



Fact Sheet – Subclass 457 Sponsor Obligations

Implementation of changes made by the Migration Legislation Amendment (Worker Protection) Act 2008 - September 2009

Introduction

In response to the growth of the Subclass 457 – Business (Long Stay) visa program the Australian Government has introduced a number of fundamental and long-term improvements to the program. These improvements are intended to ensure the program continues to provide industry with the necessary skills while not undermining local training and employment opportunities.

There are a number of obligations that employers must meet to sponsor a visa holder under the program. These obligations will apply to all new and existing sponsors of Subclass 457 visa holders from 14 September 2009, regardless of whether the sponsor is a standard business sponsor or a party to a labour agreement.

Obligation to cooperate with inspectors

Sponsors must cooperate with inspectors who are appointed under the Migration Act 1958 (the 'Act') and are exercising powers under that Act. The role of the inspector is to determine whether a sponsorship obligation is being, or has been, complied with, and whether other circumstances exist or have existed in which administrative action may be taken against the sponsor.

Examples of where a sponsor is considered to have not cooperated with inspectors are where a sponsor:

- hinders or obstructs an inspector
- conceals, or attempts to conceal, from an inspector the location of a person, document or thing
- prevents, or attempts to prevent, another person from assisting an inspector
- assaults an inspector or a person assisting the inspector, and
- intimidates or threatens, or attempts to intimidate or threaten, an inspector or a person assisting the inspector.

Obligation to ensure equivalent terms and conditions of employment

Sponsors must ensure that the terms and conditions of employment provided to primary sponsored persons (primary holders of a Subclass 457 visa) are no less favourable than the terms and conditions of employment that the sponsor provides, or would provide, to an Australian citizen or Australian permanent resident to perform equivalent work in the sponsor's workplace at the same location. This includes paying the primary sponsored person market salary rates. One exception to this is where the primary sponsored person's nominated annual earnings are equal to or above \$180 000.

There are some transitional arrangements for sponsors of primary sponsored persons who held Subclass 457 visas as at 14 September 2009 in relation to this obligation. These arrangements ensure that sponsors who were paying their primary sponsored persons the Minimum Salary Level (MSL) prior to 14 September 2009 have until 1 January 2010 to move to paying market salary rates. See: <http://www.immi.gov.au/skilled/457-market-salary-rates.htm> for further details on this obligation.

Obligation to pay travel costs to enable sponsored persons to leave Australia

Sponsors must pay reasonable and necessary travel costs to enable sponsored persons (which include both primary and secondary sponsored persons) to leave Australia *if the costs have been requested in writing* by the sponsored person or the Department of Immigration and Citizenship (the 'department') on their behalf, and the costs have not already been paid by the sponsor in accordance with this obligation.

The costs will be considered reasonable and necessary provided they:

- include the cost of travel from the primary sponsored person's usual place of residence in Australia to the place of departure from Australia
- include the cost of travel from Australia to the country (for which the person holds a passport and will travel to) specified in the request to pay travel costs
- are paid within 30 days of receiving the request for costs, and
- are for economy class air travel, or the equivalent of economy class air travel.

Obligation to pay costs incurred by the Commonwealth to locate and remove unlawful non-citizens

In the event a primary sponsored person or a secondary sponsored person becomes an unlawful non-citizen, the sponsor may be required to pay the costs incurred by the Commonwealth in locating and/or removing the primary or secondary sponsored person/s from Australia. The sponsor is liable to pay the Commonwealth the difference between the actual costs incurred by the Commonwealth (up to a maximum of \$10 000) less any amount which may have already been paid under the obligation to pay travel costs to enable sponsored persons to leave Australia (see '[Obligation to pay travel costs](#)' above).

Obligation to keep records

Sponsors must keep records of their compliance with the other sponsorship obligations. All records must be kept in a reproducible format and in a manner that is capable of being verified by an independent person.

Examples of records which sponsors must keep include, but are not limited to: records of written requests for payment of return travel costs for sponsored person/s, including when the request was received and records of how the return travel costs were paid. See the department's website at: <http://www.immi.gov.au/skilled/skilled-workers/sbs/obligations-employer.htm> and click the link under 'Obligation to keep records' for a full list of records which must be kept.

Obligation to provide records and information to the Minister

If requested to do so, sponsors must provide certain records or information to the department in the manner and timeframe requested by the department. Records or information must be provided to the department if they are records or information that the sponsor is required to keep;

- under a law of the Commonwealth, State or Territory laws (for example: tax returns)
- under the obligation to 'keep records' (for example: record of request by sponsored person to pay return travel costs)
- under the terms of the labour agreement (if the sponsor is a party to a labour agreement).

Obligation to provide information to Immigration when certain events occur

Sponsors must provide details of certain events to the department should they occur. This information must be provided by registered post or electronic mail, to a specified address and within a specified period of time. Examples of events include, but are not limited to: a change of the sponsor's address or contact details; the cessation, or expected cessation, of a primary sponsored person's employment with the sponsor and a change to the work duties carried out by the primary sponsored person. See <http://www.immi.gov.au/skilled/skilled-workers/sbs/obligations-employer.htm> and click the link under 'Obligation to provide information to Immigration when certain events occur' for a full list of events and timeframes for which the sponsor must notify the department.

Details of these events must be provided to one of the following offices of the department. The address to which the information must be sent corresponds with the state in which the head office of the sponsor is located.

New South Wales		Victoria	
Email address	NSW.sponsor.monitoring@immi.gov.au	Email address	VIC.sponsor.monitoring@immi.gov.au
Postal address	Sponsor Monitoring GPO Box 9984 Sydney NSW 2001	Postal address	Sponsor Monitoring GPO Box 241 Melbourne VIC 3001
Queensland		Western Australia	
Email address	QLD.sponsor.monitoring@immi.gov.au	Email address	WA.sponsor.monitoring@immi.gov.au
Postal address	Sponsor Monitoring GPO Box 9984 Brisbane QLD 4001	Postal address	Sponsor Monitoring Locked Bag 7 Northbridge WA 6865
South Australia		Northern Territory	
Email address	SA.sponsor.monitoring@immi.gov.au	Email address	NT.sponsor.monitoring@immi.gov.au
Postal address	Sponsor Monitoring GPO Box 2399 Adelaide SA 5001	Postal address	Sponsor Monitoring GPO Box 864 Darwin NT 0801
Australian Capital Territory		Tasmania	
Email address	ACT.sponsor.monitoring@immi.gov.au	Email address	TAS.sponsor.monitoring@immi.gov.au
Postal address	Sponsor Monitoring GPO Box 717 Canberra ACT 2601	Postal address	Sponsor Monitoring GPO Box 794 Hobart TAS 7001

Obligation to ensure the primary sponsored person works or participates in the nominated occupation, program or activity

Sponsors must ensure that the primary sponsored person does not work in an occupation other than the occupation that was identified in the most recent approved nomination for that person. If a sponsor wants to employ the primary sponsored person in a different occupation, the sponsor must **lodge a new nomination** in respect of that occupation for the primary sponsored person, and that nomination must be approved before the primary sponsored person may commence working in the new occupation.

Subject to the exception for exempt occupations discussed below, sponsors must also ensure that the primary sponsored person is only engaged as an employee of the sponsor, or where permitted as an employee of an associated entity of the sponsor. Sponsors are not required to adhere to this obligation if the primary sponsored person's occupation is an **exempt occupation**. Primary sponsored persons working in exempt occupations may work for multiple employers or as independent contractors under the Subclass 457 visa program.

For a complete list of exempted occupations and their relevant Australian Standard Classification of Occupations (ASCO) codes, please refer to the following web page, and click the link to the ComLaw website under 'IMMI 09/106': <http://www.immi.gov.au/gateways/agents/legislative-instruments.htm>

Obligation not to recover certain costs from a primary sponsored person or secondary sponsored person

Sponsors must not recover, or seek to recover from the primary or secondary sponsored person/s, all or part of the following costs:

- the costs (including migration agent costs) that relate specifically to the recruitment of the primary sponsored person, and
- the costs (including migration agent costs) associated with becoming or being an approved sponsor or being a former approved sponsor.

Sanctions for failing to satisfy sponsorship obligations

If a sponsor fails to satisfy a sponsorship obligation, the Minister may take one or more of the following actions:

- bar the sponsor, for a specified period, from sponsoring more people under the terms of the sponsorship approval
- bar the sponsor, for a specified period, from making future applications for approval as a sponsor
- cancel one or all of the sponsor's existing approvals as a sponsor
- apply to a Court for a civil penalty order of up to \$33 000 for a corporation and \$6 600 for an individual for each failure, or
- issue an infringement notice of up to \$6 600 for a body corporate and \$1 320 for an individual for each failure.

Other circumstances in which the Minister may take administrative action

There are a number of other circumstances (besides failure to satisfy a sponsorship obligation) in which the Minister may take administrative actions described in the first three dot points above (barring or cancellation of the sponsorship approval). However, these circumstances apply only in relation to standard business sponsors, where the standard business sponsor:

- provides false or misleading information to the department or the Migration Review Tribunal
- no longer satisfies the criteria for approval as a standard business sponsor or the criteria for variation of the terms of their approval as a standard business sponsor
- has been found by a court or competent authority to have contravened a Commonwealth, State or Territory law, or a primary sponsored person has contravened a law relating to licensing, registration or membership which the primary sponsored person is required to comply with in order to work in the nominated occupation, or
- has failed to pay certain medical or hospital expenses incurred by the sponsored person arising from treatment in a public hospital.

The circumstance described in the last dot point only applies where the sponsored person's Subclass 457 visa was granted before 14 September 2009. The medical or hospital expense must be incurred by the sponsored person on or after 14 September 2009, while the sponsored person is a primary sponsored person or secondary sponsored person in relation to the standard business sponsor, and the expense must not have been paid under an insurance policy or a reciprocal health agreement between Australia and another country. For more information, please refer to the department's website under 'Health Insurance' at: <http://www.immi.gov.au/skilled/skilled-workers/sbs/obligations-employee.htm>

Note: A **primary sponsored person** is the person the sponsor nominates to work in the nominated occupation. **Secondary sponsored persons** are members of the primary sponsored person's family unit. For more information see Form 1196N (www.immi.gov.au/allforms/pdf/1196n.pdf).

Disclaimer

The information relating to sponsorship obligations for Subclass 457 sponsors contained in this fact sheet is current as at 14 September 2009. Australian law may change after this time resulting in a change in sponsorship obligations. The information contained in this fact sheet is for general guidance only and should not be taken as authoritative advice on sponsorship obligations. Before relying on the information contained in this fact sheet, readers should independently evaluate its accuracy, currency, completeness and relevance for their purposes, and should obtain any appropriate professional advice relevant to their particular circumstances. To the extent permitted by law, the Commonwealth of Australia excludes all liability for loss or damage arising from the use of, or reliance on, the information contained within this fact sheet, whether or not such loss or damage is caused by any negligence or otherwise on the part of the Commonwealth of Australia or its agents.