



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

This revised version of the Guidelines on the Entry into Australia of Foreign Actors for the Purpose of Employment in Film and Television Productions was adopted on 17 August 2000.

The Department of Communications and the Arts (the Department) administers the guidelines.

The guidelines deal exclusively with the employment of screen performers for film-making and television program production. They are the basis on which the Arts Minister, or a person authorised by the Arts Minister, determines whether to certify that specified requirements identified in the Migration Regulations have been met.

The Migration Regulations require that a subclass 420 visa, which is assessed against the criteria in regulation 2.72D (4) or regulation 2.72D (5) not be approved unless the visa application is supported by a certificate given by the Arts Minister. Regulation 2.72D (4) and 2.72D (5) are included as an Appendix to this document.

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. This consultation process is undertaken as part of the process of applying for a certificate from the Arts Minister.

These guidelines are intended to achieve key government cultural objectives by ensuring that Australian industry personnel are given a fair chance in securing employment in film and television productions shot in Australia, and that Australian voices are heard in Australian productions.

## Scope

The guidelines set out the circumstances under which applications can be considered for the import of foreign actors for the following forms of film or television programs:

- feature films
- telemovies
- mini-series
- bona fide unofficial co-production series and serials.

Applications for productions that fall outside of the scope of the above categories will be considered as exceptional cases on a case by case basis.

These guidelines do not apply where the applicant for a visa seeks to enter Australia under an agreement between Australia and another country. In such cases, the application will be considered by the Department of Immigration and Border Protection against the appropriate Migration Regulations. Screen Australia administers the Official Coproduction Program and determines applications for projects to be approved as Official Co-productions.

## Terms and definitions

For the purposes of this document, the following terms are defined as specified:

**'Actor'** means a screen performer, whether in a leading, supporting or cameo role, a stunt performer, puppeteer, voice over or other person who performs in a film.

**'Australian actor'** means an actor who is a citizen or resident of Australia.

An **'Australian resident'** under the Migration Regulations is taken to mean the holder of a permanent visa for Australia.

**'Australian content criteria'** are these guidelines insofar as they relate to the import of actors for government subsidised productions.

**'Budget'** means only bona fide components of film production budgets (e.g. producer fees set in the light of usual current practices).

**'Cameo role'** means a brief but important role usually performed by a well-known screen performer.

**'Children's program'** means an Australian Broadcasting Authority classified **'C'** program or a children's program made by or for the Australian Broadcasting Corporation.

**'Exceptional cases'** means applications that cannot be classified within the categories in the guidelines or cannot meet the requirements of the guidelines but which the sponsor believes would be worthy of consideration.

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

**'Foreign actor'** means a person requiring a temporary visa to work in film or television productions in Australia.

**'Foreign investment'** includes overseas sourced funds, and private Australian investment where such investment is secured against returns from foreign markets, regardless of whether the funds are equity investment or not.

**'Government subsidised'** means any form of government subsidy other than developmental funding, including but not limited to investment, loans, distribution guarantees, pre-sale and tax concessions (other than tax concessions ordinarily available to any business enterprise). For the purpose of this definition government shall be deemed to include State, Commonwealth and Territory and shall include statutory bodies and companies wholly owned by a government, for example, Screen Australia.

**'Leading actor'**, means protagonist or a production's central or main role(s).

**'Media, Entertainment and Arts Alliance'** (MEAA), is a union representing employees in the media, entertainment, sports and arts.

**'Mini-series'** of television drama means a limited serial of television drama, normally less than 13 hours in total length or no more than 13 episodes, and wherein each episode is not less than one commercial hour.

**'Serials'** means productions comprising 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 productions comprising a potentially unlimited number of episodes, each being a self contained plot, which can be screened in any order

**'Stunt performer'** means an actor employed to perform dangerous scenes in a film and who doubles for one of the actors chosen for a particular role.

**'Supporting actor'** means an actor with more than a cameo but not a central role.

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

**'Unofficial co-productions'** means productions not made under a treaty or official less than-treaty status arrangements where a minimum of 50 per cent of the budget is foreign sourced and creative control over key decisions relating to the story line, casting or direction is shared by Australian and overseas managerial personnel or companies.

## Certification

Certification under regulation 2.72D (4) (b) or regulation 2.72D (5) (b) of the Migration

Regulations will be based on consideration of the following matters:

### GOVERNMENT SUBSIDISED PRODUCTIONS (REGULATION 2.72D (4))

#### Relevant Australian content criteria

1. When considering whether to issue a certificate, the Arts Minister, or a person authorised by the Arts Minister, must be satisfied that:

- the casting of leading and major supporting roles accurately reflects the Australian characters portrayed;
- at least 50 per cent of performers in leading roles and 75 per cent of performers in major supporting roles are Australian; and
- where applicable, an Australian actor has been cast to play a 'traditional Australian character'.
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2. Where the criteria in the preceding paragraph are satisfied, the use of foreign actors may be considered appropriate as set out below in the following situations:

2(i) Where a minimum of:

2(i)a 60 per cent of the budget of a feature film, telemovie or mini-series is foreign investment, the employment of one foreign actor may be appropriate;

2(i)b 30 per cent of a production's budget is foreign investment and the budget exceeds in the case of feature films-\$2.5 million; telemovies-\$1.25 million; mini-series-\$0.5 million per television hour, the employment of one lead and one support or cameo foreign actor may be appropriate;

2(i)c 30 per cent of a production's budget is foreign investment and the budget exceeds, in the case of features-\$7.5 million; mini-series-\$0.9 million per television hour, as well as the actors permitted through 2(1)b the employment of one additional foreign actor may be appropriate to play a cameo role;

Or

2(ii) When no Australian actor can be cast who satisfies the ethnic or other special requirements of a specific role, the employment of a foreign actor may be appropriate

provided:

2(ii)a the MEAA has been consulted; and,

2(ii)b if required by the Arts Minister or a person authorised by the Arts Minister,

the Casting Guidelines set out below have been complied with.

3. The sponsor has consulted with the MEAA regarding the employment or engagement, of the foreign actor. This requires the sponsor to:

- provide details of the proposal to the union; and
- give the union a period for comment that is reasonable in the circumstances but not more than 14 days.

### FILM OR TELEVISION PRODUCTIONS NOT SUBSIDISED BY GOVERNMENT (EXCLUDING SERIES AND SERIALS) (PARAGRAPH 2.72D (5))

1. A certificate may be issued where reasonable opportunities have been provided to citizens or residents of Australia to participate in all levels of the production. The sponsor should:

1(i) show that reasonable efforts have been made to cast Australian actors at all levels of the production;

1(ii) provide the Department with a clear explanation of the need for foreign actors; and

1(iii) show that, if required by the Arts Minister or a person authorised by the Arts Minister, the Casting Guidelines have been complied with.

2. In relation to foreign investment, the sponsor should provide the Department with documentation demonstrating that the foreign investment, or the private investment guaranteed against the foreign returns by the distributor, exceeds the proportion of the budget expended on foreign performers.

3. The sponsor has consulted with the MEAA regarding the employment or engagement of the foreign actor. This requires the sponsor to:

- provide details of the proposal to the union; and
- give the union a period for comment that is reasonable in the circumstances but not more than 14 days.

## FILM OR TELEVISION PRODUCTIONS NOT SUBSIDISED BY GOVERNMENT (BONA FIDE UNOFFICIAL CO-PRODUCTION SERIES AND SERIALS) (PARAGRAPH 2.72D (5))

1. In the case of bona fide unofficial co-production series and serials, the following shall apply:

1(i) where a minimum of 50 per cent of the budget is foreign investment, and the budget exceeds \$0.5 million per television hour, up to one third of the regular leads, or one guest lead in up to one third of the episodes may be foreign actors; and

1(ii) where 70 per cent of the budget is foreign investment, up to one third of the regular leads, and one guest in a maximum of one third of the episodes may be foreign actors.

2. The sponsor has consulted with the MEAA regarding the employment or engagement of the foreign actor. This requires the sponsor to:

- provide details of the proposal to the union; and
- give the union a period for comment that is reasonable in the circumstances but not more than 14 days.
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## EXCEPTIONAL CASES

If an application is made for a production that does not come within the forms of film or television programs set out above under the heading "Scope", the sponsor may present a case showing why the importation of a foreign actor should be considered.

Each case will be considered on its merits, and the views of the MEAA will be taken into account in determining the outcome. Where the views of MEAA are sought, the union will be given not more than 14 days to comment.

## CHILDREN'S PROGRAMS

The budget limits above will not apply to children's programs, which will be assessed on a case by case basis

## APPLICATION PROCESS FOR CERTIFICATES

Applications for certificates should be made by sponsors of 420 entertainment visa applicants.

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

- Contact the Department of Immigration and Border Protection for advice on the correct visa to apply for.
- If the entertainment visa is suitable, contact the Department to commence the application process, and consult with MEAA;

- The Department will assess the application and decide whether to issue a certificate. If a certificate is issued, it will be forwarded to the sponsor, the Department of Immigration and Border Protection and MEAA; and
- The Department of Immigration and Border Protection will process the application for the entertainment visa itself. This is a separate application process from the foreign actor certificate.

To allow adequate time for consideration of applications, sponsors should commence the application process as early as possible before the proposed date of entry into Australia of the foreign actor. Processing through all stages can take up to 12 weeks. Processing times may be accelerated to accommodate one-off applications where the sponsor has demonstrated a genuine need for urgency.

## CONSULTATION WITH THE RELEVANT UNION

The Migration Regulations require sponsors to consult with the relevant union. For the purpose of this Scheme, the relevant union is MEAA.

MEAA has the option to respond with a letter of opinion to the sponsor, with a copy provided to the Ministry, in relation to the application within 14 calendar days. The 14 day period commences from the date upon which the sponsor advises MEAA of their intent to apply for a certificate.

## MINISTRY FOR THE ARTS ASSESSMENT AND DECISION ON APPLICATION FOR FOREIGN ACTOR CERTIFICATE

### Submitting an application

The guidelines and application form are available for download from <http://www.arts.gov.au/>

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

Information provided to the Department is considered to be Commercial-in-Confidence.

### *Notice of collection under Australian Privacy Principle 5 (Privacy Act 1988)*

The Department has collected personal information from the applicant for the purpose of providing a certificate to the Department of Immigration and Border Protection. A Foreign Actor Certificate includes the name of the production, its status as either Government subsidised or Non-Government subsidised, actor names and roles and the applicant's details. It is common practice to also provide the certificate to the Media, Entertainment and Arts Alliance.

Further information about how you can access your personal information, correct your personal information or complain about a breach of the *Australian Privacy Principles*, and how the Department of Communications and the Arts would deal with the complaint, is available in the Department's privacy policy at <https://www.communications.gov.au/privacy-policy>. The Department can be contacted also on 02 6271 1512 or [foreignactors@arts.gov.au](mailto:foreignactors@arts.gov.au).

The applicant should ensure that third parties to the application are made aware of this collection, and how to access their personal information, correct their personal information or complain about a breach of the *Australian Privacy Principles*.

Applications should be emailed to [foreignactors@arts.gov.au](mailto:foreignactors@arts.gov.au).

Receipt of applications will be acknowledged and all enquiries regarding the application process should be directed to the desk officer at the above email address or by phone on +61 2 6271 1512. If you require a postal address for your application, please contact the desk officer.

Please note that a single application form may cover a number of actors.

### Application assessment

The Department considers the circumstances of each application, taking into account information provided by the sponsor and MEAA's letter of opinion, and makes a decision based on its assessment of whether the proposed importation of a foreign actor complies with the guidelines.

The Department requires five working days to process an application once all documentation is received, and may seek further information at any point in the application assessment process in order to establish whether certification should occur.

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

Should MEAA provide a letter not supporting an application, the Department will provide the sponsor with the opportunity to respond.

### Decision on certification

Final decision on certification is based on the Department's assessment of whether the applicant has complied with the guidelines.

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

The Department will notify the sponsor regarding the certification decision, and where a certificate has been issued, provide signed copies to the sponsor and the Department of Immigration and Border Protection by email (or by fax upon request).

Please note that a certificate is valid for the entire length of the 420 entertainment visa for which it is issued. A new certificate is not required in the case of subsequent re-entry of the same actor in the same production.



### Department of Immigration and Border Protection processing of application for entertainment visa

The Department of Immigration and Border Protection requires that applications for entertainment visas for foreign actors entering Australia to take part in productions covered by Migration Regulations 2.72D (4) and (5) are supported by a certificate issued by the Arts Minister or his delegate.

Sponsors should lodge their documentation with the Department of Immigration and Border Protection as soon as possible prior to the nominated person's arrival date in Australia, noting that processing times can be up to 12 weeks.

For further information and a comprehensive list of requirements, including where applications must be lodged, please visit [the Department of Immigration and Border Protection's](#) website.

## CONTACTS FOR FURTHER INFORMATION

Department of Communications and the Arts

Desk officer, Foreign Actor Certification Scheme

Tel: +61 2 6271 1512

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

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

Department of Immigration and Border Protection

Entertainment Processing Centre

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

Fax: +61 2 8861 4301

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

<http://www.immi.gov.au/visas/temporary-visa/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](mailto:imports@alliance.org.au)

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

Screen Producers Australia (SPA)

Tel: +61 2 9360 8988

Fax: +61 2 9360 8977

Email: [info@screenproducers.org.au](mailto:info@screenproducers.org.au)

<http://screenproducersaustralia.org.au/>

Ausfilm

Tel: + 61 2 9383 4192

Fax: + 61 2 9383 4190

Email: [info@ausfilm.com.au](mailto:info@ausfilm.com.au)

<http://ausfilm.com.au/>

## CASTING GUIDELINES

Where a producer seeks to import a foreign actor on the basis that a suitable Australian actor cannot be found because of ethnic or other special requirements, the producer should demonstrate that a bona fide attempt has been made to locate a suitable Australian actor.

Where the Arts Minister or a person authorised by the Arts Minister is not satisfied that a bona fide attempt has been made, the Arts Minister or a person authorised by the Arts Minister may require the Casting Guidelines to be complied with. In that case, some or all of the following would be required:

1. The producer shall distribute a character breakdown of the role to actors' agents throughout Australia.
2. The producer shall appoint a recognised casting director and all of the actors recommended by the casting director will be auditioned and where recommended screen tested. It would normally be expected that a short list of performers would be screen tested.
3. The producer shall ensure that auditions are professional. For the purpose of these guidelines, a professional audition shall be deemed an audition where the actor is given every opportunity to demonstrate his/her ability to play the nominated role. It would normally be expected that:
  - the actor is provided with a detailed character breakdown of the role for which he/she is being auditioned and excerpts from the script in sufficient time to prepare for the audition;
  - the actor is informed in advance if the role requires a particular accent;
  - the audition is conducted in a conducive atmosphere;
  - the actor is given the opportunity to discuss the requirements of the role with the director; and
  - make-up and costumes are provided where recommended by the casting director.

## **THE DEPARTMENT MAY REQUEST ADDITIONAL INFORMATION FROM THE PRODUCER IF REQUIRED.**

## APPENDIX: MIGRATION REGULATION 2.72D, SUB-PARAGRAPHS (4) AND (5)

### 2.72D CRITERIA FOR APPROVAL OF NOMINATION — SUBCLASS 420 (ENTERTAINMENT) VISA

#### 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

(i) performing in a film or television production that is subsidised, in whole or in part, by a government in Australia; and

(ii) 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

(b) the entertainment sponsor holds any necessary licences in respect of the work to which the nomination relates; and

(c) 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
  - (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.