

# Fact Sheet

## Standard Business Sponsorship obligations, monitoring and sanctions

Businesses approved as sponsors under the Temporary Skills Shortage (subclass 482) visa programme administered by the Department of Home Affairs (the Department) are required by law to meet the sponsorship obligations outlined in the *Migration Act 1958 (the Act)*.

Some obligations apply beyond the term of sponsorship approval or after the sponsored person ends their employment with the sponsor.

A full list of sponsorship obligation timeframes is outlined in **Appendix A**.

### Non-discriminatory recruitment practices

All standard business sponsors who lawfully operate businesses in Australia must not engage in, or have engaged in, discriminatory recruitment practices that adversely affect Australian citizens, or any other person based on their visa or citizenship status.

Sponsors should keep documents to demonstrate the recruitment processes of their subclass 457 holders did not discriminate based on citizenship or visa status.

Discriminatory recruitment practices could include:

- only interviewing or hiring persons of a certain citizenship or visa status
- only advertising a position via a medium that is only accessible by persons of a certain citizenship, for example foreign language newspapers or websites used solely by persons outside Australia
- not having a competitive recruitment process that might adversely affect persons of a certain citizenship or visa status, and does not adequately test the Australian labour market.

### Ensuring equivalent terms and conditions of employment

Sponsors must ensure the terms and conditions of employment for the primary sponsored person is no less favourable than:

- those provided to an Australian citizen or permanent resident performing equivalent work in the same location.<sup>1</sup>
- the terms and conditions that were nominated and approved by the Department for the sponsored person.

### Paying return travel costs

Sponsors must pay 'reasonable' travel costs when requested in writing to enable the sponsored person and their sponsored family members to leave Australia. Reasonable costs include:

- travel from the sponsored person's usual place of residence in Australia to their place of departure from Australia
- travel from Australia to their passport country

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<sup>1</sup> This obligation does not apply if the annual earnings of your sponsored person's salary are equal to, or greater than \$250,000

- economy class air travel or, where that is not available, a reasonable equivalent.

Travel costs must be paid **within 30 days** of receiving the request.

### Costs to locate and remove unlawful non-citizens

In the event a sponsored person or any of their sponsored family members does not hold a valid visa, the sponsor may be required to pay the costs incurred by the Commonwealth in locating and/or removing them from Australia, less any travel costs already paid for sponsored persons to leave Australia.

### Providing training

Sponsors must keep records of training provided to Australian citizens and permanent residents in accordance with specified 'training benchmarks'. This obligation must be met every 12 months from the date of most recent approval as a sponsor, where there is a sponsored person employed for any part of that 12 month period.<sup>2</sup>

### Keeping records

Sponsors must keep records in a reproducible format that show compliance with sponsorship obligations — such as the written employment contract and a record of tasks performed by the sponsored person. The following records must be capable of verification by an independent person:

- notifications made to the Department
- tasks performed by the sponsored visa holder and their location
- money paid to a primary sponsored person (for example wages, travel costs)
- money dealt with on behalf of a sponsored person
- documents relating to meeting the training obligation
- any return travel costs paid.
- non-monetary benefits provided to the sponsored visa holder
- a record of the terms and conditions that apply to an equivalent worker
- employment contract for each sponsored visa holder
- records required to be kept under any applicable work agreement.

The Department's position is that cash payments are generally not capable of being verified by an independent person. To avoid any doubt, sponsors are strongly encouraged to use salary payment methods which clearly meet the record keeping requirements, such as electronic funds transfers or cheques.

All records that show compliance with the sponsorship obligations must be kept in addition to records required under any other Commonwealth, state or territory law.

### Providing records and information

If requested, certain records or information to the Department must be provided in the manner and timeframe requested. These include records or information that sponsors are required to keep:

- under a law of the Commonwealth, state or territory laws (for example, PAYG payment summaries)

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<sup>2</sup> It is anticipated that these arrangements will remain in place until the introduction of a new nomination training contribution charge, known as the Skilling Australians Fund (SAF) levy, which will be paid by sponsors at nomination stage.

- under the obligation to keep records (for example, record of the sponsored person’s request to pay return travel costs)
- under the terms of the labour agreement (if the sponsor is a party to a labour agreement).

### Cooperating with inspectors

Sponsors must cooperate with inspectors investigating whether:

- a sponsorship obligation is being, or has been complied with
- an illegal worker has been hired
- there are other circumstances that the Department can take administrative action for.

This includes but is not limited to:

- providing access to premises
- producing and providing documents within the requested timeframe
- not preventing or attempting to prevent, access to a person who has custody of, or access to, a record or documents
- providing officers with access to interview any person on their premises.

### Reporting changes

The Department must be informed in writing within 28 calendar days when certain events occur. This information must be sent to the appropriate postal or email address found in Appendix B. Examples of certain events include (but are not limited to):

- a change to the business name, registration, address or contact details
- change of owners / directors / principals / partners
- changes to the business structure
- the business ceases to exist as a legal entity
- insolvency / bankruptcy / receivership / liquidation / administration
- changes to the sponsored person, such as:
  - cessation of employment
  - changes in duties
  - sponsored person did not commence employment
- information regarding the training requirement

The events you must notify the Department of can vary depending on the sponsor entity type (such as a company/partnership/sole trader). For a comprehensive list of notifiable events, refer to the ‘Sponsors’ tab at <https://www.homeaffairs.gov.au/trav/visa-1/482-?modal=/visas/supporting/Pages/482/sponsorship-obligations-monitoring-sanctions.aspx>.

### Working in the nominated occupation

The sponsored person must only work in the occupation for which they were nominated. If the sponsored person will be working in a different occupation, a new nomination application must be lodged and **approved before** the sponsored person can commence working in the new occupation.

As a standard business sponsor, the sponsored person must be employed under a written contract of employment. Sponsors must keep a copy of any written contracts.

The sponsored person may be able to work for an associated entity, but they cannot work for another business, and cannot be supplied to another business. The only exception is if the sponsored person's occupation is a specified exempt occupation.

### No recovery or transfer of costs

Sponsors must not take, or seek to take, any action that results in the transfer or charging of costs (including migration agent costs) to another person, such as a sponsored person or their dependent family members. Costs that are not recoverable or transferable include all costs related to:

- recruitment of the sponsored person
- becoming or being a sponsor or former approved sponsor
- nomination and migration agent costs.

For a comprehensive list of costs that are not recoverable or transferable, refer to the 'Sponsors' tab the 'Sponsor obligations' page.

<https://www.homeaffairs.gov.au/trav/visa-1/482-?modal=/visas/supporting/Pages/482/sponsorship-obligations-monitoring-sanctions.aspx>.

### 'Paying for visa sponsorship' conduct

It is illegal to ask for, receive or provide a benefit in return for visa sponsorship or associated employment.

See: <https://www.homeaffairs.gov.au/FAQs/Pages/what-is-payment-for-visas.aspx>

### Sanctions for meeting sponsorship obligations

The Department takes any abuse of the subclass 457/TSS programme seriously. If sponsorship obligations are not met, the Department may take one or more of the following sanction actions:

#### **Administrative**

- Barring the sponsor from sponsoring more people for a specified time, or from applying for further approval to be a sponsor.
- Cancelling sponsorship agreements.

#### **Enforceable undertaking**

You could be requested to enter into an enforceable undertaking. Enforceable undertakings require you to promise, in writing, to undertake to complete certain actions to demonstrate that the failures have been rectified and won't happen again.

#### **Civil**

- Issuing an infringement notice of up to AUD12,600 for a body corporate and AUD2520 for an individual for each failure.
- Applying to a court for a civil penalty order of up to AUD63,000 for a corporation and AUD12,600 for an individual for each breach

## **Other possible action**

Sanction action can also be taken by the Department if:

- False or misleading information was provided by the sponsor to the Department or to the Administrative Appeals Tribunal.
- The criteria for approval as a standard business sponsor or for a variation of a term of that approval are no longer satisfied.
- A court or competent authority found the sponsor contravened a Commonwealth, state or territory law.
- The primary sponsored person contravened a law relating to licensing, registration or membership needed to work in the nominated occupation.

## Appendix A — Obligation timeframes

Not all sponsorship obligations cease when the sponsored 457/TSS visa holder stops working for the sponsor. The below table outlines when each obligation applies:

Obligation	Timeframe
Obligation to cooperate with inspectors	<b>Starts:</b> the day the sponsorship is approved <b>Ends:</b> five years after the sponsorship ceases
Obligation to ensure equivalent terms and conditions of employment	<b>Starts:</b> when the sponsored person is granted a subclass 457 / TSS visa and the nomination is approved <b>Ends:</b> when the sponsored person stops working for the sponsor, or is granted a visa other than a subclass 457 / TSS visa
Obligation to pay travel costs and enable sponsored persons to leave Australia	<b>Starts:</b> when the sponsored person is granted a subclass 457 / TSS visa and the nomination is approved <b>Ends:</b> On the day (whichever is earliest): – another sponsor has an approved nomination for the sponsored person – the sponsored person is granted another visa
Obligation to pay costs incurred by the Commonwealth to locate and remove unlawful non-citizens	<b>Starts:</b> the day the sponsored person becomes an unlawful non-citizen <b>Ends:</b> five years after the person leaves Australia
Obligation to keep records	<b>Starts:</b> the day the sponsorship is approved <b>Ends:</b> two years after the sponsorship ceases and the sponsor is no longer sponsoring anyone
Obligation to provide records and information to the Minister	<b>Starts:</b> the day the sponsorship is approved <b>Ends:</b> two years after the sponsorship ceases and the sponsor is no longer sponsoring anyone
Obligation to provide information to Immigration when certain events occur	<b>Starts:</b> the day the sponsorship is approved <b>Ends:</b> two years after the sponsorship ceases and the sponsor is no longer sponsoring anyone
Obligation to ensure primary sponsored person works or participates in nominated occupation, program or activity	<b>Starts:</b> when the sponsored person is granted a subclass 457 / TSS visa and the nomination is approved <b>Ends:</b> when the sponsored person stops working for the sponsor, or is granted a visa other than a subclass 457 / TSS visa
Obligation not to recover, transfer or take actions that would result in another person paying certain costs	<b>Starts:</b> the day the sponsorship is approved <b>Ends:</b> the day the approved sponsorship agreement is no longer in effect and the sponsor is no longer sponsoring anyone
Obligation to provide training	<b>Starts:</b> the day the business becomes an approved sponsor <b>Ends:</b> 18 March 2018 or three years after being approved as a sponsor, or six years for accredited sponsors whichever is sooner
Obligation not to engage in discriminatory recruitment practices	<b>Starts:</b> the day the business becomes an approved sponsor <b>Ends:</b> when the sponsorship ceased, or ceases