

## Sponsorship Obligations

Sponsorship obligations apply to all sponsors of subclass 482 visa holders. They are in place to ensure that overseas skilled workers are protected from exploitation, and that the subclass 482 visa programme is being used to meet genuine skills shortages, and not to undercut local labour wages and conditions.

Some obligations apply beyond the term of sponsorship approval.

As a sponsor you must:

- cooperate with inspectors and the Department for checks on compliance
- ensure equivalent terms and conditions of employment
- pay travel costs to enable sponsored people to leave Australia
- pay costs to remove unlawful non-citizens
- keep and maintain records of employment for the 482 visa holder(s)
- provide records and information to the Minister
- tell us when certain events occur
- ensure the visa holder participates in the nominated occupation, program or activity
- not recover from, transfer or charge certain costs to another person
- provide training to Australians and permanent residents
- not engage in discriminatory recruitment practices.

### Obligation to cooperate with inspectors

You must cooperate with the Department and inspectors appointed under the Migration Act 1958 (the Act) who are investigating whether:

- a sponsorship obligation is being, or has been, complied with
- you have hired an illegal worker
- there are other circumstances in which the Department could take administrative action.

This obligation:

- starts on the day the sponsorship is approved or work agreement commences
- ends five years after the day the approved sponsorship ends or work agreement ceases.

Cooperating with inspectors can include (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.

### Obligation to ensure equivalent terms and conditions of employment

The terms and conditions of employment for the person you have sponsored must be:

- no less favourable than those you provide, or would provide to an Australian performing equivalent work in the same location



- the terms and conditions of employment for the person you have sponsored must be no less favourable than the terms and conditions you advised you would be providing to the sponsored person at the time of the nomination.

This obligation does not apply to a sponsor if the annual earnings of their sponsored visa holder are equal to, or greater than AUD250,000.

If you sponsor someone under a work agreement, you must ensure that the people you sponsor are paid the amount specified in the work agreement.

### **Obligation to pay travel costs to enable sponsored people to leave Australia**

The sponsor must pay reasonable and necessary travel costs to enable the sponsored person and their sponsored family members to leave Australia if:

1. the sponsored person request in writing; or
2. the Minister requests on behalf of the sponsored person in writing.

The costs will be considered reasonable and necessary if they include all of the following:

- travel from the sponsored persons usual place of residence in Australia to their place of departure from Australia
- travel from Australia to the country (for which the sponsored visa holder holds a passport) and intends to travel to
- 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.

You will only be required to pay return travel costs once. If a sponsored person returns to Australia (whilst holding the visa for which you sponsored them) after you have paid their return travel costs, you will not be required to pay their return travel costs again.

### **Obligation to pay costs incurred by the Commonwealth to locate and remove unlawful non-citizens**

In the event a primary sponsored person (or any of their sponsored family members) becomes an unlawful non-citizen, you might be required to pay the costs incurred by the Commonwealth in locating and/or removing the primary or secondary sponsored persons from Australia.

You might be liable to pay the Commonwealth the difference between the actual costs incurred by the Commonwealth (up to a maximum of AUD10,000) less any amount which might have already been paid under the obligation to pay travel costs to enable sponsored persons to leave Australia (see 'Obligation to pay travel costs' above).

This obligation starts on the day the person you sponsored becomes an unlawful non-citizen. It ends five years after they leave Australia. This means that we might, up to five years after the person you have sponsored has left Australia, give you a letter requiring payment of the costs that the Commonwealth paid to locate and remove the person you sponsored prior to their departure from Australia.

### **Obligation to keep records**

You must keep records that show your compliance with your sponsorship obligations. All of the records must be kept in a reproducible format and in a manner that is capable of verification by an independent person.

Records that must be kept, in addition to records that must be kept under other Australian Government, and state or territory laws, include the following:

- written requests for payment of outward travel costs for a sponsored visa holder or their family, including when the request was received
- how the outward travel costs were paid for a sponsored visa holder or their family, how much was paid, for whom they were paid, and when they were paid
- notifying us of an event required to be reported to us, including the date and method of notification and where the notification was provided
- tasks performed by the sponsored visa holder in relation to the nominated occupation and where the tasks were performed
- money paid to the sponsored visa holder (unless the sponsored visa holder earns over AUD250,000)
- money applied or dealt with in any way on behalf of the sponsored visa holder or as the sponsored visa holder directed (unless the sponsored visa holder earns over AUD250,000)
- non-monetary benefits provided to the sponsored visa holder, including the agreed value and the time at which, or the period over which, those benefits were provided (unless the sponsored visa holder earns over AUD250,000)
- if there is an equivalent worker in your workplace, a record of the terms and conditions that apply to the equivalent worker, including the period over which the terms and conditions applied (unless the sponsored visa holder earns over AUD250,000)
- the written contract of employment each sponsored visa holder is engaged under
- if you were lawfully operating a business in Australia at the time of your approval as a standard business sponsor or have varied the terms of your approval as a standard business sponsor—how you are complying with the training obligation
- if you are a party to a work agreement, the records required to be kept under the work agreement.

### **Obligation to provide records and information to the Minister**

You must provide records or information, if they are requested by a departmental officer that goes to determining whether:

- a sponsorship obligation is being or has been complied with, and
- determining whether other circumstances, in which the Minister might take administrative action, exist or have existed,
- in the manner and timeframe requested by the Department.

The departmental officers might ask you in writing to provide records or information which relate to your sponsorship obligations, and any other matters that relate to your sponsorship of TSS visa holders. You must provide the records or information requested if it is a record or information that:

- you are required to keep under Commonwealth, state or territory law
- you have an obligation to keep as a sponsor.

### **Obligation to provide information to the Immigration Agent when certain events occur**

You must tell us in writing when certain events occur, so we can notify the Department of such changes.

Examples of some events include changes to your:

- legal name
- trading name
- registration details
- business structure
- ongoing communication contact
- owners/Directors/Principals/Partners

- business address

You must also notify the Department of business changes such as:

- insolvency / bankruptcy / receivership / liquidation / administration • cessation of existence as a legal entity or changes to the sponsored person, such as:
- cessation of employment
- changes in duties
- sponsored person did not commence employment • information regarding the training requirement.

Please notify us as soon as possible in regards to any changes of circumstance for the business and/or the visa holder.

### **Changes or events that all sponsors must notify within 28 calendar days**

You must notify us within 28 calendar days if:

- the sponsored visa holder's employment ends, or is expected to end (the sponsor must tell us if the end date changes)
- there are changes to the work duties carried out by the sponsored visa holder
- you have paid the return travel costs of a sponsored visa holder or any of their family members in accordance with the obligation to pay return travel costs
- you have become insolvent within the meaning of subsections 5 (2) and (3) of the Bankruptcy Act 1966 and section 95A of the Corporations Act 2001
- your business ceases to exist as a legal entity.

### **If your business is a company**

A company must also notify us of the following changes or events within 28 calendar days if:

- a new director is appointed
- an administrator is appointed for the company under Part 5.3A of the Corporations Act 2001
- the company resolves by special resolution to be wound up voluntarily under subsection 491(1) of the Corporations Act 2001
- a court has ordered that the company be wound up in insolvency under Part 5.4, or on other grounds under Part 5.4A, of the Corporations Act 2001
- a court has appointed an official liquidator to be the provisional liquidator of the company under Part 5.4B of the Corporations Act 2001
- a court has approved a compromise or arrangement proposed by the company under Part 5.1 of the Corporations Act 2001
- the property of the company becomes subject to a receiver or other controller under Part 5.2 of the Corporations Act 2001
- procedures are initiated for the deregistration of the company under Part 5A.1 of the Corporations Act 2001.

### **Obligation to ensure primary sponsored person works or participates in nominated occupation, program or activity**

You must ensure that the person you have sponsored participates only in the occupation for which you nominated them. You must also ensure that the sponsored person works in their nominated occupation.

If you want to engage a visa holder for a different occupation, you must lodge a new nomination application. This obligation starts on the day the person you have sponsored is granted a visa. If they already hold a visa when you nominate them, your obligation starts on the day the nomination is approved.

If you are a standard business sponsor, you must employ the person you have sponsored under a written contract of employment. They cannot work for another business, and you cannot supply them to another business. If you were lawfully operating a business in Australia at the time you were approved as a standard business sponsor, the person might work for an associated entity.

You cannot engage in activities related to the recruitment or hire of the sponsored visa holder to another business unless it is an associated entity and you lawfully operated a business in Australia at the time you were approved as a standard business sponsor (or at the time the terms of your approval were last varied).

The only exception to this rule is if the sponsored visa holder's occupation is an exempt occupation as specified below:

<b>Column 1 Occupation</b>	<b>Column 2 ANZSCO Code</b>
Chief Executive or Managing Director	111111
Corporate General Manager	111211
General Medical Practitioner	253111
Resident Medical Officer	253112
Anaesthetist	253211
Specialist Physician (General Medicine)	253311
Cardiologist	253312
Clinical Haematologist	253313
Medical Oncologist	253314
Endocrinologist	253315
Gastroenterologist	253316
Intensive Care Specialist	253317
Neurologist	253318
Paediatrician	253321
Renal Medicine Specialist	253322
Rheumatologist	253323
Thoracic Medicine Specialist	253324
Specialist Physician nec	253399
Psychiatrist	253411
Surgeon (General)	253511

Cardiothoracic Surgeon	253512
Neurosurgeon	253513
Orthopaedic Surgeon	253514
Otorhinolaryngologist	253515
Paediatric Surgeon	253516
Plastic and Reconstructive Surgeon	253517
Urologist	253518
Vascular Surgeon	253521
Dermatologist	253911
Emergency Medicine Specialist	253912
Obstetrician and Gynaecologist	253913
<b>Column 1 Occupation</b>	<b>Column 2 ANZSCO Code</b>
Ophthalmologist	253914
Pathologist	253915
Diagnostic and Interventional Radiologist	253917
Radiation Oncologist	253918
Medical Practitioners nec	253999

### Obligation to not recover, transfer or change charge certain costs to another person

You must not take any action or seek to take any action that would result in the transfer or charging of costs (including migration agent costs) to another person, such as a sponsored visa holder or their sponsored family members. This includes costs that relate to:

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

Sponsors are also required to pay certain costs associated with becoming a sponsor or lodging a nomination and must not pass these costs, in any form, onto another person. These include:

- cost of sponsorship and nomination charges
- migration agent costs associated with the lodgement of sponsorship and nomination applications
- administrative costs and any sundry costs an employer incurs when they conduct recruitment exercises, including:
  - recruitment agent fees
  - migration agent fees
  - the cost of job advertising
  - screening of candidates, short listing, interviews and reference checks
  - salaries of recruitment or human resource staff

- the cost of outsourcing background checks, police checks and psychological testing where they relate to an employer determining an applicant's suitability for the position
- responding to queries for prospective candidates, and advising unsuccessful applicants
- travel costs for the sponsor to interview and/or meet the applicant either overseas or in Australia.

### Obligation to provide training to Australians and permanent residents

If you are a standard business sponsor and you lawfully operated a business in Australia at the time you were approved as a standard business sponsor (or at the time you had your terms of approval varied). You must contribute to the training of Australians by either:

- spending an equivalent of at least two per cent of your payroll in payments to an industry training fund that operates in the same or related industry as you
- spending an equivalent to at least one per cent of your payroll in the provision of training to employees of your business who are Australian citizens or Australian permanent residents.

The obligation begins on the day you are approved as a sponsor. You must meet this obligation in each 12 month period within which you employ a sponsored visa holder (including if the sponsored visa holder is not employed by you for the full twelve months). Where your approval as a standard business sponsor is varied, you must meet the training requirement if you employ one or more primary sponsored persons.

Please note that the Skilling Australian Fund (SAF) charge will commence on 12 August 2018. The SAF charge will repeal the aforementioned training benchmark requirements that sponsors are expected to meet.

### Skilling Australian Fund

The amount of charge payable is specified by the Migration (Skilling Australian Funds) Charges Regulations 2018 ('Migrations Regulations') as follows:

Visa Type	Annual turnover: less than AUD10 million dollars	Annual turnover: AUD10 million dollars or more
<b>Temporary Visa Nominations</b> (i.e. nominations of holders of subclass 457 and subclass 482)	\$1,200 per year of the proposed visa period.	\$1,800 per year of the proposed visa period.
<b>Permanent Visa Nominations</b> (i.e. nominations of holders of subclass 186 and subclass 187)	\$3,000 (one-off payment) per nomination	\$5,000 (one-off payment) per nomination

### Obligation not to engage in discriminatory recruitment practices

If you are a standard business sponsor who lawfully operates a business in Australia, you must not engage in, or have not engaged in, discriminatory recruitment practices that adversely affect Australian citizens, or any other person, based on their visa or citizenship status.

You should keep documents on hand that demonstrate that the recruitment process in relation to a TSS visa holder did not discriminate based on citizenship or visa status.