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# Sponsoring Temporary Workers – The Australian Experience

# Immigration and Work Visa Options in the Asia Pacific Region

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International Bar Association Annual Conference in Singapore

17 October 2007

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## INTRODUCTION

The integration of the world economy, the rise of Asia, sustained economic growth, low unemployed and demographic changes have resulted in Australian experiencing a critical shortage of skilled labour.

The Department of Immigration and Citizenship Migration Programme has been set at 152,800 places in 2007 – 2008 with the Skilled Migration Stream planned at a total of 102,500 places and the family stream planned at 50,000 places.

The top occupation for skilled stream entrants is accountants (10,688), followed by computing professionals (4,044) and registered nurses (2,088). These are followed by mechanical engineers, civil engineers, marketing specialists and general managers.[1]

The top five countries of origin for skilled stream entrants were United Kingdom (24,800), India (15,865), People's Republic of China (14,688), Republic of South Africa (4,293) and Malaysia (3,838).[2] The Australian Government's emphasis on the Skilled Migration Stream does not however satisfy the demand of our economy for skilled workers at a time of sustained economic growth and the ageing of the population.

The Subclass 457 – Temporary Business (Long Stay) Visa Programme (**457 Visas**) was developed in 1994 to help companies bring in highly skilled personnel to meet temporary skilled shortages. As of 31 March 2007 there were 101, 608 workers in Australia on 457 visas, an increase of 27.5% on the previous year. 64,459 visas were issued in the first nine months of 2006/07, close to the previous year's total.

[1] The Hon Kevin Andrews MP, Minister for Immigration and Citizenship, Media Release, Thursday, 16 August 2007, KA 069/07 'A Prosperous and Cohesive Nation – Migration Programme Outcomes 2006-07'.
[2] Ibid

Under the 457 visa, an employer can sponsor a skilled employee to work in Australia for a period of three months and up to four years. The employee can bring family members, who can work or study and they have multiple travel rights. The 457 visa requires that foreign workers provide an economic benefit for Australia and advance the skills of existing workers and further, there must be a genuine skill shortage for the job. Whilst employers are obliged to treat the 457 visa holder equally to an Australian worker, the Australian media is full of articles that people from low-wage countries on 457 visas are being underpaid by Australian standards, exploited, and in some instances, working in conditions 'akin to slavery'.[3]

## TEMPORARY BUSINESS ENTRY AND SUBCLASS 457 BUSINESS (LONG STAY) VISAS

There are 3 steps in the application process to bring in temporary overseas staff, namely:

- Sponsorship;
- Nomination; and
- Visa Application.

## AUSTRALIAN BUSINESSES – SPONSORSHIP REQUIREMENTS

### Sponsorship[4]

To be approved as a business sponsor, employers must provide details to:

- show their business is of good standing;
- explain how Australia benefits from their business employing overseas personnel; and
- demonstrate the commitment of their business to training Australian residents or introducing new technology or business skills.

Financial reports, including profit and loss statements, balance sheets, and annual reports can demonstrate that the business meets several requirements of the regulation 1.20D of the Migration Regulations 1994 (**'the Regulations'**):

- is actively and lawfully operating - regulation 1.20D(2)(a);
- has a record of training – regulation 1.20D(2)(c); and
- has the financial capacity to meet its sponsorship undertakings – regulation 1.20D(2)(f).

[3] Dead Men Working, Matthew Moore and Malcolm Knox, Sydney Morning Herald, Page 1, Tuesday 28 August 2007.

[4] The elements that need to be considered in a decision whether to approve a standard business sponsor were dealt with by *Dowsett J. in MM International (Australia) Pty Ltd (ACN 088 104 170) v MMIA* [2003] FCA 880.

In considering whether a sponsor needs to provide financial reports, officers are advised to take into account:

- the nature of the sponsor's lawful registration;
- how many staff it employs;
- how long it has been trading;
- record of previous sponsorship;
- business activities; and
- how many proposed and current employees have or would have 457 visas.

**Australian Businesses – Contribution to the Australian Economy**

Regulation 1.20D(2)(a) looks at the benefits which can be direct 'downstream' or 'flow on' benefits (such as to other businesses) in 4 prescribed ways (only one of which needs to be satisfied):

- the creation or maintenance of *employment*; or
- the *expansion of trade* in goods and services; or
- improved *business links* with international markets; or
- *enhanced competitiveness* within sectors of the Australian economy.

**Training Record or Commitment to Training**

All sponsors are assessed under this criterion and must provide evidence of either a satisfactory training record or demonstrated commitment to training Australian citizens and permanent residents. In addition to detailed training plans, which provide quantifiable data and evidence of training, including where relevant, the sponsor's training activities, which are designed to address the skill shortage, these include paying for courses of study, paying for scholarships, employment of in-house trainers, using external training providers, on-line training and the employment of apprentices, trainees or graduates recruited in the past two years.

For on-the-job training to be acceptable, as a record of employment, it must be quantified or recorded, and able to be evidenced.[5]

[5] *Apollo Parking* N05/06440 [2006] MRTA 481 (6.11.06) is a case where a company was successful on merits review, in providing evidence that it had a satisfactory training record with training conducted by the in-house manager.

**Sponsor's Undertakings**

The Sponsor's Undertakings are outlined on Form 1196 and in regulation 1.20CB. Section 140H of the *Migration Act* 1958 (**the Act**) enables the Regulations to prescribe the undertakings in regulation 1.20CB. The undertakings comprise:

- Regulation 1.20CB(1)(a) to ensure that the cost of return travel by a sponsored person is met;
- Regulation 1.20CB(1)(b) not to employ a person who would be in breach of the immigration laws of Australia as a result of being employed;
- Regulation 1.20CB(1)(c) to comply with its responsibilities under the immigration laws of Australia;
- Regulation 1.20CB(1)(d) to notify Immigration of any change in circumstances which may affect the business' capacity to honour its sponsorship undertakings or any change of the information that contributed to the applicant's being approved as a sponsor or the approval of the nomination;
- Regulation 1.20CB(1)(e) to cooperate with the Department's monitoring of the applicant and the sponsored person;
- Regulation 1.20CB(1)(f) to notify Immigration, within 5 working days after a sponsored person ceases to be in the applicant's employment;
- Regulation 1.20CB(1)(g) to comply with laws relating to workplace relations that are applicable to the applicant and any workplace agreement that the applicant may enter into with the sponsored person, to the extent that the agreement is consistent with the required undertaking;
- Regulation 1.20CB(1)(h) to ensure that a sponsored person holds any licence, registration or membership that is mandatory for the performance of work by the person;
- Regulation 1.20CB(1)(i) to 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;
- Regulation 1.20CB(1)(j) to 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 applicant notify Immigration of any change in location which will effect the nomination approval;
- Regulation 1.20CB(1)(k):
  - for an application made prior to 1 November 2005 pay all medical or hospital expenses for a sponsored person (other than those met by health insurance arrangements); or

- for an application made on or after 1 November 2005, pay all medical and hospital expenses for treatment administered in a public hospital (other than expenses that are met by health insurance or reciprocal health care arrangements);

- Regulation 1.20CB(1)(l) to make superannuation contributions required for a sponsored person while in the applicant's employment;
- Regulation 1.20CB(1)(m) to deduct tax instalments, and make payments of tax, while the sponsored person is in the applicant's employment;
- Regulation 1.20CB(1)(n) to pay to the Commonwealth an amount equal to all costs incurred by the Commonwealth in relation to the sponsored person.

Section 140I of the Act deals with undertakings to pay amounts payable to the Commonwealth in regard to regs 1.20CB(1)(n), 1.20CB(2) and 1.20CC.

Section 140J of the Act allows for cancelling or barring approval as a sponsor, if a sponsor breaches the undertakings. Section 140K allows for cancelling or barring approval of a sponsor in other circumstances.

Section 140L of the Act specifies what actions may be taken in relation to a sponsor who has breached their undertakings. Regulation 1.20HA describes the circumstances and criteria to be taken into account when considering action under s 140L in the event of a breach of undertaking.

Division 3, Subdivision GA deals with cancellation of approval as a business sponsor for breach of undertakings, which must be considered under s 137B.

By completing and signing the Form 1196 sponsors agree in writing to abide by undertakings (s 140H).

Section 140H(3) of the Act provides that the sponsor's undertakings commence once the sponsored person's 457 is granted. Under policy, the obligations in relation to the person do not commence until the person enters Australia.

Section 140D of the Act defines when a person is considered to be an approved sponsor.

The sponsor's undertakings cease in accordance with regulation 1.20E on the earliest of the following:

(a) at the end of 28 days after the sponsor notifies the Department that the sponsored person has ceased to be in their employ; or

(b) if the sponsored person ceases to hold the visa for which they were sponsored – when the person leaves Australia; or

(c) if the sponsored person ceases to hold the visa for which they were sponsored – when the person is granted another substantive visa.

Under s 140Q(1) of the Act (unless otherwise specified in regulation 1.20DB), the sponsor's undertakings remain enforceable against the sponsor until either:

(a) the sponsored person ceases to hold the 457 visa for which they were sponsored; or

(b) the approval of the sponsor ceases under regulation 1.20E.

Some undertakings, separately prescribed in regulation 1.20DB such as undertakings relating to cooperation with monitoring, payment of medical and hospital expenses and costs to the Commonwealth may continue to be enforceable until a later date. As the undertakings made in respect of the sponsored person continue to apply until the end of 28 days after the day on which the sponsor notifies the Department that the person has ceased to be in their employment, it is in the sponsor's interests to notify the Department as soon as the person is no longer employed by them. The sponsor is also liable to continue to pay the minimum salary to the 457 visa holder during this 28 day period.

If the visa holder departs Australia during this 28 day period, the visa may be cancelled after departure although, as previously stated, some undertakings may continue to be enforceable.

## BUSINESS ACTIVITY NOMINATION

Subclass 457.223(4)(b) makes nomination by an employer who is a pre-qualified business sponsor or a standard business sponsor a necessary precondition for the grant of a Subclass 457 visa and that precondition must be satisfied at the time the decision is made. The definitions of 'pre-qualified business sponsor' and 'standard business sponsor' make it clear that such a sponsor must be a person approved in accordance with regulation 1.20D. A finding which is open that a particular company does not meet that requirement has the effect that the visa conditions can not be satisfied See *Liu v MIMIA* [2004] FCA 748.[6]

Both standard business sponsors which includes Australian and overseas business sponsors can make nomination applications (regulation 1.20G(1)(c)) by the completion of the Form 1196 in paper or electronic form (regulation 1.20G(3)). A separate nomination form is required for each position to be filled.

Nominations by Australian businesses are lodged at the same the Department business centre as the sponsorship. Nominations by overseas businesses should be lodged at the nearest overseas post to the business.

Nomination approval ceases after 12 months, or when a 457 visa is granted in relation to that nomination, or when the sponsorship ceases. This means nominations can continue to be approved under a sponsorship until the number of visas granted meets the number of nominations agreed under the sponsorship approval, or until the sponsorship ceases, whichever occurs first.

[6] The Full Court in *Liu v Minister for Immigration & Multicultural & Indigenous Affairs* [2004] FCAFC 290 ((French Emmett and Dowsett JJ.) dismissed the appeal from Liu v MIMIA [2004] FCA 748 ( Sackville J.).

**Assessing Nominations**

The employer must nominate each position they wish to fill with a temporary resident. The nomination must:

- relate to an occupation which meets a minimum skills threshold covering managerial, professional, associate professional and trade occupations;
- the position to be filled must be on the occupations list specified in a Gazette Notice for this visa;
- the nominated position must be remunerated at a minimum salary level, also specified in a Gazette Notice for this visa;
- regional employers may seek an exemption from the minimum skill and/or salary levels if the nominated position is in a regional or low population growth area.

As the primary focus of the nomination assessment is the duties (or activities) of the position, sponsors should provide the position title, a detailed duty statement, an outline of the qualifications and experience required, and the proposed annual gross salary (as requested on Part B of Form 1196). The visa applicant is required to have the skills relevant to the position and to be paid the minimum salary level.

In regard to the employment hours, under policy, 38 hours employment a week constitutes full-time employment. While work less than 38 hours per week may be allowed, it is not acceptable for this to be less than 30 hours a week. The minimum salary level applicable must be paid on the basis of a 38 hour week, and cannot be reduced because a lesser number of hours are worked.

If more than 38 hours per week are worked, the additional hours must be remunerated in accordance with relevant workplace laws and awards.

**Minimum salary threshold**

Undertakings require the sponsor to comply with laws relating to Workplace Relations that are applicable to the 457 visa nominee. Any Workplace Agreement must be consistent with the required undertakings. Where there is no formal Award or Agreement the level of remuneration should be commensurate with other salaries paid by the sponsor for similar occupations and not lower than the gazetted minimum salary unless the nomination was approved for regional employers (see regulation 1.20B for definition of minimum salary level and regulation 1.20G(4)).

As of 3 May 2006 the minimum salary level (non-regional) was:

- $57,300 for Information and Communications Technology (ICT) occupations, and
- $41,850 for all other skilled occupations

From 1 July 2006 minimum salary level for regional positions was:

- $51,570 for ICT occupations and
- $37,665 for all other occupations.

While sponsors may offer benefits such as car allowances, accommodation allowance, shares, bonuses or other forms of performance-based income to nominees, including Living Away from Home Allowances (LAFHA) these do not count towards the nomination meeting the minimum salary threshold.

Regulation 1.20G(2) applies a minimum skill level to positions to be filled as part of the nomination. If the position does not meet the minimum skill level, the nomination cannot be approved.

Only gazetted occupations in the Gazette Notice under regulation 1.20G(2) relevant at the time of lodging the nomination, can be approved.

## MONITORING AND SANCTIONS

The sponsors are monitored by the Department to ensure that they comply with their undertakings in relation to the sponsored person (including any sponsored family members).

Sponsors are required to fully cooperate with the Department including by providing monitoring reports (Form 1110 – Business Sponsor Monitoring) as required to establish that there have been no significant changes in regard to the business ownership or the nature of the business since the Sponsorship was approved, there are no adverse findings or penalties imposed against the business, the person is still in the business' employ, is being remunerated in accordance with the details provided to the Department for the purposes of the approval of the application, and documents are provided evidencing the remuneration pay including pay slips, PAYG Payment Summary, Bank Statements and such like. Sponsors must also confirm that they are complying with Australian Industrial Relations Laws, levels of remuneration and conditions of employment, the tax instalments and superannuation contributions in respect of the person have been made, and that the sponsor has an ongoing commitment to training its Australian citizen and permanent resident staff.

Imposing sanctions is generally considered after the sponsor has been monitored or where a possible breach has been investigated. Regulations 1.20HA and 1.20HB prescribe the grounds for imposing sanctions under s 140J and s 140K respectively. The sanctions can include cancelling and barring actions specified in s 140L of the Act.

Regulation 1.20F prescribes the grounds for cancelling business sponsorship approval under s 137B of the Act.

If the sponsorship is cancelled under s 137B of the Act and Regulation 1.20F, then there is consequential visa 457 cancellation (under s 116(1)(g) for family members, s 140(1) for an

interdependent partner or dependent children of an interdependent partner, or under s 140(2) of the Act and regulation 2.43(1)(i) if the sponsorship status of the employer is cancelled).

Sponsorship subject to regulation 1.20CB(1)(f) and regulation 1.201A allow certain personal information on the sponsored person to be disclosed to the sponsor. Secondary visa holders are not permitted to remain in Australia if the 457 visa holder leaves Australia permanently. Under policy, they must either leave before or with the sponsored employee or apply for another class of visa. Sponsors should notify the Department of such circumstances.

With the media coverage in regard to some workers being underpaid or exploited, the arrangements around monitoring and site visits are being reviewed to enable more targeted activity of high risk industries, sponsors and occupations. Monitoring activities are recorded in ICSE (one of the Department of Immigration and Citizenship's software programmes). Sponsors can be monitored each year while their nominated employees are in Australia. One hundred per cent of all sponsors are monitored. The aim is to undertake site visits for 25% of the sponsors with priorities for site visits being newly started businesses without a proven business record and other sponsors considered to be of 'high risk'. Currently, industries of concern are those where there is a high incidence of employing illegal workers or a high incidence of unsatisfactory monitoring such as hospitality, personal and other services (including labour hire firms), manufacturing, agriculture, forestry and fishing, retail trade and construction.

Site visits can be announced and unannounced in industries of concern, or where there is a concern in regard to the information provided by the sponsor, officers can seek to interview visa holders at site visits.

While there are no search powers under migration legislation for conducting site visits, sponsors do, however agree to undertake certain responsibilities which include site visits as part of their undertakings.

The consequences for breach of undertakings depend on the prescribed considerations which include the severity of the breach and the overall merits of the case. Practitioners should particularly note the consequences of the sponsor providing incorrect or false information in relation to an application for approval for sponsor status, or in relation to any other matter relating to the sponsor. Regulations 1.20F(a) and (b) enable the approval of the sponsorship to be cancelled under s 137B. Regulation 1.20HB enables one or more of the cancelling or barring actions specified in ss 140L(a),(c),(d),(e),(f) or (g) to be taken if the sponsor has given false information in relation to the sponsorship, the sponsor's compliance with the Act and Regulations or in relation to the assessment of the sponsored person's compliance with their 457 visa conditions.

Whilst under s 137B, s 140J and s 140K, there is no legislative authority requiring that a notice of intention to consider imposing a sanction be provided to a sponsor, under policy, officers are to notify sponsors of the intention to consider action under these provisions which enable the cancellation of approval as a business sponsor (s 137B), cancellation of approval of other types of sponsorship (s 140J or s 140K), barring a sponsor under s 140L(e) from making future applications for approval as a sponsor (s 140J or s 140K), and barring a sponsor under s 140L(f)

from making future applications for approval as a sponsor for all temporary visas for which sponsorship is a criterion (s 140J or s 140K).

The notice must be in writing. The sponsor must be given a reasonable opportunity to respond to the notice, which under policy is generally 28 days plus 7 days notification if the notice is posted.

## ASSESSMENT OF THE VISA APPLICANT

The visa application must meet s 46 of the Act, Sch 1 requirements and the relevant requirements prescribed in Division 2.2 of the Regulations for a valid application to be made, otherwise it cannot be considered (see s 47(3) of the Act).

Combined or separate applications may be lodged by family members of the main applicant. If family members apply after the main applicant and/or at a different place, a separate application form is required and a separate visa application charge is payable.

Applicants sponsored by an Australian business must meet the requirements of clause 457.223(4) namely:

(a) the position be covered by an approved nomination at the time of visa grant;

(b) the employer be approved as a sponsor(under regulation 1.20D) at the time of the visa grant;

(c) the applicant be nominated for the position;

(d) the applicant have suitable personal attributes including educational qualifications and work experience for the position;

(e) the applicant demonstrate they have the necessary skills to perform the duties of the position;

(f) the applicant be paid at least the minimum gazetted salary that applied when the nomination was approved (and as specified in the nomination) or, if nominated by a regional employer under regulation 1.20GA the salary specified in the nomination, accords with Australian legislation and awards;

(g) the position cannot be created solely so the applicant can obtain a visa;

(h) the applicant is sponsored by an approved sponsor (as defined in s 140D of the Act).

## VISA CANCELLATION

Section 116 of the Act provides grounds on which a visa holder's visa may be cancelled if the person is in Australia. Section 128 of the Act provides for cancellation of visas of persons outside of Australia. Policy provides that cases which are subject to cancellation under ss 109 (compliance) or 501 (character) of the Act be referred to the Compliance or Character section of the Department of Immigration and Citizenship.

Section 116(1)(a) of the Act provides for visa cancellation where '*any circumstances which permitted the grant of the visa no longer exist*' such as where a dependant of the primary visa holder is no longer a member of the family unit (as defined in regulation 1.12 or the sponsor advises that a visa holder has ceased employment with them and withdraws their support.[7]

## ***MIGRATION AMENDMENT (EMPLOYER SANCTIONS) ACT* 2007**

The *Migration Amendment (Employer Sanctions) Act* 2007 (**the Amending Act**) received royal assent on 19 February 2007. The Amending Act commenced on 19 August 2007 to create new criminal offences for knowingly or recklessly:

- allowing an illegal worker to work; or
- referring an illegal worker for work with another business.

Individuals who are convicted of these offences face fines of up to $13 200 and two years' imprisonment while companies face fines of up to $66 000 per illegal worker. The penalties are higher where an illegal worker is being exploited through slavery, forced labour or sexual servitude.

The following provisions of the *Migration Act* 1958 are inserted:

- At the end of Division 12 of Part 2, new Subdivision C – Offences in relation to persons who allow non-citizens to work, or refer non-citizens for work, in certain circumstances
- new section 245AA - Overview
- new section 245AB - Allowing an unlawful non-citizen to work
- new section 245AC - Allowing a non-citizen to work in breach of a visa condition
- new section 245AD - Referring an unlawful non-citizen for work
- new section 245AE - Referring a non-citizen for work in breach of a visa condition
- new section 245AF - Circumstances in which this Subdivision does not apply
- new section 245AG - Meaning of work and allows to work
- new section 245AH - Meaning of exploited
- new section 245AI - Meaning of other terms

[7] *Lu v MIMIA* [2004] FCA 181, *Singh v MRT* [2004] FCA 1079 and *Hong v MIMIA* [2004] FCA are cases relating to visa cancellations.

- new section 245AJ - Geographical jurisdiction
- new section 245AK - On a trial for an aggravated offence
- new note at the end of subsection 235(1)
- new note at the end of subsection 235(3)
- new subsection 235(7) at the end of section 235.

The following provision of the Crimes Act 1914 is inserted:

- new paragraph 15Y(cb).

These offences apply to employers, labour hire companies, employment agencies and other people who allow illegal workers to work or refer illegal workers for work. This includes taxi owners who bail or lease their taxi cabs to drivers and brothel owners who rent or lease rooms to sex workers. The offences also apply to businesses that operate informal labour referral services such as backpacker hostels that organise harvest work for backpackers.[8]

## NEW ENGLISH LANGUAGE REQUIREMENTS

From 1 July 2007, employers who wish to sponsor temporary overseas workers under the 457 Visa Programme now need to ensure they meet new English Language requirements.

Foreign workers must have English language skills equivalent to an average band score of 4.5 in an International English Language Testing System (IELTS) test, unless exempted in certain special circumstances.

As a general guide, an applicant will not be required to meet the English Language requirement if:

1. their first language is English and they are Canadian, New Zealand, Irish, UK or USA passport holders; or

2. their nominated occupation is within the highly skilled major groups 1-3 of the Australian Standard Classification of Occupations (ASCO), comprising managers, administrators, professionals and associate professionals; or

[8] Australian Immigration – Legislation Change Update – 19 August 2007 - http://www.immi.gov.au/legislation/amendments/lc19082007.htm

3. they have completed at least five years of continuous full-time secondary and/or tertiary education at an institution where at least 80 percent of instruction was conducted in English; or

4. they are to be paid a gross base salary of $75,000 (based on a 38 hour week) excluding all allowances and deductions and the visa grant is in the interests of Australia.

These exemptions do not apply to applicants who have been nominated for a position that requires English language for licensing, registration or professional membership. Higher English language requirements may be applicable for these positions.

## ***MIGRATION AMENDMENT (SPONSORSHIP OBLIGATIONS) BILL* 2007**

The *Migration Amendment (Sponsorship Obligations) Bill* 2007 (**the Bill**) is expected to be passed into law shortly. It gives the Department of Immigration and Citizenship even stronger powers to enforce employer compliance with the 457 visa programme, including the power to conduct unannounced audits of employers and their premises.

Employers of skilled temporary overseas workers face tougher penalties if they breach their sponsorship obligations.

The Bill proposes that sponsors who breach their obligations be fined $6,600 for an individual and $33,000 for a body corporate for each breach identified.

If enacted some of the obligations contained in the Bill will mean that a sponsor must:

- pay at least the minimum salary level to foreign workers;
- employ foreign workers in the same or higher skilled activity (not employing them in an unskilled or lesser skilled position);
- pay return travel costs for the sponsored worker and their family to Australia;
- pay certain medical costs for the sponsored person and their family;
- pay other fees and costs such as licensing, registration, membership and other fees required to work and all costs associated with recruitment and migration agent fees;
- keep adequate records relating to all sponsored visa holders (particularly in relation to their salary payments) as evidence that sponsorship obligations are being met.

The new regime will mean that personal information regarding all past and current sponsored visa holders and their sponsors can be disclosed to prescribed agencies of the Commonwealth or of a State or Territory such as the Australian Taxation Office.[9]

## CONCLUSION

The significant increase in the temporary entry into Australia of skilled workers under the 457 visa programme, and the adverse media coverage in regard to the under-payment and exploitation of some sponsored workers, has resulted in a general tightening up of requirements and the introduction of English language proficiency to maximise workforce outcomes. In addition, the effectiveness of monitoring, enforcement and reporting arrangements have been greatly enhanced. The Amending Act has created new criminal offences for knowingly or recklessly allowing an illegal worker to work or referring an illegal worker for work with another business. The Bill proposes civil penalties if employers breach sponsorship obligations, powers around unannounced audits of employers and premises and an increased inspectorial function of the OWS to support prosecutions for breaches of the Australian Fair Pay and Conditions Standard in the *Workplace Relations Amendment (WorkChoices) Act* 2005.

Similar to the tax system and the enforcement of workplace regulations, the 457 visa programme is largely a matter of self assessment and regulation, backed up by a random audit, inspections and civil and criminal prosecutions.

The 457 visa programme continues to offer opportunities and risks in the age of globalisation, skill shortages and labour market needs.

[9] It is also important to keep in mind the role of the Office of Workplace Services (OWS) which on 16 January 2007 successfully completed the first prosecution of its kind, when a Canberra restaurant was fined $64,000 and ordered to pay $3,800 plus interest in underpaid wages to two chefs it employed from the Philippines under the subclass 457 visa.