



Australian Government

Department of Communications and the Arts

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

January 2018



Disclaimer

The material in these guidelines is of a general nature and should not be regarded as legal advice or relied on for assistance in any particular circumstance or emergency situation. In any important matter, you should seek appropriate independent professional advice in relation to your own circumstances. The Commonwealth accepts no responsibility or liability for any damage, loss or expense incurred as a result of the reliance on information contained in these guidelines.

These guidelines have been prepared for consultation purposes only and does not indicate the Commonwealth's commitment to a particular course of action. Additionally, any third party views or recommendations included in these guidelines do not reflect the views of the Commonwealth, or indicate its commitment to a particular course of action.

Copyright

© Commonwealth of Australia 2018



The material in these guidelines is licensed under a Creative Commons Attribution—4.0 International license, with the exception of:

- the Commonwealth Coat of Arms
- this Department's logo
- any third party material
- any material protected by a trademark, and
- any images and/or photographs.

More information on this CC BY license is set out as follows:

- Creative Commons website—www.creativecommons.org
- Attribution 4.0 international (CC by 4.0)—www.creativecommons.org/licenses/by/4.0.

Enquiries about this license and any use of this discussion paper can be sent to:
copyright@communications.gov.au.

Third party copyright

The Department has made all reasonable efforts to clearly identify material where the copyright is owned by a third party. Permission may need to be obtained from third parties to re-use their material.

Attribution

The CC BY licence is a standard form licence agreement that allows you to copy and redistribute the material in any medium or format, as well as remix, transform, and build upon the material, on the condition that you provide a link to the licence, you indicate if changes were made, and you attribute the material as follows:

Licensed from the Commonwealth of Australia under a Creative Commons Attribution 4.0 International licence.

Enquiries about the use of any material in this publication can be sent to:
copyright@communications.gov.au.

Using the Commonwealth Coat of Arms

Guidelines for using the Commonwealth Coat of Arms are available from the Department of Prime Minister and Cabinet website at www.pmc.gov.au/government/its-honour.

Contents

Scope	5
Terms and definitions.....	5
Certification	6
Government subsidised productions (regulation 408.229A (2)).....	6
Relevant Australian content criteria	6
Film or television productions not subsidised by government (Excluding series and serials) (regulation 408.229A (3))	7
Film or television productions not subsidised by government (Bona fide unofficial co-production series and serials) (regulation 408.229A (3)).....	8
Exceptional cases	8
Children's programs.....	8
Application process for certificates	8
Consultation with the relevant union.....	9
The Department's assessment and decision on application for foreign actor certificate	9
Submitting an application	9
Notice of collection under Australian Privacy Principle 5 (<i>Privacy Act 1988</i>)	9
Application assessment.....	10
Decision on certification.....	10
Department of Home Affairs processing of application for a temporary activity visa	10
Contacts for further information.....	11
Casting guidelines.....	11
Appendix: migration regulation 408.229A, sub-paragraphs (2) and (3)	13
408.229A criteria for approval of nomination—subclass 408 (temporary activity) visa.....	13
Performing in film or television production subsidised by government.....	13
Performing in film or television production not subsidised by government	13

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 408 visa, which is assessed against the criteria in regulation 408.229A (2) or regulation 408.229A (3) not be approved unless the visa application is supported by a certificate given by the Arts Minister. Regulation 408.229A (2) and 408.229A (3) 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 Home Affairs against the appropriate Migration Regulations. Screen Australia administers the Official Co-production 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 408.229A (2) or regulation 408.229A (3) of the Migration Regulations will be based on consideration of the following matters:

Government subsidised productions (regulation 408.229A (2))

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'.
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) (regulation 408.229A (3))

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) (regulation 408.229A (3))

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.

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 taking account of the lower prices and budgets that apply to programs in this category.

Application process for certificates

Applications for certificates should be made by sponsors of 408 temporary activity visa applicants.

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

- Contact the Department of Home Affairs for advice on the correct visa to apply for.
- If the temporary activity 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 Home Affairs and MEAA.
- The Department of Home Affairs will process the application for the temporary activity 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 Department, 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.

The Department's 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 Home Affairs. 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 MEAA.

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 1705 or 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.

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 1705. 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 Home Affairs by email (or by fax upon request).

Please note that a certificate is valid for the entire length of the 408 temporary activity 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 Home Affairs processing of application for a temporary activity visa

The Department of Home Affairs requires that applications for temporary activity visas for foreign actors entering Australia to take part in productions covered by Migration Regulations 408.229A (2) and (3) are supported by a certificate issued by the Arts Minister or his delegate.

Sponsors should lodge their documentation with the Department of Home Affairs 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 Home Affairs'](http://www.dhca.gov.au) website.



Contacts for further information

Department of Communications and the Arts
Desk officer, Foreign Actor Certification Scheme
Tel: +61 2 6271 1705
Email: foreignactors@arts.gov.au
<https://www.arts.gov.au/what-we-do/screen/filming-australia>

Department of Home Affairs
Specialist Temporary Entry Centre
Email: entertainment.visas@homeaffairs.gov.au
<https://www.homeaffairs.gov.au/trav/visa-1/408->

Media, Entertainment and Arts Alliance (MEAA)
MEAA Imports Officer
Tel: +61 7 3846 0044
Email: imports@meaa.org
<https://www.meaa.org/imports/>

Screen Producers Australia (SPA)
Tel: +61 2 9360 8988
Fax: +61 2 9360 8977
Email: info@screenproducers.org.au
<http://screenproducersaustralia.org.au/>

Ausfilm
Tel: + 61 2 9383 4192
Fax: + 61 2 9383 4190
Email: 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 408.229A, sub-paragraphs (2) and (3)

408.229A criteria for approval of nomination—subclass 408 (temporary activity) visa

Performing in film or television production subsidised by government

- 2) This subclause applies to the applicant if:
- (a) the applicant seeks to enter or remain in Australia to perform:
 - (i) as an entertainer under a performing contract for one or more specific engagements (other than non-profit engagements) in Australia, and
 - (ii) in a film or television production that is subsidised, in whole or in part, by a government in Australia, and
 - (iii) in a leading role, major supporting role or cameo role, or to satisfy ethnic or other special requirements, and
 - (b) the Arts Minister, or a person authorised by the Arts Minister, has provided a certificate confirming that the relevant Australian content criteria have been met, and
 - (c) either:
 - (i) an eligible sponsor passes the sponsorship test in relation to the applicant; or
 - (ii) if the applicant was outside Australia when the application was made, and stated on the application form that the proposed length of stay did not exceed 3 months – an eligible supporter passes the support test in relation to the applicant, and
 - (d) the eligible sponsor or eligible supporter holds any necessary licences in respect of the production, and
 - (e) the eligible sponsor or eligible supporter 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

- (3) This subclause applies to the applicant if:
- (a) the applicant seeks to enter or remain in Australia to perform:
 - (i) as an entertainer under a performing contract for one or more specific engagements (other than non-profit engagements) in Australia, and
 - (ii) in a film or television production that is not subsidised in any way by a government in Australia, and
 - (iii) in a leading role, major supporting role or cameo role, or to satisfy ethnic or other special requirements, and



- (b) the Arts Minister, or a person authorised by the Arts Minister, has provided a certificate 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) either:
 - (i) an eligible sponsor passes the sponsorship test in relation to the applicant; or
 - (ii) if the applicant was outside Australia when the application was made, and stated on the application form that the proposed length of stay did not exceed 3 months – an eligible supporter passes the support test in relation to the applicant, and
- (d) the eligible sponsor or eligible supporter holds any necessary licences in respect of the production, and
- (e) the eligible sponsor or eligible supporter has consulted with relevant Australian unions in relation to the employment or engagement of the identified visa holder or applicant in Australia.