidelines are only considered by DIAC if supported by a Foreign Performers Certificate.
- 2) The Foreign Performers Certificate should be lodged by the sponsor with DIAC to initiate processing of the visa application, together with the following documentation:
  - a) the MEAA letter of opinion;
  - b) a completed sponsorship application form (if the proposed sponsor has not already been approved as an entertainment sponsor, where sponsorship is valid for three years);
  - c) a completed nomination application form;
  - d) a completed entertainment visa application form; and
  - e) the separate fees/charges for the sponsorship, nomination and visa applications, without which an entertainment visa application will not be valid.
- 3) For further information and a comprehensive list of DIAC's requirements see:  
<http://www.inm.gov.au/skilled/specialist-entry/420> [\*\*\*TBC\*\*\*]
- 4) Sponsors should lodge their documentation with DIAC at least 8-12 weeks prior to the nominated person's arrival date in Australia.

Comment [DEH36]: Confirm with DIAC

## 7. SECTION F - CASTING GUIDELINES

- 1) Where a sponsor seeks to import a foreign performer on the basis that a suitable Australian performer cannot be found, the sponsor must demonstrate that a genuine attempt has been made to locate a suitable Australian performer.
- 2) Where the Arts Minister or person authorised by the Arts Minister is not satisfied that a genuine attempt has been made, sponsors will need to provide documentary evidence to demonstrate to DEWHA that some or all of the following have been undertaken:
  - a) appointment of a recognised casting director;
  - b) employment of recognised casting agents;
  - c) appropriate advertising of the role;
  - d) distribution of the character breakdown of the role to performers' agents Australia-wide;
  - e) professional auditions conducted in a conducive atmosphere where the performer is given every opportunity to demonstrate their ability to play the nominated role including:
    - i) providing the performer with a detailed character breakdown of the role and excerpts from the script in sufficient time to prepare for the role;
    - ii) informing the performer in advance if the role requires a particular accent;
    - iii) giving the performer the opportunity to discuss the role with the director; and
    - iv) providing make-up and costumes where recommended by the casting director.
- 3) DEWHA may also require evidence to establish that where recommended by the casting director, all performers were auditioned and, where appropriate, short-listed performers were screen-tested.
- 4) Additional information regarding the Australian performers who were considered, interviewed or auditioned for the role may be requested by DEWHA as follows:
  - a) details of the performers offered the role and an explanation of why they were unable to accept; and
  - b) details of the performers considered unsuitable for the role and a statement of the reasons for the decision.
- 5) Please note DEWHA may seek further information and/or statutory declarations in relation to supporting documentation provided by the sponsor where appropriate.

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## **8. SECTION G - CONTACTS FOR FURTHER INFORMATION**

### **1. Department of the Environment, Water, Heritage and the Arts (DEWHA)**

Desk Officer, Foreign Performers Certification Scheme

Tel: +61 2 6275 9633

Fax: +61 2 6275 9320

Email: [foreignactors@environment.gov.au](mailto:foreignactors@environment.gov.au)

<http://www.arts.gov.au/foreignactors>

### **2. Department of Immigration and Citizenship (DIAC)**

Entertainment Processing Centre

Tel: +61 2 8861 4356 or +61 2 8861 4358

Fax: +61 2 8861 4301

Email: [entertainment.visas@immi.gov.au](mailto:entertainment.visas@immi.gov.au)

<http://www.immi.gov.au/skilled/specialist-entry/420> [\*\*\*TBC\*\*\*]

### **3. Media, Entertainment and Arts Alliance (MEAA)**

Federal Policy Officer

Tel: +61 2 9333 0958

Fax: +61 2 9333 09333

Email: [imports@alliance.org.au](mailto:imports@alliance.org.au)

[http://www.alliance.org.au/imports\\_information/1](http://www.alliance.org.au/imports_information/1)



**Page 8: [1] Comment [DEH16]Department of the Environment and Heritage20/11/2009 1:29:00 PM**

Current level is 30%; MEAA adamant this level should remain; SPAA argues usual level of Foreign Investment is now 10-15%. Screen Aust research data shows over last 5-10 years Foreign Investment is 10-15% for features and 10-15% for TV productions.

If necessary, could concede this point to MEAA as flexibility provisions in Section D allow case by case assessment.

**Page 8: [2] Comment [DEH17]Department of the Environment and Heritage20/11/2009 1:29:00 PM**

This framework is from current guidelines; MEAA is very strongly in favour of retaining; because we build in flexibility elsewhere we lose nothing by including it; it is useful in giving a sense of the number of foreign performers who could enter in any particular production in receipt of direct govt subsidy

**Page 8: [3] Comment [A18]**

**A06209**

**20/11/2009 1:36:00 PM**

s42

**Page 8: [4] Comment [DEH21]Department of the Environment and Heritage20/11/2009 1:29:00 PM**

Objective is to set a common standard for productions accessing the PO only and not having the foreign performer process potentially set a higher/different standard than the PO SAC test



**Sircar, Sanjay**

**From:** Richards, Stephen  
**Sent:** Friday, 4 December 2009 4:46 PM  
**To:** 'catherine.griff@screenaustralia.gov.au'; 'matthew.deaner@screenaustralia.gov.au'  
**Cc:** Sircar, Sanjay  
**Subject:** foreign actor guidelines review - updated draft [SEC=UNCLASSIFIED]

**Importance:** High

**Categories:** UNCLASSIFIED

**Attachments:** Guidelines - Draft to SA - 4 Dec 2009.doc

Catherine  
 Matthew

In August-September 2009 we sought feedback from a working group of stakeholders re potential amendments to the foreign actor certification guidelines.

Based on feedback received and our further consideration of the options for addressing the issues identified by our foreign actor guidelines review working group (ie MEAA, SPAA, selection of sponsors, DIAC, Screen Australia), we have prepared a revised draft (attached).



Guidelines -  
 raft to SA - 4 D.

We would like to get Screen Australia's views on before we circulate to other working group members.

As we are providing you with a draft in advance of other stakeholders we ask that you please keep the contents of the draft confidential at this time. Once we have obtained Screen Australia's views we will circulate the draft (incorporating any necessary revisions agreed with Screen Australia) to other stakeholders. We anticipate this will happen later in December or early next year.

The guidelines relate to DEWHA's responsibility for administering the foreign actor certification process. As such we do not expect that Screen Australia will have extensive comments. However, in preparing the revised draft we are conscious of the need to minimise the potential for ambiguity between how the foreign actor guidelines apply and their relationship to the Producer Offset. Accordingly, I'd be particularly interested in your views on:

- The proposed scope of the guidelines (see section A, p4) - Application of the guidelines has been mainly limited to drama production in the past and we propose to continue that at this stage, although we have specifically added documentaries to the list of specified film and television productions in this draft. Some stakeholders are proposing a much broader scope that would encompass a vastly expanded range of production types including reality, quiz, entertainment, chat/panel and variety programs, television commercials, etc.
- Some of the definitions we have adopted (see section B, pp5-7), particularly those relating to genres of film and television productions such as 'documentary', 'feature film', 'series', 'serial', etc. - While it is not essential for the foreign actor guidelines definitions to be identical to definitions Screen Australia may use, we think there would be value if our definitions were broadly consistent with those used by Screen Australia.
- References to the Producer Offset in section C (pp8-10) - We regard the Producer Offset as a form of government subsidy but do not want to unnecessarily impose conditions on film

makers intending to access the Producer Offset, particularly when the Producer Offset is the only form of subsidy the film maker is accessing. Where productions are in receipt of direct subsidy (even when producers are also likely to seek access to the Producer Offset) the guidelines set out more specific criteria that must be met before foreign actors can be engaged with the intent being to encourage employment of Australian actors.

- And any other area of the guidelines you think appropriate.

Finally, we would like to thank Screen Australia for updating the Producer Offset guidelines to make reference to the existence of the foreign actor guidelines (and provide a hotlink to same).

Should you wish to discuss any of the above in further detail, please call me on 02-62759645.

Cheers

Stephen

PS Matthew - It was good to talk with you this morning. s22  
s22

Stephen Richards  
Manager - Film Incentives & International  
tel: 61-2-62759645  
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web: [www.arts.gov.au](http://www.arts.gov.au)



**Australian Government**

**Department of the Environment,  
Water, Heritage and the Arts**

## **Foreign Performers Certification Scheme**

# **Guidelines for the entry into Australia of foreign performers for the purpose of performing in film and television productions**

*4 December 2010*

**Australian Government**  
**[insert month] 2010**

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## FOREIGN PERFORMERS CERTIFICATION SCHEME

### Guidelines on the entry into Australia of foreign performers for the purpose of performing in film and television productions

#### INTRODUCTION

1. This revised version of the *Guidelines on the entry into Australia of foreign performers for the purpose of performing in film and television productions* was adopted on [?? 2010].
2. The Guidelines deal exclusively with the employment of specified On-screen Performers entering Australia to take part in specified Film and Television Productions. They are the basis on which the Arts Minister, or a person authorised by the Arts Minister, determines whether to certify that specified requirements identified in the Migration Regulations have been met.
3. The Migration Regulations require that a subclass 420 visa, which is assessed against the criteria in sub-paragraphs 2.72D(4) and (5), not be approved unless the visa application is supported by a Foreign Performers Certificate issued by the Arts Minister.
4. In addition, the Migration Regulations require that the sponsorship of the proposed visa applicant cannot be approved unless the Sponsor has consulted the relevant Australian unions. For the purposes of these Guidelines, the relevant union is the Media Entertainment and Arts Alliance (MEAA). This consultation process is undertaken as part of the process of applying for a Foreign Performers Certificate from the Arts Minister.
5. The Guidelines support key Government objectives for the film and television industry including providing Australian industry personnel with a fair chance of securing employment in Film or Television Productions shot in Australia, ensuring Australian voices are heard in Australian productions, and building a commercially sustainable film and television industry.
6. The Guidelines are administered by the Department of the Environment, Water, Heritage and the Arts (DEWHA).

## SECTION A - SCOPE

1. The Foreign Performers Certification Scheme applies to the import of foreign On-screen Performers taking part in the following specified forms of Film or Television Production intended for distribution via platforms such as cinema, television broadcast, DVD, and Internet and mobile devices:
  - (a) Feature Films;
  - (b) Telemovies;
  - (c) Series, Serials and Sketch Comedy Programs
    - (i) excluding foreign Performers/celebrities who take part or make brief, one-off appearances as themselves in Film or Television Productions, when this participation is incidental to their main purpose for entering Australia (which might include live performance concert tours and other promotional activities);
  - (d) Documentaries and dramatised Documentaries
    - (i) excluding all On-screen Performers other than foreign Hosts and foreign Performers in dramatic roles.
2. The Guidelines set out the circumstances under which applications can be considered for the import of foreign Performers to take part in the Film or Television Productions and roles specified above.
3. The Guidelines do NOT apply to:
  - (a) foreign Performers in roles or forms of Film or Television Production other than those specified above. Visa applications for such Performers will be considered by the Department of Immigration and Citizenship (DIAC) under sub-paragraph 2.72D(7) of the Migration Regulations; or
  - (b) foreign Performers seeking visas to enter Australia under an agreement between Australia and another country, such as Australia's bilateral film co-production agreements. In such cases, the application will be considered by DIAC under sub-paragraph [\*\*\*TBC\*\*\*] of the Migration Regulations. Screen Australia administers the Commonwealth Government's International Co-production Program and determines applications for projects to be approved as Official Co-productions.

Comment [DEH1]: Getting reference from DIAC



## SECTION B - TERMS AND DEFINITIONS

**'Australian Content Criteria' or 'ACC'** means the criteria describing Category 1, Category 2, and Category 3 Government Subsidised productions set out in Section C of these guidelines.

**'Cameo Actor Role'** means a brief but important role in a Film or Television Production, usually performed by a well-known On-screen Performer.

**'DEWHA'** means the Department of the Environment, Water, Heritage and the Arts.

**'DIAC'** means the Department of Immigration and Citizenship.

**'Documentary'** means a program which is a creative interpretation of actuality, provides a detailed study of real people and/or events, presenting an issue, subject or theme of social, political or general interest, and often deals with travel, science, and historical subjects but excludes news or current affairs, sports coverage, magazine, infotainment, light entertainment, and reality programs.

**'Feature Film'** means a film, including animations, commonly screened as the main attraction in commercial cinemas that is no less than 60 minutes, or in the case of a larger format (IMAX) film no less than 45 minutes, and shot and processed to commercial standards for cinema exhibition, television broadcast or distribution via other platforms.

**'Film or Television Production'** means a production intended for cinema exhibition, television broadcast, or distribution via other platforms (such as DVD, and internet and mobile phone downloads) and includes a Feature Film, Telemovie, Series, Serial, Sketch Comedy Program, Documentary and dramatised Documentary but does not include computer games.

**'Foreign Investment'** includes overseas sourced funds where such investment is secured against returns from foreign markets, regardless of whether the funds are equity investment or not, including direct investment and revenue raised through pre-sales and distribution in overseas markets.

**'Government Subsidy'** means and includes any form of government financial support other than developmental funding and includes:

- (a) direct subsidies such as direct investment, loans, distribution guarantees and pre-sales;
- (b) indirect subsidies such as tax concessions (e.g. Producer Offset, Location Offset, Post, Digital and Visual Effects Offset in Division 376 of the *Income Tax Assessment Act 1997*)).

For the purposes of this definition 'government' includes Commonwealth and state and territory governments.

**'Host'** means the central Performer in a Documentary or dramatised Documentary who introduces and presents the material to a viewing audience and who may also be referred to as "compere", "presenter", "commentator" or "narrator".

**‘Leading Actor Role’** means the role of protagonist or one of the central or main roles in a Film or Television Production.

**‘Media Entertainment and Arts Alliance’** or **‘MEAA’** means the union representing employees in the media, entertainment, sport and the arts.

**‘Motion-capture Performer’** means a Performer in a computer animation production in a role which involves a performance from which points can be tracked on a moving face or body in order to get a simplified image of motion, e.g. the animation of the penguins in Happy Feet.

**‘Official Co-production’** means a production for which a Performer seeks to enter Australia under an agreement between Australia and another country, under the International Co-production Program administered by Screen Australia, for which visa applications are considered by the Department of Immigration and Citizenship (DIAC) under sub-paragraph [\*\*\*CHECK\*\*\*] of the Migration Regulations.

Comment [DEH2]: Getting reference from DIAC

**‘On-screen Performer’** means:

- (a) a Performer in a Feature Film; Telemovie; drama Series, Serial or Sketch Comedy Program; or dramatised Documentary who is performing:
  - (i) a Leading, Supporting or Cameo Actor role;
  - (ii) as a dancer, Motion-capture Performer, Puppeteer, Stunt Performer or Voice-over Performer; or
- (b) as a Host in a Documentary or dramatised Documentary.

**‘Puppeteer’** means a manipulator of any variety of puppet, whose work appears in a Film or Television Production.

**‘Serial’** means a Film or Television Production which is a narrative series made up of two or more episodes that:

- (a) are produced wholly or principally for public exhibition under a single title, for both free-to-air (broadcast network) and subscription television (cable or satellite); and
- (b) comprise a potentially unlimited number of episodes, relating a number of equally important and overlapping plots, without an apparent single major plot necessarily moving towards a resolution and arranged into consecutive episodes for screening purposes.

**‘Series’** means a Film or Television Production which is a narrative series made up of two or more episodes that:

- (a) are produced wholly or principally for public exhibition under a single title, for both free-to-air (broadcast network) and subscription television (cable or satellite);
- (b) have a common theme or themes that draws the episodes of the series into a cohesive whole;
- (c) contain dramatic elements that form a narrative structure; and

(d) are intended for exhibition together in a national market or markets.

**‘Sketch Comedy Program’** means a Film or Television Production comprising comedy and satirical sketches that are short, self-contained stories or plots; but does not include a stand-up comedy program or an incidental sketch that is a component in a program of another kind.

**‘Sponsor’** means an Australian producer applying for a Foreign Performers Certificate or an Australian sponsor acting on behalf of a foreign producer in making this application.

**‘Stunt Performer’** means a Performer engaged to perform dangerous scenes in a Film or Television Production and/or who doubles for one of the actors chosen for a particular role.

**‘Supporting Actor Role’** means a role which is more than a Cameo but not a central role in a Film or Television Production.

**‘Telemovie’** means a drama program of a like nature to a Feature Film, which is not less than one commercial television hour in length and shot and processed to commercial release standards for television broadcast or distribution via other platforms (such as DVD and internet and mobile phone downloads).

**‘Traditional Australian Character’** means an Australian character that appears in Australian literature (e.g. *Man from Snowy River*, *The Shiralee*, etc) or is part of Australia's history and/or folklore (e.g. Dame Nellie Melba, Ned Kelly, etc).

**‘Voice-over Performer’** means a Performer who provides recorded dialogue or narration, that comes from an unseen, off-screen voice in a Film or Television Production.

## **SECTION C - TREATMENT OF SUBSIDISED AND UNSUBSIDISED PRODUCTIONS**

1. In accordance with the requirements of the Migration Regulations, the Guidelines set different criteria for assessing the appropriateness of foreign Performers taking part in a specified Film or Television Production in Australia based on whether or not the production has, or will receive, a Government Subsidy.
2. Sponsors are required by the Migration Regulations to consult with the MEAA in relation to each application for a Foreign Performers Certificate before submitting the application to DEWHA. Details of the application process, including consultation requirements, are at Section E.
3. In seeking to import foreign Performers, Sponsors will need to identify the type of production proposed and satisfy the corresponding criteria as outlined below. Since every production that proceeds in Australia provides at least some benefit to the Australian screen industry through employment opportunities for Performers, crews and other film production service providers, a Sponsor must present a convincing case in its application to DEWHA which demonstrates that the import of a foreign Performer is necessary for a particular production and consistent with the Government's cultural and commercial film policy objectives.

### **SUBSIDISED PRODUCTIONS**

4. A production is subsidised if it has, or will receive:
  - (a) a direct Government Subsidy
  - (b) the Producer Offset
  - (c) the Location or PDV Offsets
5. For a foreign Performer to take part in a subsidised Film or Television Production, the application for a Foreign Performers Certificate must satisfy the requirements set out in the Australian Content Criteria (ACC) detailed below.
6. However, please note the ACC requirements vary depending on whether or not the production in which the foreign Performer is to appear receives a direct Government Subsidy.

#### **Category 1 - ACC for Film or Television Productions in receipt of a direct Government Subsidy**

7. Reasonable opportunity must be given to employing Australian Performers at all levels of the production, and:
  - (a) the casting of Leading and major Supporting Actor Roles must accurately reflect the Australian characters portrayed;
  - (b) at least 50 per cent of Performers in Leading Actor roles and 75 per cent of Performers in major Supporting Actor Roles must be Australian; and
  - (c) where applicable, an Australian Performer must be cast to play each Traditional Australian Character.
8. The level of Foreign Investment in a production's budget will be a factor considered in assessing applications for the importation of foreign Performers on a

case by case basis. As a general guidance, the greater the level of Foreign Investment in the production over 20 per cent, the greater the possible opportunity for the employment of foreign Performers in Leading, Supporting and Cameo Actor Roles within the above parameters. For example, where a minimum of:

- (a) 20 per cent of a production's budget is Foreign Investment and the budget in the case of a Feature Film is less than \$4.0 million, in the case of a Telemovie less than \$2.0 million, or in the case of a Series or Serial less than \$0.75 million per commercial hour, the employment of one foreign Performer may be appropriate;
  - (b) 20 per cent of a production's budget is Foreign Investment and the budget in the case of a Feature Film is \$4.0-12.0 million, in the case of a Telemovie more than \$2.0 million, or in the case of a Series or Serial is \$0.75-1.0 million per commercial hour, the employment of one foreign Performer in a Leading Actor Role and one foreign Performer in a Supporting or Cameo Actor Role may be appropriate;
  - (c) 20 per cent of a production's budget is Foreign Investment and the budget in the case of a Feature Film is more than \$12.0 million, or in the case of a Series or Serial, more than \$1.0 million per commercial hour, the employment of one additional foreign Performer may be appropriate to play a Cameo Actor Role.
9. Where a Sponsor seeks to import a foreign Performer on the basis that a suitable Australian Performer cannot be found, the Sponsor must demonstrate that a genuine attempt has been made to locate a suitable Australian Performer. DEWHA Casting Guidelines are at Section F.
  10. When no Australian Performer can be cast to satisfy the requirements of a role, the employment of a foreign Performer may be appropriate in the following circumstances:
    - (a) highly specialist/unusual roles; or
    - (b) ethnicity; or
    - (c) continuity; or
    - (d) unexpected change in the level of Foreign Investment; or
    - (e) private investment being dependent on the engagement of a foreign Performer; or
    - (f) overall benefit to the Australian film and television industry.
  11. If a Sponsor seeks consideration on the basis of factors listed above, the Sponsor will be required to provide additional evidence in support of their application as detailed in Section D.

**Category 2 -- ACC for Film or Television Productions NOT in receipt of direct Government Subsidy but eligible to access the Producer Offset**

12. The Sponsor must provide evidence that the production has obtained provisional certification to access the Producer Offset. Evidence must include a copy of the Provisional Certificate and covering letter from Screen Australia.

*Note: Further information regarding the Producer Offset application process is available on Screen Australia's website at*

*[http://www.screenaustralia.gov.au/producer\\_offset/prov\\_certification.asp](http://www.screenaustralia.gov.au/producer_offset/prov_certification.asp)*

*Note: Productions in receipt of direct Government Subsidy in addition to accessing the Producer Offset must apply for Foreign Performers Certification under Subsidised Productions 'Category 1' above.*

**Category 3 - - ACC for Film or Television Productions eligible to access the Location or PDV Offsets**

13. The Sponsor must provide evidence that the production intends to access the Location or PDV Offsets. Evidence may include a letter of intent from the relevant production company and/or demonstration that the production budget exceeds the Location or PDV Offset eligibility criteria for minimum expenditure thresholds.

*Note: The fact that a production eligible to access the Location or PDV Offset may also be in receipt of direct Government Subsidy does not impose any additional requirements in this instance.*

**UNSUBSIDISED PRODUCTIONS**

14. Unsubsidised productions, including those fully funded offshore, must satisfy the following criteria:
- (a) Australian citizens/residents have been provided with a reasonable opportunity to participate in all levels of the production; and
  - (b) the sum of Foreign Investment exceeds the amount to be expended on the foreign Performers while they are in Australia to take part in the unsubsidised production.
15. In making an application to import foreign Performers, the Sponsor must demonstrate that reasonable efforts have been made to cast Australian Performers at all levels of the production. DEWHA Casting Guidelines are at Section F.
16. In relation to Foreign Investment, the Sponsor must provide DEWHA with documentation demonstrating that the Foreign Investment component of the production's budget is greater than that expended on the proposed foreign Performers while they are in Australia to take part in the unsubsidised production. Expenditure on foreign Performers in Australia includes salary, living allowances, travel and other expenditure associated with their stay in Australia.

## **SECTION D - FLEXIBILITY CIRCUMSTANCES AND EVIDENCE REQUIRED FOR SUBSIDISED PRODUCTIONS: CATEGORY 1**

1. As noted in Section C, where the Sponsor demonstrates that an Australian Performer cannot be found to fill a role for a production in receipt of direct Government Subsidy (Subsidised Productions 'Category 1'), importation of a foreign Performer may be considered in the circumstances outlined below on the basis of additional evidence provided by the Sponsor in support of the application.
2. Please note that proof of a genuine search of the Australian labour market to fill the role with an appropriately qualified or experienced Australian Performer will be required in the first instance. The evidence required is set out in the DEWHA Casting Guidelines at Section F.
3. Sponsors who intend to make an application for importation of a foreign Performer in the following circumstances must mount a convincing case supported by the documentary evidence. The simple assertion that foreign Performer participation is critical will not be sufficient.
4. Please also note that the circumstances detailed below are not intended to lead to exploitation as a minimum standard applied to all productions.
5. If a Sponsor believes there are other compelling reasons to import a foreign Performer beyond those circumstances detailed below they should contact both MEAA and DEWHA to present a case. Such approaches will be considered on their merits on an individual basis.

### **Highly specialist/unusual roles**

6. The foreign Performer is necessary to perform a highly specialist or unusual role which requires specific or specialist attributes including, but not limited to, physical appearance, physical talent and linguistic or vocal skills. Please note that foreign language and accent requirements\* for a particular role are not necessarily sufficient grounds for importing a foreign Performer.
7. Evidence:
  - (a) script or synopsis demonstrating that the role requires certain highly specialist attributes; and
  - (b) documentation such as a listing of personal attributes or specialist skills from a resume or curriculum vitae that supports the claim that the proposed foreign Performer possesses the attributes necessary to perform the role.

### **Ethnicity**

8. The foreign Performer is necessary for reasons of ethnicity required by the role. Please note that foreign language and accent requirements\* for a particular role are not necessarily sufficient grounds for importing a foreign Performer.

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\* Australia is a multicultural country. Many Australian performers are competent in a variety of languages other than English, and can speak an extensive range of English language and non-English language accents.

9. Evidence:

- (a) script or synopsis demonstrating that specific ethnic characteristics are required by the role; and
- (b) documentation verifying that the proposed foreign Performer is of the ethnicity required.

**Continuity**

10. The foreign Performer is necessary for reasons of continuity.

11. Evidence:

- (a) documentation, such as a Performer contract, cast list or press clippings, supporting the claim that the foreign Performer has worked on, or will be working on, the same production outside Australia for at least one month.

**Unexpected change in the level of Foreign Investment**

12. Where the initial level of Foreign Investment in a production's budget allows for the importation of foreign Performers, but decreases unexpectedly, consideration will be given to approving the importation of foreign Performers already attached to the production. For example, if a foreign investor withdraws support due to financial pressures and is replaced by an Australian investor at short notice.

13. Evidence:

- (a) details of the production budget;
- (b) documentation from private investors committing to the production;
- (c) documentation verifying the genuine withdrawal of a foreign investor and the reasons for the withdrawal; and
- (d) documentary proof that a genuine attempt has been made to secure replacement foreign investors.

**Private investment being dependent on the engagement of a foreign Performer**

14. The foreign Performer is commercially necessary to secure Australian and/or Foreign Investment in the production or overseas pre-sales and distribution deals.

15. Evidence:

- (a) details of the production budget;
- (b) one or more of the following documents as necessary:
  - (i) letter of confirmation from the production's principal private investor that finance in the production is dependent on the foreign Performer's participation;
  - (ii) letter of confirmation from the production's distributor that distribution is dependent on the foreign Performer's participation;
  - (iii) contracts indicating that overseas pre-sales are dependent on the foreign Performer's participation;



16. where the foreign Performer is internationally known, documentary proof of their box office appeal through international box office figures for Film or Television Productions in which they have undertaken Leading or major Supporting Actor Roles; and/or
17. where the foreign Performer is an emerging On-screen Performer, or cast to appeal to a particular overseas audience, documentation in support of their potential box office appeal such as resume/filmography details including previous work, reviews, awards/accolades, and/or other evidence of audience appeal.

**Overall benefit to the Australian film and television industry**

18. The foreign Performer is necessary to ensure that the production proceeds in Australia, and proceeds on the scale originally envisaged rather than being significantly diminished, and the size of the production's budget is such that associated local employment opportunities constitute an overall net economic benefit for the Australian film and television industry. Net economic benefit could include additional employment opportunities for Australian Performers and crews, longer employment contracts as a consequence of a larger production budget and longer production schedules, and significant commercial opportunities for other film production service providers in Australia.
19. Please note that where a Sponsor claims there is a financial imperative to engage a foreign Performer which is not demonstrated by a higher level of Australian and/or Foreign Investment in the production budget a detailed explanation of that financial imperative will be required.
20. Evidence to demonstrate the significantly diminished scale of the production if the foreign Performer for whom certification is being sought is not attached to the production, including:

*If production were to proceed with foreign Performer*

- (a) details of the estimated production budget including estimated expenditure in Australia;
- (b) one or more of the following documents as necessary:
  - (i) letter of confirmation from the production's principal private investor that investment in the production is dependent on the foreign Performer's participation;
  - (ii) letter of confirmation from the production's distributor that distribution is dependent on the foreign Performer's participation;
  - (iii) contracts indicating that overseas pre-sales are dependent on the foreign Performer's participation;
- (c) details of the number and description of the specific roles to be filled by Australian Performers and the positions to be filled by Australian crew, all including employment contract details; and

*If production were to proceed without foreign Performer*

- (d) details of the estimated production budget including estimated expenditure in Australia;
- (e) details of the number and description of the specific roles to be filled by Australian Performers and the positions to be filled by Australian crew, all including employment contract details.

DRAFT

## **SECTION E - APPLICATION PROCESS**

1. Applications for Foreign Performers Certificates should be made by Sponsors.
2. Applying for certification of the foreign Performer through to the provision of the entertainment visa is a four part process as follows:
  - Initial contact with DEWHA and MEAA, and in special cases DIAC, to indicate the Sponsor is commencing application for a Foreign Performers Certificate;
  - Consultation with MEAA to obtain a letter of opinion;
  - DEWHA assessment and decision on application for a Foreign Performers Certificate; and
  - DIAC processing of application for the entertainment visa.
3. To allow adequate time for consideration of applications, Sponsors should commence the application process at least 10-12 weeks prior to the proposed date of entry into Australia of the foreign Performer. Processing times may be accelerated to accommodate one-off applications where the Sponsor has demonstrated exceptional circumstances apply.

### **Initial contact with relevant agencies**

4. Sponsors must advise DEWHA and MEAA of their intention to apply for a Foreign Performers Certificate required to import a foreign Performer into Australia. This will provide an opportunity for information exchange and to clarify any initial questions the Sponsor may have regarding the application process including relevant application forms and MEAA consultation requirements.
5. Sponsors should provide initial e-mail advice to:
  - (a) DEWHA (E-mail: [foreignactors@environment.gov.au](mailto:foreignactors@environment.gov.au)) and
  - (b) MEAA (E-mail: [imports@alliance.org.au](mailto:imports@alliance.org.au))which sets out:
  - (a) Name and contact details of the Sponsor;
  - (b) Name of the production;
  - (c) Number and nationalities of the foreign Performers for whom entry is being sought; and
  - (d) Estimated arrival and departure dates.
2. Sponsors seeking to import 10 or more foreign personnel (including Performers and crew) in a single application should also provide the above advice to DIAC by e-mail (E-mail: [entertainment.visas@immi.gov.au](mailto:entertainment.visas@immi.gov.au)).
3. For full contact details for agencies see Section G.

#### Consultation with MEAA to obtain letter of opinion

4. Sponsors should consult with MEAA in advance of submitting their application for a Foreign Performers Certificate to DEWHA. MEAA considers the circumstances of each application and provides a letter of opinion to the Sponsor and DEWHA based on its assessment of whether the proposed foreign Performer importation complies with the Migration Regulations and DEWHA Guidelines.
5. MEAA requires the Sponsor to provide a range of information in order to make this assessment including the following documentation (unless otherwise agreed with MEAA):
  - (a) script or synopsis;
  - (b) letter outlining the reasons for the proposed foreign Performer import, including details of the production budget and level of Foreign Investment;
  - (c) evidence of compliance with the DEWHA Casting Guidelines when the basis of the application is an inability to cast the role with an Australian Performer;
  - (d) details of the Performer's itinerary;
  - (e) foreign Performer's resume; and
  - (f) copy of the deal memo/contract with the foreign Performer.
6. For further information and a comprehensive list of MEAA's requirements see: <http://www.alliance.org.au/imports-information/1/>
7. Where a Sponsor approaches MEAA well in advance of submitting its application to DEWHA for a Foreign Performers Certificate, MEAA may provide an 'in-principle no objection letter' in relation to the proposed import.
8. MEAA is required to provide a written response (letter of opinion) to the Sponsor and DEWHA in relation to their application within 14 calendar days. The 14 day period commences from the date upon which all relevant documentation is submitted to MEAA for consideration.

#### DEWHA assessment and decision on application for Foreign Performers Certificate

##### *Submitting an application*

9. The DEWHA Guidelines and Foreign Performers Certificate application form are available for download from <http://www.arts.gov.au/foreignactors>.
10. Applications should contain evidence of compliance with the requirements set out in Sections C and D of the Guidelines as necessary. DEWHA may also seek further information and/or statutory declarations in relation to supporting documentation provided by the Sponsor where appropriate.
11. In determining whether to issue a Foreign Performers Certificate, the Arts Minister or person authorised by the Arts Minister, will take comments provided by MEAA into consideration. A copy of the letter of opinion from MEAA should be provided by the Sponsor as part of the application submitted to DEWHA.

**Comment [DEH3]:** NB: we will update the webpage & f e-mail addresses when we g agreement to text from our working group.

12. Applications should be addressed and faxed or emailed as follows:

Assistant Secretary  
Film and Creative Industries Branch  
Department of the Environment, Water, Heritage and the Arts  
Fax: +61 2 6275 9320  
Email: [foreignactors@environment.gov.au](mailto:foreignactors@environment.gov.au)

13. Receipt of applications will be acknowledged and all enquiries regarding the application process should be directed to the Desk Officer at the above generic email address or by phone on Tel: +61 2 6275 9633.

14. Please note that a single application form may cover a number of Performers. Alternatively, applications may be made for Performers in a sequence as details become available.

***Application assessment***

15. DEWHA considers the circumstances of each application, taking into account the views of the Sponsor and MEAA's letter of opinion, and makes a decision based on its assessment of whether the proposed foreign Performer importation complies with the Migration Regulations and the Guidelines.

16. DEWHA commences its assessment of an application for a Foreign Performers Certificate once the completed application form and supporting documentation (including a letter of opinion from MEAA) has been received. DEWHA requires five working days to process an application, and may seek further information at any point in the application assessment process in order to establish whether certification should occur.

17. Where MEAA has been consulted but has not provided a written response to the Sponsor within the required 14 day period, DEWHA will seek to elicit the requested letter of opinion from MEAA. DEWHA will proceed with the assessment of the application based on the information provided by the Sponsor if MEAA is unable to meet this request within a reasonable timeframe.

18. Should MEAA object to the application, the Sponsor will be invited to make a written submission to DEWHA addressing the reasons for the objection set out in MEAA's letter of opinion, together with any additional relevant information in support of the application. The Sponsor's submission should be provided to DEWHA and copied to MEAA by email or fax within three working days of DEWHA's request.

19. Upon receipt of the Sponsor's submission, MEAA will be invited to provide any additional comments it may wish to make in response in writing to DEWHA. These comments should be provided to DEWHA and copied to the Sponsor by email or fax within three working days of DEWHA's request.

20. The Sponsor will subsequently be invited to provide any final written comments in support of the application to DEWHA, again within three working days of DEWHA's request.

21. Every effort will be made to come to a determination as expeditiously as possible, and DEWHA takes the timeframe of the production and proposed arrival date of the Performer into consideration. Hence in some circumstances input from the Sponsor and MEAA may be required within a shorter timeframe than that

indicated above.

***Decision on certification***

22. Upon completion of the assessment process, DEWHA makes its recommendations regarding the issuing of a Foreign Performers Certificate to the Arts Minister, or person authorised by the Arts Minister, for consideration and final decision.
23. DEWHA will notify the Sponsor, MEAA and DIAC regarding the certification decision, and where a certificate has been issued, provide signed copies to all three parties by email (or by fax upon request). The Sponsor will also be sent the original hard copy of the certificate by regular post.
24. Please note that a Foreign Performers Certificate is valid for the entire length of the production for which it is issued. A new certificate is not required in the case of subsequent visa applications for re-entry of the same Performer in the same production.

**DIAC processing of application for entertainment visa**

25. Applications for entertainment visas for foreign Performers entering Australia to take part in productions covered by these Guidelines are only considered by DIAC if supported by a Foreign Performers Certificate.
26. The Foreign Performers Certificate should be lodged by the Sponsor with DIAC to initiate processing of the visa application, together with the following documentation:
  - (a) the MEAA letter of opinion;
  - (b) a completed sponsorship application form (if the proposed Sponsor has not already been approved as an entertainment Sponsor, where sponsorship is valid for three years);
  - (c) a completed nomination application form;
  - (d) a completed entertainment visa application form; and
  - (e) the separate fees/charges for the sponsorship, nomination and visa applications, without which an entertainment visa application will not be valid.
27. For further information and a comprehensive list of DIAC's requirements see:  
<http://www.immi.gov.au/skilled/specialist-entry/420> [\*\*\*TBC\*\*\*]
28. Sponsors should lodge their documentation with DIAC at least 8-12 weeks prior to the nominated person's arrival date in Australia.

Comment [DEH4]: Confirm with DIAC

## SECTION F - CASTING GUIDELINES

1. Where a Sponsor seeks to import a foreign Performer on the basis that a suitable Australian Performer cannot be found, the Sponsor must demonstrate that a genuine attempt has been made to locate a suitable Australian Performer.
2. Where the Arts Minister or person authorised by the Arts Minister is not satisfied that a genuine attempt has been made, the Sponsor will need to provide documentary evidence to demonstrate to DEWHA that some or all of the following have been undertaken:
  - (a) appointment of a recognised casting director;
  - (b) employment of recognised casting agents;
  - (c) appropriate advertising of the role;
  - (d) distribution of the character breakdown of the role to Performers' agents Australia-wide;
  - (e) professional auditions conducted in a conducive atmosphere where the Performer is given every opportunity to demonstrate their ability to play the nominated role including:
    - (i) providing the Performer with a detailed character breakdown of the role and excerpts from the script in sufficient time to prepare for the role;
    - (ii) informing the Performer in advance if the role requires a particular accent;
    - (iii) giving the Performer the opportunity to discuss the role with the director; and
    - (iv) providing make-up and costumes where recommended by the casting director.
3. DEHWA may also require evidence to establish that where recommended by the casting director, all Performers were auditioned and, where appropriate, short-listed Performers were screen-tested.
4. Additional information regarding the Australian Performers who were considered, interviewed or auditioned for the role may be requested by DEWHA as follows:
  - (a) details of the Performers offered the role and an explanation of why they were unable to accept; and
  - (b) details of the Performers considered unsuitable for the role and a statement of the reasons for the decision.
5. Please note DEWHA may seek further information and/or statutory declarations in relation to supporting documentation provided by the Sponsor where appropriate.

## SECTION G - CONTACTS FOR FURTHER INFORMATION

### Department of the Environment, Water, Heritage and the Arts (DEWHA)

Desk Officer, Foreign Performers Certification Scheme

Tel: +61 2 6275 9633

Fax: +61 2 6275 9320

Email: [foreignactors@environment.gov.au](mailto:foreignactors@environment.gov.au)

<http://www.arts.gov.au/foreignactors>

### Department of Immigration and Citizenship (DIAC)

Entertainment Processing Centre

Tel: +61 2 8861 4356 or +61 2 8861 4358

Fax: +61 2 8861 4301

Email: [entertainment.visas@immi.gov.au](mailto:entertainment.visas@immi.gov.au)

<http://www.immi.gov.au/skilled/specialist-entry/420> [\*\*\*TBC\*\*\*]

### Media, Entertainment and Arts Alliance (MEAA)

Federal Policy Officer

Tel: +61 2 9333 0958

Fax: +61 2 9333 09333

Email: [imports@alliance.org.au](mailto:imports@alliance.org.au)

[http://www.alliance.org.au/imports\\_information/1](http://www.alliance.org.au/imports_information/1)



*Draft Guidelines*  
*Sent to Andy Palfreyman 17 December 2009*  
 Awaiting Response

**Sircar, Sanjay**

**From:** Richards, Stephen  
**Sent:** Thursday, 17 December 2009 3:00 PM  
**To:** Sircar, Sanjay  
**Cc:** Gault, Penny; Carter, Jane  
**Subject:** FW: review of foreign actor guidelines [SEC=UNCLASSIFIED]

**Importance:** High

**Categories:** UNCLASSIFIED

**Attachments:** Guidelines - Draft - 17 dec for andy palfreyman.doc

Sanjay - for information and file, please. Cheers - Stephen

**From:** Richards, Stephen  
**Sent:** Thursday, 17 December 2009 2:54 PM  
**To:** Palfreyman, Andrew  
**Cc:** Arnott, Stephen; Basser, Sally  
**Subject:** review of foreign actor guidelines [SEC=UNCLASSIFIED]  
**Importance:** High

Andy

As discussed, I'd be grateful if you could seek the Minister's views on the draft revised foreign actors certification guidelines we have been working on over the last 12 months (C08/23892, C09/9076 and C09/2839 provide further background).

The aims of the review are to ensure the guidelines are clear and transparent and to strike a balance between the Government's screen objectives including providing Australian industry personnel with a fair chance of securing employment in film and television productions shot in Australia, ensuring Australian voices are heard in Australian productions, and building a commercially sustainable film and television industry.

In developing the draft we have been consulting with key stakeholders including MEAA, SPAA, the Department of Immigration and Citizenship (DIAC), Screen Australia and a number of producers who have acted as sponsors for foreign actors entering Australia to appear in film and television productions in the past.

Attached is a revised draft of the guidelines, which we are now calling "foreign performer guidelines" because we are proposing to slightly expand the range of roles specifically covered by the guidelines to include presenters/hosts of documentaries.



Guidelines -  
 raft - 17 dec fo.

While using the current guidelines as a model, the draft moves away from that structure and some of the formulations of words.

The main policy changes the draft proposes are to:

- Clearly define the scope of the guidelines - we are proposing they apply to lead, major supporting and cameo roles in drama productions and to hosts/presenters of documentaries (see Section A)
- Clearly define how different forms of government subsidy are affected by the guidelines (see Section C)

- Allow some flexibility in the application of the guidelines, and to describe the sorts of circumstances where that flexibility might be applied (see Section D)
- Allow for a lesser level of foreign investment in government subsidised productions - down from 30% to 20% - to recognise increasing difficulty producers have raising foreign investment (see Section D)
- Treat all productions not in receipt of government subsidies the same - MEAA argues that unsubsidised Australian productions such as *Neighbours* should have to satisfy the same requirements as government subsidised productions rather than the lesser requirements of unsubsidised foreign financed productions (see Section D)

Some comments are included in the margins of the draft. These identify the main policy issues and the views of MEAA and SPAA on these issues.

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and Screen Australia have reviewed this draft.

We propose to discuss the draft with MEAA and SPAA in February 2010. It would be helpful if we were aware of the Minister's views on the proposed policy approach before we commence these discussions.

Following the discussions with MEAA and SPAA, we will present a final draft of the guidelines to the Minister for his consideration and approval.

Once approved, we will discuss any consequential amendments which might need to be made to the Migration Regulations with DIAC. Ideally, any amendments which are required will be taken forward in a package of amendments that DIAC will commence drafting in April 2010.

I am on Christmas leave from 21 December to 6 January. Outside those dates I would be happy to discuss any of the above in further detail. Stephen Arnott is back in the office on 4 January.

Cheers

Stephen

PS As requested, a hard copy of the draft has sent to the Minister's Office in Canberra.



**Australian Government**

**Department of the Environment,  
Water, Heritage and the Arts**

## **Foreign Performers Certification Scheme**

# **Guidelines for the entering into Australia of foreign performers for the purpose of employment in film and television productions**

**Australian Government**

**[insert month] 2010**

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## FOREIGN PERFORMERS CERTIFICATION SCHEME

### Guidelines on the entry into Australia of foreign performers for the purpose of employment in film and television productions

#### INTRODUCTION

This revised version of the *Guidelines on the Entry into Australia of Foreign Performers for the Purpose of Employment in Film and Television Productions* was adopted on [?? 2010].

The Guidelines deal exclusively with the employment of specified on-screen performers entering Australia to take part in specified film and television productions. They are the basis on which the Arts Minister, or a person authorised by the Arts Minister, determines whether to certify that specified requirements identified in the Migration Regulations have been met.

The Migration Regulations require that a subclass 420 visa, which is assessed against the criteria in sub-paragraphs 2.72D(4) and (5), not be approved unless the visa application is supported by a Foreign Performers Certificate issued by the Arts Minister.

In addition, the Migration Regulations require that the sponsorship of the proposed visa applicant cannot be approved unless the sponsor has consulted the relevant Australian unions. For the purposes of these Guidelines, the relevant union is the Media Entertainment and Arts Alliance (MEAA). This consultation process is undertaken as part of the process of applying for a Foreign Performers Certificate from the Arts Minister.

The Guidelines support key Government objectives for the film and television industry including providing Australian industry personnel with a fair chance of securing employment in film and television productions shot in Australia, ensuring Australian voices are heard in Australian productions, and building a commercially sustainable film and television industry.

The Guidelines are administered by the Department of the Environment, Water, Heritage and the Arts (DEWHA).

## SECTION A - SCOPE

The Foreign Performers Certification Scheme applies to the import of foreign on-screen performers taking part in the following specified forms of film or television production intended for distribution via platforms such as cinema, television broadcast, DVD, and Internet and mobile devices:

- feature films
- telemovies
- television drama series, serials and sketch comedy programs
  - excluding foreign performers/celebrities who take part or make brief, one-off appearances as themselves in film or television productions, when this participation is incidental to their main purpose for entering Australia (which might include live performance concert tours and other promotional activities)
- documentaries and dramatised documentaries
  - excluding all on-screen performers other than foreign hosts and foreign performers in dramatic roles

The Guidelines set out the circumstances under which applications can be considered for the import of foreign performers to take part in the film and television productions and roles specified above.

The Guidelines do not apply to:

- foreign performers in roles or forms of film or television production other than those specified above. Visa applications for such performers will be considered by the Department of Immigration and Citizenship (DIAC) under sub-paragraph 2.72D(7) of the Migration Regulations; or
- foreign performers seeking visas to enter Australia under an agreement between Australia and another country, such as Australia's bilateral film co-production agreements. In such cases, the application will be considered by DIAC under sub-paragraph [\*\*\*TBC\*\*\*] of the Migration Regulations. Screen Australia administers the Commonwealth Government's International Co-production Program and determines applications for projects to be approved as Official Co-productions.

**Comment [DEH1]:** MEAA believes the guidelines should apply to all performers and all forms of production (eg reality TV, variety, quiz, panel, chat programs, TV commercials, etc). Based on DEWHA's past application of the Guidelines we propose to limit to discreet major roles in drama productions and documentaries (concept of drama production is based on 2005 Australian Content Standard).

**Comment [DEH2]:** This exclusion is to cover the recent

s45

MEAA strongly opposes these sorts of performances being excluded from the guidelines because s45 appearance denial screen time to Australian actors. DIAC is concerned that if this sort of performance is included it will overly complicate entertainment visa processes.

**Comment [DEH3]:** Getting reference from DIAC

## SECTION B - TERMS AND DEFINITIONS

**‘Cameo acting role’** means a brief but important role in a feature film or similar drama production, usually performed by a well-known screen performer.

**‘Government subsidy’** means any form of government financial support other than developmental funding and including:

- (i) direct subsidies such as direct investment, loans, distribution guarantees and pre-sales;
- (ii) indirect subsidies such as tax concessions (e.g. Producer Offset, Location Offset, Post, Digital and Visual Effects Offset in Division 376 of the *Income Tax Assessment Act 1997*)).

For the purposes of this definition ‘government’ includes Commonwealth and state and territory governments.

**‘Documentary’** means a program which is a creative interpretation of actuality, provides a detailed study of real people and/or events, presenting a single issue, subject or theme of a social, political or general (but not special) interest, and often deals with travel, science, and historical subjects but excludes news or current affairs, sports coverage, magazine, infotainment, light entertainment, and reality programs.

**‘Feature film’** means a film, including animations, commonly screened as the main attraction in commercial cinemas that is no less than 60 minutes, or in the case of a larger format (IMAX) film no less than 45 minutes, and shot and processed to commercial standards for cinema exhibition, television broadcast or distribution via other platforms.

**‘Film or television production’** means a production intended for cinema exhibition, television broadcast, or distribution via other platforms (such as DVD, and internet and mobile phone downloads) but does not include computer games.

**‘Foreign investment’** includes overseas sourced funds where such investment is secured against returns from foreign markets, regardless of whether the funds are equity investment or not, including direct investment and revenue raised through pre-sales and distribution in overseas markets.

**‘Host’** means the central performer in a documentary who introduces and presents the material to a viewing audience and who may also be referred to as “compere”, “presenter”, “commentator” or “narrator”.

**‘Leading actor role’** means the role of protagonist or one of the central or main roles in a feature film or similar drama production.

**‘Motion capture performer’** means a performer in a computer animation production in a role which involves tracking points on a moving face or body in order to get a simplified image of motion, e.g. the animation of the penguins in Happy Feet.

**‘Official co-production’** means a production for which a performer seeks to enter Australia under an agreement between Australia and another country, under the International Co-production Program administered by Screen Australia, for which

visa applications are considered by the Department of Immigration and Citizenship (DIAC) under sub-paragraph [\*\*\*CHECK\*\*\*] of the Migration Regulations.

Comment [DEH4]: Getting reference from DIAC

**‘On screen Performer’** means:

- (i) a performer in a feature film; telemovie; television drama series, serial or sketch comedy program; or dramatised documentary who is performing:
  - (a) a leading, supporting or cameo acting role;
  - (b) as a dancer, motion-capture performer, puppeteer, stunt performer or voice-over performer; or
- (ii) a host in a documentary or dramatised documentary.

**‘Puppeteer’** means a manipulator of any variety of puppet, whose work appears in a feature film or similar drama production.

**‘Sponsor’** means an Australian producer applying for a Foreign Performers Certificate or an Australian sponsor acting on behalf of a foreign producer in making this application.

**‘Stunt performer’** means a performer engaged to perform dangerous scenes in a film or television production and/or who doubles for one of the actors chosen for a particular role.

**‘Supporting actor role’** means a role which is more than a cameo but not a central role in a feature film or similar drama production.

**‘Serial’** means a narrative series made up of two or more episodes that:

- (i) are produced wholly or principally for public exhibition on television under a single title, for both free-to-air (broadcast network) and subscription television (cable or satellite); and
- (ii) comprise a potentially unlimited number of episodes, relating a number of equally important and overlapping plots, without an apparent single major plot necessarily moving towards a resolution and arranged into consecutive episodes for screening purposes.

**‘Series’** means a narrative series made up of two or more episodes that:

- (i) are produced wholly or principally for public exhibition on television under a single title, for both free-to-air (broadcast network) and subscription television (cable or satellite);
- (ii) have a common theme or themes that draws the episodes of the series into a cohesive whole;
- (iii) contain dramatic elements that form a narrative structure; and
- (iv) are intended for exhibition together in a national market or markets.

**‘Sketch comedy program’** means a comedy program produced for television comprising sketches that are short, self-contained stories or plots; but does not include a stand-up comedy program or an incidental sketch that is a component in a program of another kind.

**‘Telemovie’** means a drama program of a like nature to a feature film, which is no less than one commercial television hour in length and shot and processed to



commercial release standards for television broadcast or distribution via other platforms (such as DVD and internet and mobile phone downloads).

**'Traditional Australian character'** means an Australian character that appears in Australian literature (e.g. *Man from Snowy River*, *The Shiralee*, etc) or is part of Australia's history and/or folklore (e.g. Dame Nellie Melba, Ned Kelly, etc).

**'Voice-over performer'** means a performer who provides recorded dialogue or narration, that comes from an unseen, off-screen voice in a feature film or similar drama production.

DRAFT

## SECTION C - TREATMENT OF SUBSIDISED AND UNSUBSIDISED PRODUCTIONS

In accordance with the requirements of the Migration Regulations, the Guidelines set different criteria for assessing the appropriateness of foreign performers taking part in specified film and television productions in Australia based on whether or not a production is, or will be, subsidised by an Australian government (ie Commonwealth, state or territory government).

Sponsors are required by the Migration Regulations to consult with the MEAA in relation to each application for a Foreign Performers Certificate before submitting the application to DEWHA. Details of the application process, including consultation requirements, are at Section E.

In seeking to import foreign performers, sponsors will need to identify the type of production proposed and satisfy the corresponding criteria as outlined below. Since every production that proceeds in Australia provides at least some benefit to the Australian screen industry through employment opportunities for performers, crews and other film production service providers, the onus is on the sponsor to demonstrate that an application to import a foreign performer is required.

### SUBSIDISED PRODUCTIONS

Productions can be subsidised in three ways:

1. Receive direct government subsidy
2. Access the Producer Offset
3. Access the Location or PDV Offsets

For a foreign performer to take part in a subsidised film or television production, the application for a Foreign Performers Certificate must satisfy the requirements set out in the Australian Content Criteria (ACC) detailed below.

However, please note the ACC requirements vary depending on whether or not the production in which the foreign performer is to appear receives a direct government subsidy.

#### Category 1 - Productions in receipt of direct government subsidy

The ACC is satisfied where reasonable opportunity has been given to employing Australian performers at all levels of the production, and:

- the casting of leading and major supporting roles accurately reflects the Australian characters portrayed;
- at least 50 per cent of performers in leading roles and 75 per cent of performers in major supporting roles are Australian; and
- where applicable, an Australian performer has been cast to play each 'traditional Australian character'.

The level of foreign investment in a production's budget will be a factor considered in assessing applications for the importation of foreign performers on a case by case basis. As a general guidance, the greater the level of foreign investment in the

**Comment [DEH5]:** Previously no distinction was made re receipt of government subsidy. Direct government subsidy was addressed but treatment of indirect government support provided by the Producer and Location Offsets was not. MEAA & SPAA both wanted Location Offset productions excluded from the higher standard requirement for direct government funded projects. MEAA also wanted a higher standard to apply to Producer Offset productions.

This is a compromise:

- which sets the highest standard for any production in receipt of direct government subsidy (eg grants, investment, etc).
- where productions receive only the Producer Offset it is proposed they must only comply with the eligibility requirements of the Producer Offset - Screen Australia supports this approach
- which allows Location Offset productions to operate to a lower standard whether they receive direct government subsidy or not (noting that many state film agencies provide direct grants to encourage Location Offset productions to shoot in their state).

**Comment [DEH6]:** Area of SPAA concern - it believes this needs to be more tightly defined. We don't see this as a substantive issue and propose to leave as is. See definition for further detail

production over 20 per cent, the greater the possible entitlement for the employment of foreign performers in lead, support and cameo acting roles within the above parameters. For example, where a minimum of:

- 20 per cent of a production's budget is foreign investment and the budget in the case of a feature film is less than \$4.0 million, in the case of a telemovie less than \$2.0 million, or in the case of a series or serial less than \$0.75 million per television hour, the employment of one foreign performer may be appropriate;
- 20 per cent of a production's budget is foreign investment and the budget in the case of a feature film is \$4.0-12.0 million, in the case of a telemovie more than \$2.0 million, or in the case of a series or serial is \$0.75-1.0 million per television hour, the employment of one lead and one support or cameo foreign performer may be appropriate;
- 20 per cent of a production's budget is foreign investment and the budget in the case of a feature film is more than \$12.0 million, or in the case of a series or serial, more than \$1.0 million per television hour, the employment of one additional foreign performer may be appropriate to play a cameo acting role.

Where a sponsor seeks to import a foreign performer on the basis that a suitable Australian performer cannot be found, the sponsor should demonstrate that a genuine attempt has been made to locate a suitable Australian performer. DEWHA Casting Guidelines are at Section F.

When no Australian performer can be cast who satisfies the requirements of a role, the employment of a foreign performer may be appropriate in the following circumstances:

- highly specialist/unusual roles
- ethnicity
- continuity
- unexpected change in level of foreign investment
- private investment dependent on engagement of foreign performer
- overall benefit to Australian film and television industry

If a sponsor seeks consideration on the basis of factors listed above, the sponsor will be required to provide additional evidence in support of their application as detailed in Section D.

### **Category 2 - Productions NOT in receipt of direct government subsidy but eligible to access the Producer Offset**

The ACC is satisfied if the sponsor provides evidence that the production has obtained provisional certification to access the Producer Offset. Evidence should include a copy of the Provisional Certificate and covering letter from Screen Australia. Further information regarding the Producer Offset application process is available on Screen Australia's website at [http://www.screenaustralia.gov.au/producer\\_offset/prov\\_certification.asp](http://www.screenaustralia.gov.au/producer_offset/prov_certification.asp)

**Comment [DEH7]:** Current level is 30%. MEAA adamant this level should remain. SPAA argues usual level of foreign investment is now 10-15%. Screen Aust research data shows over last 5-10 years foreign investment is 10-15% for features and 10-15% for TV productions. If necessary, we could concede this point to MEAA as flexibility provisions in Section D allow case by case assessment.

**Comment [DEH8]:** This framework is from current guidelines. MEAA is very strongly in favour of retaining. Because proposed Section D provides flexibility nothing is lost by including it. It is also useful in giving a sense of the number of foreign performers who could enter in any particular production in receipt of direct govt subsidy

**Comment [DEH9]:** Objective is to set a common standard for productions accessing the PO only and not having the foreign performer process potentially set a higher/different standard than the PO SAC test

Productions in receipt of direct government subsidy in addition to accessing the Producer Offset should apply for Foreign Performers Certification under Subsidised Productions 'Category 1' above.

### **Category 3 - Productions eligible to access the Location or PDV Offsets**

The ACC is satisfied if the sponsor provides evidence that the production intends to access the Location or PDV Offsets. Evidence may include a letter of intent from the relevant production company and/or demonstration that the production budget exceeds the Location or PDV Offset eligibility criteria for minimum expenditure thresholds.

The fact that a production eligible to access the Location or PDV Offset may also be in receipt of direct government subsidy **does not impose any additional requirements** in this instance.

**Comment [DEH10]:** MEAA and SPAA both of view that flexibility is required for Location and PDV Offset productions and don't want small amounts of state govt support to impose higher standard re approach to foreign performers appearing in offshore productions (where it is not uncommon for 4-6 foreign a to be cast).

### **UNSUBSIDISED PRODUCTIONS**

Unsubsidised productions, including those fully funded offshore, must satisfy the following criteria:

- Australian citizens/residents have been provided with a reasonable opportunity to participate in all levels of the production; and
- the sum of foreign investment exceeds the amount to be expended on the foreign performers while they are in Australia to take part in the unsubsidised production.

In making an application to import foreign performers, the sponsor should demonstrate that reasonable efforts have been made to cast Australian performers at all levels of the production. DEWHA Casting Guidelines are at Section F.

In relation to foreign investment, the sponsor should provide DEWHA with documentation demonstrating that the foreign investment component of the production's budget is greater than that expended on the proposed foreign performers while they are in Australia to take part in the unsubsidised production. Expenditure on foreign performers in Australia includes salary, living allowances, travel and other expenditure associated with their stay in Australia.

**Comment [DEH11]:** Retains current arrangement for unsubsidised productions. However, MEAA will strongly oppose treatment of 'Australian' productions such as Neighbours being treated in this way - it will regard this as a lowering of the standard.

## SECTION D - FLEXIBILITY CIRCUMSTANCES AND EVIDENCE REQUIRED

**Comment [DEH12]:** The following evidentiary requirements are based on UK system for entry of foreign performers appearing on film & TV productions

As noted in Section C, where the sponsor demonstrates that an Australian performer cannot be found to fill a role for a production in receipt of direct government subsidy (Subsidised Productions 'Category 1'), importation of a foreign performer may be considered in the circumstances outlined below on the basis of additional evidence provided by the sponsor in support of the application.

Please note that proof of a genuine search of the Australian labour market to fill the role with an appropriately qualified or experienced Australian performer will be required in the first instance. The evidence required is set out in the DEWHA Casting Guidelines at Section F.

Sponsors who intend to make an application for importation of a foreign performer in the following circumstances will need to mount a convincing case supported by the documentary evidence as requested in each case. The simple assertion that foreign performer participation is critical will not be sufficient.

Please also note that the circumstances enumerated below are not intended to lead to exploitation as a minimum standard is applied to all productions.

If a sponsor believes there are other compelling reasons to import a foreign performer beyond those circumstances listed below they should contact both MEAA and DEWHA to present a case. Such approaches will be considered on their merits on an individual basis.

### 1. Highly specialist/unusual roles

**Comment [DEH13]:** MEAA and SPAA both support

The foreign performer is necessary to perform a highly specialist or unusual role which requires specific or specialist attributes including, but not limited to, physical appearance, physical talent and linguistic or vocal skills. Please note that foreign language and accent requirements\* for a particular role are not necessarily sufficient grounds for importing a foreign performer.

Evidence:

- script or synopsis demonstrating that the role requires certain highly specialist attributes; and
- documentation such as a listing of personal attributes or specialist skills from a resume or curriculum vitae that supports the claim that the proposed foreign performer possesses the attributes necessary to perform the role.

### 2. Ethnicity

**Comment [DEH14]:** MEAA and SPAA both support

The foreign performer is necessary for reasons of ethnicity required by the role. Please note that foreign language and accent requirements\* for a particular role are not necessarily sufficient grounds for importing a foreign performer.

\* Australia is a multicultural country. Many Australian performers are competent in a variety of languages other than English, and can speak an extensive range of English language and non-English language accents.

Evidence:

- script or synopsis demonstrating that specific ethnic characteristics are required by the role; and
- documentation verifying that the proposed foreign performer is of the ethnicity required.

### **3. Continuity**

The foreign performer is necessary for reasons of continuity.

Evidence:

- documentation, such as a performer contract, cast list or press clippings, supporting the claim that the foreign performer has worked on, or will be working on, the same production outside Australia for at least one month.

**Comment [DEH15]:** MEAA opposed; SPAA support

### **4. Unexpected change in level of foreign investment**

Where the initial level of foreign investment in a production's budget allows for the importation of foreign performers, but decreases unexpectedly, consideration will be given to approving the importation of foreign performers already attached to the production. For example, if a foreign investor withdraws support due to financial pressures and is replaced by an Australian investor at short notice.

Evidence:

- details of the production budget;
- documentation from private investors committing to the production;
- documentation verifying the genuine withdrawal of a foreign investor and the reasons for the withdrawal; and
- documentary proof that a genuine attempt has been made to secure replacement foreign investors.

**Comment [DEH16]:** MEAA (grudgingly) and SPAA both support

### **5. Private investment dependent on engagement of foreign performer**

The foreign performer is commercially necessary to secure Australian and/or foreign investment in the production or overseas pre-sales and distribution deals.

Evidence:

- details of the production budget;
- one or more of the following documents as necessary:
  - letter of confirmation from the production's principal private investor that finance in the production is dependent on the foreign performer's participation;
  - letter of confirmation from the production's distributor that distribution is dependent on the foreign performer's participation;

**Comment [DEH17]:** MEAA strongly opposed; SPAA support

- contracts indicating that overseas pre-sales are dependent on the foreign performer's participation;
- where the foreign performer is internationally known, documentary proof of their box office appeal through international box office figures for productions in which they have undertaken lead or major supporting acting roles; and/or
- where the foreign performer is an emerging on-screen performer, or cast to appeal to a particular overseas audience, documentation in support of their potential box office appeal such as resume/filmography details including previous work, reviews, awards/accolades, and/or other evidence of audience appeal.

#### **6. Overall benefit to Australian film and television industry**

The foreign performer is necessary to ensure that the production proceeds in Australia, and proceeds on the scale originally envisaged rather than being significantly diminished, and the size of the production's budget is such that associated local employment opportunities constitute an overall net economic benefit for the Australian film and television industry. Net economic benefit could include additional employment opportunities for Australian performers and crews, longer employment contracts as a consequence of a larger production budget and longer production schedule, and significant commercial opportunities for other film production service providers in Australia.

Please note that where a sponsor claims there is a financial imperative to engage a foreign performer which is not demonstrated by a higher level of Australian and/or foreign investment in the production budget a detailed explanation of that financial imperative will be required.

Evidence:

- details of the production budget including estimated expenditure in Australia;
- one or more of the following documents as necessary:
  - letter of confirmation from the production's principal private investor that investment in the production is dependent on the foreign performer's participation;
  - letter of confirmation from the production's distributor that distribution is dependent on the foreign performer's participation;
  - contracts indicating that overseas pre-sales are dependent on the foreign performer's participation;
- number and description of the specific roles to be filled by Australian performers including employment contract details;
- number and description of positions to be filled by Australia crew including employment contract details; and
- estimated production budget (including expenditure in Australia) and the number of Australian cast and crew to be employed if the production proceeds without the foreign performer's participation.

**Comment [DEH18]:** MEAA very strongly opposed. SPAA support

Concept we are seeking to cover is likely to be very rare but one that DEWHA approved as a one-off production \$4 years ago. Production with budget of \$45 wanted to employ foreign actors to play \$45 lead roles on basis that name foreign actors were necessary to support the level of foreign and Australian investment. One dimension of our consideration was that if foreign actors were not attached production might proceed but only with a budget of \$45. It significantly diminished with significantly reduced employment opportunities for actors, crew and service providers.



## SECTION E - APPLICATION PROCESS

**Comment [DEH19]:** Finalised  
in concert with DIAC and MEAA

Applications for Foreign Performers Certificates should be made by Australian producers on behalf of performer applicants or by sponsors acting on behalf of foreign producers.

Applying for certification of the foreign performer through to the provision of the entertainment visa is a four part process as follows:

1. Initial contact with DEWHA and MEAA, and in special cases DIAC, to indicate sponsor is commencing application for a Foreign Performers Certificate.
2. Consultation with MEAA to obtain letter of opinion
3. DEWHA assessment and decision on application for Foreign Performers Certificate
4. DIAC processing of application for entertainment visa

To allow adequate time for consideration of applications, sponsors should commence the application process at least 10-12 weeks prior to the proposed date of entry into Australia of the foreign performer. Processing times may be accelerated to accommodate one-off applications where the sponsor has demonstrated exceptional circumstances apply.

### **1. Initial contact with relevant agencies**

Sponsors must advise DEWHA and MEAA of their intention to apply for a Foreign Performers Certificate required to import a foreign performer into Australia. This will provide an opportunity for information exchange and to clarify any initial questions the sponsor may have regarding the application process including relevant application forms and MEAA consultation requirements.

Sponsors should provide initial e-mail advice to DEWHA (E-mail: [foreignactors@environment.gov.au](mailto:foreignactors@environment.gov.au)) and MEAA (E-mail: [imports@alliance.org.au](mailto:imports@alliance.org.au)) which sets out details of:

- Name and contact details of sponsor
- Name of the production
- Number and nationalities of foreign performers for whom entry is being sought
- Estimated arrival and departure dates

Sponsors seeking to import 10 or more foreign performers in a single application should also provide the above advice to DIAC by e-mail (E-mail: [entertainment.visas@immi.gov.au](mailto:entertainment.visas@immi.gov.au))

For full contact details for agencies see Section G.

### **2. Consultation with MEAA to obtain letter of opinion**

Sponsors should consult with MEAA in advance of submitting their application for a Foreign Performers Certificate to DEWHA. MEAA considers the circumstances of each application and provides a letter of opinion to the sponsor and DEWHA based on



its assessment of whether the proposed foreign performer importation complies with the Migration Regulations and DEWHA Guidelines.

MEAA requires the sponsor to provide a range of information in order to make this assessment including the following documentation (unless otherwise agreed with MEAA):

- script or synopsis;
- letter outlining the reasons for the proposed foreign performer import, including details of the production budget and level of foreign investment;
- evidence of compliance with the DEWHA Casting Guidelines when the basis of the application is an inability to cast the role with an Australian performer;
- details of the performer's itinerary;
- foreign performer's resume; and
- copy of the deal memo/contract with the foreign performer.

For further information and a comprehensive list of MEAA's requirements see:

[http://www.alliance.org.au/imports\\_information/1/](http://www.alliance.org.au/imports_information/1/)

Where a sponsor approaches MEAA well in advance of submitting its application to DEWHA for a Foreign Performers Certificate, MEAA may provide an 'in-principle no objection letter' in relation to the proposed import.

MEAA is required to provide a written response (letter of opinion) to the sponsor and DEWHA in relation to their application within 14 calendar days. The 14 day period commences from the date upon which all relevant documentation is submitted to MEAA for consideration.

### **3. DEWHA assessment and decision on application for Foreign Performers Certificate**

#### ***Submitting an application***

The DEWHA Guidelines and Foreign Performers Certificate application form are available for download from <http://www.arts.gov.au/foreignactors>.

Applications should contain evidence of compliance with the requirements set out in Sections C and D of the Guidelines as necessary. DEWHA may also seek further information and/or statutory declarations in relation to supporting documentation provided by the sponsor where appropriate.

In determining whether to issue a Foreign Performers Certificate, the Arts Minister or person authorised by the Arts Minister, will take comments provided by MEAA into consideration. A copy of the letter of opinion from MEAA should be provided by the sponsor as part of the application submitted to DEWHA.

**Comment [DEH20]:** NB: we will update the webpage & generic e-mail addresses when we get agreement to text from our working group

Applications should be addressed and faxed or emailed as follows:

Assistant Secretary  
Film and Creative Industries Branch  
Department of the Environment, Water, Heritage and the Arts  
Fax: +61 2 6275 9320  
Email: [foreignactors@environment.gov.au](mailto:foreignactors@environment.gov.au)

Receipt of applications will be acknowledged and all enquiries regarding the application process should be directed to the Desk Officer at the above generic email address or by phone on Tel: +61 2 6275 9633.

Please note that a single application form may cover a number of performers. Alternatively, applications may be made for performers in a sequence as details become available.

#### ***Application assessment***

DEWHA considers the circumstances of each application, taking into account the views of the sponsor and MEAA's letter of opinion, and makes a decision based its assessment of whether the proposed foreign performer importation complies with the Migration Regulations and the Guidelines.

DEWHA commences its assessment of an application for a Foreign Performers Certificate once the completed application form and supporting documentation (including a letter of opinion from MEAA) has been received. DEWHA requires five working days to process an application, and may seek further information at any point in the application assessment process in order to establish whether certification should occur.

Where MEAA has been consulted but has not provided a written response to the sponsor within the required 14 day period, DEWHA will seek to elicit the requested letter of opinion from MEAA. DEWHA will proceed with the assessment of the application based on the information provided by the sponsor if MEAA is unable to meet this request within a reasonable timeframe.

Should MEAA object to the application, the sponsor will be invited to make a written submission to DEWHA addressing the reasons for the objection set out in MEAA's letter of opinion, together with any additional relevant information in support of the application. The sponsor's submission should be provided to DEWHA and copied to MEAA by email or fax within three working days of DEWHA's request.

Upon receipt of the sponsor's submission, MEAA will be invited to provide any additional comments it may wish to make in response in writing to DEWHA. These comments should be provided to DEWHA and copied to the sponsor by email or fax within three working days of DEWHA's request.

The sponsor will subsequently be invited to provide any final written comments in support of the application to DEWHA, again within three working days of DEWHA's request.

Every effort will be made to come to a determination as expeditiously as possible, and DEWHA takes the timeframe of the production and proposed arrival date of the performer into consideration. Hence in some circumstances input from the sponsor and MEAA may be required within a shorter timeframe than that indicated above.

#### ***Decision on certification***

Upon completion of the assessment process, DEWHA makes its recommendations regarding the issuing of a Foreign Performers Certificate to the Arts Minister, or person authorised by the Arts Minister, for consideration and final decision.

DEWHA will notify the sponsor, MEAA and DIAC regarding the certification decision, and where a certificate has been issued, provide signed copies to all three parties by email (or by fax upon request). The sponsor will also be sent the original hard copy of the certificate by regular post.

Please note that a Foreign Performers Certificate is valid for the entire length of the production for which it is issued. A new certificate is not required in the case of subsequent visa applications for re-entry of the same performer in the same production.

#### **4. DIAC processing of application for entertainment visa**

Applications for entertainment visas for foreign performers entering Australia to take part in productions covered by these Guidelines are only considered by DIAC if supported by a Foreign Performers Certificate.

The Foreign Performers Certificate should be lodged by the sponsor with DIAC to initiate processing of the visa application, together with the following documentation:

- the MEAA letter of opinion;
- a completed sponsorship application form (if the proposed sponsor has not already been approved as an entertainment sponsor, where sponsorship is valid for three years);
- a completed nomination application form;
- a completed entertainment visa application form;
- the separate fees/charges for the sponsorship, nomination and visa applications, without which an entertainment visa application will not be valid.

For further information and a comprehensive list of DIAC's requirements see:

<http://www.immi.gov.au/skilled/specialist-entry/420> [\*\*\*TBC\*\*\*]

**Comment [DEH21]:** Confirm with DIAC

Sponsors should lodge their documentation with DIAC at least 8-12 weeks prior to the nominated person's arrival date in Australia.

## SECTION F - CASTING GUIDELINES

Where a sponsor seeks to import a foreign performer on the basis that a suitable Australian performer cannot be found, the sponsor should demonstrate that a genuine attempt has been made to locate a suitable Australian performer.

Where the Arts Minister or person authorised by the Arts Minister is not so satisfied, sponsors will need to provide documentary evidence to demonstrate to DEWHA that some or all of the following have been undertaken:

- appointment of a recognised casting director;
- employment of recognised casting agents;
- appropriate advertising of the role;
- distribution of the character breakdown of the role to performers' agents Australia-wide;
- professional auditions conducted in a conducive atmosphere where the performer is given every opportunity to demonstrate their ability to play the nominated role including:
  - providing the performer with a detailed character breakdown of the role and excerpts from the script in sufficient time to prepare for the role;
  - informing the performer in advance if the role requires a particular accent;
  - giving the performer the opportunity to discuss the role with the director; and
  - providing make-up and costumes where recommended by the casting director.

DEHWA may also require evidence to establish that where recommended by the casting director, all performers were auditioned and, where appropriate, short-listed performers were screen-tested.

Additional information regarding the Australian performers who were considered, interviewed or auditioned for the role may be requested by DEWHA as follows:

- details of the performers offered the role and an explanation of why they were unable to accept; and
- details of the performers considered unsuitable for the role and a statement of the reasons for the decision.

Please note DEWHA may seek further information and/or statutory declarations in relation to supporting documentation provided by the sponsor where appropriate.