

## Bulletin

29 June 2004

### **Business Sponsor Undertakings and Sanctions – 1 July 2004 Changes**

A very significant change in immigration law for business sponsors comes into effect on 1 July 2004.

Regulation changes become effective on 1 July 2004 relating to Subclass 457 Sponsorships.

#### **New undertakings and sanctions**

The Business Sponsor's undertakings have been placed in a new Migration Regulation 1.20 CB. The new undertakings comprise a revision of the previous undertakings with some additional undertakings added.

Importantly, there are newly clarified sanctions for Business Sponsors and the sponsored Subclass 457 Visa holder.

#### **New forms**

Form 1196 (including the internet form) has an essential change for 1 July 2004 as the new version will include the new undertakings that will be in regulation. Old forms should be destroyed and new sponsorship applications made on or after 1 July 2004 should be completed on the new form. If applications are lodged on the old paper form 1196, at the very least the applicant will be required to complete and sign (and thereby agree to) the new undertakings comprising part of the new version form.

#### **Website information**

The immigration department's website will be updated as of 1 July 2004 to include the new (and old) undertakings and consequences of breaching the undertakings.

#### **Effective Date**

The effective date is 1 July 2004. This means the date on which the application is lodged with the immigration department (as distinct from the date on which the form was signed or mailed). Thus if sponsorship applications are currently in the course of preparation and it is not intended to lodge the application by 30 June 2004, it will be preferable to wait until the new version of form 1196 becomes available on the website on 1 July 2004.

#### **Visa Applications**

Form 1066 has also been modified and the new version will be available on the immigration department website from 1 July 2004 and should be used by visa applicants from that date onwards. Any old forms should be destroyed.

**The new undertakings are provided below:**

### ***1 July 2004 Changes to Subclass 457 – Undertakings and Sanctions***

*From 1 July 2004, businesses applying to sponsor persons under the Temporary Business (Long Stay) visa (subclass 457) agree to meet **new sponsorship undertakings** in relation to sponsored employees and their accompanying family unit members.*

*Responsibility for the undertakings will commence on the grant of the visa to the sponsored person.*

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*Responsibility for the undertakings will cease when the sponsored person ceases to hold the visa for which he or she was sponsored, unless otherwise notified below.*

**The new undertakings are as follows:**

*The business undertakes to do the following in relation to sponsored persons, including accompanying family members:*

- *ensure that the cost of return travel by a sponsored person is met;*
- *not employ a person who would be in breach of the immigration laws of Australia as a result of being employed;*
- *comply with its responsibilities under the immigration laws of Australia;*
- *notify Immigration of:*
  - *any change in circumstances that may affect the business's capacity to honour its sponsorship undertakings; or*
  - *any change to the information that contributed to the business's ability to be approved as a sponsor or the approval of a nomination;*
- *cooperate with the Department's monitoring of the business or of any sponsored persons;*
  - *this undertaking continues until the earlier of the following:*
    - *if the sponsored person ceases to hold the visa for which he or she was sponsored, the earlier of the time when the person leaves Australia and the time when the person is granted a substantive visa; and*
    - *the time when the sponsor ceases to be an approved sponsor of the sponsored person;*
- *notify Immigration within 5 working days after a sponsored person ceases to be in the business's employment*
- *comply with laws relating to workplace relations that are applicable to the business and any workplace agreement that the business may enter into with a sponsored person;*
- *ensure that a sponsored person holds any licence, registration or membership that is mandatory for the performance of work by the person;*
- *ensure that, if there is a gazetted minimum salary in force in relation to the nominated position occupied by the sponsored person, the person will be paid at least that salary;*
- *ensure that, if it is a term of the approval of the nomination of a position that a sponsored person must be employed in a particular location, the business will notify Immigration of any change in the location which would affect the nomination approval;*
- *pay all medical or hospital expenses for a sponsored person (other than costs that are met by health insurance arrangements)*
  - *this undertaking continues until any such expenses are paid;*
- *make any superannuation contributions required for a sponsored person while the person is in the business's employment;*
- *deduct tax instalments, and make payments of tax, while the sponsored person is in the business's employment;*

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- *pay the Commonwealth an amount equal to all costs incurred by the Commonwealth in relation to a sponsored person*
  - *these costs may include those relating to locating and detaining the sponsored person, removing the sponsored person from Australia and processing any application for a protection visa made by a sponsored person;*
  - *this undertaking continues until all such costs are paid.*

### **Failure to comply with undertakings**

*Should the business fail to comply with these undertakings, provide false information to the Department or otherwise fail to continue to satisfy the requirements of the sponsorship, DIMIA may take action to:*

- ***cancel the business's approval as a sponsor;***
- ***bar the business***, for a specified period, ***from making further applications*** for approval as a sponsor;
- ***bar the business***, for a specified period, ***from sponsoring or nominating*** more people under the terms of existing sponsorship approvals;
- ***cancel the visas*** of any temporary business entrants, and their accompanying family members, sponsored by the business; and/or
- ***take any failure to comply with these undertakings into account*** in assessing any future sponsorship applications made by the business or by any other business operated by the same principals.

*Term for the responsibilities of the sponsored person will cease upon the earlier of the following:*

- *at the end of 28 days after the business notifies Immigration that the sponsored person has ceased to be in the business's employment;*
- *if the sponsored person ceases to hold the visa for which he or she was sponsored – when the person leaves Australia or is granted another substantive visa. Liabilities accrued in the period prior will remain.*

*From 1 July 2004 it will also be possible for the Department to request securities from sponsors to ensure compliance with the requirements of the Migration Regulations and Migration Act. This would occur in very few circumstances and only where significant concerns exist. The upper limit of these securities will be \$10,000.*

*In addition, some personal information about Subclass 457 visa holders will be able to be disclosed to their sponsors where that information may form the basis of a sanction being imposed on the sponsor.*

*Forms and other information material, including the DIMIA website, will be updated to reflect these changes from 1 July 2004. Please refer to these and lodge only the new forms 1196 and 1066 from this date.*

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