



Australian Government

Department of the Environment, Water, Heritage and the Arts

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 Environment, Water, Heritage and the Arts is referred to in these guidelines as 'the Department'.

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.

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.

The guidelines, based on the criteria in the Migration Regulations, contain rigorous criteria for government subsidised productions in order to safeguard their Australian content.

For **unsubsidised** productions, including those fully funded offshore, the key criteria are that:

- Australian citizens/residents have had a reasonable opportunity to participate; and
- the sum of overseas investment must exceed the amount to be spent importing foreign actors.

The guidelines are administered by the Department of the Environment, Water, Heritage and the Arts (the Department).

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 other forms of film or television productions 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 Citizenship (DIAC) 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 e.g. Division 10B of the *Income Tax Assessment Act 1936*). For the purpose of this definition government shall be deemed to include State, Commonwealth and Territory and shall include statutory authorities 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'.

2. Where the criteria in the preceding paragraph are satisfied, the use of foreign actors may be considered appropriate 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, the employment of one additional foreign actor may be appropriate to play a cameo role;

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 Department's 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 Department's 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.

EXCEPTIONAL CASES

If an application does not come within the scope of the guidelines, the sponsor may present a case showing why the guidelines should not apply.

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

Conditions of application:

- Applications for certificates should be made by Australian producers on behalf of actor applicants or by sponsors acting on behalf of foreign producers, using the *Application form: Certificate to import foreign actors into Australia for a film or television production* which is available from www.arts.gov.au/film.
- To allow the Department adequate time to consider an application it should have been lodged at least seven days before a foreign actor is due to depart for Australia.

Applications should be addressed as follows:

Assistant Secretary
Film and Creative Industries
Department of the Environment, Water, Heritage and the Arts
GPO Box 787, CANBERRA ACT 2601
Fax: (61) 02 6275 9320

All enquiries should be directed to the desk officer at phone: (61) 02 6275 9633.

Applications should contain evidence of compliance with the requirements set out above. The Department may also seek further information to establish whether a certificate should be issued.

As set out in the requirements above, sponsors should consult the MEAA in advance of making their application. A copy of the sponsor's request for comments and, if available, the MEAA's written response should be provided with the application.

In determining whether to issue a certificate, the Arts Minister or person authorised by the Arts Minister, will take into consideration the MEAA's comments. If the MEAA has been consulted but has not provided a written response to the sponsor within 14 days, the Arts Minister or person authorised by the Arts Minister may proceed to make a determination based on the information provided by the sponsor.

If the MEAA's response (if any) suggests it has a relevant objection to the application, the Department will give the sponsor the opportunity to respond, before determining whether to issue a certificate.

Once the Arts Minister, or a person authorised by the Arts Minister, has issued a certificate, the sponsorship application should be lodged for processing with the:

Department of Immigration and Citizenship
Sydney Entertainment Processing Centre
GPO Box 9984
Sydney NSW 2001

Email: entertainment.visas@immi.gov.au

Fax: (61) 02 8861 4301

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

<http://www.immi.gov.au/contacts/forms/email/eform-processing-centres.htm?30>

The signed certificate is forwarded to sponsors, MEAA and the Department of Immigration and Citizenship by fax and post.

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 so satisfied, it would be the expectation of the Minister that some or all of the following would be done:

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 role;
 - 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.