

## Bulletin

01 July 2002

### **FROM 1 JULY 2002: NO CHANGE OF SPONSOR APPLICATIONS: Australia: immigration**

To All Clients

In a significant legislative amendment to the Migration Regulations, announced today, and coming into effect on 1 July 2002, a subclass 457 visa holder (temporary resident sponsored to work in Australia) will not be able to change employer unless a FULL VISA APPLICATION is lodged with the immigration department. This means that if a visa holder wishes to change sponsor, or change their nominated employment activity, the following steps must take place:

1. A sponsoring employer promptly advises the immigration department about the cessation of employment of the sponsored employee;
2. The new sponsoring employer must lodge, with the immigration department, a Position Nomination (with supporting documents) (and a Standard Business Sponsorship if not already approved under a Labour Agreement, PQBS or SBS) to nominate the visa holder for the specified position;
3. The visa holder must lodge a Visa Application with the immigration department - this will include, updated CV, evidence of qualifications or experience, offer letter or employment contract, fresh health examination and any other requisite documents (e.g. evidence of de facto spouse relationship)
4. The visa holder must not cease employment with the original sponsoring employer. The visa holder must not commence employment with the new employer until the immigration department has granted approval to the change of sponsorship under the new visa application. **It appears to be that there must be NO GAP in employment between sponsoring employers. I will revert to you immediately upon my having examined the legislation when the amendments are published.**

I have discussed the changes with our departmental contact officer today. At this stage, the immigration department officer knows as much as we do about the changes and is unable to comment on the procedural impact of the changes. I will provide further information to you as it becomes available.

These changes may result in higher costs and increased processing times.

The full text of the immigration department statement on this issue is reprinted below. For more information please contact:

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## Bulletin

# Temporary Residence Visas - changes to Work Condition 8107

### Client summary

From 1 July 2002, immigration law has been amended to strengthen the wording of condition 8107 to ensure that a visa holder to whom the condition applies undertakes employment or activities that are consistent with the visa and the basis on which it was granted.

### Technical details

**Additional information:** Condition 8107 is a mandatory visa condition for most temporary residence visas. The amended condition 8107 comprises two parts:

- If the visa was granted to enable the holder to be employed in Australia (eg. Temporary Business Long Stay (Subclass 457) visa), the holder must not:
  - stop working for the employer who sponsored them (ie. become unemployed or change employer); or
  - work in a position or occupation inconsistent with the nominated position or occupation; or
  - work for another person or for themselves while working for the sponsoring employer.
  
- If the visa was granted in cases where direct employment might not be the primary purpose of the visa, the holder must not:
  - stop undertaking the activity for which the visa was granted; or
  - engage in an activity inconsistent with the activity for which the visa was granted; or
  - engage in work for another person or for themselves inconsistent with the activity for which the visa was granted.

A visa holder may only undertake secondary employment or an additional activity where the work/activity is for the sponsor (if applicable), is consistent with the approved position/activity, and is incidental to their principal employment/activity.

Under policy, voluntary unpaid work for a non-profit charity or community organisation will not constitute a breach of the 8107 condition. However, there is an expectation that the visa holder will obtain the agreement of their sponsor in view of the liabilities and undertaking of the sponsor.

If a visa holder wishes to change employer or undertake an alternative activity (eg. change sponsor or activity), a new visa application is required, together with an approved sponsorship and nomination (if applicable), to allow full consideration against the visa criteria.

**Transitional arrangements:** These amendments apply in relation to (applicable) visa applications:

- made, but not finally determined, before 1 July 2002; or
- made on or after 1 July 2002.

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