



Film Certification Advisory Board Rules 2008¹

Income Tax Assessment Act 1997

I, PETER ROBERT GARRETT, Minister for the Environment, Heritage and the Arts, make these Rules under subsection 376-260 (1) of the *Income Tax Assessment Act 1997*.

Dated 2008

Minister for the Environment, Heritage and the Arts

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Part 1 Preliminary

1 Name of Rules

These Rules are the *Film Certification Advisory Board Rules 2008*.

2 Commencement

These Rules commence on the day after they are registered.

3 Objects of Rules

The objects of these Rules are:

- (a) to establish the Board (see paragraph 376-260 (1) (a) of the Act); and
- (b) to specify additional functions of the Board in relation to the operation of Division 376 of the Act (see subparagraph 376-260 (1) (a) (ii) of the Act); and
- (c) to specify the membership of the Board (see paragraph 376-260 (1) (b) of the Act); and
- (d) to specify the terms and conditions of appointment to the Board (see paragraph 376-260 (1) (b) of the Act); and
- (e) to specify the procedures to be followed by the Board in performing its functions (see paragraph 376-260 (1) (c) of the Act).

4 Definitions

In these Rules:

Act means the *Income Tax Assessment Act 1997*.

appointed member means a Board member appointed under rule 8.

Board means the Film Certification Advisory Board established by rule 5.

certificate for the location offset means a certificate issued by the Arts Minister under section 376-20 of the Act.

certificate for the PDV offset means a certificate issued by the Arts Minister under section 376-45 of the Act.

Department means the Department of the Environment, Water, Heritage and the Arts.

location offset means the tax offset mentioned in section 376-10 of the Act.

PDV offset means the tax offset mentioned in section 376-35 of the Act.

scheme means the scheme established under Division 376 of the Act.

Rule 4

SES employee has the meaning given by section 7 of the *Public Service Act 1999*.

Note Several other words and expressions used in these Rules have the meaning given by section 995-1 of the Act. For example:

- Arts Minister
- Arts Secretary
- film.

Part 2 Film Certification Advisory Board

5 Establishment of the Board

The Film Certification Advisory Board is established.

6 Additional functions of the Board

The additional functions of the Board are:

- (a) to advise the Arts Minister in relation to any policy issues relevant to the scheme, including administrative processes for the scheme, to the extent that the scheme relates to the location offset and the PDV offset; and
- (b) to consider applications for, and issue, provisional certificates for the location offset and the PDV offset; and
- (c) to advise the Arts Minister, at his or her request, about matters relating to:
 - (i) the determination by the Arts Minister, under subsection 376-30 (1) of the Act, of the total of a company's qualifying Australian production expenditure on a film for the purposes of the location offset; or
 - (ii) the determination by the Arts Minister, under subsection 376-50 (1) of the Act, of the total of a company's qualifying Australian production expenditure, to the extent that it relates to post, digital and visual effects production for a film, for the purposes of the PDV offset.

Note Subparagraph 376-260 (1) (a) (i) of the Act gives the Board the following functions:

- to consider applications made under subsection 376-230 (1) or (2) of the Act;
- to advise the Minister on whether to issue certificates under section 376-20 or 376-45 of the Act.

7 Powers of the Board

The Board has the power to do everything that is necessary or convenient to be done for the purpose of carrying out its functions.

8 Constitution of, and appointment to, the Board

- (1) The Board consists of:
 - (a) a Chair; and
 - (b) two other members.
- (2) The Chair is the person who, from time to time, performs the duties of an SES employee in the Department that are nominated for the purposes of this subrule by the Arts Secretary.

Rule 9

- (3) If the Arts Secretary nominates duties for the purposes of subrule (2) or paragraph 15 (2) (b), a person who performs those duties is taken to be a member of the Board for any period during which:
 - (a) the nomination has effect; and
 - (b) the person is performing those duties.
- (4) A member referred to in paragraph (1) (b) is to be appointed by the Arts Minister by written instrument for the period, not exceeding 3 years, specified in the instrument.
- (5) A member appointed under subrule (4) must be someone who, in the opinion of the Arts Minister, is, or has been, involved in the film production industry and has experience and expertise in feature film production budgets or film auditing.
- (6) An appointed member holds office on a part-time basis.

9 Acting appointments

- (1) The Arts Minister may appoint a person to act as a member:
 - (a) during a vacancy in the office of the member (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the member is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.
- (2) Anything done by a person purporting to act under an appointment under subrule (1) is not invalid merely because:
 - (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment;
or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.

10 Appointed members may be given leave of absence from meetings

The Arts Minister may grant an appointed member leave to be absent from a meeting or meetings of the Board on the terms and conditions (if any) that the Minister determines.

11 Resignation of appointed member

An appointed member may resign his or her appointment by giving a written resignation to the Arts Minister.

12 Termination of appointment of appointed members

- (1) The Arts Minister may terminate the appointment of an appointed member for misbehaviour or physical or mental incapacity.
- (2) Without limiting subrule (1), the Arts Minister may terminate the appointment of an appointed member if the member fails, without reasonable excuse, to comply with rule 13 (duty of confidentiality) or rule 14 (disclosure of interests).
- (3) The Arts Minister must terminate the appointment of an appointed member if:
 - (a) the member:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
 - (b) the member is absent, except on leave of absence granted under rule 10, from 3 consecutive meetings of the Board.
- (4) A termination under this rule takes effect when the member is given written notice of the termination.

13 Board members' duty of confidentiality

- (1) Except in the performance of the functions of the Board, a Board member must not communicate, or use to gain an advantage for himself or herself, or someone else, information that is made known to the person in the capacity of Board member.
- (2) The duty in subrule (1) continues after the person ceases to be a Board member.

14 Disclosure of certain interests of Board members

- (1) A Board member who has a direct or indirect pecuniary interest in a matter that is being considered, or is about to be considered, by the Board must disclose the nature of the interest in writing to the Arts Minister.
- (2) The disclosure must be made as soon as possible after the relevant facts have come to the Board member's knowledge.
- (3) Unless the Arts Minister consents in writing, the Board member:
 - (a) must not be present during any deliberation by the Board on the matter; and
 - (b) must not vote on the matter or otherwise take part in any decision of the Board on the matter.

Rule 15

- (4) If the Arts Minister consents, the disclosure and the Minister's consent must be recorded in:
 - (a) the minutes of the relevant meeting; and
 - (b) any written advice on the matter mentioned in subrule (1) that is provided to the Arts Minister.

15 Board meetings

- (1) The Chair may convene a meeting of the Board at any time.
- (2) A meeting of the Board must be presided over by:
 - (a) if the Chair is present — the Chair; or
 - (b) if the Chair is not present — the person who, from time to time, performs the duties of an SES employee in the Department that are nominated for the purposes of this paragraph by the Arts Secretary.

16 Quorum

- (1) Subject to subrule (2), at a meeting of the Board a quorum is constituted by two members.
- (2) If two members of the Board are unable to participate in, or to continue to participate in, the performance of their duties as a result of the disclosure of conflicts of interest under rule 14, the quorum necessary for a meeting of the Board is one.

Note As a result of subrules 14 (3) and 17 (1), the Board member who constitutes a quorum under subrule (2) would be the only member entitled to vote in respect of the relevant matter.

17 Conduct of meetings

- (1) A question arising at a meeting of the Board is to be determined by a majority of members of the Board present and entitled to vote on that question.
- (2) The person presiding at a meeting has a deliberative vote and, if necessary, a casting vote.
- (3) The Board may regulate proceedings at its meetings as it considers appropriate. However, proceedings at a meeting must not be inconsistent with the other rules in this Part.

Note Section 33B of the *Acts Interpretation Act 1901* provides for people to participate in meetings by various means of communication (eg telephone or closed-circuit television).

- (4) Without limiting subrule (3), the Board may invite a person to attend a meeting for the purpose of advising or informing the Board on any matter.

Rule 18

- (5) A person invited to attend a meeting under subrule (4) must not communicate, or use to gain an advantage for himself or herself, or someone else, information that is made known to the person as a result of being so invited.
- (6) The Board must ensure that minutes of its meetings are kept.

18 Decisions without meetings

- (1) The members of the Board may pass a resolution without a Board meeting being held if all of the members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- (2) Separate copies of a document may be used for signing by members if the wording of the resolution and statement is identical in each copy.
- (3) The resolution is taken to have passed when the last member signs.

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.