

*Draft before cleanups
sent to Tish
Taylor*



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

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 Performer 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 Performer 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 that is a creative treatment of actuality, other than a news, current affairs, sports coverage, magazine, infotainment, light entertainment or reality program.

'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 (excluding loans to cashflow the Producer Offset), 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, but excludes the Australian Broadcasting Corporation and the Special Broadcasting Services Corporation [include definition entries for these if retained].

'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".

Deleted: 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.

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http://www.screenaustralia.gov.au/industry_support/Production/Documentary.asp says "[Note: For the purposes of these funding guidelines, Screen Australia will apply its definition of 'documentary' from the guidelines compiled by the Australian Communications and Media Authority (ACMA). These guidelines are available on the ACMA website.]"

The ACMA definition is from <http://www.acma.gov.au/webwr/aba/tv/content/requirements/australian/documents/documentaryguidelines.pdf>

‘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 [DEH3]: 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 Performer 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 Performer 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: WHY ISN'T THIS JUST "A production is subsidised if it has, or will receive a Government Subsidy" IE. THE 3 THINGS LISTED DON'T COVER EVERY POSSIBILITY IN THE DEFINITION OF GOVT SUBSIDY
 - (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 Performer 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 in point 10 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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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

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

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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. BUT THEY WILL HAVE TO MEET BOTH CATEGORY 1 AND CATEGORY 3 ACC? IF SO THEN THIS STATEMENT COULD BE MISLEADING AND SHOULD SET OUT CLEARLY WHAT'S NEEDED. OR IF THIS IS SAYING THAT THEY DON'T HAVE TO MEET CATEGORY 1 ACCs THEN I THINK IT SHOULD STATE THAT CLEARLY

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.

* 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.

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SECTION E - APPLICATION PROCESS

1. Applications for Foreign Performer 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 cases which involve a large number of cast and crew DIAC, to indicate the Sponsor is commencing application for a Foreign Performer Certificate;
 - Consultation with MEAA to obtain a letter of opinion;
 - DEWHA assessment and decision on application for a Foreign Performer 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 a genuine need for urgency applies.

Initial contact with relevant agencies

4. Sponsors must initially advise DEWHA and MEAA of their intention to apply for a Foreign Performer Certificate. 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) and
 - (b) MEAA (E-mail: 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.
6. 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@inmi.gov.au).
7. For full contact details for agencies see Section G.

Consultation with MEAA to obtain letter of opinion

8. Sponsors should consult with MEAA in advance of submitting their application for a Foreign Performer Certificate to DEWHA. MEAA may provide a no objection letter, or a letter of opinion to the Sponsor and DEWHA based on its assessment of whether the proposed foreign performer importation complies with the DEWHA Guidelines.
9. WHOSE REQUIREMENT IS THIS? IF ITS DONE IN ADVANCE THEN IS THE RESPONSE TIME CRITICAL? 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 (see also paragraph 20 below).
10. 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.

For further information and a comprehensive list of MEAA's requirements see:
<http://www.alliance.org.au/imports>

11. Where a Sponsor approaches MEAA well in advance of submitting its application to DEWHA for a Foreign Performer Certificate, MEAA may provide an 'in-principle no objection letter' in relation to the proposed import. Where an in-principle letter has been provided, the Sponsor must nevertheless consult formally and receive a final no objection letter.

DEWHA assessment and decision on application for Foreign Performer Certificate

Submitting an application

12. The DEWHA Guidelines and Foreign Performer Certificate application form are available for download from <http://www.arts.gov.au/foreignactors>.
13. 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.
14. In determining whether to issue a Foreign Performer 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

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provided by the Sponsor as part of the application submitted to DEWHA.

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15. 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

16. 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.
17. 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

18. 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 Guidelines.
19. DEWHA commences its assessment of an application for a Foreign Performer 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.
20. 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.
21. Should MEAA object to the application, DEWHA will invite the Sponsor to make a written submission. This submission should address MEAA's objections and also provide any additional relevant information in support of the application. The Sponsor's submission should be provided to DEWHA and copied to MEAA within three working days of DEWHA's request. This may be done by email or fax.
22. 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 within three working days of DEWHA's request. This may be done by email or fax.
23. 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.
24. 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

25. Upon completion of the assessment process, DEWHA makes its recommendations regarding the issuing of a Foreign Performer Certificate to the Arts Minister, or person authorised by the Arts Minister, for consideration and final decision.
26. 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.
27. Please note that a Foreign Performer 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 re-entry of the same performer in the same production.

DIAC processing of application for entertainment visa

28. 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 Performer Certificate.
29. Sponsors should lodge their documentation with DIAC at least 8-12 weeks prior to the nominated person's arrival date in Australia.
30. The Foreign Performer 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. 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 (if applicable) for the sponsorship, nomination and visa applications, without which an entertainment visa application will not be valid.
31. For further information and a comprehensive list of DIAC's requirements, including where applications must be lodged, see:
<http://www.immi.gov.au/skilled/specialist-entry/420> [***TBC***]
32. Sponsors should also make themselves aware of the obligations under the Entertainment visa program. More information can be found at:
<http://www.immi.gov.au/skilled/specialist-entry/420/obligations-sponsor.htm>

Comment [DEH5]: 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. 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.

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

<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

<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

<http://www.alliance.org.au/imports>

GUIDELINES REVIEW
FILE

Carter, Jane

From: Richards, Stephen
Sent: Thursday, 14 October 2010 3:00 PM
To: Carter, Jane
Subject: RE: For clearance today: s22 [SEC=UNCLASSIFIED]
Categories: UNCLASSIFIED

Sent + Greg
14.10.10.
X

Jane – Thanks. I've suggested a small addition to give us some cover as to why this has taken so long. If this is OK with you can you pass to Greg, please? Cheers – Stephen

From: Carter, Jane
Sent: Thursday, 14 October 2010 2:21 PM
To: Richards, Stephen
Subject: For clearance today: SPAA briefing [SEC=UNCLASSIFIED]

Stephen

Draft input for Greg's brief at the link below – for your comments/clearance today please:

G:\AS&IFilm and Creative Industries\Immigration\POLICY\BRIEFING\Meeting brief_Crean with SPAA_Oct 2010.doc

Greg has indicated this length is ok.

Cheers,

Jane Carter

Assistant Director, Film Incentives and International Section

ph +61 2 6275 9631 | fax +61 2 6275 9320
jane.carter@environment.gov.au

From: Jericho, Greg
Sent: Tuesday, 12 October 2010 3:47 PM
To: Richards, Stephen; Carter, Jane
Cc: Roberts, Belinda
Subject: s22 [SEC=UNCLASSIFIED]

Stephen

s22

Could you provide me with a couple paragraphs on the issue for the briefing, and any talking points if you think they are necessary?

We're hoping to get the briefing to Celia by cob Friday.

Cheers
Greg

Greg Jericho

14/10/2010

Policy Officer
Australian Film Industry
Culture Division

Office for the Arts
Department of the Prime Minister and Cabinet

Tel: +61 (0)2 6275 9609
Fax: +61 (0)2 6275 9320

Foreign Actor Certification Scheme

- Regulation of the entry of foreign actors into Australia for film and television is an important measure to ensure Australian performers are seen and heard on Australian screens.
- As you know, the Department's Guidelines for the entry of foreign actors are the basis on which decisions are made as to whether the requirements identified in the Migration Regulations have been met.
- The Department is in the process of reviewing the Guidelines.
 - I expect to be briefed on progress with the review in the coming weeks.

In 2009, with the approval of the previous Arts Minister, the Department began a review of the *Guidelines for the entry into Australia of foreign performers for the purpose of performing in film or television productions* (the Guidelines). The Guidelines set out in detail the scope and eligibility requirements of the Foreign Actor Certification Scheme.

The review process to date has been undertaken in consultation with key stakeholders – the Media, Entertainment and Arts Alliance (MEAA), the Screen Producers Association of Australia (SPAA), the Department of Immigration and Citizenship (DIAC) and Screen Australia (SA). On the basis of these initial consultations in 2009, the Department prepared revised draft Guidelines for further discussion with stakeholders. The draft Guidelines were being considered by the former Minister for the Arts when the 2010 federal election was called.

The draft Guidelines are modelled on the existing Guidelines and do not constitute a radical departure from them. The intent has been to find a middle path between the divergent positions of SPAA and MEAA – one which supports employment opportunities for Australian performers so that Australian voices are heard in Australian productions as advocated by MEAA, while also offering some flexibility in the importation of foreign actors in special circumstances in order to build a commercially sustainable film and television industry, as preferred by SPAA.

DIAC and SA have indicated they are in broad agreement with the revised draft. External industry stakeholders such as SPAA have not yet seen the revised draft Guidelines. Your agreement will be sought in the coming weeks to continue the review of the Guidelines, including further consultation with external stakeholders.

Carter, Jane

From: Street, Celia
Sent: Monday, 25 October 2010 10:57 AM
To: Carter, Jane
Cc: Richards, Stephen; Sircar, Sanjay
Subject: RE: For clearance: Foreign actors brief - guidelines review [SEC=UNCLASSIFIED]
Categories: UNCLASSIFIED

Thanks Jane – one v minor additional change.

Please print (single sided) for Sally's consideration.

Kind regards

C

From: Carter, Jane
Sent: Monday, 25 October 2010 10:49 AM
To: Street, Celia
Cc: Richards, Stephen; Sircar, Sanjay
Subject: RE: For clearance: Foreign actors brief - guidelines review [SEC=UNCLASSIFIED]

Hi Celia

As per your comment in the draft brief, I've gone back over the Screen Australia data, including the revised figures that were sent through on Friday and have come up with a more expanded analysis of the level of foreign investment in the last three years and in the mid-late 1990s. Grateful for your further clearance of the draft.

G:\AS&\Film and Creative Industries\Immigration\POLICY\GDLNS\GUIDELINES REVIEW 2009
Briefing\Draft Brief - Minister Crean - State Government Assistance and Review October 2010.doc

I've accepted all your other changes.

If you are happy with this, I'll accept all new changes and delete your comment so that you can clear a clean version through Sally.

Many thanks,

Jane Carter
Assistant Director, Film Incentives and International Section

ph +61 2 6275 9631 | fax +61 2 6275 9320
jane.carter@environment.gov.au

From: Street, Celia
Sent: Friday, 22 October 2010 1:39 PM
To: Carter, Jane
Cc: Richards, Stephen; Sircar, Sanjay
Subject: RE: For clearance: Foreign actors brief - guidelines review [SEC=UNCLASSIFIED]

Thanks Jane

I think it all makes a lot of sense and the rationale is strong. I have made some suggestions for your consideration.

25/10/2010

DEPARTMENT OF THE ENVIRONMENT, WATER, HERITAGE AND THE ARTS

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

cc: Secretary, Deputy Secretary, FAS - Culture

Brief No: B10/251 vision/Agency: Culture Public Affairs Consulted: Yes
--

REVIEW OF THE FOREIGN ACTOR CERTIFICATION GUIDELINES

Timing: 26 February 2010 (to enable next phase of stakeholder consultation to commence)

Purpose: To seek your approval to circulate the current draft of the Foreign Performers Certification Scheme Guidelines (the Guidelines) to the Media Entertainment and Arts Alliance (MEAA) and the Screen Producers Association of Australia (SPAA) for their consideration.

Background: We have previously advised you (B09/2839) that through 2009 the Department has been reviewing the *Guidelines on the Entry into Australia of Foreign Actors for the Purpose of Employment in Film and Television Productions*, which have not been substantively updated since the early 1990s.

This has been done in consultation with key stakeholders – MEAA, SPAA, the Department of Immigration and Citizenship (DIAC) and Screen Australia (SA) – who have had opportunities to comment on the issues they believe need to be addressed in the review. The Department had further discussions with DIAC and SA at the end of 2009 and as a result, these agencies are in broad agreement with the current draft of the Guidelines.

A copy of the draft Guidelines is at **Attachment A**. In keeping with the terminology of the Migration Regulations 1994, which underpin the scheme, the current draft Guidelines refer to 'foreign performers' rather than 'foreign actors'.

Issues/ Sensitivities: The objectives of the review are to ensure that the revised Guidelines are clear, transparent and take account of the way in which productions are financed (e.g. introduction of the Producer Offset, changing levels of foreign investment in productions, etc.).

In preparing this draft, the Department has sought to strike a balance between the objectives of providing Australian performers 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 Department expects broad support from SPAA for the greater flexibility and transparency set out in the draft Guidelines, although SPAA continues to have some criticism of the level of MEAA involvement in the process. The Department anticipates strong criticism on a number of points from the MEAA, which favours strict compliance with the existing Guidelines and less flexibility in the application of the Guidelines. A summary of the main MEAA and SPAA's sensitivities is at **Attachment B**.

s22

s22

s22

Accordingly, we wish to discuss the draft in further detail with MEAA and SPAA during March 2010.

We will brief you on the outcomes of these consultations and any recommendations arising from them when we submit a final draft of the Guidelines for your consideration.

Recommendation: That you:

1. Agree to circulate the current draft Guidelines to the MEAA and SPAA

1. Agreed/Not agreed



Stephen Arnott
Assistant Secretary
Film & Creative Industries

62759557 / s47F
email:Stephen.Arnott@environment.gov.au

Secondary Contact
Stephen Richards

6275 9645 / s47F
email:Stephen.Richards@environment.gov.au

MINISTER
/ /2010

10 / 2 /2010

Consultation: Screen Australia, Department of Immigration and Citizenship

Attachments:

- A Current draft Foreign Performers Certification Scheme Guidelines
- B MEAA and SPAA sensitivities



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

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 Performer 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 Performer 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 the appropriate 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. a person may lodge an application to be considered by DIAC under subclass 406 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.

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 that is a creative treatment of actuality, other than a news, current affairs, sports coverage, magazine, infotainment, light entertainment or reality program.

‘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 (excluding loans to cashflow the Producer Offset), 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 government film and television agencies, but excludes the Australian Broadcasting Corporation and the Special Broadcasting Service.

‘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 subclass 406 of the Migration Regulations.

‘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 Performer 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 Performer 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 Government Subsidy.
5. For a foreign Performer to take part in a subsidised Film or Television Production, the application for a Foreign Performer 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:
 - (a) receives a direct Government Subsidy- see Category 1 below; or
 - (b) is likely to access the Producer Offset and is receiving no direct Government Subsidy – see Category 2 below; or
 - (c) is likely to access the Location or PDV Offset – see Category 3 below.

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 in paragraph 10 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

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. Such a production is only required to satisfy the Category 3 requirement set out in paragraph 13 and does not have to satisfy any of the Category 1 requirements set out in paragraphs 7-11.

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.

* 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 Performer 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 cases which involve a large number of cast and crew DIAC, to indicate the Sponsor is commencing application for a Foreign Performer Certificate;
 - Consultation with MEAA to obtain a letter of opinion;
 - DEWHA assessment and decision on application for a Foreign Performer 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 a genuine need for urgency applies.

Initial contact with relevant agencies

4. Sponsors must initially advise DEWHA and MEAA of their intention to apply for a Foreign Performer Certificate. 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) and
 - (b) MEAA (E-mail: 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.
6. 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).
7. For full contact details for agencies see Section G.

Consultation with MEAA to obtain letter of opinion

8. Sponsors should consult with MEAA in advance of submitting their application for a Foreign Performer Certificate to DEWHA. MEAA may provide a letter of opinion to the Sponsor and DEWHA based on its assessment of whether the proposed foreign performer importation complies with the DEWHA Guidelines.
9. MEAA is required to provide a 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 (see also paragraph 20 below).
10. 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.

For further information and a comprehensive list of MEAA's requirements see:
<http://www.alliance.org.au/imports>

11. Where a Sponsor approaches MEAA well in advance of submitting its application to DEWHA for a Foreign Performer Certificate, MEAA may provide a letter of opinion indicating 'in-principle' support for the proposed import. Where an in-principle letter has been provided, the Sponsor must nevertheless consult formally and receive a final letter of opinion.

DEWHA assessment and decision on application for Foreign Performer Certificate

Submitting an application

12. The DEWHA Guidelines and Foreign Performer Certificate application form are available for download from <http://www.arts.gov.au/foreignactors>.
13. 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.
14. In determining whether to issue a Foreign Performer 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.

15. 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

16. 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.
17. 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

18. 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 Guidelines.
19. DEWHA commences its assessment of an application for a Foreign Performer 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.
20. 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.
21. Should MEAA object to the application, DEWHA will invite the Sponsor to make a written submission. This submission should address MEAA's objections and also provide any additional relevant information in support of the application. The Sponsor's submission should be provided to DEWHA and copied to MEAA within three working days of DEWHA's request. This may be done by email or fax.
22. 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 within three working days of DEWHA's request. This may be done by email or fax.
23. 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.
24. 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

25. Upon completion of the assessment process, DEWHA makes its recommendations regarding the issuing of a Foreign Performer Certificate to the Arts Minister, or person authorised by the Arts Minister, for consideration and final decision.
26. 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.
27. Please note that a Foreign Performer 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 re-entry of the same performer in the same production.

DIAC processing of application for entertainment visa

28. 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 Performer Certificate.
29. Sponsors should lodge their documentation with DIAC at least 8-12 weeks prior to the nominated person's arrival date in Australia.
30. The Foreign Performer 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. 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 (if applicable) for the sponsorship, nomination and visa applications, without which an entertainment visa application will not be valid.
31. For further information and a comprehensive list of DIAC's requirements, including where applications must be lodged, see:
<http://www.immi.gov.au/skilled/specialist-entry/420>
32. Sponsors should also make themselves aware of the obligations under the Entertainment visa program. More information can be found at:
<http://www.immi.gov.au/skilled/specialist-entry/420/obligations-sponsor.htm>

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. 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.

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

<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

<http://www.immi.gov.au/skilled/specialist-entry/420>

Media, Entertainment and Arts Alliance (MEAA)

Federal Policy Officer

Tel: +61 2 9333 0958

Fax: +61 2 9333 09333

Email: imports@alliance.org.au

<http://www.alliance.org.au/imports>

REVIEW OF the FOREIGN ACTOR CERTIFICATION GUIDELINES – SUMMARY OF MEAA AND SPAA SENSITIVITIES

MEAA

MEAA supports minimal amendments to the existing Guidelines and strict compliance in all instances to protect employment opportunities for Australian actors, which in turn allow them to showcase their talents nationally and internationally. MEAA also maintains that the Australian Government cultural policy objectives require strict compliance so that local filmmakers tell Australian stories using Australian voices. Hence:

1. MEAA maintains that the Guidelines should apply to all foreign entertainers in all genres, including reality television, quiz and variety programs, television commercials and electronic games. The existing Guidelines and the new draft Guidelines do not include these genres within their scope, which is limited to drama productions and documentaries.
2. The Guidelines have always allowed for consideration of undefined 'exceptional circumstances' where the criteria for subsidised productions are not met. However, MEAA is likely to strongly disagree with the flexibility provisions which are now explicitly set out in the draft Guidelines.
3. MEAA is likely to disagree with the required level of foreign investment for subsidised productions being lowered from 30% to 20% to allow for foreign performer importation. The Department believes that the reduction is necessary because of the greater difficulty producers have today in securing foreign investment. Screen Australia data indicates average foreign investment levels over the last 5 years have been 15-20% for feature films and 10-15% for television drama productions.
4. MEAA is likely to oppose the new provision for productions only in receipt of the Producer Offset. Such productions would only need to provide evidence that they have provisional Producer Offset certification in order to import foreign performers. The MEAA believes a separate and higher standard should apply to such productions and that MEAA should have some say in the certification decision. The Department believes that a higher standard is appropriate only in the case of productions which receive direct Government subsidy and that provisional Producer Offset certification is sufficient in other cases.
5. Foreign entertainers who visit Australia obtain an entertainment visa, valid for a specific purpose. No more than one visa is valid at any one time. There have been instances of some entertainers making brief appearances as themselves in cameo roles in television serials while staying in Australia for other purposes (e.g. singer on concert tours making one-off guest appearances as self in television serial). DIAC is opposed to requiring a Foreign Performer Certificate for such entertainers on the grounds that it would complicate the visa process. The current draft Guidelines specifically state that such entertainers need not apply for a Foreign Performer Certificate. MEAA believes that such performers are appearing in roles that would otherwise be taken by Australians and that separate certification should be required.
6. MEAA is likely to oppose the proposed certification criteria for unsubsidised productions (e.g. Australian television series such as *Neighbours*) on the grounds that they are not sufficiently rigorous. Under the draft, unsubsidised production will be required to demonstrate they have provided reasonable opportunity for Australians to participate in the production and that foreign investment is greater than the amount spent on any foreign actors appearing in the production.

SPAA

SPAA supports the incorporation of greater flexibility into the Guidelines. However, SPAA is likely to be less satisfied with the following aspects of the draft Guidelines:

1. The draft Guidelines cover host roles in documentaries, and thus go beyond merely the drama genres to which SPAA believes the Guidelines should be restricted.
2. SPAA is likely to oppose the proposed certification criteria for unsubsidised productions (e.g, Australian television series such as *Neighbours*) on the grounds that such productions should not need to undergo the certification process at all since they have no government investment.
3. SPAA is seeking a lesser role for MEAA in the certification process. The draft Guidelines provide for MEAA to be consulted on all applications, which maintains the existing arrangement. SPAA would prefer MEAA to be excluded completely from the certification process for unsubsidised productions.

**DEPARTMENT OF THE PRIME MINISTER AND CABINET
OFFICE FOR THE ARTS**

PM&C
Secretary
Ms Bassar
Ms Street

PMO
Mr Clifton
Ms O'Neil

File:
2010/07023

To: Minister for the Arts (for decision)

**FOREIGN ACTOR CERTIFICATION SCHEME (FACS) GUIDELINES
REVIEW**

Timing: Routine – 6 December 2010

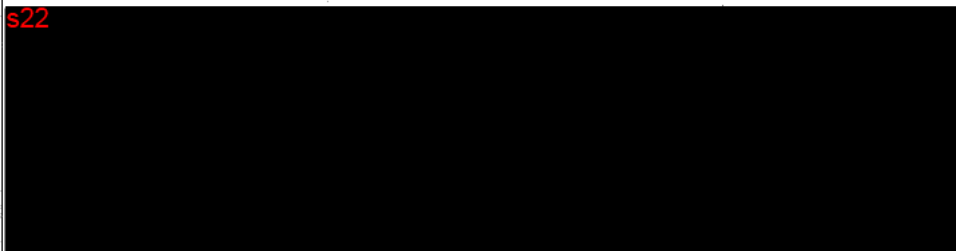
*Cleared by Sally
28.10.10*

Recommendations - that you:

1. Agree to continue the Foreign Actor Certification Scheme (FACS) Guidelines review.

Agreed/Not agreed

s22



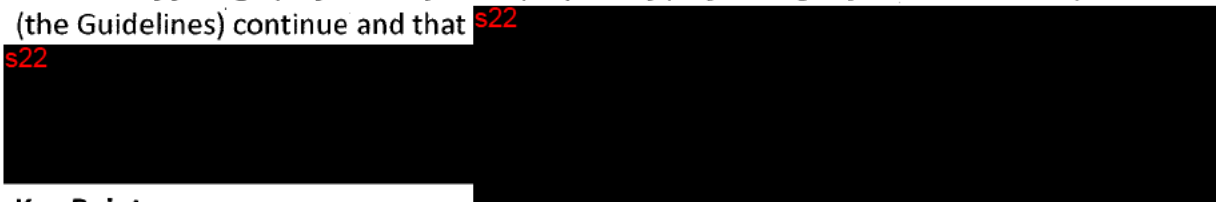
Agreed/Not agreed

Simon Crean

Date:

Purpose: To seek your agreement that the review of the *Guidelines for the entry into Australia of foreign performers for the purpose of performing in film or television productions* (the Guidelines) continue and that

s22



Key Points:

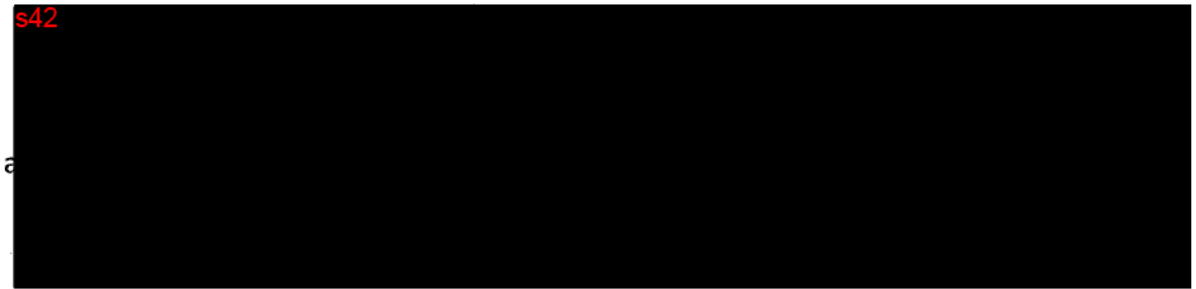
1. The objective of FACS is to provide opportunities for Australian actors to perform in productions made in Australia so that Australian voices are heard on screen. In practice, FACS seeks to strike a balance between supporting Australian actors and supporting production activity across the industry as a whole. This is done by regulating the import of foreign actors in a way that is reasonable in the context of each production and takes current industry practices into consideration.
2. The Migration Regulations 1994 (the Regulations) requires that a Subclass 420 (Entertainment) visa for a foreign actor working on a film or television production is supported by a certificate issued by the Arts Minister.
 - a. You have authorised the administration of FACS to the Office for the Arts (OFTA).
3. FACS prescribes more rigorous eligibility requirements for foreign actors working on a government subsidised production than a non government subsidised production. This is to ensure that productions in receipt of public funds provide significant opportunities for Australian actors to participate.

4. FACS applications are assessed prior to or during production. Direct government support (eg. equity investment) can be determined at that time and OFTA considers that productions receiving such support should be considered government subsidised.

s22



8. s42



9. In 2009, with the approval of the previous Arts Minister, OFTA began a review of the Guidelines, which have not been substantively updated since the early 1990s. The review to date has involved key stakeholders – MEAA, the Screen Producers Association of Australia, the Department of Immigration and Citizenship and Screen Australia. OFTA has prepared revised draft Guidelines for further discussion with stakeholders. The draft is provided at **Attachment B**.
10. If you agree to continue the review of the Guidelines, OFTA will circulate the draft Guidelines to MEAA and SPAA for further discussion.
 - a. We will brief you on the outcomes of these consultations and submit a final draft of the Guidelines for your consideration.
 - b. MEAA and SPAA are likely to have divergent views on the issues raised. The main areas of proposed change and stakeholder sensitivities are set out in **Attachment C**.

s42

Richard Eccles
Deputy Secretary
Arts and Sport Group
October 2010

Policy Officer: Celia Street
Phone no.: 6275 9557 / s47F

ATTACHMENTS

- Attachment A** Background and s42 on conditional state/territory government support
- Attachment B** Draft Guidelines
- Attachment C** Summary of proposed change in the Guidelines and sensitive issues

State/territory government support to film and television productions with respect to the Foreign Actor Certification Scheme

Background

1. For the purposes of the FACS, the Australian Government's Producer, Location and Post, Digital and Visual Effects (PDV) Offsets are not considered as subsidies because they are only accessible after a production is completed.
2. Direct investment in film and television productions by Screen Australia and state/territory governments is considered a form of government subsidy because the payment of the support occurs prior to completion of the production and forms part of the film's budget.
3. However, four states (NSW, Queensland, South Australia and Victoria) are also major providers of financial support in other forms, through the state government film agencies. These other forms of support are likely to be accessed by large budget offshore productions that may attract the Location or PDV Offset, and which routinely engage foreign actors. They may also be accessed by larger scale domestic productions that occasionally seek to engage one or more foreign actors. Other state/territory governments also provide support for film production but the delivery mechanisms are similar to those offered by NSW, Queensland, South Australia and Victoria.
4. The forms of support identified fall into three main categories:
 - a. Loan funds, which assist the financing and/or cashflowing of finance for a production,
 - b. Location attraction funds, which require certain levels of production activity/employment of local crew to occur within the relevant state (or defined regions within the state) before production companies are eligible to access the funding. Some of the funds provide payment following completion of production while others provide for payments during and following completion of production, and
 - c. Payroll tax exemptions – one of which (South Australia) exempts the production company from paying any payroll tax at all, and others which repay some or all of the payroll tax paid by the production company either:
 - i. following completion of production, or
 - ii. during and following completion of production.
5. For very large budget productions (eg. those likely to access the Location or PDV Offset, or major local productions such as s45 etc.) government film agencies may negotiate additional terms and conditions of support with production companies in order to attract the production to film in their state or territory.

UNCLASSIFIED

s42



UNCLASSIFIED

Review of the Foreign Actor Certification Scheme Guidelines

Main areas of change between current and proposed draft Guidelines

1. The draft Guidelines are modelled on the existing Guidelines, but they provide greater clarity on definitions and how various types of film and television programs are treated under FACS. They also provide greater flexibility to reflect changes in film and television program investment and support. More specifically, the draft Guidelines:
 - a. clearly define the scope of the FACS as applying to lead, supporting, and cameo roles in drama productions and to hosts/presenters of documentaries,
 - b. clearly define how different forms of government subsidy are treated under the Guidelines,
 - c. allow some flexibility in the application of the Guidelines and to describe the sorts of circumstances in which flexibility might be applied,
 - d. allow for importation of foreign actors in government subsidised productions with a lower level of foreign investment (from 30 per cent to 20 per cent), in recognition of the increasing difficulty producers have in raising foreign investment, and
 - e. treat all genres of non government subsidised productions in the same way (whether they be Australian productions or foreign financed productions).

Media Entertainment and Arts Alliance (MEAA) and Screen Producers Association of Australia (SPAA) sensitivities

MEAA

1. MEAA supports minimal amendments to the existing Guidelines and strict compliance in all instances to protect employment opportunities for Australian actors, which in turn allow them to showcase their talents nationally and internationally. MEAA also maintains that the Australian Government cultural policy objectives require strict compliance so that local filmmakers tell Australian stories using Australian voices. Hence:
 - a. MEAA maintains that the Guidelines should apply to all foreign entertainers in all genres, including reality television, quiz and variety programs, television commercials and electronic games. The existing Guidelines and the new draft Guidelines do not include these genres within their scope, which is limited to drama productions and documentaries.
 - b. The Guidelines have always allowed for consideration of undefined 'exceptional circumstances' where the criteria for subsidised productions are not met. However, MEAA is likely to strongly disagree with the flexibility provisions which are now explicitly set out in the draft Guidelines.

- c. MEAA is likely to disagree with the required level of foreign investment for subsidised productions being lowered from 30 per cent to 20 per cent to allow for foreign actor importation. OFTA believes that the reduction is necessary because of the greater difficulty producers have today in securing foreign investment. Screen Australia data indicates average foreign investment levels over the last three years have been 38 per cent for feature films and 12 per cent for television drama productions. The level of foreign investment in feature films can vary substantially, reaching peaks in some years due to large budget film/s with US studio finance being made under Australian creative control (such as ^{s45} [REDACTED]). Foreign investment in 2009/10 was 18 per cent for feature films, but was much higher at 51 per cent the previous year. When the current FACS Guidelines were developed in the 1990s, MEAA, SPAA and the Australian Government agreed that 30 per cent foreign investment was a reasonable threshold for government subsidised productions. The five year average for foreign investment in Australian films (1995/96-1999/2000) was 50 per cent for feature films and 20 per cent for television drama.
 - d. MEAA is likely to oppose the new provision for productions only in receipt of the Producer Offset. Such productions would only need to provide evidence that they have provisional Producer Offset certification in order to import foreign performers. MEAA believes a separate and higher standard should apply to such productions and that MEAA should have some say in the certification decision. OFTA believes that a higher standard is appropriate only in the case of productions which receive direct Government subsidy and that provisional Producer Offset certification is sufficient in other cases.
 - e. Foreign entertainers who visit Australia obtain an entertainment visa, valid for a specific purpose. No more than one visa is valid at any one time. There have been instances of some entertainers making brief appearances as themselves in cameo roles in television serials while staying in Australia for other purposes (e.g. singer on concert tours making one-off guest appearances as self in television serial). The Department of Immigration and Citizenship is opposed to requiring a Foreign Actor Certificate for such entertainers on the grounds that it would complicate the visa process. The current draft Guidelines specifically state that such entertainers need not apply for a Foreign Performer Certificate. MEAA believes that such performers are appearing in roles that would otherwise be taken by Australians and that separate certification should be required.
 - f. MEAA is likely to oppose the proposed certification criteria for unsubsidised productions (e.g. Australian television series such as *Neighbours*) on the grounds that they are not sufficiently rigorous. Under the draft, unsubsidised production will be required to demonstrate they have provided reasonable opportunity for Australians to participate in the production and that foreign investment is greater than the amount spent on any foreign actors appearing in the production.
2. Since MEAA believes all forms of government support – including the Australian Government film tax offsets – should be treated as subsidies, it is likely to be critical of any decision to treat productions that may receive conditional state/territory government support as non government subsidised.

SPAA

1. SPAA supports the incorporation of greater flexibility into the Guidelines. However, SPAA is likely to be less satisfied with the following aspects of the draft Guidelines:
 - a. The draft Guidelines cover host roles in documentaries, and thus go beyond merely the drama genres to which SPAA believes the Guidelines should be restricted.
 - b. SPAA is likely to oppose the proposed certification criteria for unsubsidised productions (eg. Australian television series such as Neighbours) on the grounds that such productions should not need to undergo the certification process at all since they have no government investment.
 - c. SPAA is seeking a lesser role for MEAA in the certification process. The draft Guidelines provide for MEAA to be consulted on all applications, which maintains the existing arrangement. SPAA would prefer MEAA to be excluded completely from the certification process for unsubsidised productions.

IN-CONFIDENCE

Ref: B10/1788

DEPARTMENT OF THE PRIME MINISTER AND CABINET
OFFICE FOR THE ARTS

- Copy forwarded to
Richard Eccles 9.12.10
- Original sent to MCV 9.12.10

To: Minister for the Arts (for decision)

MEDIA, ENTERTAINMENT AND ARTS ALLIANCE: s22
s22 AND FOREIGN ACTOR CERTIFICATION SCHEME

Timing: 23 December 2010

Recommendations - that you:

1. Agree to the recommendations in Attachment A relating to s22

s22

Agree / Disagree

2. Agree to the recommendations in Attachment C relating to the Foreign Actor Certification Scheme.

Agree / Disagree

Simon Crean

Date:

Purpose: To seek your agreement to recommendations regarding the s22
s22 and the Foreign Actor Certification Scheme (FACS), both of which are key policy interests for the Media, Entertainment and Arts Alliance (MEAA).

Key Points:

s22

IN-CONFIDENCE

PM&C
Secretary
Mr Eccles
Ms Bean
Ms Bassar


MO
Mr Clifton
Ms O'Neil

File:
2010/15983,
2010/07023

s22



Foreign Actor Certification Scheme

1. A detailed briefing on the Foreign Actor Certification Scheme Guidelines Review, including recommendations, was provided to you on 26 November 2010 (**B10/1427, Attachment C**). Your office requested this briefing be amended and combined with briefing on s22 
2. The objective of FACS is to provide opportunities for Australian actors to perform in productions made in Australia so that Australian voices are heard on screen. FACS

IN-CONFIDENCE


prescribes more rigorous eligibility requirements for foreign actors working on a government subsidised production than a non-government subsidised production, as per the requirements of the Migration Regulations 1994 (the Regulations).

- a. As required under the Regulations, MEAA is consulted by sponsors on each FACS application and advises OFTA on whether or not it objects to the application.

s22

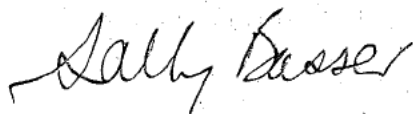



4. In 2009, with the approval of the previous Arts Minister, OFTA began a review of the FACS Guidelines, which have not been substantively updated since the early 1990s. The review to date has involved key stakeholders – MEAA, the Screen Producers Association of Australia, DIAC and Screen Australia. OFTA has prepared revised draft Guidelines for further discussion with stakeholders, including MEAA.
 - a. We will brief you on the outcomes of these consultations and submit a final draft of the FACS Guidelines for your consideration by mid-2011.
5. Detailed briefing, including recommendations, is provided at **Attachment C**.




Lynn Bean
First Assistant Secretary
Arts Division
9 December 2010

Policy Officer: Paul McInnes
Phone no: 6275 9501 / s47F



Sally Basser
First Assistant Secretary
Culture Division
9 December 2010

Policy Officer: Stephen Arnott
Phone no: 6275 9557 / s47F



ATTACHMENTS

Attachment A Brief: s22 [REDACTED] including Attachments A - I

Attachment B

s22 [REDACTED]

Attachment C

Brief: B10/1427 Foreign Actor Certification Scheme Guidelines Review, including Attachments A – C

IN-CONFIDENCE

Ref: B10/1597

DEPARTMENT OF THE PRIME MINISTER AND CABINET
OFFICE FOR THE ARTS

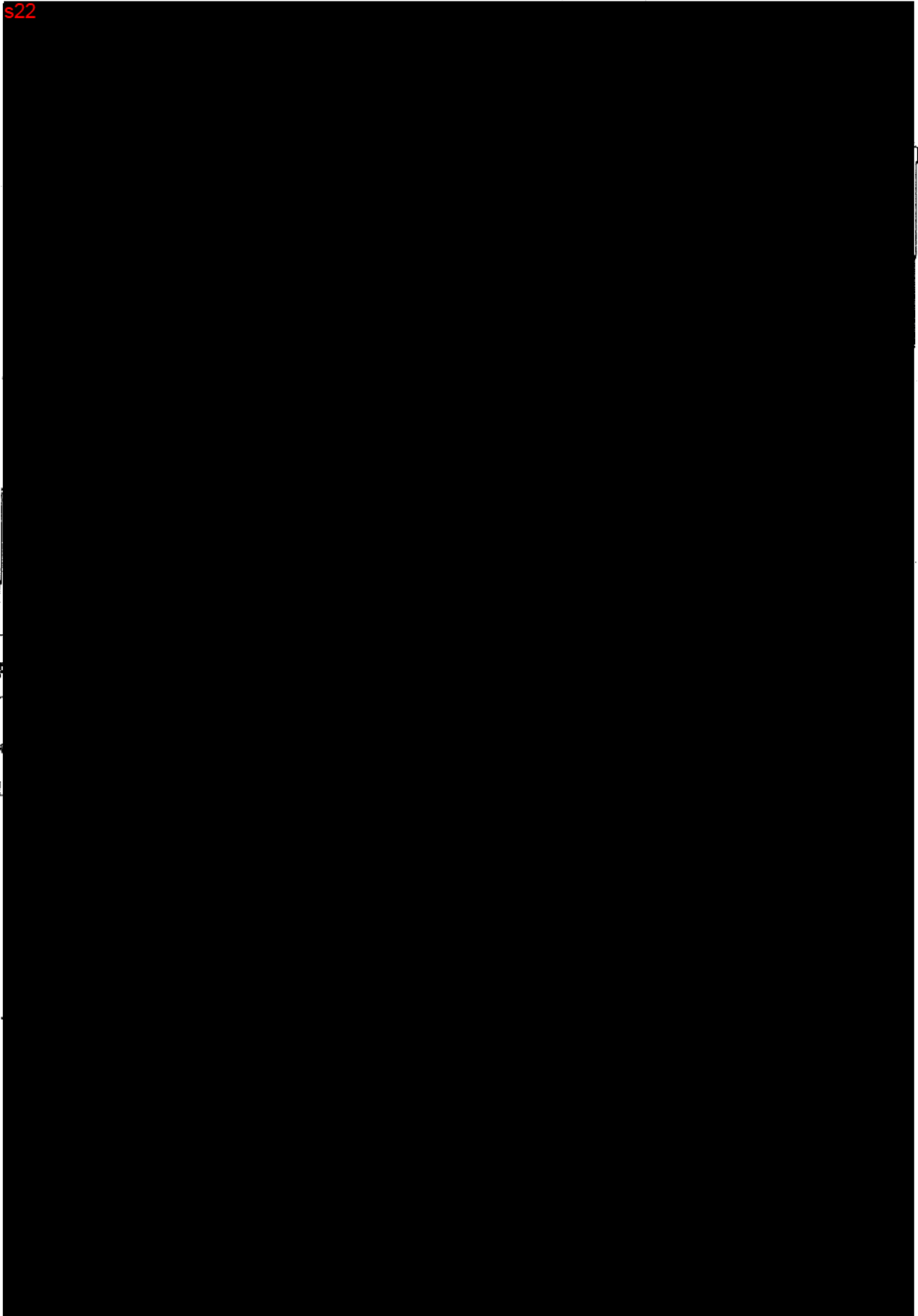
PM/C
Secretary
Ms Bean
Mr McInnes

MD
Mr Clifton
Ms O'Neill

File:
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To: Minister for the Arts (for decision; correspondence: for signature)

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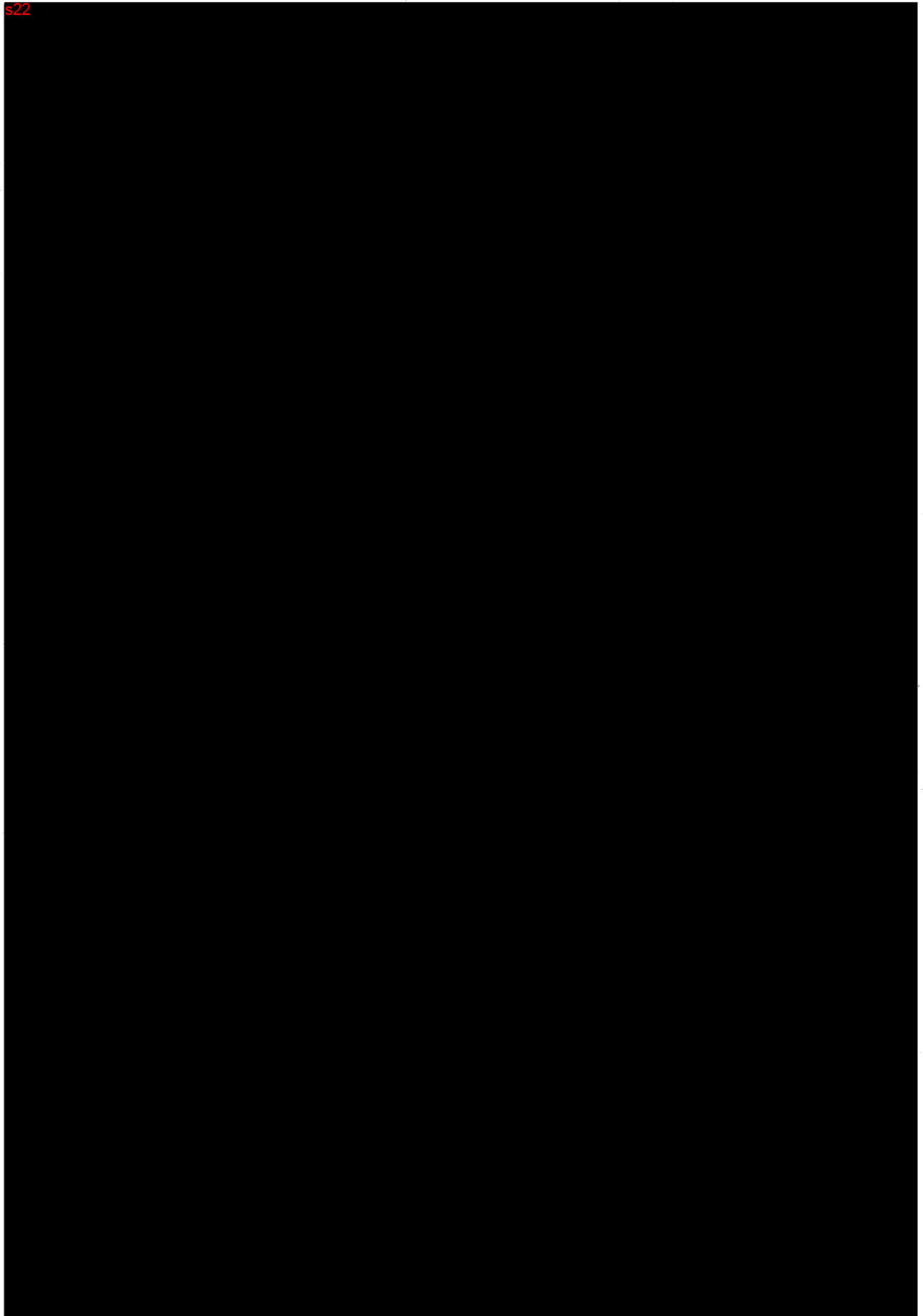
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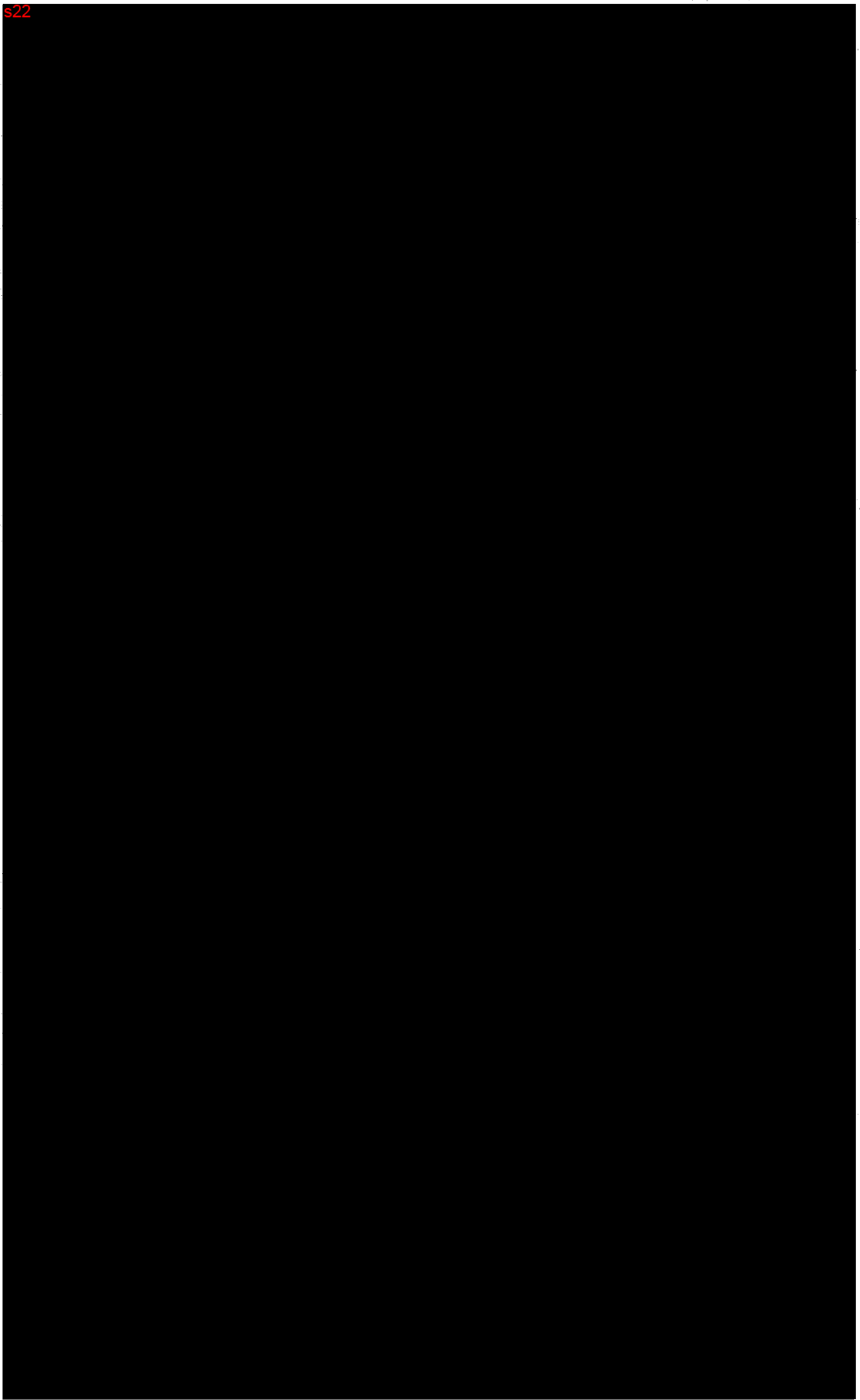
DEPARTMENT OF THE PRIME MINISTER AND CABINET
OFFICE FOR THE ARTS

s22



IN-CONFIDENCE





DEPARTMENT OF THE PRIME MINISTER AND CABINET
OFFICE FOR THE ARTS

PM&C
Secretary
Ms Bassar
Ms Street

To: Minister for the Arts (for decision)

PMO
Mr Clifton
Ms O'Neil

FOREIGN ACTOR CERTIFICATION SCHEME GUIDELINES REVIEW

Timing: 23 December 2010

Recommendations - that you:

1. Note progress with the Foreign Actor Certification Scheme (FACS) Guidelines review.

Noted/Please Discuss

s22

Agreed/Not agreed

Simon Crean

Date:

Purpose: To advise you of progress with the review of the *Guidelines for the entry into Australia of foreign performers for the purpose of performing in film or television productions* (the Guidelines) and s22

s22

Key Points:

1. The objective of FACS is to provide opportunities for Australian actors to perform in productions made in Australia so that Australian voices are heard on screen. In practice, FACS seeks to strike a balance between supporting Australian actors and supporting production activity across the industry as a whole. This is done by regulating the import of foreign actors in a way that is reasonable in the context of each production and takes current industry practices into consideration.
2. The Migration Regulations 1994 (the Regulations) requires that a Subclass 420 (Entertainment) visa for a foreign actor working on a film or television production is supported by a certificate issued by the Arts Minister.
 - a. You have authorised the administration of FACS to the Office for the Arts (OFTA).
3. FACS prescribes more rigorous eligibility requirements for foreign actors working on a government subsidised production than a non government subsidised production. This is to ensure that productions in receipt of public funds provide significant opportunities for Australian actors to participate.

4. FACS applications are assessed prior to or during production, to enable actors to enter Australia for filming. Direct government support (eg. equity investment) can be determined at that time and OFTA considers that productions receiving such support should be considered government subsidised.

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10. In 2009, with the approval of the previous Arts Minister, OFTA began a review of the Guidelines, which have not been substantively updated since the early 1990s. The review to date has involved key stakeholders – MEAA, the Screen Producers Association of Australia, the Department of Immigration and Citizenship and Screen Australia. OFTA has prepared revised draft Guidelines for further discussion with stakeholders. The draft is provided at **Attachment C.B.**
11. OFTA will continue the FACS review and circulate the draft Guidelines to MEAA and SPAA for further discussion.
- a. We will brief you on the outcomes of these consultations and submit a final draft of the Guidelines for your consideration by mid-2011.
12. MEAA and SPAA are likely to have divergent views on the issues raised. The main areas of proposed change and stakeholder sensitivities are set out in **Attachment C.C.**

s42



Sally Basser
First Assistant Secretary
Culture Division
9 December 2010

Policy Officer: Stephen Arnott
Phone no.: 6275 9557 / s47F

ATTACHMENTS

- Attachment C.A** Background and s42 on conditional state/territory government support
- Attachment C.B** Draft Guidelines
- Attachment C.C** Summary of proposed change in the Guidelines and sensitive issues

State/territory government support to film and television productions with respect to the Foreign Actor Certification Scheme

Background

1. For the purposes of the FACS, the Australian Government's Producer, Location and Post, Digital and Visual Effects (PDV) Offsets are not considered as subsidies because they are only accessible after a production is completed.
2. Direct investment in film and television productions by Screen Australia and state/territory governments is considered a form of government subsidy because the payment of the support occurs prior to completion of the production and forms part of the film's budget.
3. However, four states (NSW, Queensland, South Australia and Victoria) are also major providers of financial support in other forms, through the state government film agencies. These other forms of support are likely to be accessed by large budget offshore productions that may attract the Location or PDV Offset, and which routinely engage foreign actors. They may also be accessed by larger scale domestic productions that occasionally seek to engage one or more foreign actors. Other state/territory governments also provide support for film production but the delivery mechanisms are similar to those offered by NSW, Queensland, South Australia and Victoria.
4. The forms of support identified fall into three main categories:
 - a. Loan funds, which assist the financing and/or cashflowing of finance for a production,
 - b. Location attraction funds, which require certain levels of production activity/employment of local crew to occur within the relevant state (or defined regions within the state) before production companies are eligible to access the funding. Some of the funds provide payment following completion of production while others provide for payments during and following completion of production, and
 - c. Payroll tax exemptions – one of which (South Australia) exempts the production company from paying any payroll tax at all, and others which repay some or all of the payroll tax paid by the production company either:
 - i. following completion of production, or
 - ii. during and following completion of production.
5. For very large budget productions (eg. those likely to access the Location or PDV Offset, or major local productions such as s45 etc.) government film agencies may negotiate additional terms and conditions of support with production companies in order to attract the production to film in their state or territory.

UNCLASSIFIED

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UNCLASSIFIED



Australian Government

**Department of the
Prime Minister and Cabinet
Office for 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

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 Performer 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 Performer 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 the appropriate 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. a person may lodge an application to be considered by DIAC under subclass 406 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.

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 that is a creative treatment of actuality, other than a news, current affairs, sports coverage, magazine, infotainment, light entertainment or reality program.

‘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 (excluding loans to cashflow the Producer Offset), 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 government film and television agencies, but excludes the Australian Broadcasting Corporation and the Special Broadcasting Service.

‘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 subclass 406 of the Migration Regulations.

'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

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 in paragraph 10 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.

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 Performer 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 Government Subsidy.
5. For a foreign Performer to take part in a subsidised Film or Television Production, the application for a Foreign Performer 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:
 - (a) receives a direct Government Subsidy- see Category 1 below; or
 - (b) is likely to access the Producer Offset and is receiving no direct Government Subsidy – see Category 2 below; or
 - (c) is likely to access the Location or PDV Offset – see Category 3 below.

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

(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 Performer 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.

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

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. Such a production is only required to satisfy the Category 3 requirement set out in paragraph 13 and does not have to satisfy any of the Category 1 requirements set out in paragraphs 7-11.

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.

* 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.

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

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;

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.

SECTION E - APPLICATION PROCESS

1. Applications for Foreign Performer 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 cases which involve a large number of cast and crew DIAC, to indicate the Sponsor is commencing application for a Foreign Performer Certificate;
 - Consultation with MEAA to obtain a letter of opinion;
 - DEWHA assessment and decision on application for a Foreign Performer 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 a genuine need for urgency applies.

Initial contact with relevant agencies

4. Sponsors must initially advise DEWHA and MEAA of their intention to apply for a Foreign Performer Certificate. 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) and
 - (b) MEAA (E-mail: 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.
6. 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).
7. For full contact details for agencies see Section G.

Consultation with MEAA to obtain letter of opinion

8. Sponsors should consult with MEAA in advance of submitting their application for a Foreign Performer Certificate to DEWHA. MEAA may provide a letter of opinion to the Sponsor and DEWHA based on its assessment of whether the proposed foreign performer importation complies with the DEWHA Guidelines.
9. MEAA is required to provide a 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 (see also paragraph 20 below).
10. 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.

For further information and a comprehensive list of MEAA's requirements see:
<http://www.alliance.org.au/imports>

11. Where a Sponsor approaches MEAA well in advance of submitting its application to DEWHA for a Foreign Performer Certificate, MEAA may provide a letter of opinion indicating 'in-principle' support for the proposed import. Where an in-principle letter has been provided, the Sponsor must nevertheless consult formally and receive a final letter of opinion.

DEWHA assessment and decision on application for Foreign Performer Certificate

Submitting an application

12. The DEWHA Guidelines and Foreign Performer Certificate application form are available for download from <http://www.arts.gov.au/foreignactors>.
13. 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.
14. In determining whether to issue a Foreign Performer 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.

15. 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

16. 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.
17. 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

18. 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 Guidelines.
19. DEWHA commences its assessment of an application for a Foreign Performer 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.
20. 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.
21. Should MEAA object to the application, DEWHA will invite the Sponsor to make a written submission. This submission should address MEAA's objections and also provide any additional relevant information in support of the application. The Sponsor's submission should be provided to DEWHA and copied to MEAA within three working days of DEWHA's request. This may be done by email or fax.
22. 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 within three working days of DEWHA's request. This may be done by email or fax.
23. 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.
24. 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

25. Upon completion of the assessment process, DEWHA makes its recommendations regarding the issuing of a Foreign Performer Certificate to the Arts Minister; or person authorised by the Arts Minister, for consideration and final decision.
26. 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.
27. Please note that a Foreign Performer 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 re-entry of the same performer in the same production.

DIAC processing of application for entertainment visa

28. 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 Performer Certificate.
29. Sponsors should lodge their documentation with DIAC at least 8-12 weeks prior to the nominated person's arrival date in Australia.
30. The Foreign Performer 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. 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 (if applicable) for the sponsorship, nomination and visa applications, without which an entertainment visa application will not be valid.
31. For further information and a comprehensive list of DIAC's requirements, including where applications must be lodged, see:
<http://www.immi.gov.au/skilled/specialist-entry/420>
32. Sponsors should also make themselves aware of the obligations under the Entertainment visa program. More information can be found at:
<http://www.immi.gov.au/skilled/specialist-entry/420/obligations-sponsor.htm>

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. 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.

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

<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

<http://www.immi.gov.au/skilled/specialist-entry/420>

Media, Entertainment and Arts Alliance (MEAA)

Federal Policy Officer

Tel: +61 2 9333 0958

Fax: +61 2 9333 09333

Email: imports@alliance.org.au

<http://www.alliance.org.au/imports>

Review of the Foreign Actor Certification Scheme Guidelines

Main areas of change between current and proposed draft Guidelines

1. The draft Guidelines are modelled on the existing Guidelines, but they provide greater clarity on definitions and how various types of film and television programs are treated under FACS. They also provide greater flexibility to reflect changes in film and television program investment and support. More specifically, the draft Guidelines:
 - a. clearly define the scope of the FACS as applying to lead, supporting, and cameo roles in drama productions and to hosts/presenters of documentaries,
 - b. clearly define how different forms of government subsidy are treated under the Guidelines,
 - c. allow some flexibility in the application of the Guidelines and to describe the sorts of circumstances in which flexibility might be applied,
 - d. allow for importation of foreign actors in government subsidised productions with a lower level of foreign investment (from 30 per cent to 20 per cent), in recognition of the increasing difficulty producers have in raising foreign investment, and
 - e. treat all genres of non government subsidised productions in the same way (whether they be Australian productions or foreign financed productions).

Media Entertainment and Arts Alliance (MEAA) and Screen Producers Association of Australia (SPAA) sensitivities

MEAA

1. MEAA supports minimal amendments to the existing Guidelines and strict compliance in all instances to protect employment opportunities for Australian actors, which in turn allow them to showcase their talents nationally and internationally. MEAA also maintains that the Australian Government cultural policy objectives require strict compliance so that local filmmakers tell Australian stories using Australian voices. Hence:
 - a. MEAA maintains that the Guidelines should apply to all foreign entertainers in all genres, including reality television, quiz and variety programs, television commercials and electronic games. The existing Guidelines and the new draft Guidelines do not include these genres within their scope, which is limited to drama productions and documentaries.
 - b. The Guidelines have always allowed for consideration of undefined 'exceptional circumstances' where the criteria for subsidised productions are not met. However, MEAA is likely to strongly disagree with the flexibility provisions which are now explicitly set out in the draft Guidelines.

- c. MEAA is likely to disagree with the required level of foreign investment for subsidised productions being lowered from 30 per cent to 20 per cent to allow for foreign actor importation. OFTA believes that the reduction is necessary because of the greater difficulty producers have today in securing foreign investment. Screen Australia data indicates average foreign investment levels over the last three years have been 38 per cent for feature films and 12 per cent for television drama productions. The level of foreign investment in feature films can vary substantially, reaching peaks in some years due to large budget film/s with US studio finance being made under Australian creative control (such as *Australia* and *Happy Feet*). Foreign investment in 2009/10 was 18 per cent for feature films, but was much higher at 51 per cent the previous year. When the current FACS Guidelines were developed in the 1990s, MEAA, SPAA and the Australian Government agreed that 30 per cent foreign investment was a reasonable threshold for government subsidised productions. The five year average for foreign investment in Australian films (1995/96-1999/2000) was 50 per cent for feature films and 20 per cent for television drama.
 - d. MEAA is likely to oppose the new provision for productions only in receipt of the Producer Offset. Such productions would only need to provide evidence that they have provisional Producer Offset certification in order to import foreign performers. MEAA believes a separate and higher standard should apply to such productions and that MEAA should have some say in the certification decision. OFTA believes that a higher standard is appropriate only in the case of productions which receive direct Government subsidy and that provisional Producer Offset certification is sufficient in other cases.
 - e. Foreign entertainers who visit Australia obtain an entertainment visa, valid for a specific purpose. No more than one visa is valid at any one time. There have been instances of some entertainers making brief appearances as themselves in cameo roles in television serials while staying in Australia for other purposes (e.g. singer on concert tours making one-off guest appearances as self in television serial). The Department of Immigration and Citizenship is opposed to requiring a Foreign Actor Certificate for such entertainers on the grounds that it would complicate the visa process. The current draft Guidelines specifically state that such entertainers need not apply for a Foreign Performer Certificate. MEAA believes that such performers are appearing in roles that would otherwise be taken by Australians and that separate certification should be required.
 - f. MEAA is likely to oppose the proposed certification criteria for unsubsidised productions (e.g. Australian television series such as *Neighbours*) on the grounds that they are not sufficiently rigorous. Under the draft, unsubsidised production will be required to demonstrate they have provided reasonable opportunity for Australians to participate in the production and that foreign investment is greater than the amount spent on any foreign actors appearing in the production.
2. Since MEAA believes all forms of government support – including the Australian Government film tax offsets – should be treated as subsidies, it is likely to be critical of any decision to treat productions that may receive conditional state/territory government support as non government subsidised.

SPAA

1. SPAA supports the incorporation of greater flexibility into the Guidelines. However, SPAA is likely to be less satisfied with the following aspects of the draft Guidelines:
 - a. The draft Guidelines cover host roles in documentaries, and thus go beyond merely the drama genres to which SPAA believes the Guidelines should be restricted.
 - b. SPAA is likely to oppose the proposed certification criteria for unsubsidised productions (eg. Australian television series such as Neighbours) on the grounds that such productions should not need to undergo the certification process at all since they have no government investment.
 - c. SPAA is seeking a lesser role for MEAA in the certification process. The draft Guidelines provide for MEAA to be consulted on all applications, which maintains the existing arrangement. SPAA would prefer MEAA to be excluded completely from the certification process for unsubsidised productions.

Carter, Jane

From: Richards, Stephen
Sent: Monday, 28 February 2011 11:00 AM
To: Carter, Jane
Subject: FW: FACS guidelines & s45 [SEC=UNCLASSIFIED]
Importance: High
Categories: UNCLASSIFIED
Attachments: Minister's meeting paper.docx

Jane – for info; don't yet know outcome of this; it was intended to help Richard E prompt the Minister to approve the FACS brief. Cheers – Stephen

From: Richards, Stephen
Sent: Friday, 25 February 2011 4:44 PM
To: 'renee.fleming@pmc.gov.au'
Cc: Arnott, Stephen
Subject: RE: FACS guidelines & s45 [SEC=UNCLASSIFIED]
Importance: High

Renee – Could you please pass the attached on to Richard? I understand he will be taking up this issue with the Minister next week. Cheers – Stephen

From: Arnott, Stephen
Sent: Friday, 25 February 2011 4:38 PM
To: Richards, Stephen
Subject: Re: FACS guidelines & s45 [SEC=UNCLASSIFIED]

Classification: [SEC=UNCLASSIFIED]

That's great thanks Stephen.
Can you please send to Renee and ask her to pass to Richard?

Stephen

From: Richards, Stephen
To: Arnott, Stephen
Sent: Fri Feb 25 16:30:17 2011
Subject: FACS guidelines & s45
Stephen – for consideration. Cheers – Stephen

From: Arnott, Stephen
Sent: Friday, 25 February 2011 3:45 PM
To: Richards, Stephen
Subject: FW: Documents for the Minister [SEC=UNCLASSIFIED]

Stephen

Have you got time now to do a few dot points on s45 and foreign actors so it can be raised with the Minister on Monday morning?

Stephen


1/03/2011

Arts Agenda Item #
FOREIGN ACTORS CERTIFICATION SCHEME GUIDELINES

Purpose

To seek clearance of B10/1788

Key Points

- OFTA is reviewing the Foreign Actors Certification Scheme guidelines. The guidelines have not been amended since the mid 1990s and do not reflect current industry practices for casting and financing productions, particularly large-budget productions.
- s45 
- The proposed revisions to the guidelines are intended to provide greater flexibility for considering the entry of foreign actors.
- Supporting the employment of Australian actors will remain the primary objective of the guidelines, but it is proposed that they also take account of the overall employment opportunities for the industry which would be generated by a production and the extent to which production financing is dependent on the engagement of marquee foreign actors.
- Screen producers and many other industry stakeholders are supportive of the guidelines having greater flexibility. The MEAA strongly supports strict compliance of the existing guidelines.

Draft

Australian Government

Department of the Environment,
Water, Heritage and the Arts

**Foreign Performers Certification
Scheme**

Guidelines ✓

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

Australian Government

[insert month] 2010

2011

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].
The Scheme / 2011
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 Performer 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 Performer 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).

OFTA PMC

~~Do I need to apply?~~
Who needs to apply under the Scheme?

How do I apply? — + contact, web, etc
(Is there a cost?)
~~What is the application process?~~

How long will it take?

FAPS (FPCS)
(FAPS)
Guidelines

end

redraft
simplifying

2 questions

sketch

SECTION B - TERMS AND DEFINITIONS

~~Australian Content Criteria~~ ~~Performer~~ ~~as defined by tax Act?~~
'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. *personality*

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

'DIAC' means the Department of Immigration and Citizenship.

'Documentary' means a program that is a creative treatment of actuality, other than a news, current affairs, sports coverage, magazine, infotainment, light entertainment or reality program.

'Feature Film' means a film, including *an animated film* 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, *duration* 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, *and* 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 (excluding loans to cashflow the Producer Offset), 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 *Australian* state and territory government *scripted* film and television agencies, but excludes the Australian Broadcasting Corporation and the Special Broadcasting Service.

'Host' means the central *scripted* 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".

Performer
'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. *3*

'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.

did we certify them?
'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 subclass 406 of the Migration Regulations.

'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;

So you think? (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:

either (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

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 Performer 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.
Satisfy ?
criteria
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. *however* 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 Government Subsidy.
5. For a foreign Performer to take part in a subsidised Film or Television Production, the application for a Foreign Performer 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:
 - (a) receives a direct Government Subsidy - see Category 1 below; or
 - (b) is likely to access the Producer Offset *or* and is receiving no direct Government Subsidy - see Category 2 below; or
 - (c) is likely to access the Location or PDV Offset - see Category 3 below.

State incentives

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

- *Does not apply to productions intending to access the Location or PDV effects*
7. Reasonable opportunity must be given to employing Australian Performers at all levels of the production, and: *Demonstrated by:*
 - (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 in paragraph 10 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.

✓

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

- X
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.

move up to
category 1?
~~we have~~
~~refuse~~
deal merits?

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.

* 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.

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

This is usually tied to finance/distrib. isn't it? why necessary?

May be problematic for some sponsors who don't have access to all this. Could be hundreds of people

SECTION E - APPLICATION PROCESS

1. Applications for Foreign Performer 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: *DIAC 1 - which visa? application under way.*
 - Initial contact with DEWHA and MEAA, and in cases which involve a large number of cast and crew DIAC, to indicate the Sponsor is commencing application for a Foreign Performer Certificate;
 - Consultation with MEAA to obtain a letter of opinion;
 - ~~importation certificate~~ DEWHA assessment and decision on application for a Foreign Performer 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 a genuine need for urgency applies.

Initial contact with relevant agencies

4. Sponsors must initially advise DEWHA and MEAA of their intention to apply for a Foreign Performer Certificate. 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) and
 - (b) MEAA (E-mail: 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.
6. 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).
7. For full contact details for agencies see Section G.

of 420 visa applicants.

*why so long
2 wks MEAA
1 wk OFTA
1 wk DIAC
= 4*

and a 420 visa.

of

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

Foreign Actor Performer Certification Scheme
Assistant Secretary

Literature
Film and Creative Industries Branch

Department of the Environment, Water, Heritage and the Arts

Fax: +61 2 6275 9320

Email: foreignactors@environment.gov.au *OTTA*

16. 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.

17. Please note that a single application form may cover a number of performers. *For large productions, certification may be granted*
~~Alternatively, applications may be made for performers in a sequence as details become available.~~ *X*

Application assessment

18. 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 Guidelines. *and the Regulations.*
19. DEWHA commences its assessment of an application for a Foreign Performer 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. *once all doc. is received*
20. 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.
21. Should MEAA object to the application, DEWHA will invite the Sponsor to make a written submission. This submission should address MEAA's objections and also provide any additional relevant information in support of the application. The Sponsor's submission should be provided to DEWHA and copied to MEAA within three working days of DEWHA's request. This may be done by email or fax.
22. 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 within three working days of DEWHA's request.~~ This may be done by email or fax.
23. 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. *7*
24. 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

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; *in Aust*
 - (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; ? *skills or attributes*
 - (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.

Regulation 2.72D

- (b) the identified visa holder or applicant has a significant record of achievement in his or her field.
- (6) The Minister is satisfied that the identified visa holder or applicant will not receive from the visiting academic sponsor a salary; scholarship or allowance (other than an allowance for living expenses in Australia and travel costs).

2.72D Criteria for approval of nomination — Subclass 420 (Entertainment) visa

- (1) This regulation applies to a person:
 - (a) who is an entertainment sponsor; and
 - (b) who, under paragraph 140GB (1) (b) of the Act, has nominated an occupation, a program or an activity in relation to a holder of, or an applicant or a proposed applicant for, a Subclass 420 (Entertainment) visa (the *identified visa holder or applicant*).
- (2) For subsection 140GB (2) of the Act, and in addition to the criteria set out in regulation 2.72A, the criteria that must be satisfied for the Minister to approve a nomination by the entertainment sponsor are the criteria set out in:
 - (a) subregulation (3); and
 - (b) 1 of subregulations (4) to (9).
- (3) The Minister is satisfied that the person making the nomination is an entertainment sponsor.

Performing in film or television production subsidised by government

- (4) The Minister is satisfied that:
 - (a) the identified visa holder or applicant will be:
 - (i) performing as an entertainer under a performing contract for 1 or more specific engagements (other than non-profit engagements) in Australia; and
 - (ii) performing in a film or television production that is subsidised, in whole or in part, by a government in Australia; and

Regulation 2.72D

- (iii) performing:
 - (A) in a leading role, major supporting role or cameo role; or
 - (B) to satisfy ethnic or other special requirements; and
- (b) the nomination is supported by a certificate given by the Arts Minister, or a person authorised by the Arts Minister, confirming that the relevant Australian content criteria have been met; and
- (c) the entertainment sponsor holds any necessary licences in respect of the work to which the nomination relates; and
- (d) the entertainment sponsor has consulted with relevant Australian unions in relation to the employment or engagement of the identified visa holder or applicant in Australia.

Performing in film or television production not subsidised by government

- (5) The Minister is satisfied that:
 - (a) the identified visa holder or applicant will be:
 - (i) performing as an entertainer under a performing contract for 1 or more specific engagements (other than non-profit engagements) in Australia; and
 - (ii) performing in a film or television production that is not subsidised in any way by a government in Australia; and
 - (iii) performing:
 - (A) in a leading role, major supporting role or cameo role; or
 - (B) to satisfy ethnic or other special requirements; and
 - (b) the nomination is supported by a certificate given by the Arts Minister, or a person authorised by the Arts Minister, confirming that:
 - (i) citizens or residents of Australia have been afforded a reasonable opportunity to participate in all levels of the production; and

Regulation 2.72D

- (ii) the foreign investment, or the private investment guaranteed against the foreign returns by a distributor, in the production is greater than the amount to be expended on entertainers sponsored for entry; and
- (c) the entertainment sponsor holds any necessary licences in respect of the work to which the nomination relates; and
- (d) the entertainment sponsor has consulted with relevant Australian unions in relation to the employment or engagement of the identified visa holder or applicant in Australia.

Performing in productions not related to film or television

- (6) The Minister is satisfied that:
 - (a) the identified visa holder or applicant will be performing as an entertainer under a performing contract that:
 - (i) is not related to a film or television production; and
 - (ii) is for 1 or more specific engagements (other than non-profit engagements) in Australia; and
 - (b) the nominated activity will bring a net employment benefit to the Australian entertainment industry; and
 - (c) the entertainment sponsor holds any necessary licences in respect of the work to which the nomination relates; and
 - (d) the entertainment sponsor has consulted with relevant Australian unions in relation to the employment or engagement of the identified visa holder or applicant in Australia; and
 - (e) the entertainment sponsor has provided an itinerary specifying the dates and venues for all performances.

Production roles other than as a performer

- (7) The Minister is satisfied that:
 - (a) the identified visa holder or applicant will be directing, producing or taking another part (otherwise than as a performer) in a theatre, film, television or radio production, or a concert or recording to be performed or shown in Australia; and

Regulation 2.72D

- (b) the nominated activity will bring a net employment benefit to the Australian entertainment industry; and
- (c) the entertainment sponsor holds any necessary licences in respect of the work to which the nomination relates; and
- (d) the entertainment sponsor has consulted with relevant Australian unions in relation to the employment or engagement of the identified visa holder or applicant in Australia; and
- (e) the entertainment sponsor has provided an itinerary specifying the dates and venues for the production, concert or recording.

Support staff

- (8) The Minister is satisfied that:
 - (a) the identified visa holder or applicant will be supporting an entertainer or a group of entertainers (whether by assisting a performance or by personal services) in relation to a performing contract for 1 or more specific engagements in Australia; and
 - (b) the nominated activity will bring a net employment benefit to the Australian entertainment industry; and
 - (c) the entertainment sponsor holds any necessary licences in respect of the work to which the nomination relates; and
 - (d) the entertainment sponsor has consulted with relevant Australian unions in relation to the employment or engagement of the identified visa holder or applicant in Australia; and
 - (e) the entertainment sponsor has provided an itinerary specifying the dates and venues for all performances.

Non-profit engagements

- (9) The Minister is satisfied that:
 - (a) the identified visa holder or applicant will be performing as an entertainer in 1 or more specific engagements that are for non-profit purposes; and
 - (b) the entertainment sponsor has provided an itinerary specifying the dates and venues for all performances.