

CHAPTER 10 – CULTURAL AND SOCIAL STREAM: THE ENTERTAINMENT INDUSTRY

BACKGROUND

Policy Objective

10.1 This visa subclass provides for entertainment personnel involved in one or more specific performances or productions in Australia. It seeks to facilitate the community's access to a wide range of overseas cultural events and activities. In doing so, it also seeks to ensure that employment and training opportunities for Australian entertainment personnel result from these activities.

Current Arrangements

10.2 This visa covers a wide range of circumstances including:

- entertainers involved in live performances or in the production of films, television or radio productions, concerts or recording of performances;
- their support staff;
- directors, producers, choreographers and other technical staff for such productions; and
- models and mannequins.

10.3 Sponsorship is required for all applicants, regardless of period of stay, except in relation to those entering under a country-to-country agreement. Union consultation is a requirement of the sponsorship application process except in relation to applicants entering under a country-to-country agreement or where the entertainment activities are considered by the Department to be of a 'cultural/non-commercial' nature.

10.4 Unless the visa applicant seeks to enter Australia to perform purely for non-commercial purposes, the applicant is required to be employed or engaged in

Australia in accordance with the standard wages and conditions provided for under relevant Australian legislation and awards.

10.5 The current arrangements reflect the particular circumstances of the Australian entertainment industry – its relatively small size, the limited number of opportunities, the large number of persons seeking available work and the short-term/contract nature of much of the work. They also reflect the commitment to Australia's cultural policy, which involves, amongst other things, the promotion of Australian culture, and access by Australian audiences to Australian content in film and television.

10.6 It should however also be noted that the Australian entertainment industry is no longer in its infancy and enjoys considerable success on the world stage.

10.7 Over 8,800 Entertainment visas were granted in 2000-01. Most people using this visa stay in Australia for very short periods of time, often significantly less than three months, reflecting use of this visa for participation in relatively short-term entertainment activities.

Major Issues Raised

10.8 The issues raised in relation to the Entertainment visa are the following:

- lack of clarity in the sponsorship requirements, especially for first-time sponsors;
- the need for faster processing time because a quick turnaround time can be critical;
- lack of clarity in the definition of 'net employment benefit' that leads to uncertainty for sponsors and difficulty for DIMIA staff when called to arbitrate on this requirement in the very small

minority of cases where promoters and unions do not reach agreement. This was reflected strongly in public submissions to this Review and in discussions with key stakeholders;

- the need for clearer definition of 'cultural/non-commercial' as there is difficulty for DIMIA staff in determining which activities may be regarded as 'cultural/non-commercial' and therefore not subject to union consultation or the 'net employment benefit' requirement;
- confusion about the use of another visa (Media and Film Staff) for some persons working in the entertainment industry; and
- confusion about why models and mannequins need to use the entertainment visa when they have little (if anything) in common with others included in the visa class.

10.9 These issues are addressed in the context of the five policy parameters and client service and administrative efficiency. The threshold issue of the need for a separate visa is addressed first.

Is a Separate Visa Needed?

10.10 Overseas residents working in the Australian entertainment industry are required to be sponsored like other temporary resident employees, but the nature of the entertainment industry is different from other industries that sponsor employees. Areas of difference include:

- normal recruitment mechanisms, for example, advertising in newspapers, are not a standard method for locating employees in the entertainment industry;
- because of this, normal labour market testing requirements are not appropriate for temporary residents in this industry – instead protection of employment opportunities for Australians is achieved through the union consultation process

(this is the only occupation that has a union consultation requirement as part of the visa processing);

- there is an absence of readily acceptable qualifications (for example, degrees, certificates, registration etc) for persons working in this industry; and
- Australia's cultural policy objectives need to be taken into account.

10.11 As summarised in one submission to the Review:

The problem of applying the labour market testing procedure for 457 to the entertainment industry is that the test does not take account of the employment dynamics of the industry. The work is usually short-term and available at short notice. National and metropolitan newspaper advertising is not commonly used to fill positions... Performers and technicians rely almost exclusively on companies contacting their agent or booking agent enquiring in respect of availability. Skill shortages can fluctuate wildly and for abnormal reasons. (Submission from the Media Entertainment and Arts Alliance)

10.12 In addition:

...it is appropriate that union consultation be a visa requirement for foreign performers entering for film and television production...Both the Screen Producers Association of Australia (SPAA) and the Media Entertainment and Arts Alliance (MEAA) have expressed strong reservations about the industry's capacity to self-regulate in an environment where applications for overseas personnel to work in Australia are triggered by non-nationals who have no local presence. (Submission from the Department of Communications, Information Technology and the Arts)

10.13 These distinguishing features of visa processing for entertainment industry personnel are such that it would be difficult to accommodate them under the generic visa requirements for other sponsored temporary resident employees. It might be difficult to force the entertainment visa applicants into the generic provisions for the temporary business (subclass 457) visa because there would need to be specific requirements and processes retained for entertainment visa applicants as opposed to other sponsored employees under that visa. The newly introduced skill and salary thresholds would not be appropriate for entertainers. It might hamper the entry of some overseas entertainment personnel who do not meet it, but who are vital to an entertainment production. Also, as many overseas entertainment organisations arrange teams of suitable personnel, any perception that keeping these teams together might not be possible could compromise Australia's ability to attract such overseas entertainment activities. In addition, many entertainment skills do not fit well with the ASCO classification that is largely based on skills acquired through formal training mechanisms. Forcing the entertainment industry into generic visa arrangements for sponsored employees would therefore have no advantage for visa applicants nor result in greater efficiencies in administration – indeed it might create client confusion for both entertainment visa applicants and other applicants under that visa.

10.14 It is therefore considered more appropriate to retain separate visa arrangements for persons working in the entertainment industry, in recognition of the specific requirements and specific processing arrangements for these visa applicants.

EMPLOYMENT OPPORTUNITIES FOR AUSTRALIANS

10.15 Currently, there are three requirements in this visa which seek to ensure that the

employment opportunities for Australian residents are not diminished:

- a visa criterion ensuring that there is a 'net employment benefit to the Australian entertainment industry' in relation to all commercial entertainment activities;
- union consultation in relation to all commercial entertainment activities. This provides a significant element of protection to the Australian entertainment industry; and
- a visa criterion ensuring that the visa applicant is to be employed or engaged in Australia in accordance with the standard wages and conditions provided for under relevant Australian legislation and awards.

10.16 While this Chapter discusses how these requirements may be refined to ensure they achieve the desired outcome, they are considered by the entertainment industry in Australia to provide appropriate protection.

Net Employment Benefit to the Entertainment Industry

10.17 The net employment benefit test, with its focus on the entertainment industry, is intended to help foster local talent and ensure that opportunities for Australian artists, support acts, technicians and other entertainment personnel are not jeopardised by arrangements. However, under policy, there have been numerous occasions for which a broader interpretation has been necessary so that Australians have access to quality international entertainment and to the subsidiary employment opportunities that it creates. For example, in the case of large international performing troupes such as Cirque de Soleil or the Moscow Circus, opportunities for Australian performers are clearly limited. While some Australian technicians may be employed, 'net employment benefit', relative to the number of people entering

Australia may only occur if ticket sellers, truck drivers, security and other support personnel are considered.

- 10.18 Assessing net employment benefit can be difficult and stakeholders have mixed views on the subject. Some consider that the definition of benefits to the entertainment industry alone is not appropriate, and indeed that the broader benefit should not need to be quantified:

Any international artist or company performing in this country immediately creates an employment benefit to the industry and to Australia (Theatre staff, catering staff, support artists, etc) so I don't know what benefit there is in quantifying it within the present application. (Submission from Arts Projects Australia Pty Ltd)

- 10.19 A larger proportion is of the view that the definition should relate specifically to the entertainment industry, although opinions about the appropriate scope differ:

The test however needs to remain specific to the entertainment/modelling industry and not broadened out to Australian employment as many of the positions have not a comparable position outside the entertainment/modelling industry. One has to compare like with like. (Submission from the Shop, Distributive and Allied Employers' Association)

Too often, demonstration of a net employment benefit can be achieved by adding together Australians who will be engaged as security personnel, ticket sellers, car park attendants, front-of-house staff, drivers and publicists... The support personnel ...will be engaged regardless of whether the production they are supporting is Australian or from overseas... The support personnel will work regardless

and consequently the Alliance believes that in such circumstances net employment benefit has not been demonstrated... the Alliance believes that the net employment benefit test must be in respect of the Australian entertainment industry and not redefined to mean a net employment benefit to Australia. The latter is simply too broad and [would not] serve to adequately protect employment opportunities for certain sectors of performers nor for technicians. (Submission from the Media Entertainment and Arts Alliance)

AEIA has always held, and continues to hold, the strong view that [net employment benefit] is judged on the net benefit to the entertainment industry. This is easily determined with regard to the direct expenditure from a tour budget. We vigorously support the employment of all persons involved in the entertainment industry... [including] technical crew, front of house, eg ticket sellers, ushers, merchandise sellers,... catering, security, crewing services,... (Submission from the Australian Entertainment Industry Association)

- 10.20 There can be benefits to Australia in both approaches but under current arrangements DIMIA officers can be required to decide whether there is a 'net employment benefit to the entertainment industry' in cases relating to entertainers entering for commercial activities:
- this has caused processing difficulties in cases where the relevant union consulted indicated that there was not a 'net employment benefit' and the promoter/sponsor maintained that there was;
 - DIMIA officers lack expertise in this area and the difficulty of deciding whether a

job created was within the entertainment industry or not is often beyond the expertise of DIMIA officers not required to be familiar in non-immigration matters. For example, performers are clearly employed in the entertainment industry as directors, set dressers, etc but it can often be a matter of judgment if carpenters who construct the sets, ticket sellers, roadies, etc should be part of the net employment benefit calculation;

- DIMIA officers often feel ill-equipped to resolve disputes and there is no obvious independent agency from which expert advice could be sought.

10.21 Promoters and union representatives have generally taken responsible positions in interpreting the requirements but a better assessment process is required. Better definition of what constitutes 'net employment benefit' is essential and stakeholders consulted during this review agreed on this point and indicated a preparedness to join DIMIA in developing a better definition.

10.22 DIMIA's lack of expertise in this area remains an issue in cases where officers are called upon to decide whether there is 'net employment benefit' in contentious cases where unions and promoters do not agree. The alternative of referral to an expert third party, to avoid potential for the repeat of past highly publicised incidents when disputes arose, would be consistent with practice in other visa classes and has a parallel with those entertainer cases that are referred to DCITA for expert advice.

10.23 Establishment of a panel was therefore canvassed with stakeholders but the lack of an existing expert body was seen as a major obstacle. It was acknowledged that it would be possible to establish a panel – for example, by involving a suitable independent arbitrator (such as a member

of The Institute of Arbitrators), industry representation (for example, the Australian Entertainment Industry Association) and a relevant union representation (for example, the Media Entertainment and Arts Alliance or the Musicians' Union of Australia as appropriate for the case).

10.24 Stakeholders preferred to focus on developing a better definition of 'net employment benefit' to avoid disputes arising in the first place. Most saw acceptance of the an expert panel as difficult to achieve, at least seeing DIMIA as an unbiased party that had no stake in decision and fearing that more knowledgeable "experts" may have preconceived views that could lead to an apprehension of bias.

10.25 **RECOMMENDATION:**

That consultations be undertaken with industry representatives and relevant unions to clarify the definition of 'net benefit to the entertainment industry' and draft an agreed set of guidelines for assessing this criterion. If a sufficiently robust definition of net employment benefit can not be developed then establishment of an expert panel to determine 'net employment benefit' in the small number of cases where promoters and unions are in dispute could then be explored.

PAY AND CONDITIONS FOR AUSTRALIAN WORKERS

10.26 It is a requirement of the Entertainment visa that, "unless the applicant seeks to enter Australia to perform purely for non-commercial purposes, the applicant is to be employed or engaged in Australia in accordance with the standards for wages and working conditions provided for under relevant Australian legislation and awards".

10.27 Decision-makers assessing sponsorship applications for the Entertainment visa are required to ensure that this visa requirement is met. An assessment of the performer's contract by the decision maker, in addition to appropriate advice concerning any legislation and awards from organisations such as the Department of Employment and Workplace Relations, or the relevant entertainment union, ensures that Australian pay and conditions are not eroded. The relevant unions are in the best position to provide up-to-date advice about industry standards – this occurs either as part of the formal consultation process required for some applicants or can also be obtained on an ad hoc basis as required for other applications.

and that those are not is as follows...those considered non-commercial are considered to be cultural. This has attendant problems....

CLIENT SERVICE AND ADMINISTRATIVE EFFICIENCY

Definition of 'Cultural/non-commercial'

10.28 Consistency problems have been identified in the interpretation of the words 'cultural' and 'non-commercial' as they relates to certain entertainment activities:

- the term 'cultural' in the 'cultural and non-commercial' context is seen as redundant since all performances are cultural in nature. In their Submission to the Review, the Media, Entertainment and Arts Alliance submits that:

the term "cultural" in the context of the entertainment industry is tautological. All performances, whether live or recorded, are by definition cultural. The unfortunate consequence of the use of the term "cultural" is a need to distinguish between productions/performances that are "cultural" and those that, supposedly, are not. Common parlance in the entertainment industry with reference to this distinction between application that are "cultural and non-commercial"

- the inclusion of the term 'cultural' does not add to the requirement and could lead people to believe that DIMIA is exercising some form of creative control (when clearly it has no responsibility or role of this nature);
- the definition of 'non-commercial' is open to interpretation and DIMIA officers have sometimes applied different interpretations that caused delay to promoters when they were subsequently asked to undertake union consultation because their sponsorships were classified by DIMIA as commercial. The existence of some fee exemptions for cultural and non-commercial sponsorships had also encouraged some sponsors to stretch their claims. At least three reasonable definitions of 'non-commercial' have been used by different DIMIA officers in relation to entertainment activities at various times:
 - (a) where the sponsor does not intend to make a profit;
 - (b) where the entertainer does not get paid for the performances; and
 - (c) where the audience is not charged an entrance fee.

10.29 To ensure that there is greater consistency in decision-making, that clients fully understand the requirement, and that it is not open to potential abuse, it is proposed to define the term 'non-commercial' more clearly. While this may require further consultation with industry stakeholders, 'non-commercial' might well be defined simply as an activity that is not staged for commercial profit and this might require the sponsor to clearly demonstrate this. For example, the sponsor may be receiving a government arts or cultural grant to meet

the costs of an event, funding which would not be provided to commercial entertainment activities. Alternatively, the sponsor might be able to demonstrate that it is a public performance to which no admission fee will be charged.

10.30 **RECOMMENDATION:**

That reference to 'cultural and non-commercial' be changed to 'non-commercial' and that this be clearly defined in the Migration Regulations following further consultation with industry stakeholders.

Faster Processing

10.31 Almost all stakeholder comments made during the consultations on this Review commented about the need for promoters to move quickly to secure the best international entertainers and that it is important that sponsorship/visa processes recognise this with quick turnaround of applications. Three measures are proposed to facilitate quick processing:

- a reduction in the period of time within which the union may raise concerns or objections as part of the union consultation process – discussed below;
- requiring sponsorships and applications to be lodged together to enable concurrent processing at a single office in Australia – see Chapter 3 for further discussion of the proposal to combine visa and sponsorship applications; and
- requiring sponsors to lodge all relevant documentation, such as the certificate from DCITA required for film and television productions, evidence of union consultation in the form of a letter from the relevant union, for example, at the time of application, rather than during the course of processing an application.

10.32 The delays associated with the union consultation process were a source of comment in the consultation process:

the requirement that the union be given generally 10 working days to respond to sponsor's consultation and to comment, is considered excessive. The AEIA believes the unions have used this as a means to delay the process, and put unfair pressure on the sponsor. Further, this can sometimes endanger a last-minute application, which is part and parcel of the exigencies of this business. There have also been examples where DIMA staff have waited for a union response beyond the stated timeframe, this causing delay. (Submission from the Australian Entertainment Industry Association)

the level of consultation...can lead to costly delays for some productions. SPAA acknowledges that for the majority of applications the approval process is timely...there have been many occasions where the MEAA has acted very quickly due to production deadlines. However, the filmmaking business runs on very tight timelines. Casting and crew requirements can change overnight, and competition for talented personnel is fierce... We are often talking about...very short visits to Australia...[we recommend that the] consultation process be limited to five (5) working days. (Submission from the Screen Producers Association of Australia)

10.33 Avenues to reduce processing time, including the measures identified above, should continue to be pursued. To this end consideration has been given to the suggestion that the period allowed for union consultation could be reduced to five working days where sufficient information has been provided to the union for a decision to be made. DCITA have indicated that, in general, the cases they deal with, for example major film productions, have

sufficient lead-time to allow the relevant union ten days to raise their concerns (as provided for under their guidelines). On that basis, where DCITA certification is required, they would prefer that the turnaround time for the relevant union remain at ten days. It is therefore proposed that the time allowed for union consultation be reduced to five working days only for those cases where DCITA certification is not required.

Fee Exemption for Certain Visa Applicants

10.34 As discussed in Chapter 3, the Government user-charging policy involves charging those people who use particular government services a fee for the use of that service. As a general principle, fee exemptions are a subsidy to particular individuals or organisations and reflect public policy objectives to provide support to particular people or organisations. This review recommends that existing fee exemptions should continue but should apply only where sponsorship and visa applications are lodged together and with complete documentation, thus providing DIMIA with a corresponding benefit in terms of greater efficiency.

10.35 Under current arrangements, there is no visa application charge for applicants where:

- the purpose of the visit is 'cultural and non-commercial', or
- the applicant is sponsored for one of the prescribed festivals, or
- the applicant is sponsored by an organisation which is funded partly or wholly by the Commonwealth and which is approved for fee exemption.

10.36 It is estimated that in approximately 50 per cent of Entertainment visa applications an exemption from the visa application charge is being granted under current arrangements. There is also a group

discount available (discussed below).

10.37 There are costs associated with these exemptions including a loss of government revenue to pay for the provision of the service; an administrative cost in assessing applications for exemptions and an efficiency cost associated with providing the service free to some users who are not presented with a price signal that would moderate their demand for the service.

10.38 These exemptions do however reflect a fostering of a wide range of cultural activities for the benefit of the Australian community and provide a financial 'break' to struggling and emerging festivals and organisations in receipt of Commonwealth subsidies. This Review acknowledges that the Australian community benefits from access to a wide range of entertainment activities provided by overseas performers and artists, who benefit from fee exemptions.

10.39 Under the principles outlined in Chapter 3, fee exemptions should be provided only where the organisation granted the exemption delivers a corresponding benefit to the organisation granting the exemption in terms of greater efficiency. Thus it is proposed that such exemptions should apply only where all sponsorship and visa applications made under the exemption are lodged at the same time and with all relevant documentation (recommendation at paragraph 3.114 refers). This will allow DIMIA to obtain some benefit in terms of greater efficiency from the ability to deal with a fee-exempt organisation in a speedy manner.

Group Discounts

10.40 Under current arrangements, group discounts are available for applicants for entertainment (subclass 420) visa – if there are eleven or more applicants in an

entertainment group, the total application charge is capped at \$1,540, that is the group pays no more than ten application fees. This discount is only available for members of sporting or entertainment bodies but not to any other temporary resident visa applicants and is restricted to applicants who apply for their visas offshore.

- 10.41 Again it is proposed that, as such a discount can involve a significant subsidy from the Australian community in the case of large groups, it should apply only where DIMIA is able to offset this cost by obtaining a benefit through increased efficiency.
- 10.42 This review therefore recommends that group discounts should apply only for those visa and sponsorship applications which are lodged together and complete with all necessary supporting documentation (recommendation at paragraph 3.123 refers).

Models and Mannequins

- 10.43 The labour market for models and mannequins is characterised by casual and short-term contract work. The elite end of the market operates differently from the lower end of the market:
- at the elite end of the market, models operate on an international circuit and Australian models travel overseas as well as overseas models travelling to Australia;
 - at the lower end of the market, local models are employed on a casual basis for local work.
- 10.44 Under current arrangements, models and mannequins are required to use Entertainment visas to work in Australia. This means that they are subject to the Entertainment visa sponsorship and union consultation processes. However, Australian model agencies have suggested that these processes are inappropriate for

models and mannequins, who are no different from other specialised sponsored employees, and who, by the nature of the industry sector, tend to have facilitated work rights in many overseas countries.

It is very important to note that none of the models represented by the top reputable agencies in Australia are members of any union... There is no need to consult a Union regarding models' visa requirements... unions have no bearing or influence in the way our industry is conducted... the modelling industry in Australia is totally independent and different to the Entertainment industry. (Submission from Chic Model Management)

- 10.45 Not all agree with this view:

The current arrangements are operating well for the Australia entertainment/modelling industry as there are some checks that ensure the industry is not over run by "imports"... Protection needs to be maintained in order to ensure that Visas are granted to create further work opportunities not diminish work for Australians in the modelling industry... Any reduction of the involvement of the SDA in this process would seriously affect work for Australian models. (Submission from the Shop, Distributive and Allied Employees' Association)

- 10.46 On balance, it is considered that the specific requirements which apply to persons working in the entertainment industry are not necessary for models and mannequins and that they should use the temporary business visas (subclasses 456 for short stays and 457 for longer stays) instead of Entertainment visas. Under the newly introduced skills threshold for that visa, models and mannequins fall outside

the skill levels currently defined as “skilled” for the purposes of the 457 visa. However, at the elite end of the market, the salaries paid are well in excess of the salary threshold for the long stay business visa, and there would not be concerns about impacts on local labour markets. It might therefore be appropriate for them to be gazetted as a skilled occupation for the purposes of that visa. Persons operating at the non-elite end of the market would not meet the salary threshold so would not be eligible for the visa. However, it is unlikely that models would be brought from overseas (with all the additional costs associated with overseas workers) in order to work at that end of the market on any long-term basis. In this context, the visa would not provide for persons travelling to Australia without a pre-arranged work commitment and sponsor, and in this way, it would avoid the visa being used for models coming to Australia on speculation of employment.

10.47 Because of the nature of this market, most workers would not plan to be in Australia for more than 3 months. Therefore the assumption cannot be made that persons entering for short periods of stay are unlikely to work, an assumption that may be valid for other occupations. Some of them would be eligible for the business visitor (subclass 456) visa, on the basis of the broader interpretation of allowable work under that visa, as discussed in Chapter 6.

10.48 **RECOMMENDATION:**

That provisions for employed models and mannequins should be removed from the Entertainment (subclass 420) visa policy and they should instead use the generic provisions for sponsored employees under the temporary business (subclass 457) visa arrangements or the short stay business visa (subclass 456).

Documentaries or Commercials Exclusively for Overseas Use

- 10.49 Under current visa arrangements, there is a differentiation between:
- persons who wish to come to Australia to participate in the making of a documentary or commercial that is exclusively for overseas use; and
 - persons wishing to make a documentary or commercial that is to be aired in Australia.
- 10.50 For overseas use, visa applicants must use the Media and Film Staff visa (subclass 423). For that visa there are no requirements for union consultation and no requirement for a DCITA certificate, unlike the Entertainment (subclass 420) visa. This can be attractive to certain documentary producers and creates an incentive for applicants to claim that the documentary is exclusively for overseas use, whether that is the case or not.
- 10.51 In contrast, where the documentary or commercial will be for Australian use, visa applicants must use the Entertainment visa (subclass 420) and are subject to the requirement for consultation with the relevant union.
- 10.52 The distinction between productions for Australian use and those for overseas use has lost its meaning in recent years, as the availability of products is global rather than national, especially for documentaries. With the advent of satellite and cable television, the 423 visa requirement that the documentary or commercial must not be aired in Australia has become outdated. Those documentaries that may once have been made purely for an overseas audience now get aired, in part or in full, on Australian television. Therefore, any attempt by decision-makers to distinguish between those documentaries or commercials claimed to be made exclusively for overseas use and those which

are not becomes even more difficult. These arrangements can lead to some confusion for staff and clients about the respective use of the Entertainment visa (subclass 420) and the Media and Film Staff Visa (subclass 423).

- 10.53 It is therefore proposed that all documentary and commercial makers who intend to work in Australia no longer use the 423 visa and apply for the 420 Entertainment visa. This will eliminate client and staff confusion and associated inefficiencies in processing visa applications. Submissions to this Review support this approach:

The separation of differing types of film production across two visa types...does cause a degree of confusion...the confusion of applicants is in the experience of the Alliance usually quickly resolved. The real problem occurs with confusion that arise in overseas posts. (Submission from the Media Entertainment and Arts Alliance)

Whilst offshore commercials provide useful employment...this is not the case for offshore documentaries. However, even with offshore commercials, the number of Australians engaged is often eroded by the ...preference to employ someone "known"...[this does not] serve to minimise the level of overseas personnel... The biggest problem that arises in the distinction created by produced "for exclusive overseas use" is determining whether that will in fact be the case...The biggest areas of concern is applicants from English language countries...subsequent to the completion of the program, they may well be sold into this territory. Indeed...it would be a foolish producer

who would not seek to sell a program into every English language market. (Submission from the Media Entertainment and Arts Alliance)

...the Department may wish to consider adding documentary and television commercial production to the 420 visa subclass for reasons of simplicity and continuity. We would comment that the current entry criteria of "to make a documentary program or a commercial that is exclusively for overseas use" is perhaps not very relevant to today's international media environment. (Submission from the Screen Producers Association of Australia.)

10.54 **RECOMMENDATION:**

That provisions for persons making a commercial or documentary exclusively for overseas use would be more appropriately included in the Entertainment (subclass 420) visa rather than the Media and Film Staff (subclass 423) visa.

- 10.55 In making this change, the question arises as to whether union consultation or the 'net employment benefit' criteria that are required of other Entertainment visa applications should apply to persons involved in the production of a documentary or commercial for overseas use. Views expressed in submissions varied on this issue:

SPAA believes that documentary and television commercial production should be added to the 420 visa for the sake of simplicity and clarity. They should remain a separate category within the visa, with different economic and employment benefit tests. (Submission from the Screen Producers Association of Australia)

and ...the employment benefits that might accrue to Australians are the same regardless of the intended audience for the production. It therefore seems that the distinction drawn on the basis of intended audience is an arbitrary one and one that is certainly now outdated... (Submission from the Media Entertainment and Arts Alliance)

All overseas personnel involved with making wildlife documentaries should be required to be on a 420 Entertainment visa. It is essential that 420 Visas are not granted unless the Union has been consulted. This allows us to keep the Union informed of the special features of our industry so that we maximize the opportunities for Australians to work on these films and can be sure the net employment benefit test is properly worked through. (Submission from Green Cape Wildlife Films)

10.56 The requirements for union consultation and to meet the 'net employment benefit' criteria do not currently apply in the case of visa applications under the Media and Film Staff (subclass 423) visa arrangements so they would be an additional requirement. Clearly consistency in requirements is desirable, both for client ease and for administrative efficiency. More importantly, consistency of requirements would also remove the current difficulty of determining whether a commercial or documentary would ever be used in Australia – an extremely difficult determination. However, there may be good reasons to retain different requirements. If these productions are to continue to be exempt from these requirements, there must be clear policy reasons for doing so. In developing the requirements that should apply to documentaries and commercials made for

overseas use, maximum consistency with the requirements for documentaries and commercials for Australia should be sought. The Review concluded that the potential advantage to Australia in these requirements being applied in any or all cases should be explored jointly by DIMIA and DCITA.

Country-to-Country Agreements

10.57 The Entertainment visa also currently contains provisions for persons entering under a country-to-country agreement. For those persons there is no requirement for sponsorship, union consultation or a DCITA certificate – there is only the requirement for the relevant authorities in Australia and the other country to agree that the applicant's stay meets the requirements of the agreement. Chapter 13 discusses transferring these provisions into a new visa specifically for country-to-country agreements.

Tourist Visas

10.58 In cases where a person is participating in a 'non-commercial' performance as part of a visit to Australia, for example in a dance display at a cultural festival, and the primary purpose of the visit to Australia is for tourism purposes, it is appropriate for such persons to obtain a visitor visa. Visitor visas only prohibit work that would normally attract remuneration – such cultural activities would not fall within this definition of work. Therefore there is no need for such persons to obtain an Entertainment visa for these purposes.

10.59 Client awareness of when they can use visitor visas for participating in certain types of entertainment for non-commercial purposes could be improved through client information and policy guidelines.

Short Stay Business Visas

10.60 Likewise entertainers who are not performing as an entertainer but are

engaging in a promotional tour are able to use the short stay business visa or its electronic equivalent rather than an Entertainment visa.

IMMIGRATION INTEGRITY

Bona fides

10.61 Outside the usual bona fides issues that apply to all visa applicants (discussed in Chapter 2), there is no evidence to suggest any other integrity concerns with the use of the Entertainment visa. In this context, the overstay rates that apply to this visa subclass indicate that less than 0.1 per cent of people entering Australia on this visa overstay.

10.62 The sponsorship requirement applying to almost all Entertainment visa applicants, regardless of the period of the applicant's stay, necessitates an assessment of the sponsor. A sponsor is required to have good professional standing in the industry, except in relation to cultural/non-commercial activities where the sponsor might be a community organisation as opposed to a professional entertainment promoter. The sponsor must also have good financial standing in order to meet the undertakings associated with sponsorship obligations. These factors, in addition to the role of union consultation, which involves further scrutiny, have resulted in a high degree of visa integrity.

10.63 A discussion of generic immigration integrity issues can be found in Chapter 2. No other issues specific to the visas discussed in this chapter were raised in the course of this review. Available departmental statistics support the view that there are no particular areas for concern in relation to this visa.

- A small proportion of entertainment visa holders applied for temporary entry visas while onshore in 2000-01 – virtually all

applied for either another entertainment visa or a tourist visa. This pattern does not indicate any issues of concern.

- Some 75 entertainment visa holders applied for protection visas while in Australia in 2000-01 but this is still a very small proportion of people granted this visa each year.
- A small number of entertainment visa holders had their visa cancelled in 2000-01, but the number is too small to be of concern.
- Statistics regarding overstayers indicate that only a very small proportion of entertainment visa holders remain in Australia beyond the validity of their visa, for example less than 0.4 per cent in 2000-01.

Character

10.64 A submission to the Review highlighted concern that Entertainment visa applicants from one country were perceived to be attempting to create tension and destabilise the community in Australia that originated from that country. The community group in Australia held concerns that the foreign entertainers had the primary purpose of spreading propaganda on behalf of the other country, rather than to entertain for cultural exchange purposes. Such issues should continue to be assessed in the context of generic character checking procedures, which include an assessment of any likely adverse impact on the broad Australian community.

TRAINING OPPORTUNITIES FOR AUSTRALIANS

10.65 While there are no specific provisions within the Entertainment visa, which relate to training opportunities for Australians, there are three visa requirements, as highlighted in the previous section, which seek to ensure that the employment opportunities for Australians are not diminished. As employment opportunities themselves

form a large part of the training opportunities offered in the entertainment industry, it is considered that the current arrangements offer significant protection to Australian residents involved in the industry. They also provide significant 'on-the-job' skills transfer to Australians from the wide range of international entertainment personnel entering on this visa. This Review proposes no change to these arrangements. The issue of training arrangements including the option of a training levy is discussed in detail in Chapter 2.

NO NET COST TO THE AUSTRALIAN COMMUNITY

10.66 The Entertainment visa currently requires almost all of its applicants to be sponsored and it is not proposed that these arrangements be altered. Sponsorship obligations protect the Australian community from costs associated with a person's stay in Australia. The only current exception to sponsorship applies to those applicants entering under a country-to-country agreement, and as it is proposed that a new separate class of visa be established to accommodate such applicants, all remaining Entertainment visa applicants will be subject to the sponsorship requirement.

CONCLUSION

- 10.67 The main outcomes for this visa are that:
- the Entertainment visa should be retained for overseas entertainment personnel;
 - it should also include provisions for documentaries and commercials made for overseas use;
 - provisions for models and mannequins should be accommodated within Temporary Business Entry visa (457); and
 - some persons participating in non-commercial activities should use visitor visas rather than this visa.