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Screen Producers Australia's submission to the Review of the Temporary Work (Entertainment) visa (Subclass 420)

Screen Producers Australia was formed by the screen industry to represent large and small enterprises across a diverse production slate of feature film, television and interactive content.

As the peak industry and trade body, we consult with a membership of more than 300 production businesses in the preparation of our submissions. This consultation is augmented by ongoing discussions with our elected Council and appointed Policy Working Group representatives. Our members employ hundreds of producers, thousands of related practitioners and drive more than $1.7 billion worth of annual production activity from the independent sector.

On behalf of these businesses we are focused on delivering a healthy commercial environment through ongoing engagement with elements of the labour force, including directors, writers, actors and crew, as well as with broadcasters, distributors and government in all its various forms. This coordinated dialogue ensures that our industry is successful, employment levels are strong and the community's expectations of access to high quality Australian content have been met.

Screen Producers Australia welcomes this opportunity to make a submission to the Review of the Temporary Work (Entertainment) visa (Subclass 420). Screen Producers Australia has limited our recommendations to key areas of the discussion paper, outlined in the following sections:

1. **Union consultation**
2. **Requirements for film and television Arts Certificate**
3. **Net Employment Benefit**
4. **Sponsorship and Nomination**

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The independent production sector in Australia is highly competitive. These businesses are characterised by their professionalism, entrepreneurial spirit and quality of output. They operate in a media landscape that is equally characterised by its dynamism, in which technological changes are giving rise to changes in production, distribution, consumption and business models.

It is crucial that the screen industry regularly benchmarks its competitiveness and continues to explore opportunities for growth. This must be balanced by market expectations and audience desires and needs. In this context, supporting frameworks and mechanisms that have not been changed for many years must be reviewed to ensure that they do not inhibit the industry's potential.

The Temporary Employment (Entertainment) visa (Subclass 420) and the Foreign Actors Certification Scheme have not been substantially updated since the 1990s and as a result are out of step with current commercial pressures. Access to foreign investment and sales is highly competitive and critical in a climate of static domestic tax incentives and declining subsidies. Incentives and subsidies that alone will not fund current levels of highly creative and culturally relevant Australian content.

Producers are looking to the global marketplace to stretch domestic dollars further, as highlighted in Screen Producers Australia's 2014 Annual Business Survey that found that three-in-four producers were actively developing official and unofficial co-productions with international partners.[1] This should be seen as an opportunity, not a threat. The local industry clearly benefits from the international engagement as our talented technicians, performers and creators are working globally as a result. In return, the Australian industry is significantly larger than it would be if we were purely domestically oriented. This is key to preserving wages and employment conditions.

Screen Producers Australia is looking to Government for sensible reforms that embrace simplicity in design and structural flexibility. They should be reforms that empower industry to expand levels of production with the public safe in the knowledge that there are a number of safeguards in other legislation and regulation that protect the cultural importance of our screen content. These are safeguards that should not be replicated, or made more prescriptive, in visa requirements. It needlessly creates red tape and results in commercial uncertainty through a consultation process that may inappropriately influence the negotiations of producers, cast and crew.

The Subclass 420 visa is not used widely or lightly, this is due to both the very high quality of local cast and crew as well as the costs that temporary workers typically add cost to a production. For example, out of more than 13,000 full-time equivalent people employed annually by the independent production sector,[2] there were just 114 foreign actors (far less on a full-time equivalent basis) certified by the Arts Minister with a Subclass 420 visa for film and television production in 2013/14.[3] These visa holders require

[1] National Roadshow Presentation, 2014 (http://screenproducersaustralia.org.au/assets/Uploads/2014-Roadshow-Pres-PUBLIC2.pdf)
[2] Economic contribution of the film and television industry in Australia, 2015 (http://www.screenassociation.com.au/resources.php)
[3] Discussion Paper: Review of the Temporary Work (Entertainment) visa (Subclass 420), 2015 (http://www.immi.gov.au/pub-res/Documents/discussion-papers/review-temporary-work-entertainment-visa.pdf)

additional transport and accommodation costs and, in the case of feature films, they trigger loadings of between 25 and 100 per cent for all Australian actors who perform alongside foreign actors.[4]

On occasion the creative and commercial demands of a project warrant the use of international talent. But the current process is not efficient, progressive or effective. Changes to this process will create more opportunities for employment and career advancement, increase production levels and decrease commercial uncertainty. This will guarantee that the public continues to have access to a diverse range of distinctive Australian screen content in a more competitive global environment.

To achieve this the regulation and guidelines must be clear, transparent and easily understood, responding to contemporary practice and accurately reflecting the crucial role of foreign investment in Australian screen content. Screen Producers Australia believes that this can be achieved in film and television production by amendments to union consultation, the requirements for the Arts Certificate, the definition of Net Employment Benefit and the streamlining of sponsorship and nomination.

Union consultation

The regulations specify that sponsorship of a proposed visa applicant for certain nomination types cannot be approved unless the sponsor has consulted the relevant Australian union. This is a requirement for all nomination types except where the engagement is for non-profit purposes or for a documentary or commercial made for an overseas audience. In 2013/14 around 70 per cent of nominations required union consultation.

The Subclass 420 visa is the only visa subclass that includes a legislative requirement for union consultation. However, the nature of the consultation is not defined in regulation and there is no authority under which the union can veto an application. Despite this a process has now been established under which the application to the union incurs a fee and must include the lodgment of wide-ranging commercially sensitive documentation. This information goes far beyond the reasons for importing overseas talent, including details of local cast and crew, the finance plan and script.[5]

Furthermore, as a point of comparison, New Zealand has already streamlined their 'one size fits all' visa application process for entertainment industry personnel.[6] Previously, all applications were referred to the relevant professional association, industry guild or union such as the New Zealand Film and Video Technicians' Guild, the Screen Production and Development Association, New Zealand Actors Equity, etc. This occurred irrespective of whether there was a risk of displacing New Zealand workers.

From 30 April 2012 consultation was no longer required for short stay entrants, those sponsored by an accredited company or on an approved activity. The objective of these changes was to reduce red tape and compliance costs by ensuring that businesses could get the people they need when they need them,

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[4] Australian Feature Film Collective Agreement (AFFCA), Screen Producers Australia and Media Entertainment and Arts Alliance, 2012

[5] Application for a union 420 visa non-objection letter: Recorded Media (http://www.alliance.org.au/documents/2014_checklist_payment_form_recorded_media_new.pdf)

[6] 'Changes to work visa applications for entertainment industry personannel', 2012 (http://www.immigration.govt.nz/migrant/general/generalinformation/news/entertainmentindustrychanges.htm)

while still providing protection for New Zealand workers. Australia would benefit from a similar progressive position.

Screen Producers Australia recommends that the requirement to consult with the relevant union should be removed to align the Subclass 420 with other temporary work visas.

Requirements for film and television Arts Certificate

Subclass 420 nominations need to be certified by the Arts Minister. The 'Guidelines on the entry into Australia of Foreign Actors for the purpose of employment in film and television productions' are the basis on which the Arts Minister determines whether to certify that specified requirements have been met.

In 2013/14 the Arts Minister issued certificates for 114 individuals. The guidelines have historically been intended to achieve key government cultural objectives by ensuring that Australian industry personnel receive a fair chance in securing employment in film and television productions shot in Australia and that Australian faces and voices are seen and heard on screen.

However, despite these historical concerns the industry has matured. The Government should take into account its broader policy objectives to encourage a healthy level of local screen production and to attract foreign investment to Australia, which ultimately creates a strong, skilled screen industry.

There are a number of safeguards introduced by Government to ensure that local audiences can access Australian content that do not need to be duplicated by the Subclass 420. These safeguards include the Significant Australian Content test under the Producer Offset, the Australian Content Standard and Screen Australia's investment processes. Furthermore, there are similar assessment processes across each state-based screen agency. Each test, on both a federal and state level, has domestic interests as a guiding principle.

Screen Producers Australia recommends the removal of the requirement for certification from the Arts Minister. This should be replaced with the requirement to 'not intend to engage in activities that will have adverse consequences for employment or training opportunities, or conditions of employment, for Australian citizens or Australian permanent residents.' If the Government wishes to retain Net Employment Benefit then it should be further defined in policy.

Net Employment Benefit

The regulations require that the nominated activity brings a Net Employment Benefit to the Australian entertainment industry and is intended to foster local talent and ensure that opportunities for Australian artists are not jeopardised. Under policy, this is met if the total number of Australian citizens or permanent residents who would be employed as a result of the applicant undertaking the activity is more than the number who would be employed (in that industry) were an Australian resident to undertake the activity.

However, the regulations do not prescribe a methodology for calculating the Net Employment Benefit to the entertainment industry. As a result, assessing how to meet the Net Employment Benefit can be difficult for both stakeholders and visa processing officers.

Public policy objectives are best met through holistic measures that consider broader employment and training outcomes. Importantly, the extent to which the experience gained by working with internationally renowned experts in their craft creates career advancement opportunities both locally and overseas.

Screen Producers Australia recommends replace the Net Employment Benefit with the requirement to 'not intend to engage in activities that will have adverse consequences for employment or training opportunities, or conditions of employment, for Australian citizens or Australian permanent residents.' If the Government wishes to retain Net Employment Benefit then it should be further defined in policy.

Sponsorship and nomination

The current sponsorship and nomination requirements are a result of the worker protection framework that was introduced in September 2009 to clarify and enforce sponsor obligations and to enhance existing mechanisms to help deal with particular vulnerability of temporary visa holders.

During the 2013/14, more than 90 per cent of Subclass 420 visas holders stayed in Australia less than 12 weeks (over 80 per cent of these stayed less than 27 days). It is suggested that the existing regulatory requirement for sponsorship and nomination seems somewhat excessive for this low risk cohort seeking entry for short periods of stay. As mentioned, Australia needs to remain competitive with our neighbouring New Zealand who has streamlined their visa application process for short stay entrants and those working on approved activities.

Screen Producers Australia recommends either the removal of the requirement for sponsorship and nomination for short stay periods or the retention of form of sponsorship depending on period of stay or certain activities and the removal of nomination.