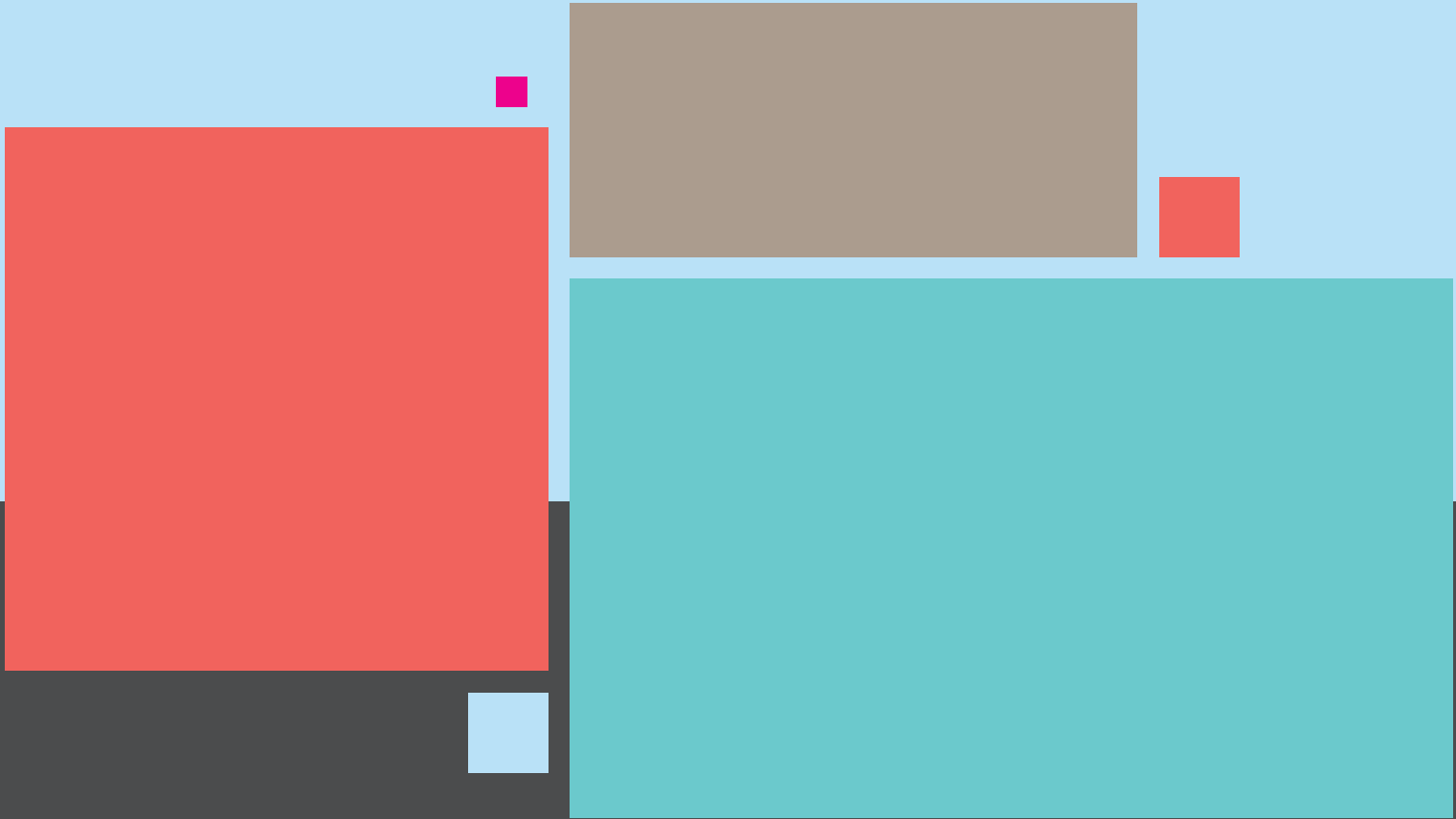




Australian Government

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



BRINGING AUSSIE MUSICIANS CENTRE STAGE
FOREIGN MUSIC ACTS CERTIFICATION SCHEME
DISCUSSION PAPER



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INVITATION TO COMMENT

Live performance offers a critical opportunity for artists to showcase their music and develop their careers. On 12 November 2007, the Australian Government released the *Bringing Aussie musicians centre stage* policy fact sheet, which committed to boosting the employment of Australian musicians by giving them the opportunity to perform with international acts.

The Government has proposed an amendment to the *Migration Regulations 1994* to require international touring productions to engage at least one local band or musician as a support act as a requirement of their temporary Entertainment Visa. This paper seeks public comment on a suggested way forward to implement the commitment.

This paper proposes the development of a Foreign Music Act Certification Scheme (the Scheme) which could require foreign musicians wishing to enter Australia to perform for a commercial purpose to seek a supporting certificate from the Minister responsible for the Arts, before the Minister responsible for Immigration may issue a temporary Entertainment Visa. The Australian Government Department of the Environment, Water, Heritage and the Arts (DEWHA) would be responsible for administering the Scheme.

In proposing amendments to regulation governments should work as closely as possible with Australians to determine the impacts of those proposals. As the development of the Scheme is guided by a regulation policy framework there are questions posed within this paper which aim to assist with the assessment of the regulatory impacts of the proposal.

I am keen to ensure that the Australian Government receives the best possible advice on the suggested proposal for reforming this regulation, and ensuring an appropriate implementation method for the Government's commitment. Within this paper are a number of questions which I urge you to consider and provide comments on via a written submission to my Department.

I look forward to receiving your input on this proposal and to considering your views.



THE HON PETER GARRETT AM MP
Minister for the Environment, Heritage and the Arts





OBJECTIVES

Under the current Migration Regulations, there is no specific requirement for international performers to engage a local support act. Local support acts would benefit greatly from the opportunity to perform live whenever international musicians tour Australia. The intent of changing the Migration Regulations, and implementing the new Scheme is to provide additional employment opportunities for Australian music industry performers and increase exposure of Australian music.

Live performance offers a critical opportunity for artists to showcase their music and develop their careers. Increased access to live performance can provide valuable opportunities such as:

- artistic development: live music performance is important at all stages of a musician's development, particularly for honing skills, increasing professional experience and building connections with audiences;
- income and revenue: performers have the potential to receive increased income from ticketing and bookings, merchandising and royalties. Performance revenue can be re-invested into industry through ancillary music related services such as CD manufacturing and media;
- networking: live performance stimulates relationships through which musicians can further their careers, provide promotional opportunities and opportunities to network with and learn from overseas performers and managers;
- market access: live performance can open doors to recording, airplay, film, radio, and advertising opportunities;
- employment: live performance provides employment opportunities for musicians, music managers, tour agents, concert promoters, technicians, venue staff, and crowd control services;
- feeling of achievement: for many musicians live performance can be a significant achievement in itself.



CURRENT REQUIREMENTS

The Entertainment (subclass 420) visa (Appendix 1) has numerous entry streams for people intending to work within the entertainment industry in Australia. Foreign music acts are assessed under Stream 3 – Performing in Productions not related to film or television (Regulation 2.72D(6)). This regulation relates to entertainers who seek to enter Australia under a performing contract that is not related to film or television production, for one or more specific engagements (other than non-profit engagements).

Visa applicants who are assessed against subparagraph Regulation 2.72D(6) must also bring a net employment benefit to the Australian entertainment industry (2.72D(6)(b)). The ‘net employment benefit’ requirement would be met if the undertaking of the activity would lead to greater employment of Australian citizens or Australian permanent residents (or both) than if a person normally resident in Australia undertook the activity.

At present musicians entering the country under the temporary Entertainment Visa can satisfy the net employment benefit by demonstrating, amongst other things, employment of front-of-house staff and/or venue technicians.

The proposed new Scheme could require that applicants engage at least one local band or musician as a support act for each of their performances in Australia, in addition to the need to satisfy the net employment benefit test.





PROPOSAL

It is proposed that incoming music acts which fall within the prescribed definition of a Foreign Music Act and associated criteria (described later in this paper) could be required to demonstrate that they will engage at least one local musician or band as a support act for each performance they undertake in Australia. This paper suggests that this requirement could be administered through the proposed new *Foreign Music Act Certification Scheme*.

The Scheme could require foreign music acts wishing to enter Australia to perform for a commercial purpose to seek a supporting certificate from the Minister for the Arts. Where relevant, the certificate will need to be obtained before an application for a temporary entertainment visa can be lodged.

The Minister for the Arts or approved delegate would need to be satisfied that the foreign music act has engaged a local support act for each of the performances to be undertaken while in Australia before a supporting certificate can be issued. The Minister would have discretionary power over the decision to issue a supporting certificate for exceptional circumstances. The certificate would only be valid for those performances specified in the application for a certificate, and not for separate performances to be undertaken at a later date.

Should the scheme be implemented the requirement to have a local support act would only need to be met for applicants who are applying for a visa under regulation 2.72D(6), and only where certain criteria have been met. For those persons who are entering the country under Stream 5 – Support Staff to support an entertainer or group of entertainers (regulation 2.72D(8)) or those who are entering the country under Stream 4 – Production Roles Other than as a Performer to direct, produce or take part in a concert in Australia (regulation 2.72D(7)) only the current net employment benefit test would need to be satisfied.

Proposed definition of a ‘local support act’

Given the complexities of the contemporary music industry it is essential that an accurate definition of a ‘local support act’ is determined. It is suggested that a ‘local support act’ could be classified as a local entertainer or group of entertainers who perform music. In the case of a solo artist, it is proposed that the individual would have to be an Australian resident or permanent resident of Australia. In the case of an act with more than one performer, it is proposed that the majority of its members would need to be Australian Citizens or permanent residents of Australia. If these requirements cannot be met, other evidence may be considered which provides details as to the local or Australian nature of the band. Alternatively, exceptional cases may be considered through the Ministerial discretion process that is detailed later in this paper.

Questions for consideration:

- **Is this definition of a ‘local support act’ appropriate?**
- **Should the requirement of a local support act be Australian citizenship only?**
- **Are there any other criteria or requirements that could potentially assist in defining a local support act?**

Proposed definition of a ‘foreign music act’

A foreign music act for the purposes of this scheme could be an entertainer, or group of entertainers, who perform music and are seeking to enter Australia to perform for a commercial purpose. A foreign music act could include:

- a) a foreign solo musician;
- b) a foreign solo musician and accompanying band or group;
- c) a foreign band or group;
- d) a foreign musician/s with or without musical instruments.

The requirement to have a local support act would not be triggered where the majority of members of an incoming act are Australian citizens or permanent residents.

Questions for consideration:

- **Is this definition of a foreign music act appropriate?**
- **How should an international band with at least one Australian citizen in the group be treated?**





Type of acts exempt from certificate requirement

It is proposed that there will be certain types of performances for which an incoming music acts would not be required to seek a Certificate. The following are proposed categories for exclusion:

- those participating in a festival or joint concert where local Australian bands already feature;
- those performing a class of music which may not be conducive to having a support act, such as a chamber orchestra;
- those performing music acts of a specific cultural nature for which a support act may not be available or culturally appropriate;
- those performing in a competition;
- those performing in a theatrical musical show or production;
- those performing in a private performance.

Categories and examples of exemption will be specifically detailed in any guidelines established for the proposed scheme should it be implemented.

Questions for consideration:

- **Are these categories appropriate for exclusion?**
- **Are there any other categories that should be excluded?**

What performances will be required to have a local support act?

Given the diversity in the size and type of musical acts, requiring an international music act to have a local support act for every performance may pose issues of cost effectiveness, particularly for example where acts perform in small venues to a small crowd. It is therefore proposed to include an additional parameter to this Scheme that would only impose the conditions of the Scheme under the following specific circumstance.

- **Venue capacity**

It is proposed that the Scheme could apply only to those international music acts performing in venues of 400 or more capacity. For those acts which perform a variety of shows in venues of varying size local support act requirements would only need to be met for shows where the venue exceeds the specified limit.

Questions for consideration:

- **Is venue capacity an appropriate criterion?**
- **If so, is the level that is proposed appropriate?**
- **If not, are there other types of criteria that could assist in determining the requirement for a local support act?**

Headlining music acts and supporting music acts

In the circumstances that a foreign music act wishes to enter Australia to perform as support for a headlining Australian act, the foreign music act would need to provide evidence that the tour is in support of an Australian headline act when seeking certification under this Scheme. Should the foreign music act wish to undertake additional performances in Australia as the headline music act, it will be required to provide details of engagement of a local support act for each performance in seeking certification under the Scheme.

In circumstances where two foreign music acts or more wish to enter Australia as the headline and supporting acts of a tour, only the headline foreign act would be required to seek a certificate under this scheme. The supporting foreign act will be able to obtain a visa based on the certificate issued to the headline foreign act. Where a supporting foreign act wishes to undertake other performances in Australia as the headline music act, local support act requirements would need to be met for each of these performances.


Question for consideration:

- **Are the terms ‘headline act’ and ‘supporting act’ reasonable and appropriate to address the scenario of multiple foreign acts touring together or acts that come to Australia to support an Australian act?**

Suggested Application Process:

Applications for certificates would be made by the relevant sponsor on behalf of the foreign music act, using an Application for a Certificate to Import a Foreign Music Act, which would be made available from DEWHA.

The application would require supporting documentation in the form of contractual arrangements for engaging the local support act or acts. Details of contracts would be treated in confidence. Documentation would need to include, amongst other things: a deal memo with the local support act or acts and an itinerary of the concert engagements including dates and venues. There would not be a cost applied to sponsors by DEWHA in applying for a certificate. As the relevant unions are consulted through the visa application process, it is not proposed to require consultation with unions in the process of granting a certificate.



The application would be assessed by DEWHA against the criteria to be specified in the guidelines and a recommendation made to the Minister for the Arts or a person authorised by the Minister.

To allow DEWHA adequate time to consider a complete application it would need to be lodged at least 14 days before the sponsor wishes to apply to DIAC for a temporary Entertainment Visa.

The certificate would be a prerequisite to apply for a temporary Entertainment Visa. On receipt of this certificate, the Minister for Immigration may issue a temporary Entertainment Visa.

Ministerial Discretion for Exceptional Cases

It is proposed to provide the Minister for the Arts or approved delegate with discretion to issue a supporting certificate where it has been clearly demonstrated that there are exceptional circumstances which do not allow for the engagement of a local support act.

If an application did not fall within the scope of the guidelines or could not meet the requirements of the guidelines but which the sponsor believes would still be worthy of consideration, the sponsor would need to present their case demonstrating why the incoming international music act should be exempt from the local support act requirement.

Each case would be considered on its merits. DEWHA may wish to seek the views of a relevant union and any other stakeholders in these specific instances, and these external views would be considered when determining the outcome. However, the Minister or delegate would have the final say as to whether a certificate will be issued in each specific circumstance.

IMPACT ANALYSIS

In considering the development of the Scheme, the Australian Government is committed to ensuring that it minimises the compliance burden on business and costs to the community. Consideration and responses to the following questions would therefore be appreciated.

- Where you have answered yes/no to a question, please provide an explanation for your answer;
- Where any statistics are quoted, please identify the source of these statistics.
- What would be the positive impacts of the proposed Scheme? Please explain your answer.
- What would be the negative impacts of the proposed Scheme? Please explain your answer.
- Do you believe the implementation of the election commitment will provide valuable opportunities for Australian acts?
- Are you aware of how many incoming international acts currently have or do not have local support acts? Please cite the sources of any data quoted in your answer.

General compliance costs:

- What changes and costs would your business incur as a result of complying with the proposed Scheme? Please list any costs/estimated value of costs.
 - What additional 'paper burden' or administrative costs would be incurred i.e. costs associated with record keeping, legal and financial services, completing application documentation and associated supporting material?
 - What additional costs would be incurred in order for the local support act to perform? For example costs for production, transportation and marketing, wages, stage equipment and costs for other additional materials?
- Do you consider any identified costs to be low, medium or high to your business?





Effects on Competition

- Would your business be able to continue to provide the usual goods or services as well as comply with the proposed Scheme? Please provide supporting information for your answer.
- Would compliance with the proposed Scheme restrict entry of a relevant business into the market place? If so, why?
- Would compliance with the proposed Scheme alter your ability to compete with others in the industry? If so, how and to what degree?
- Would you be more or less likely to enter into the industry as a result of this Scheme? Please provide supporting information for your answer.
- What other broader impacts (both positive and negative) do you see the proposed Scheme having on businesses, individuals or the economy?



POLICY REVIEW

Should the proposed Scheme be implemented, the effectiveness of this policy will be monitored to assess its progress in achieving the objectives, and how it might be amended.

As part of the Australian Government's best practice regulation requirements, Australian Government Departments are required to undertake targeted reviews of regulations every five years.

Should the scheme be implemented it is recommended that this regulatory requirement would be subject to review following the first year of operation. Following this it is proposed that a review would be conducted at a point three years from the time of implementation, and then after five years as formally required.





HOW TO HAVE YOUR SAY

We would like to hear your views on the proposals which have been raised in this discussion paper. Please use the submission form accompanying this paper, which sets out our policy on publishing submissions. Alternatively you may wish to write to one of the addresses below.

It is up to you what you put in your submission.

Your submission is more likely to have influence if you include brief recommendations about whether and how to improve the proposal.

To assist you we have included questions within the proposal. However we encourage you to raise any additional issues that are important to you to ensure the information provided to the Government is as robust as possible. You are welcome to add your own proposals if you wish.

Please be sure to include your contact details, including your name, address, and website (if any), so that we can acknowledge your submission. If you have a particular interest in this proposal it may be appropriate to include some information about yourself and your interests. Also, please indicate whether you are acting on behalf of other people or an organisation.

All submissions will be treated as Confidential due to the commercial nature of information that submissions may contain.

To have your say, please either submit your submission form online or email it to **localsupportacts@environment.gov.au**

Alternatively you can mail your written submission to:

Mr Paul McInnes
Assistant Secretary, Arts Policy and Access Branch
Department of the Environment, Water, Heritage and the Arts.
GPO Box 787
Canberra ACT 2601

It would be appreciated if submissions could be provided electronically (online or by email), wherever possible.

Questions concerning this project may also be directed by email to the above address, by telephone 02 6275 9535, or by facsimile 02 6275 9663.

THE DEADLINE FOR SUBMISSIONS IS 12 FEBRUARY 2010.



APPENDIX 1

CURRENT REGULATIONS

Reg 2.57

- (4) In this Part, the entry of a person to Australia is taken to confer a **net employment benefit** on Australia if:
- (a) the person seeks to enter or remain in Australia to carry out an activity individually or in association with a group; and
 - (b) the Minister is satisfied that the carrying out of the activity would lead to greater employment of Australian citizens or Australian permanent residents (or both) than if a person normally resident in Australia undertook the activity.

Entertainment Visa – Nomination regulations (Reg 2.72D)

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
- (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.



