[590] Changes to 457 visa regime from 14 September 2009

By Katie Malyon BA (Qld) LLB (Hons) (Syd)[1]

Introduction

Sweeping changes to the 457 visa program — the biggest in over a decade — were implemented from 14 September 2009 to remedy actual and publicly perceived problems with Australia's temporary business entry scheme. The changes to the 457 visa regime affect all existing and all future business sponsors from 14 September 2009. In most instances, the regime still requires a sponsorship, nomination and 457 visa application. However, it is now possible for existing 457 visa holders to change employers — without the need for a new visa application.

After 2 months in operation and, despite the barrage of ongoing changes to the law and the delayed issue of immigration policy, implementation of the government's new 457 visa regime reforms have already resulted in streamlined decisions for low risk sponsors and visa applicants with decision ready applications being approved in 1–2 days at the Parramatta and Sydney offices. The challenge for sponsors, their professional advisors and case officers alike has been coming to grips with the breadth of the changes as well as the evolving policy imperatives underlying them.

Background to the changes

Reflecting recommendations set out in the *Visa Subclass 457 Integrity Review* conducted by Barbara Deegan (the Deegan Review) released in October 2008,[2] the 14 September 2009 changes to the program have been designed to:

- stop the exploitation of overseas workers;
- overcome criticisms of the Minimum Salary Level (MSL) which had created, in effect, a second industrial relations system in Australia allowing some overseas workers to be paid less than Australian workers undertaking equivalent work while at the same time depriving them of other entitlements under industrial relations law such as maternity leave;
- remove the perceived use of overseas workers to undermine Australian working conditions;
- ensure employers' investment in training;
- stop the bonding of sponsored workers to their employers and resultant exploitation that was tolerated by overseas workers — in the hope of obtaining permanent residence in Australia;
- reinstate confidence in the program by the Australian community; and,
- ensure overseas workers are skilled.

Following the Deegan Review, amendments were made to the MA by the Migration Legislation Amendment (Worker Protection) Act 2008 which laid the framework for redefined sponsorship obligations, expanded the powers of DIAC to monitor and investigate non-compliance as well as introduced punitive penalties and improved information sharing with Commonwealth, state and territory agencies. About this time, the Global Financial Crisis started to impact on Australia. With unemployment levels anticipated to rise, the government was also politically motivated to ensure that Australian workers were not made redundant in an economic downturn while cheaper imported labour was retained — as had been occurring in Europe, particularly the United Kingdom.

A suite of amendments to the MR were made from 18 June 2009.[3] Although some of the amending legislation is concerned with other sponsored entry to Australia in the 400 visa subclass series (for example, Occupational Trainee visas and Entertainment visas) this article deals only with changes that specifically relate to the sponsorship of foreign nationals under the Temporary Business Entry subclass 457 visa program.

The sheer number of legislative instruments that have been required since June 2009 — seven in all — suggests that the government was working with an unrealistic timeframe, failed to think through the changes thoroughly and failed to consult with affected stakeholders. The result has been that further amendments have been necessary as the unintended impact of changes or oversights are identified.

This article now examines the key changes.

1. Sponsorship

(a) New application criteria

Applicants for sponsorship approval who operate a business in Australia are now subject to new criteria for approval as a business sponsor. Key changes include:

- the business must demonstrate that it meets minimum training benchmarks (see below) or, if trading for less than 12 months, has an auditable plan to do so: regs 2.59(d) and 2.59(e);
- an attestation that the business has a strong record of, or demonstrated commitment to, employing local labour and non-discriminatory business practices: reg 2.59(f); and,
- there must be no adverse information in the last 3 years about the business, or a person associated with a business — or it is reasonable for the Minister to disregard such information. Adverse information includes being found guilty of an offence, subject to administrative action (including a warning) or subject to disciplinary action in relation to a contravention of discrimination law, OH&S, immigration, industrial relations or taxation law: regs 2.59(g) and 2.57(3).

Following the 14 September changes, there is now greater flexibility for employment of 457 visa holders within corporate group members where the sponsor and the employer are *associated* for the purposes of s 50AAA of the Corporations Act 2001. This includes franchises. Previously, the nexus between the employer and sponsor was limited to related bodies corporate within the meaning of s 50 of the Corporations Act 2001.

Applicants for sponsorship approval who operate overseas are not required to demonstrate they meet training benchmarks: however, these criteria will apply when the overseas business sponsor seeks to vary or extend the term of their sponsorship approval.

Sponsorship approvals are now valid for up to 3 years (as opposed to 2 years formerly) and the term can be extended by way of an application to vary the sponsorship approval. While a sponsor is still invited to provide information on the number of expatriates anticipated to be required over the course of the sponsorship, there is no limit on the number of persons a business can nominate under their sponsorship.

Gone from the criteria for approval as a sponsor is the former need for a business to satisfy the benefit to Australia test (show that the employment of expatriates would create or maintain employment for Australians, increase trade or add competitiveness to a sector of the economy) and the need for the sponsor to show that, as an alternative to a demonstrated commitment to training, the sponsor would introduce, use or create in Australia leading edge technologies.

Clearly, the emphasis in the new criteria is now on aspects of a business that are readily measurable — good corporate citizenship through meeting minimum training benchmarks and an absence of recent adverse findings.

(b) New interim training benchmarks

Training benchmarks are yet to be developed by the Department of Education, Employment and Workplace Relations (DEEWR) and agreed by the Government after consultation with key stakeholders. Pending release of DEEWR's training benchmarks, DIAC has published its own

interim training benchmarks made pursuant to regs 2.59(d) and 2.68(e) in a legislative instrument.[4] The new benchmarks are a welcome clarification of DIAC's old policy on the need for a sponsor to have a demonstrated commitment to training.

Businesses that have been established for more than 12 months must now demonstrate expenditure of at least either:

- 2% of payroll allocated to an industry training fund; or
- 1% of payroll in training Australian employees of the business.

The business is also required to show a commitment to maintain expenditure at these levels for the term of sponsorship approval.

Expenditure that counts towards the 1% training benchmark includes:

- paying for a formal course of study or funding a scholarship for Australian employees, or for TAFE or university students, as part of an organisational training strategy;
- paying external providers to deliver training to Australian employees;
- employing apprentices, trainees or recent graduates on an ongoing basis in "numbers proportionate to the size of the business" — DIAC has yet to indicate in policy what numbers are considered acceptable;
- employing a person who, as a key part of their job, trains Australian employees; and,
- providing structured on-the-job training developed by a qualified trainer who has also set assessments of learning outcomes to be achieved — this must have a timeframe and result in a clearly identified increase in employees' skills. Records must be kept to demonstrate how progress is monitored and assessed, who received the training and their skill/occupation.

Expenditure that cannot count towards the 1% training benchmark includes on-the-job training that does not meet the requirements outlined above or training that has been undertaken only by a business owner.

The latter exclusion — training undertaken by a business owner only, as distinct from training that a business owner undertakes together with staff — appears ill conceived and inappropriate as it penalises business owners who undertake, for example, management related training that would obviously benefit a business but which, by its very nature, will generally not be undertaken by staff of the business.

Recently published policy clarifies aspects of the new legislative instrument in relation to on-the-job training. Policy confirms that, contrary to the express requirements of legislative instrument IMMI 09/107, formal assessments are "not an essential characteristic" of on-the-job training. There is no indication yet of what constitutes a "qualified trainer" — will extensive experience alone be sufficient or must formal training qualifications be held?

The new policy also clarifies that all of the wages of an apprentice or trainee can be included — but not the wages of a graduate unless the graduate's training is structured and has identified learning outcomes. A welcome addition to the new policy is the recognition that associated costs such as travel, facility hire and printing may also be included as a training cost.

Clients should be encouraged to keep detailed records of training expenditure to demonstrate their continued ability to meet sponsorship criteria.

(c) New sponsorship obligations

New sponsorship obligations apply to **all** new and existing sponsors from 14 September 2009.

Under the old sponsorship regime, a sponsor was required to give a number of codified undertakings to the Commonwealth of Australia, breach of which would attract the administrative sanctions of cancellation or a bar against being able to sponsor further

expatriates for a time. Under the new regime, all sponsors are bound by nine new obligations (the Obligations) in relation to sponsored persons, including family members, breach of which now attracts new civil penalties as well as the old administrative sanctions.

In summary, the Obligations require a sponsor to:

- ensure equivalent terms and conditions of employment for the primary visa holder;
- ensure the sponsored person works in the approved occupation;
- not recover, or seek to recover, recruitment or migration costs;
- pay return travel costs, when requested in writing by the primary sponsored person and/or secondary sponsored persons;
- keep records in relation to approval of the business as a sponsor and the visa holders sponsored;
- provide records and information to DIAC on request;
- notify DIAC when certain events occur (for example, termination of employment of a sponsored employee, appointment of a new director or partner);
- cooperate with DIAC inspectors; and,
- pay the Commonwealth costs for locating and removing visa holders who have overstayed their 457 visa.

For ease, a full list of the Obligations, when they start and when they end, have been set out in the attached Table. A careful read of the Table is recommended. It has been formatted to combine the four obligations *in italics* that relate to a sponsored employee and reflects the stages of the employment cycle. This is followed by the five obligations that relate directly to DIAC.

As can be seen from the list above, some of the obligations reflect old undertakings. Missing from the list is the old undertaking to meet costs incurred in a public hospital for sponsored persons. For new 457 visa holders this is now a condition attached to their visa; and for existing 457 visa holders, this old undertaking has been preserved in MR 2.94B.

With the commencement on 1 January 2010 of the new National Employment Standards and Modern Awards under the Fair Work Act 2009, many employers are in the process of reviewing employment contracts and policies. As a key part of this process, all sponsors should be encouraged to review their contracts of employment and policies to ensure that the new sponsorship obligations are appropriately considered and managed.

(d) New information sharing powers

Following the Deegan Review, the Act was amended to include the legislative framework for DIAC to share information with Commonwealth, state and territory government agencies including the Australian Taxation Office and Fair Work Australia. The Department has already entered into a number of Memoranda of Understanding with state government bodies such as WorkCover NSW.

The enhanced information sharing powers will be used by DIAC under the new regime to monitor a sponsor's disclosure of adverse information when lodging new applications, including new nomination applications, or seeking a variation of the terms of their sponsorship. It will also enable the ATO to disclose information to DIAC for the Department determine if appropriate salary levels have been paid to overseas workers.

(e) New amplified sponsor monitoring powers

The Department now has significantly enhanced powers to monitor sponsors and their compliance with the Obligations. By way of example, DIAC authorised officers now have the power to enter business premises or other places, including work sites, to:

- inspect any work, process or object;
- interview any person;
- require a person to tell an inspector the whereabouts of a record or document; and,

- require a person to produce the record or document inspected, and make copies of any record or document.

Failure to produce a document or thing is an offence punishable by imprisonment for six months. Self-incrimination or exposure to a penalty is no defence.

(f) New sanctions for sponsors

Under the previous sponsorship regime, where a sponsor failed to comply with an undertaking, provided false information to DIAC or otherwise failed to continue to satisfy the requirements for approval as a sponsor, the Department could impose one or more of the following sanctions:

- cancel the approval as a sponsor;
- bar the sponsor, for a specified period, from making further applications for approval as a sponsor;
- bar the sponsor, for a specified period, from sponsoring or nominating more people under the terms of an existing sponsorship approval;
- cancel the visas of any person sponsored by the business; or,
- take any failure to comply with the old undertakings into account in assessing any future sponsorship applications made by the business or by any other business operated by the same principals.

From 14 September 2009, a breach of the Obligations now attracts not only the above sanctions but also any one or more of the following additional sanctions:

- an Infringement Notice — $3300 for an initial breach and $6600 for any subsequent breach; and,
- civil penalty proceedings in the Federal Magistrates Court and fines of up $33,000 per breach for a corporation.

In addition, debts owing under an obligation may now be recovered by the Minister. This addresses a serious shortcoming of the old regime.

When deciding to sanction a sponsor, the Minister must take into account a number of factors, including:

- the past and present conduct of the sponsor;
- the number of occasions the business has failed to satisfy their sponsorship obligations;
- the nature and circumstances relating to the failure to satisfy the sponsorship obligations;
- whether the failure was reckless, intentional or inadvertent;
- whether the person cooperated with DIAC and the steps taken to rectify the failure.

2. Nomination

The new regime introduces new criteria for approval of a nomination including terms of employment must be no less favourable than those provided to Australian workers, certification that the position is *with* the sponsor's business, certification that the nominated position includes a *significant majority* of duties as set out in the Australian Standard Classification of Occupations and that the named applicant has the skills necessary to perform the occupation. Sponsors will need to provide evidence of a nominee's skills and experience to demonstrate the person has the requisite skills required for the position.

As part of the new on-going disclosure requirements, a sponsor must also confirm when lodging each new nomination that there is no “adverse information” about the sponsor.

A new Temporary Skilled Occupation list has also issued.

(a) No less favourable terms and conditions of employment — market salary

Previously, a nominee was merely required to be paid above the MSL set at $61,920 per annum for ICT related positions and $45,220 per annum for all other positions based on a 38 hour week. Post 14 September 2009 and before a nomination can be approved DIAC now requires evidence the nominated position will be remunerated at market salary rates on terms and conditions no less favourable than those provided, or would be provided, to an Australian performing the work in an equivalent position in the sponsor's workplace: reg 2.72(10AA) and legislative instrument 09/113.

The market salary rate is assessed according to the industrial arrangements that apply to an equivalent position occupied by an Australian worker at the same workplace, that is, a collective agreement, award or common law contract.

If there is no Australian performing equivalent work in the same workplace, the sponsor must explain how the market rate was determined by reference to the following:

- collective agreement or award;
- remuneration surveys;
- published earnings data, eg ABS earnings data, Job Outlook; and,
- evidence of what employees are paid in similar workplaces, eg job vacancy advertisements.

With the technical ability now to attach documentation to an elodged nomination, sponsors will need to address in a submission and by reference to attached documentation how the business has arrived at the salary package to be offered to a proposed 457 visa holder.

A Temporary Skilled Migration Income Threshold (TSMIT) has been introduced[5] to ensure that all 457 visa holders have sufficient income to support themselves. For ICT professionals the TSMIT is $61,920 per annum and for others $45,220 per annum based on a 38 hour week. Market salary rates for a nominated occupation must be at least above the TSMIT. If the market salary rate for an occupation is lower than the TSMIT, a nomination will not be approved.

Sponsors of persons whose nominated position was approved before 14 September 2009 must pay at least the old MSL until 31 December 2009.[6] This will allow for a transition period for sponsors to move to market rates effective 1 January 2010.

Positions with a salary level above $180,000 per annum guaranteed earnings are not required to provide evidence of the market salary rate.[7]

(b) New temporary skilled occupations list

The new temporary skilled ASCO occupations list (TSOL) which issued in early September and has already been replaced.[8]

A key difference of the new regime is that the new TSOL has removed all of the Not Elsewhere Classified Occupations, ICT professions as well as Contract, Program and Project Administrator from the standard listing of occupations. Instead, these occupations are separately listed in the TSOL which now sets out, in some detail, the specialisations which fall within these occupations. This recognises that ASCO is now more than a decade old and does not cater for the many occupations that have developed since its publication. DIAC is expected in early 2010 to replace ASCO with the Australia and New Zealand Standard Classification of Occupations.

(c) New flexible arrangements for medical practitioners and general managers

Under the pre-14 September 2009 law all sponsored employees were required to be the direct employee of their sponsor (or a related entity). However, sponsored employees may now work *with* their sponsor (or an associated entity) unless the person's occupation is an exempt

occupation: regs 2.72(10)(d)(ii)B and 2.72(10)(d)(iii)B.

Primary sponsored persons working in one of 14 medical practitioner occupations or as a general manager may work for multiple employers or as independent contractors under the new 457 visa program. This allows managing directors to sit on boards and earn director's fees without breaching visa Condition 8107. The change recognises the inflexibility of the previous law in its application to doctors and managing directors.

3. 457 Visa

Key changes to the 457 visa itself include the uncoupling of a 457 visa holder and sponsor (this was a key recommendation of the Deegan Review), the need for new 457 visa holders to have health insurance before grant of a 457 visa and, for chefs and tradespersons, the need to demonstrate they have IELTS 5. The new health insurance visa condition does not apply to persons whose visa was granted before 14 September 2009.

The old law permitted a period of stay on a 457 visa from three months to four years. This often presented difficulties for businesses that needed to have foreign nationals work in Australia for short periods of less than three months. The new law has replaced the old period of validity and now permits grant of a 457 visa for any time up to four years. With the recent publication of revised policy[9] on strictly limited work rights of six weeks only for holders of Business Visitor visas, we can expect to see greater use of the 457 visa regime for what previously might have been permitted under the business visitor program.

(a) New requirements regarding health costs for existing 457 visa holders

For those foreign nationals who held a 457 visa before 14 September 2009 reg 2.94B continues the former undertaking of a sponsor to meet a sponsored person's public hospital costs where such costs are not covered by insurance or a reciprocal health care agreement (RHCA).

And, as recently as 9 November 2009,[10] reg 2.72(7A) was inserted in the MR to address an oversight in the new regime in relation to express undertakings to meet estimated health costs where a health waiver had been granted. If a 457 visa holder had, before 14 September, been granted their visa on the basis of a waiver of public interest health criteria set out in subcl 4006A(2) of Sch 4 because their sponsor had given a written undertaking to meet estimated health costs then a prospective new sponsor is now required to give an equivalent undertaking before the sponsor's nomination will be approved.

(b) New time of decision health insurance requirement for new 457 visa applicants

As indicated above, previously sponsors gave an undertaking to meet sponsored persons' public hospital costs if not covered by insurance or a RHCA. Now, and in response to burgeoning debts owed to state and territory public hospitals, it is a requirement that all sponsored employees provide evidence they have made "adequate arrangements" for health insurance before their 457 visa is granted. Additionally, new visa Condition 8501 requires that health insurance must be maintained for the duration of the 457 visa: failure to do so risks visa cancellation.

The evidence required by DIAC to demonstrate an applicant has made adequate arrangements for health insurance varies depending on whether the applicant is in or out of Australia and whether the person is from a country with whom Australia has a RHCA. Australia has RHCAs with just ten countries: UK, Ireland, Sweden, Norway, Finland, Denmark, Belgium, Italy, Malta and New Zealand.

In the first month of operation of the new 457 scheme, visa decisions stalled as health insurers, particularly those overseas but also many in Australia, grappled with DIAC's template letter required to be provided from a health insurer confirming that the required level of cover includes all of the following items:

- public hospital cover

- pharmacy — all PBS drugs
- surgically implanted prostheses
- medical services
- ambulance services
- no buy out clauses
- informed financial consent on admission to a hospital
- global annual benefit limits not less than $1 million per person
- no waiting periods except for pregnancy and pre-existing conditions.

The difficulties encountered by health insurers locally largely reflect the fact that DIAC's first discussions with the health insurance industry were held just 6 weeks before the introduction of the new regime.

In response to the on-going difficulties with production of letters acceptable to DIAC and the resultant impact on visa processing a more flexible approach has been adopted. If a 457 visa applicant is outside Australia when making their application they are now required to provide either evidence of travel insurance (with the understanding that enrolment in a private health insurance fund will occur after arrival or, if relevant, enrolment with Medicare under RHCA arrangements) or production of private health insurance arrangements such as evidence of a policy being taken out (the policy does not need to be prepaid) or a certificate or confirmation letter from a health insurance provider that the person will be covered by health insurance upon arrival in Australia. In some cases, certification from a trusted third party such as an insurance broker that the person will be covered by health insurance upon arrival in Australia will be acceptable.

By comparison, if a person is in Australia when making their 457 visa application they must provide evidence of private health insurance arrangements. This can be evidence of a policy being taken out (the policy does not need to be prepaid), a certificate or confirmation letter from a health insurance provider that the person is covered by health insurance or, if relevant, production of a Medicare card.

Local health insurers have been quick to respond with DIAC compliant policies for less than $900 per person.

(c) New Condition 8501 for new 457 visa holders

New visa Condition 8501 requires all new 457 visa holders to ensure they maintain adequate health insurance for the duration of their 457 visa. Failure to do so may result in visa cancellation. A sleeping issue is that all health insurers are obliged to report a 457 visa holder's policy cancellation to DIAC.

It is likely DIAC will commence monitoring compliance with this new visa condition sometime in 2010.

(d) New Condition 8107 for all 457 visa holders

A key change to the 457 visa itself is the ability of the primary sponsored visa holder to change employer without the need for a new visa application. This has been achieved by the introduction of new visa Condition 8107. A new 457 visa application may be considered necessary or desirable where there is limited time remaining on a current visa.

New visa Condition 8107 also now allows visa holders to work out a notice period under an existing employment contract and not breach the obligation to work only for their approved sponsor. In addition, condition 8107 clarifies that 457 visa holders have 28 days in which to find a new sponsor following termination of employment. These are welcome and common sense changes that recognise the absurdity of the old Condition 8107 in which notice obligations arising under a contract of employment conflicted with the statutory obligation under immigration law to work only for an approved sponsor.

Conclusion

The new 457 visa regime in place since 14 September 2009 has been the final phase of implementation of many recommendations of the Deegan Review commenced in late 2008 with the Worker Protection amendments to the Act. That the scale of the changes has been large is evidenced by the fact that it has required seven pieces of subordinate legislation, including two statutory rules that amended earlier ones, and at least 15 legislative instruments. And, it is not over yet: we await publication of DEEWR's training benchmarks to replace the interim ones published by DIAC and further amendments are likely as the unintended impact of changes or oversights are identified.

Thankfully, the changes have brought to an end the dual industrial relations system that developed under the old scheme — one for Australian workers and another for sponsored 457 employees. Newly sponsored workers must now be paid market rates and engaged on terms no less favourable. This will see an end to use of foreign labour to undercut Australian workers and ensure that sponsored employees will be able to access entitlements previously denied to them, such as maternity leave.

As Australian employers get ready for the introduction of the new National Employment Standards and Modern Awards on 1 January 2010 under the Fair Work Act 2009, it is appropriate that 457 visa holders whose visas were granted before 14 September 2009 will also transition to market rates and equivalent terms of conditions from that date. Indeed, the date heralds in a new industrial relations regime for all workers in Australia.

The greater clarity of what now constitutes sponsorship obligations, when they start and when they end is welcome. However, sponsorship approval notifications issued by DIAC in September and October 2009 have contained links to an incomplete outline of the Obligations — notwithstanding the notification itself refers to link to "full" obligations. Although the Department's role is one of enforcement, it is to be hoped that the approach taken when shortcomings are identified will be educative, at least in the early stages.

Especially welcome too is the change that allows existing 457 visa holders to change employers without the need for a new visa application.

The impact of two of the big changes — the onus of ongoing disclosure of notifiable events by sponsors and information sharing with other Commonwealth, state and territory agencies — are yet to be felt. Sponsors need to have in place now appropriate risk management polices and procedures to ensure compliance with the Obligations, some of which continue for 5 years after a sponsored employee leaves. Sponsors also need to consider amending contracts of employment as well as policies and procedures to ensure that the new obligations are appropriately considered and managed.

There have been teething problems including, for example, the old Condition 8107 text being included on both primary and secondary applicant's visa approvals. However, with the passage of time, these will diminish.

As the new law and policy is bedded down, let's hope DIAC case officers live up to the Department's motto of "*people* our business".

457 VISA Sponsorship obligations from 14 SEPT 2009

OBLIGATION		STARTS	ENDS
1.	***Ensure equivalent terms and conditions of employment***	*Nomination is approved or person is granted a 457 visa if they don't already hold a 457 visa*	*Earlier of:*
	Terms and conditions of employment provided to the sponsored person are no less favourable than the terms and conditions the sponsor provides, or would provide, to an Australian citizen or permanent resident to perform the work in an equivalent position in the		*• termination of employment or• grant of another visa other than a*

workplace using a process set out by the Minister in an instrument.		*457 visa*
2. Ensure that the primary sponsored person does not work in an occupation other than the approved occupation *Ensure that the primary sponsored person does not work in an occupation other than the occupation nominated by the sponsor and approved by the Department.*	*Nomination is approved or person is granted a 457 visa if they don't already hold a 457 visa*	*Earlier of:* • *a nomination is approved for another sponsor or* • *grant of another visa, other than a 457 visa or* • *person has left Australia, 457 visa and any BVB has ceased*
3. Not recover, or seek to recover, certain costs from a sponsored person *Not recover, or seek to recover, the following costs from a sponsored person* • *costs relating to the recruitment of the sponsored person* • *costs associated with becoming, or being, an "approved sponsor"*	*Nomination is approved orperson is granted a 457 visa if they don't already hold a 457 visa*	*Earlier of:* • *a nomination is approved for another sponsor or* • *grant of another visa, other than a 457 visa or* • *person has left Australia, 457 visa and any BVB has ceased*
4. Pay travel costs to enable sponsored persons to leave Australia *Pay all reasonable and necessary travel costs, within 30 days of receiving a written request from the sponsored person or the Minister on behalf of a sponsored person.* *Reasonable and necessary travel costs include:* • *economy class air fare from Australia*	*Nomination is approved or person is granted a 457 visa if they don't already hold a 457 visa*	*Earlier of:* • *a nomination is approved for another sponsor or* • *grant of another visa other than a 457 visa or* • *person has*

to a country for which they hold a passport or, if more than one, the country of their choice • *travel costs from the visa applicant's usual place of residence to the point of departure* ***Note:*** *The written request must be made while the person still has a valid 457 visa, specify the persons covered, country of destination.*		*left Australia, 457 visa and any BVB has ceased*
5. Keep the following records ("Records") in a reproducible format		
• written requests by visa holders for the payment of return travel costs, date requests were received, and how and when the costs were paid	Sponsorship is approved or Labour Agreement (LA) commences	2 years after sponsorship has ceased and there are no sponsored persons or as set out in the LA
• notifications to DIAC of a "Notifiable Event" (see 7 below) including date, method of delivery and place where the notification was provided		
• tasks performed by the primary sponsored employee in relation to their work and the location(s) at which the tasks were performed		
• money paid to the primary sponsored person and money applied or dealt with on the person's behalf at their direction		
• non-monetary benefits provided to the primary sponsored person including agreed value, time and period over which benefits were provided		
• if there is an equivalent worker/s at the workplace, a record of their most beneficial terms and conditions including the period over which the terms and conditions applied		Note: The obligation does not require Records to be kept for more than 5 years.
• for nominees whose nominated positions were approved before 14 September 2009, a record of hours worked to 1 January 2010		
6. Provide Records and information to DIAC on request		
• the Records (see 5 above)		2 years after sponsorship

• any records required to be kept under Commonwealth/State/Territory law • the administration of a LA, if relevant	Sponsorship is approved or LA commences	has ceased and there are no sponsored persons
7. Notifiable Events — notify DIAC within 10 working days by email / fax • change of contact details or address • appointment of a new director to a corporation or a new partner to a partnership • changes to the training information provided to DIAC in the sponsor application or an application for variation of a term of approval • changes to the duties of the sponsored person • cessation, or expected cessation, of a primary 457 visa holder's employment • payment of return travel costs to a sponsored person • sponsor becomes insolvent, bankrupt, deregistered, enters into a debt agreement, or any such similar event prescribed under relevant Bankruptcy or Corporations legislation • sponsoring entity ceases to exist	Sponsorship is approved or LA commences	After sponsorship has ceased and there are no sponsored persons
8. Cooperate with inspectors who have produced an ID card and not hinder or obstruct an inspector exercising powers to:		
• enter and inspect any work, material, machinery, appliance or facility • interview any person • require the production of any document or thing, or advise who has custody of it, and make copies **Note:** self incrimination or exposure to a penalty is no defence. Failure to produce a document or thing is an offence punishable by imprisonment for 6 months.	Sponsorship is approved or LA commences	5 years after the sponsorship has ceased
9. Pay costs incurred by the Commonwealth to locate and remove unlawful non-citizens who overstay a 457 visa		
Pay costs incurred by the Commonwealth in locating and removing the visa holder(s) upon becoming unlawful.		*5 years after the visa*

Costs payable by the sponsor are the actual costs but capped at $10,000 per person. Any costs already paid by a sponsor in relation to return travel are set off against the amount owed to the Commonwealth.	*Sponsored person becomes an unlawful non-citizen*	*holder/s leave Australia*

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This Schedule provides information about topical legal issues as at November 2009. It is not intended to be exhaustive. Information contained in this schedule is intended as an introduction only and should not be relied upon in place of legal advice.

1 Katie Malyon is Principal of Katie Malyon & Associates, Lawyers and is MARN 9580358.

2 Available from DIAC at http://www.immi.gov.au.

3 Migration Amendment Regulations 2009 (No 5) SLI 115; Migration Amendment Regulations 2009 (No 2) SLI 116; Migration Amendment Regulations 2009 (No 9) SLI 202; Migration Amendment Regulations 2009 (No 5) Amendment Regulations (No 1) SLI 203; Migration Amendment Regulations 2009 (No 5) Amendment Regulations (No 2) SLI 230; Migration Amendment Regulations 2009 (No 12) SLI 273; Migration Amendment Regulations 2009 (No 13) SLI 289.

4 Legislative instrument IMMI 09/107.

5 Legislative instrument IMMI 09/112.

6 Legislative instrument IMMI 09/109.

7 Ibid.

8 Legislative instrument IMMI 09/094 replaced by Legislative instrument IMMI 09/125.

9 ETA (Business Entrant — Short Validity) subclass 977, ETA (Business Entrant — Long Validity) subclass 956, eVisitor — Business Stream subclass 651, Business (Short Stay) subclass 456 and Sponsored Business Visitor (Short Stay) subclass 459.

10 Migration Amendment Regulation 2009 (No 13) SLI 289.