

November 2007

Migration News

Working Through the Maze



Migration Law Update

Employing overseas workers in Australia can be a valuable, profitable and efficient way of boosting your Australian workforce.

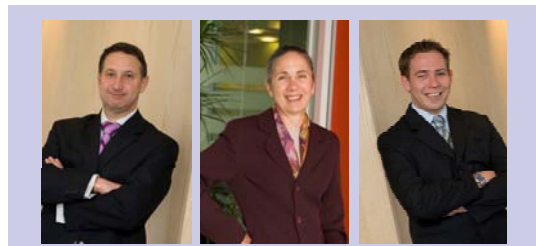
If you already sponsor workers from overseas, it is imperative that you understand your rights and obligations and that they understand theirs. Similarly, if you are considering sponsoring employees in the future, you should understand your options and the obligations each option entails.

The Department of Immigration & Citizenship (DIAC) strictly enforces monitoring of all business sponsors and it is important that employers adhere to all obligations in order to avoid bad publicity or even prosecution. While the requirements for sponsoring overseas employees can be onerous, with the help of experienced migration agents, you can effectively manage your relationships with DIAC and your sponsored employees for the benefit of your

business and Australia as a whole.

We have put together this newsletter, setting out some of the issues of which we believe you need to be aware, whether you already sponsor overseas workers, or if you may wish to do so in the future.

For further information, please contact our Registered Migration Agents Gerald Santucci, Lynne Heffernan or Nick Tebbey on 6285 8000 or e-mail them at lawyers@sneddenhall.com.au.



Snedden Hall & Gallop Migration Team

457 Frequently Asked Questions



In 2006 DIAC reported 50,000 temporary workers in Australian on the 457 Visa.

The Minister for Immigration is currently writing to all employers of temporary skilled workers. The letter answers frequently asked questions and provides information for Subclass 457 visa holders.

It is a requirement to provide this to any employees on a Subclass 457 visa within five days of receiving the Minister's letter.

Furthermore, any new employee must be provided with the frequently asked questions on the day they commence work.

Further copies of the frequently asked questions can be obtained from the DIAC website at www.immi.gov.au/skilled/skilled-workers/pdf/FAQ_457_visa_holders.pdf.

These frequently asked questions cover issues such as employer's obligations to employees and their options once they are in Australia.

It is worthwhile for employers to read and understand these questions, as they are an important indication of some of the obligations attached to sponsoring workers from overseas.

Minister for Immigration 'Beefs Up' Employer Sanctions

In June 2007, the Minister for Immigration tabled in the Australian Parliament laws which clarify and strengthen the obligations of sponsors who employ overseas workers.

This legislation complements laws passed allowing for criminal sanctions against employers who breach the Migration Act. A major emphasis for employers should be on complying with the undertakings made to DIAC when sponsoring overseas workers.

It is important that, as employers, Australian companies do not jeopardise their rights to sponsor people in the future, or put themselves at risk of prosecution. The best way to avoid this is for employers to:

- ✓ Ensure they understand their obligations to DIAC as well as under Work Choices and to

the Taxation Office; and

✓ Carefully check each employee's entitlement to work. This may change depending on the visa which your employees hold.

DIAC has set up an Entitlement Verification Online system that allows employers to enter the details of an employee and determine whether or not they are eligible to work.

Any employer sponsoring overseas workers should take a moment to check the visas of those workers and the related work rights and limitations. Snedden Hall & Gallop can provide expert advice in this area if you have any questions or concerns or are confused over your employees' entitlement to work.

Permanent Residency

After 2 years, subclass 457 visa holders in Australia can follow a pathway for permanent residency. If their employer is willing to sponsor them, employees can apply under the Employer Nomination Scheme (ENS) for permanent residency on-shore. This can include their family members, but only if the employer is willing to sponsor them all.

The employer must show that they will be able to continue to pay the required salary level, that the position is for at least three years full-time and that it would be of benefit to Australia. "Benefit" is usually demonstrated in terms of the opportunities that the position will create for Australian citizens or permanent residents.

Where employers are located in regional Australia, it is possible to gain some concessions in the program by applying under the Regional Sponsored Migration Scheme (RSMS).

Further, it is possible for some overseas skilled workers to access permanent residency under the ENS or RSMS directly, without first having held a subclass 457 visa.

The various options are well worth exploring and our experienced Migration Team would be delighted to take you through how they affect you.

**The new citizenship rules.
Do you understand them?**

Minimum Salary

An important element of the Subclass 457 Visa scheme is the Minimum Salary Level (MSL) which must be paid to Subclass 457 visa holders. The MSL will depend on what legislation was in force at the time an employer entered sponsorship arrangements with its employee. For example, the current MSL is \$41,850 for most occupations (and approximately \$57,000 for IT related occupations). The MSL is based on a 38 hour working week. Where employees work less than 38 hours in a week an employer is not entitled to decrease their salary below the MSL. However, if an employee works over 38 hours then their salary needs to be increased pro rata.

The MSL must only relate to the salary paid to the employee. Superannuation must be paid in addition to this at the legislated rates, and any inclusions such as rent, motorcar, food allowance, et cetera, cannot be deducted from the MSL.

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This newsletter is intended as information only and should not be construed as legal advice. For expert advice contact Snedden Hall & Gallop on 6285 8000.