



## Film Certification Advisory Board Rules 2018

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I, Mitch Fifield, Minister for the Arts, make the following instrument.

Dated 11 February 2018

MITCH FIFIELD  
Minister for the Arts

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## Part 1—Preliminary

### 1 Name

This instrument is the *Film Certification Advisory Board Rules 2018*.

### 2 Commencement

This instrument commences the day after this instrument is registered.

### 3 Authority

This instrument is made under subsection 376-260(1) of the *Income Tax Assessment Act 1997*.

### 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

### 5 Objects of Rules

The objects of this Instrument are:

- (a) to establish the Board (see paragraph 376-260(1)(a) of the Act); and
- (b) to specify additional functions of the Board in relation to the operation of Division 376 of the Act (see subparagraph 376-260(1)(a)(ii) of the Act); and
- (c) to specify the membership of the Board (see paragraph 376-260(1)(b) of the Act); and
- (d) to specify the terms and conditions of appointment to the Board (see paragraph 376-260(1)(b) of the Act); and
- (e) to specify the procedures to be followed by the Board in performing its functions (see paragraph 376-260(1)(c) of the Act).

### 6 Definitions

In this instrument:

**Act** means the *Income Tax Assessment Act 1997*.

**appointed member** means a Board member appointed under rule 10.

**Board** means the Film Certification Advisory Board established by rule 7.

**certificate for the location offset** means a certificate issued by the Arts Minister under section 376-20 of the Act.

**certificate for the PDV offset** means a certificate issued by the Arts Minister under section 376-45 of the Act.

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***location offset*** means the tax offset mentioned in section 376-10 of the Act.

***PDV offset*** means the tax offset mentioned in section 376-35 of the Act.

***scheme*** means the scheme established under Division 376 of the Act.

***SES employee*** has the meaning given by section 7 of the *Public Service Act 1999*.

Note: A number of expressions used in this instrument are defined in section 995-1 of the Act, including the following:

(a) Arts Secretary;

(b) film.

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## **Part 2—Film Certification Advisory Board**

### **7 Establishment of the Board**

The Film Certification Advisory Board is established.

### **8 Additional functions of the Board**

The additional functions of the Board are:

- (a) to advise the Arts Minister in relation to any policy issues relevant to the scheme, including administrative processes for the scheme, to the extent that the scheme relates to the location offset and the PDV offset; and
- (b) to consider applications for, and issue, provisional certificates for the location offset and the PDV offset; and
- (c) to advise the Arts Minister, on the Minister's request, about matters relating to:
  - (i) a determination by the Arts Minister, under subsection 376-30(1) of the Act, of the total of a company's qualifying Australian production expenditure on a film for the purposes of the location offset; or
  - (ii) a determination by the Arts Minister, under subsection 376-50(1) of the Act, of the total of a company's qualifying Australian production expenditure, to the extent that it relates to post, digital and visual effects production for a film, for the purposes of the PDV offset.

Note: Subparagraph 376-260(1)(a)(i) of the Act gives the board the following functions:

- (a) to consider applications made under subsection 376-230(1) or (2) of the Act;
- (b) to advise the Minister on whether to issue certificates under section 376-20 or 376-45 of the Act.

### **9 Powers of the Board**

- (1) The Board has the power to do everything that is necessary or convenient to be done for the purpose of carrying out its functions.
- (2) Without limiting rule 10, the Board can exercise all of its powers and carry out all of its functions if an appointed member position referred to in paragraph 10(1)(b) is vacant, or an appointed member is absent from performing the duties of the office.

### **10 Constitution of, and appointment to, the Board**

- (1) The Board consists of:
  - (a) a Chair; and
  - (b) two other members.
- (2) The Chair is the person who:
  - (a) from time to time, performs the duties of the Band 1 SES employee in the Arts Department who is responsible for administering the location offset and the PDV offset; or

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- (b) if a nomination has been made by the Arts Secretary – the person who, from time to time, performs the duties of an SES employee in the Arts Department that are nominated by the Arts Secretary for the purposes of this paragraph.
  - (3) If the Arts Secretary nominates duties for the purposes of paragraph (2)(b) or paragraph 17(2)(b), a person who performs those duties is taken to be a member of the Board for any period during which:
    - (a) the nomination has effect; and
    - (b) the person is performing those duties.
  - (4) A member referred to in paragraph (1)(b) is to be appointed by the Arts Minister by written instrument for the period, not exceeding 3 years, specified in the instrument
  - (5) A member appointed under subrule (4) must be someone who, in the opinion of the Arts Minister, is, or has been, involved in the film production industry and has experience and expertise in film production budgets, or television production budgets or film auditing.
  - (6) An appointed member holds office on a part-time basis.

## **11 Acting appointments**

- (1) The Arts Minister may appoint a person to act as a member:
  - (a) during a vacancy in the office of the member (whether or not an appointment has previously been made to the office); or
  - (b) during any period, or during all periods, when the member is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.
- (2) Anything done by a person purporting to act under an appointment under subrule (1) is not invalid merely because:
  - (a) the occasion for the appointment had not arisen; or
  - (b) there was a defect or irregularity in connection with the appointment; or
  - (c) the appointment had ceased to have effect; or
  - (d) the occasion to act had not arisen or had ceased.

## **12 Appointed members may be given leave of absence**

The Arts Minister may grant, on the terms and conditions (if any) the Minister determines, an appointed member leave to be absent from:

- (a) a meeting or meetings of the Board; or
- (b) performing the duties of the office.

## **13 Resignation of appointed member**

An appointed member may resign their appointment by giving a written resignation to the Arts Minister.



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## **14 Termination of appointment of appointed members**

- (1) The Arts Minister may terminate the appointment of an appointed member for misbehaviour or physical or mental incapacity.
- (2) Without limiting subrule (1), the Arts Minister may terminate the appointment of an appointed member if the member fails, without reasonable excuse, to comply with rule 15 (duty of confidentiality) or rule 16 (disclosure of interests).
- (3) The Arts Minister must terminate the appointment of an appointed member if:
  - (a) the member:
    - (i) becomes bankrupt; or
    - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounds with his or her creditors; or
    - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
  - (b) the member is absent, except on a leave of absence granted under rule 12, from:
    - (i) three consecutive meetings of the Board; or
    - (ii) performing the duties of the office for a period of three months or longer.
- (4) A termination under this rule takes effect when the member is given written notice of the termination.

## **15 Board members' duty of confidentiality**

- (1) Except in the performance of the functions of the Board, a Board member must not communicate, or use to gain an advantage for themselves, or someone else, information that is made known to the person in their capacity as a Board member.
- (2) The duty in subrule (1) continues after the person ceases to be a Board member.

## **16 Disclosure of certain interests of Board members**

- (1) A Board member who has a direct or indirect pecuniary interest in a matter that is being considered, or is about to be considered, by the Board must disclose the nature of the interest, in writing, to the Arts Minister.
- (2) The disclosure must be made as soon as possible after the relevant facts have come to the Board member's knowledge.
- (3) Unless the Arts Minister consents in writing, the Board member:
  - (a) must not be present during any deliberation by the Board on the matter; and
  - (b) must not vote on the matter or otherwise take part in any decision of the Board on the matter.
- (4) If the Arts Minister consents, the disclosure and the Minister's consent must be recorded in the minutes of the relevant meeting.

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## 17 Board meetings

- (1) The Chair may convene a meeting of the Board at any time.
- (2) A meeting of the Board must be presided over by:
  - (a) if the Chair is present—the Chair; or
  - (b) if the Chair is not present—the person who, from time to time, performs the duties of an SES employee in the Arts Department that are nominated for the purposes of this paragraph by the Arts Secretary.

## 18 Quorum

- (1) Subject to subrule (3), at a meeting of the Board a quorum is constituted by two Board members.
- (2) To avoid doubt, at a meeting of the Board, a quorum is constituted under subrule (1) by two Board members where one appointed member position is vacant.
- (3) If two members of the Board are unable to participate in, or to continue to participate in, the performance of their duties as a result of the disclosure of an interest under rule 16, the quorum necessary for a meeting of the Board is one.

Note: As a result of subrules 16(3) and 19(1), the Board member who constitutes a quorum under subrule (3) would be the only member entitled to vote in respect of the relevant matter.

## 19 Conduct of meetings

- (1) A question arising at a meeting of the Board is to be determined by a majority of members of the Board present and entitled to vote on that question.
- (2) The person presiding at a meeting has a deliberative vote and, if necessary, a casting vote.
- (3) The Board may regulate proceedings at its meetings as it considers appropriate. However, proceedings at a meeting must not be inconsistent with the other rules in this Part.

Note: Section 33B of the *Acts Interpretation Act 1901* provides for people to participate in meetings by various means of communication (for example, telephone or closed-circuit television).

- (4) Without limiting subrule (3), the Board may invite a person to attend a meeting for the purpose of advising or informing the Board on any matter.
- (5) A person invited to attend a meeting under subrule (4) must not communicate, or use to gain an advantage for himself or herself, or someone else, information that is made known to the person as a result of being so invited.
- (6) The Board must ensure that minutes of its meetings are kept.

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## **20 Powers, functions and decisions without meetings**

- (1) The Board may exercise all of its powers and carry out all of its functions without a Board meeting being held if a majority of the members agree to the exercise of the power or the performance of the function.
- (2) If the Board exercises a power or carries out a function under subrule (1), the Board must ensure that a record of the agreement of the majority of members to exercise the power or perform the function is kept.
- (3) The members of the Board may pass a resolution without a Board meeting being held if a majority of the members entitled to vote on the resolution provide a statement in writing that they are in favour of the resolution.
- (4) The resolution is taken to have passed when a majority of members entitled to vote on the resolution have each provided a statement in writing that they are in favour of the resolution.

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## Part 3—Transitional provisions

### 21 Definitions

In this Part:

**2008 rules** means the *Film Certification Advisory Board Rules 2008*, as in force immediately before the commencement of this instrument.

### 22 Establishment of the Board

The establishment of the Board made under rule 5 of the 2008 rules, has effect, from commencement of this instrument, as if the Board had been established under rule 7 of this instrument.

### 23 Appointments

An appointment:

- (a) made under subrule 8(4) of the 2008 rules; and
  - (b) in force immediately before the commencement of this instrument;
- has effect, from that commencement, as if it had been made under subrule 10(4) of this instrument.

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## **Schedule 1—Repeals**

### ***Film Certification Advisory Board Rules 2008***

#### **1 The whole of the instrument**

Repeal the instrument.