



**TEMPORARY RESIDENCE VISA, Subclass 457 & 470
MIGRATION AMENDMENT REGULATION CHANGES –
Effective September 14, 2009**

--- MAJOR REFORM OF SPONSORSHIP OBLIGATIONS ---

OVERVIEW:

In conjunction with the Federal Government's introduction on September 14, 2009 of the new Australian Worker Protection Act legislation, new migration legislation will apply to existing and future business sponsors of 457 and 470 (Professional Development) visas, including those related to a Labour Agreement.

The amended obligations of approved sponsors, and nomination applications are applicable to both:

- Applications not decided by September 14, 2009, and
- Applications made on or after that date

Two classes of sponsor are specified:

- Standard Business Sponsor: sponsoring a person for business-related purposes, and
- Professional Development Sponsor: to undertake specified training programs that last no longer than 18 months

Additionally, effective June 28, 2009 sponsors for new and not-yet-finalised applications are required to attest in writing that they have a strong record of, or a demonstrated commitment to, employing local labour and do not engage in discriminatory employment practices.

Significant changes will include:

- ⇒ Sponsorship Obligations
- ⇒ Non-compliant Sponsors
- ⇒ Standard Business Sponsorship Validity
- ⇒ Specific Applicant information at Nomination stage
- ⇒ Salaries aligned to *Market Rate*
- ⇒ Health obligations
- ⇒ Government Monitoring -- Sponsorship compliance



In view of these significant changes, Expat stresses the importance for your company to review employment conditions for your current subclass 457 visa holders prior to September 14, 2009, to ensure compliance with the new obligations which are summarised herewith

Please Note: *With exception of repayment of costs incurred by the Australian Government to locate and remove unlawful non-citizens, sponsorship obligations towards each sponsored visa holder cease when the primary visa holder is approved through a different employing sponsor, or when another Australian temporary visa is obtained independently from the employer, or when a Permanent Residence visa is granted to the 457 holder.*

SPONSORSHIP OBLIGATIONS

Important elements will include:

- ⇒ **Employ the 457 visa holder in the occupation as sponsored**
- ⇒ **Maintain equivalent terms and conditions of employment**

By law, the employment terms and conditions for a 457 visa holder must be no less favourable than those of an Australian citizen or Permanent Residence visa holder performing in an equivalent role

- ⇒ **Market Rate Salary**

Final details are not yet available but we understand that:

- *The rate will be struck by comparing base salaries of an Australian employee with that of the foreign employee*
- *The current 38 hour week stipulation which formed the basis for MSL will be substituted by comparing usual requirements for an Australian citizen or Permanent Resident employed in the same role*
- *Current 457 holders' salaries must not fall below existing MSL levels*



⇒ **Pay travel costs to enable sponsored employees and dependants to repatriate from Australia**

This condition applies when a sponsored person, or DIAC, requests payment of travel costs in writing, in an approved format to the sponsor. Costs must be paid within 30 days of receipt of the formal request and cover economy air fares to the appropriate country.

⇒ **Pay costs incurred by the Australian Government to locate and remove unlawful non-citizens who were last sponsored by the employer**

⇒ **Maintain appropriate employment records for minimum of 5 years ... for provision in an acceptable format, to the Government when requested.**

Recorded information to include:

- *Tasks performed by the visa holder, including work locations*
- *Notification to DIAC of defined events (description follows)*
- *Sponsored visa holders' written request for payment of return travel costs*

⇒ **Provide information to DIAC within 10 working days when certain events occur. Principal events being ...**

- *When a sponsored employee ceases, or will cease to be employed*
- *Payment of repatriation travel costs to sponsored visa holders, arising from cessation of employment*
- *Changes within the business structure, eg: change of visa holder's Position title; new company name; new directors, partners or members in the sponsoring legal entity*
- *Insolvency or similar situations as prescribed under provisions in the bankruptcy legislation or Corporations Act*
- *When the sponsoring entity ceases to exist*

It is important that you, as an Expat client, advise us of any changes as listed, so we may immediately notify DIAC on your behalf, and within their specified time limits.

⇒ **Full co-operation with Government monitoring inspectors**

It is our understanding that various Government departments may be involved in monitoring a sponsor's obligations, including DIAC, Department of Education, Employment & Workplace Relations (DEEWR) for market rate salaries, and Australian Tax Office



⇒ **Sponsorship Bar, Cancellation, Penalties resulting from Non-Compliance**

A sponsorship may be cancelled, and/or a sponsor barred from future applications when DIAC deems that any of the following circumstances have occurred:

- *Failure to satisfy a sponsorship obligation*
- *Provision of false or misleading information*
- *Circumstances that no longer exist, relative to approval of the visa*
- *Sponsor's contravention of the law*
- *Imposition of significant monetary fine*

⇒ **Prohibit recovering certain costs from a sponsored person**

- *Sponsors are specifically prohibited from recovering recruitment and migration agent costs*

⇒ **Training Benchmarks**

Expat will provide further information of Training Benchmark requirements when details are released

⇒ **Term of Standard Business Sponsorship**

Expat will provide further information on this subject when details are released. We understand however, that the term of approval may be specified as a period of time ending on a particular date, or on the occurrence of a particular event

Sponsors who have successfully operated in Australia for more than 12 months may seek to vary the terms of duration and numbers, if ongoing compliance can be demonstrated

⇒ **Full co-operation with Government monitoring inspectors**

We understand that various Government departments may be involved in monitoring a sponsor's obligations, including DIAC, Department of Education, Employment & Workplace Relations (DEEWR) for market rate salaries, and Australian Tax Office



⇒ **Health Cover Obligations Removed**

Definitive information is still forthcoming. We understand that from September 14, 2009 the visa holder, **not** the employer, will be personally responsible for maintaining health insurance for duration of their stay in Australia.

Please Note: It is *crucial* that your company maintains the liability as a sponsorship obligation for current health costs incurred in a public hospital until midnight on September 13, 2009.

IN CONCLUSION:

The additional requirements to be imposed upon sponsors indicate a significantly increased degree of complexity in nominating for subclass 457 or 470 visas. Expat will be pleased to discuss your company's specific situation and possible alternative arrangements.

Material contained within this Newsletter is intended for general informational purposes only.

**THE PROPOSED CHANGES ARE COMPLEX,
WITH EXTENSIVE QUALIFYING BACKGROUND DETAIL TO BE
FINALISED WE BELIEVE, BY SEPTEMBER 14, 2009**

Margaret McCartney

MARN 9904656