

## CHAPTER 4 – SPONSORSHIP REQUIREMENTS AND SPONSORSHIP OBLIGATIONS

### BACKGROUND

- 4.1 Employers who bring overseas workers to Australia do so on the basis that they cannot find a suitable Australian worker to do the work and it would have an impact on their business to leave that position unoccupied. Therefore they obtain a direct economic benefit from the provisions which allow them to bring in an overseas worker. They are the main beneficiary of such arrangements, although there are also indirect economic benefits that the whole community shares in, as a result of increased economic activity. For other visas the Australian community benefits through the temporary entrant's participation in community life (for example, in the case of the Special Program and Religious Worker visas) or Australia's place in the world is enhanced through the temporary entrant's service in Australia (for example, in the case of the Foreign Government Agency visa).
- 4.2 Temporary residence policy therefore expects that employers of temporary residents will bear any costs associated with them and to plan for these costs when making a decision to sponsor an overseas worker. When undertaking to sponsor someone, a sponsor needs to take into account the fact that employing an overseas worker will involve longer lead times and greater expense (for example in terms of recruitment, travel and relocation costs) than employing a local employee; it would not normally make sound business sense to employ an overseas resident. Because temporary residents may not access Australia's health or welfare system, employers of overseas temporary workers must also take on responsibility in respect of health costs and other costs normally covered by these systems. The sponsor may, of course, have whatever arrangements they consider appropriate between themselves and the overseas worker in relation to these unknown costs, for example, they may require the overseas worker to take out private health insurance or they may have a contract to recover any costs from them if they arise.
- 4.3 Sponsorship arrangements are the means by which the employers of overseas residents become responsible for any costs associated with those residents.
- 4.4 'Sponsorship' is a legally defined term, which means an undertaking to sponsor an applicant. In broad terms a sponsor for temporary residence accepts responsibility for:
- all financial obligations to the Commonwealth incurred by the applicant arising out of the applicant's stay in Australia;
  - compliance with all relevant legislation and awards in relation to any employment entered into by the applicant in Australia; and
  - compliance by the applicant with the conditions under which the applicant was allowed to enter Australia.
- 4.5 Sponsorship benefits the sponsored person, the sponsoring body and the Australian community as a whole by offering a degree of protection and certainty to all concerned. The purpose of sponsorship for temporary resident visa applicants is to ensure that:
- there are arrangements in place to ensure that the employer covers the costs associated with the sponsored temporary residents, rather than the Australian community;
  - all relevant Australian legislation, particularly in relation to employment

of overseas residents in Australia is complied with;

- overseas temporary workers are not subject to exploitation because of their vulnerable position as an temporary resident; and
- visa holders comply with the visa conditions under which they were allowed to enter Australia.

4.6 Sponsorship is thus an integral element of the five policy parameters outlined in Chapter 2. This Chapter seeks to refine the sponsorship regime within those parameters to achieve a regime that is clear and flexible and in tune with today's environment.

### Current Arrangements

4.7 The current arrangements for ensuring that the Australian community does not bear the cost of bringing overseas residents to Australia are the following:

- Temporary business entry sponsors (for subclass 457 visa applicants) are required to sign an undertaking to be responsible for all salary, taxation, superannuation insurance etc costs, for the departure arrangements and costs, any medical and hospital costs and any claims against the social security system.
- For other temporary resident visas, the sponsor undertakings vary but none are as comprehensive as the ones for temporary business entrants.
- The sponsorship arrangements for sponsored business (subclass 457) entrants are also different from those for other temporary resident visas – for example, under the business sponsor (subclass 457) arrangements a sponsorship can be valid for more than one position and there is provision for pre-qualified sponsorship status. These arrangements are discussed in more detail in Chapter 5.

- For some temporary resident visas there is no sponsorship requirement and no employer undertakings; in some cases this reflects the nature of the visa and in other cases it reflects the short period of stay for the visa. Sponsorship is not generally required for periods of stay less than three months although there are some exceptions to this general rule (for example, medical practitioners, religious workers and certain persons working in the entertainment industry are required to be sponsored regardless of period of stay). A summary of where sponsorship is required under current arrangements is at Appendix L.
- In some cases there is no formal sponsorship requirement, yet the Australian party must undertake to provide certain forms of support for the temporary resident, similar to sponsorship undertakings. In one case there is a 'nomination' rather than a sponsorship. These undertakings serve the same function as a sponsorship but are less formalised.
- There are health checks for the visa applicants – these seek to identify those persons who are likely to require expensive medical attention while in Australia, who could compete with Australians for scarce medical treatment facilities eg dialysis, or who have a communicable disease that could put the Australian community at risk. Full medical checks are not required for all visa applicants and streamlined processing arrangements are in place for the business visas (compared with the other temporary resident visas). Health checks are usually not required for short periods of stay although they can be requested if there are indications that they should be done or in certain situations, for example, where the visa applicant will be working in a hospital. The arrangements for assessing all temporary entrants have been subject to a recent departmental review.

- 4.8 In summary, the requirements to be approved as a sponsor, the undertakings required of the sponsor and the sponsorship approval processes differ for different visas. The differences do not necessarily reflect different policy objectives but seem to have resulted from sponsorship requirements for different visas drifting apart over time. Some of the differences reflect the considerable change following the review of visas for business people and highly skilled specialists (chaired by Neville Roach AO) in 1995.
- 4.9 As it is a fundamental concept in temporary residence policy, sponsorship needs standardisation across categories to the extent possible. This is consistent with DIMIA's strategic plan (see paragraph 1.36). Issues with the current arrangements include the following:
- the sponsor undertakings are not comprehensive for temporary resident visas other than the temporary business visa;
  - the sponsor undertakings are not standardised and this leads to some client confusion;
  - much of the inconsistency flows from the fact that some visas have been recently reviewed and others not, rather than any deliberate policy objective;
  - there are some difficulties with enforcing some of the sponsorship undertakings, for example recovering debts incurred by the visa holder, and recovering debts that are incurred by all Government agencies;
  - monitoring of sponsor undertakings has not been as comprehensive as it could have been;
  - there is no formal monitoring regime for visas other than the temporary business entrants – monitoring is less formal and systematic;
  - some of the sponsorship undertakings are not explicit enough although they have been made more explicit by some recent changes. Nevertheless it is still doubtful if all employers fully understand what the undertakings are intended to cover – for example, “obligations to the Commonwealth” is intended to covers costs such as detention and removal costs if the employee were to become an unlawful non-citizen but are not intended to cover private debts that the visa holder might incur eg fines;
- because these undertakings are vaguely stated they could invite litigation if DIMIA tried to enforce them. The broad nature of these undertakings – as currently expressed – might also be seen by the community as unreasonable;
  - there is confusion about whether the sponsorship undertakings cover family members;
  - the sponsorship obligations are not very prominent in the sponsorship application and this may create the impression that they are not that important;
  - visa applicants are not made aware of the undertakings that the sponsor has made in relation to them and, even where they may be aware of the sponsor undertakings, visa applicants are not aware of what to do if any of the undertakings are broken; and
  - the sponsorship undertakings continue even if the employee leaves the employment of the sponsor – in theory when a sponsored employee leaves the employment of their sponsor, the sponsor could continue to be held responsible for all resulting compliance, detention and departure costs, as well as any other debts incurred to the Commonwealth.
- 4.10 Many of these shortcomings can be addressed with relatively minor refinement of the current arrangements, which are discussed throughout this chapter. Standardisation of sponsorship arrangements involves a number of aspects:
- standardisation of the requirement for a sponsorship;

- standardisation of sponsorship undertakings to reflect the appropriate role of sponsors;
- standardisation of application forms; and
- standardisation of fees and charges.

4.11 Submissions to the Review were generally supportive of a more standardised approach to sponsorship:

*...where there is an Australian employer or Australian connection, the legislative framework should be rationalised so as to require all temporary residents to be sponsored and to standardise sponsorship arrangements (same form, fee and the same level of sponsorship undertakings). (Submission for The Australian Lebanese Christian Federation)*

*To simplify and reduce the number of forms, and to aid efficient processing, we support the application of the full range of sponsor obligations...as part of a standard range of obligations...We support the inclusion of all visa subclass 457-type undertakings in a standard set of obligations, as these undertakings apply whenever the applicant enters Australia for the primary purpose of engaging in work. (Submission from the Vietnamese Community in Australia)*

4.12 However there were reservations expressed about sponsorship requirements for short stay visas:

*MIA submits that there is no need to introduce sponsorship requirements for short stays (less than 3 or 4 months) for any temporary residence sub-class. Again we feel that it is important to lessen documentation requirements, especially in bona-fide cases. A typical example is where a major*

*employer...needs the appropriately qualified person in Australia in 24 hours. Introduction of short stay sponsorship requirements will make such situations impossible to deal with. (Submission from the Migration Institute of Australia)*

*It does seem unnecessary for very short periods to require sponsorship (ie less than 1 month)...[exemptions for short stay temporary residents would] allow for applicants to take responsibility for expenses etc and I would support this approach. (Submission from CSIRO)*

4.13 This report proposes that the sponsorship undertakings currently in use for temporary business entrants be used as a model for other temporary residence sponsorship arrangements, with some modification (see paragraphs 4.56–4.58 below).

**Major Issues Raised**

4.14 The sponsorship issues that need to be considered are the following:

- When should sponsorship be required (ie for which visa applicants)?
- Who should be able to sponsor a visa applicant?
- What should sponsor undertakings cover?
- How to ensure compliance with sponsor undertakings?
- What sanctions should apply to those who do not adhere to their undertakings?
- How can administrative efficiency be improved?

**WHEN SHOULD SPONSORSHIP BE REQUIRED?**

4.15 Sponsorship should generally be required for all temporary residents – there is no policy basis for exemption from the sponsorship requirement for most of the

situations where it is currently not required. Broadening of the sponsorship requirement in this way would contribute to enhanced integrity in the program, without increasing processing burdens for many applicants.

- 4.16 There would need to be some exceptions to this general rule. These would be for the following:
- Short stay streamlined visas, in particular the short stay business visas, where a sponsorship requirement would add to the difficulty of processing such applications quickly;
  - persons covered by Labour Agreements and Regional Headquarters Agreements for whom there are comparable requirements built into the agreements; and
  - persons whose entry is governed by international diplomatic conventions – including persons accorded privileges and immunities but who are not eligible for a diplomatic visa and domestic workers for diplomatic and consular staff.

4.17 ***RECOMMENDATION:***

*That sponsorship be a requirement for all temporary residents except under the short stay business visas or where there is an agreement in place which obviates the need for a sponsorship.*

- 4.18 The responsibilities for sponsors who will be the visa holder’s employer will be different from those that apply to sponsors who will not be the employer of the visa holder. For example:
- where the sponsor will be the employer of the visa holder, they should be required to undertake to employ the employee in accordance with Australian salaries and working conditions; and
  - where the sponsor will not be the visa holder’s employer, this requirement would be inappropriate; instead they should be required to ensure that there

are appropriate arrangements for the visa holder’s accommodation and support during their stay in Australia (either directly or by providing them with the money to arrange it themselves).

- 4.19 Other sponsor undertakings however, should be identical, so that the sponsor:
- undertakes to be responsible for the health and medical expenses of the visa applicant;
  - undertakes to notify DIMIA if the visa holder leaves the employment of the sponsor or, where not employed, ceases the activities that were the basis for the visa etc.
- 4.20 It should be possible to achieve a standardised sponsorship form to be used by all temporary resident sponsors. Even where the nature of the undertakings will be different depending on whether the sponsor will be employing the visa applicant or not (as in the above example), the undertakings could provide for one or the other situation as appropriate.

4.21 ***RECOMMENDATION:***

*That there should be a standardised sponsorship, involving standardised undertakings, for temporary resident visa sponsors.*

- 4.22 The proposal to extend the sponsorship requirement to all temporary resident visas will mean that some visa applicants will be subject to a sponsorship requirement instead of the less formal undertakings and other arrangements that currently apply. These include:
- representatives of overseas news organisations where the organisation has no Australian presence – under the proposed sponsorship requirement, it is proposed that the overseas organisation be required to undertake the same responsibilities and undertakings as an Australian organisation sponsoring such

a person. This is also consistent with the report's recommendations broadening the definition of 'who can sponsor' as discussed below.

- visiting academics – currently there is no requirement for any of these to be sponsored, yet they have a strong association with a particular institution who has invited them to undertake or observe some research at their institution. While Australia benefits from these collaborative research activities, there are also significant benefits from all other temporary resident visa arrangements which are not exempt from sponsorship requirements.
- Special Program visa applicants – there are no sponsorship requirements for any of these although there is a nomination requirement. This Review considers that it is inappropriate to exempt these temporary residents, many of whom remain in Australia for 6–12 months, and sometimes longer, from the protections (for both the visa applicant and the Australian community) provided for in a sponsorship. A less onerous sponsorship arrangements may be appropriate (discussed further below) but the absence of sponsorship obligations is no longer considered appropriate.
- sports competitors who intend to stay more than three months who are 'internationally known' (or associated with someone who is) and have a record of participation in international events – few sports persons of such calibre would remain in Australia more than three months however where they did intend to do so a sponsorship would be appropriate, by an overseas person or organisation if there was no appropriate Australian promoter or contact.
- domestic workers who are working for an overseas executive (subclass 427) where the overseas worker did not have a sponsor – under current arrangement

where the executive has been sponsored, the domestic worker is also required to be sponsored by the same sponsor. But where the executive has not been sponsored, the executive themselves must provide undertakings that are consistent with the sponsorship obligations. These undertakings are consistent with sponsorship undertakings.

- Supported Dependant visa applicants – it is proposed that this visa be moved to the Family Program and that the issue of whether any sponsorship is appropriate and, if so, what undertakings it might entail, be considered in the context of family program policy objectives and policy settings.
- occupational trainees – these are currently subject to a nomination requirement which involves similar responsibilities for the nominator as a sponsorship although the current arrangements for nominations are less formalised than the sponsorship arrangements.
- some temporary resident visa applicants who intend to stay less than three months who are currently not required to obtain a sponsorship, but should be sponsored if they could not meet the broader availability of the short stay business visa and they apply for another Temporary Residence visa.

### Period of Stay Requiring Sponsorship

- 4.23 The visa requirements for the short stay business visa (and for certain countries the electronic equivalent visas) for stays of up to three months are quicker, cheaper, involve less processing and generally have no sponsorship requirement. In the case of electronic visas, processing is almost instantaneous and there is no application fee. As a result, few people who intend to stay less than three months apply for the other temporary resident visas.

4.24 However there may be some cases where an applicant who intends to stay less than three months is not able to meet the requirements for a short stay business visa. This may be because of doubts regarding their short-term business bona fides. If they want a visa for business purposes, they would need to apply for a temporary resident visa regardless of intended period of stay. Such applicants should be subject to sponsorship requirements. This approach is recommended for a number of reasons:

- sponsorship offers appropriate protections for visa applicants and the Australian community in relation to the entry of temporary residents;
- in the small number of cases where a short stay visa applicant cannot meet the requirements for a short stay business visa, it is considered appropriate that they be subject to greater scrutiny via a sponsorship requirement which would be consistent with the temporary business visa arrangements; and
- a standardised approach would reduce the complexity in the current sponsorship requirements where different rules apply for different periods of stay (and also for persons extending their stay onshore) resulting in client confusion and administrative inefficiency.

4.25 The temporary business entry (subclass 457) visa already has a sponsorship requirement that applies regardless of period of intended stay, as do the entertainment, religious worker and medical practitioner visas. The recommendation to extend the sponsorship requirement to all periods of stay would bring all temporary resident visas (except the short stay business visa) into alignment with these visas by requiring a sponsorship regardless of period of stay. It would also eliminate the risk of applicants understating their intended period of stay in order to fall below the threshold period for sponsorship:

*An inherent problem of any fixed and finite threshold is what to do with cases just under or just above it. Another is that thresholds tend to modify behaviour artificially and may lead to inefficiencies. If length of stay is the sole or main threshold deciding sponsorship, there will also be other problems. The costs to the Australian community, the need for the applicant to be protected, and the need to protect Australia's labour market ... do not halve just because the length of stay is halved. Indeed a short stay may well incur equally high costs for the community, and if repeated frequently may equally damage the labour market. An applicant who is on a short stay also equally needs protection from an unscrupulous sponsor, as does a longer stayer. (Submission from the Vietnamese Community in Australia)*

4.26 This proposal would also streamline visa requirements and permit clearer client information about the visa requirements that will apply to them, which will permit faster visa processing.

4.27 Under the broader use of the short stay business (subclass 456) visa – discussed in Chapter 6 – most persons who intend a short visit would be eligible for that visa, which has no sponsorship requirement and streamlined processing. The availability of that visa would address views expressed in Submissions to the Review that there is a need to have a sponsorship free visa to meet the need to travel at short notice. These sponsorship arrangements would also serve to highlight the different role of the short stay business visa from other temporary resident visas:

- the short stay business visa provides a relatively quick (and cheap) visa for the purposes of a relatively short visit to conduct some business or work-related

activities, that are unlikely to have any impact on the Australian labour market.

- other temporary resident visas are designed to provide for longer term periods of residence and where there are specific industry and labour market considerations which justify specific consideration of applications from overseas workers.

4.28 If a visa has a sponsorship requirement then it is appropriate that it be a requirement for all visa applicants, regardless of period of intended stay.

**WHO CAN BE A SPONSOR?**

4.29 In relation to who should be able to be a sponsor for a temporary resident visa applicant, the following issues arise:

- what the acceptable characteristics of a sponsor are;
- whether the sponsor should be required to be the employer in all cases where the visa applicant will be employed;
- whether overseas persons or organisations should be able to be sponsors;
- whether a visa applicant should be able to change sponsor after arrival in Australia and obtain a 'second' sponsor.

**Characteristics of a Sponsor**

4.30 A sponsor's financial standing is a major factor taken into account in assessing a temporary business entry sponsorship application. A sponsor must be able to honour their undertakings (including payment of any promised salary to the temporary entrant). In broadening the requirement for a sponsorship to most temporary resident visas, the sponsor should be required to be a person or body with good professional and financial standing (in a relevant part of the industry or community) in all cases. This requirement goes to the ability of the

sponsor to meet their undertakings as a sponsor. As recommended by the Labor Council of NSW in their submission: "A more rigorous criteria for the assessment of potential sponsors needs to be developed and implemented to ensure they are "persons of good character".

4.31 Where the prospective sponsor has previously had dealings with DIMIA in the form of prior sponsorship their immigration history should also be taken into account in assessing their application.

4.32 It is appropriate to approve a sponsorship only from a sponsor who can demonstrate that they are of good professional and financial standing, and that they have a sound immigration history if relevant.

**Does the Sponsor Have To Be the Employer?**

4.33 Most of the current temporary resident regulations require the sponsor to be the Australian employer where the temporary resident will be employed in Australia. This reflects the fact that the sponsor generally needs to be the direct employer in order to give effect to many of the sponsorship obligations, for example, to employ the overseas resident under Australian wages and conditions and to deduct appropriate taxation and superannuation payments.

4.34 This Review recommends retention of the general rule that, where the visa applicant will be employed, the sponsor should be the employer. As expressed in one submission:

*It is preferable that the Sponsor is in an Employer/relative of the visa applicant as this relationship is more likely ensures a longer lasting and more extensive commitment to the sponsored person. (Submission from Dentists Job Search)*

4.35 However this Review also recommends that there be sufficient flexibility for circumstances where this requirement would not be appropriate. Examples where the sponsor might not be the employer would be where a person:

- is not coming to Australia for employment;
- will be employed by a number of different bodies;
- is being recruited by an employment agency; or
- will be effectively self-employed (eg a rural doctor).

4.36 Submissions to the Review were supportive of a more flexible approach in relation to whether the sponsor had to be the employer of the visa applicant:

*The criteria for determining the direct employer of visa applicants is very narrow and fails to take into account the complex business structures of multinational companies. The current definition does not accommodate for groups of companies who have strategic partnerships or contractual obligations to provide a service or product. There are many instances where it is not appropriate for a visa applicant to be on the sponsoring company's payroll...By virtue of sponsoring a person, the company is accepting responsibility for the applicant through the sponsor's undertaking on form 1067, regardless of where they are paid from... Providing a full declaration regarding the nature of salary arrangements (remuneration figure, currency paid in and name of paying company), should be sufficient to demonstrate the applicant is being paid in accordance with Australian conditions. (Submission from Nortel Networks Australia)*

*...under the present guide lines the 457 business visa does not work for us. This is because as an exchange program we are very rarely the employer and under the current regulation the sponsor of the 457 business visa must also be the employer or the person responsible for paying the employees wages. Because we are currently sponsoring in excess of one hundred applicants per year and anticipate this number to be nearer two hundred per year in 2001/2002, we feel this would be unpractical. (Submission from Stabmate Staff Management)*

*In the case of visas grouped in the economic stream, the sponsor will most likely be the employer. However in nearly all other cases there is the potential for the sponsor not to be the direct employer. ..Council Exchanges, as the facilitator of the exchange, is an example of an organisation that would want to sponsor applicants without being the direct employer. ..In all cases the sponsor must have a direct relationship with the applicant to ensure that the undertakings of the sponsor can be carried out. (Submission from Council Exchanges)*

4.37 In these cases, it might be more appropriate for the person or organisation who has invited the temporary resident to Australia to be the sponsor. Policy guidance on who the sponsor should be in these circumstances would need to be provided in the sponsorship guidelines. The sponsor will not be the employer of the visa applicant in all circumstances, even though as a general rule this will be the case. There should be provision for the sponsor to

be a different person or body (in the relevant field or industry) in specified circumstances such as where the visa applicant will be working for a number of employers (only one of which will be the sponsor) or the visa applicant will be effectively self-employed (for example in the case of a rural doctor).

### Where There Is No Sponsor

4.38 Costs to the Australian community associated with the entry of overseas workers are minimised through the operation of sponsorship undertakings. However, there are some temporary resident visas for which a sponsorship requirement is inappropriate:

- situations where the visa arrangements are designed to foster good international relations by providing streamlined entry arrangements for certain persons. There are relatively small numbers of visas granted for these reasons and a sponsorship requirement would not be appropriate because of international goodwill reasons (for example, the Domestic Worker – Diplomatic or Consular visas, of which 140 were granted in 2000-01);
- visas for short visits for business and work-related purposes – the temporary business visa (short stay) (subclass 456) is exempt from a sponsorship requirement. It would not be appropriate to have a sponsorship requirement for this visa given its policy objective to provide a relatively streamlined and quick visa for short stay purposes, usually for independent business visitors.

4.39 In cases where there is no sponsorship requirement, there are still some protections for the Australian community from costs associated with overseas residents:

- Temporary residents are generally required to pay taxes on income earned in Australia – so they are contributing

towards the costs of Government services like Australian residents.

- They do not have access to social welfare benefits.
- They cannot usually access the national public health cover.
- While children and spouses can attend Australian schools and educational institutions, the State Government may, and generally does, charge them overseas student fees.
- The health checking procedures minimise the health risk associated with pre-existing medical conditions. Improved health declarations for temporary residents (emanating from the current departmental review of health processing) will assist in identifying high-risk applicants.
- Client information makes it clear that medical expenses can be high in Australia and temporary residents are advised to take out private health insurance for the duration of their stay.

4.40 Therefore the arrangements whereby certain persons, for example persons on short stay visas, can be maintained without resulting in undue risk on the Australian community.

### Sponsorship by Overseas Organisations

4.41 In some cases there is no Australian employer or Australian organisation or person that could appropriately sponsor the temporary resident, yet there is benefit to Australia from allowing that person to enter Australia temporarily. This may occur where, for example, a large overseas operation decides to open an office in Australia and wishes to bring in experienced personnel to set up the business. The option of allowing a person who has no link with the visa applicant or the relevant industry to be a sponsor is not supported, as they would not have appropriate incentives to meet the sponsorship obligations. In such circumstances, a financially sound overseas

sponsor (eg an established business) should be able to meet the sponsorship requirement. For example:

*Reputable international media and sport organisations should be given the benefit of sponsoring an overseas person for situations where there is no Australian connection. But this should be done with an undertaking from them that future sponsorships may not be granted if the visitor uses the visa inappropriately. (Submission from the Australian Lebanese Christian Federation Inc.)*

- 4.42 Under current arrangements a sports competitor who is “known internationally and having a record of participation in international events” is not required to be sponsored, regardless of their period of intended stay in Australia, whereas most other sports competitors and persons working in the sporting industry are required to be sponsored. It would be preferable to allow them to be sponsored by the sports organisation overseas with which they are affiliated, rather than having no sponsorship requirement at all.
- 4.43 Where a visa applicant has no connection with an Australian person or company and there is currently no sponsorship requirement, there should be a sponsorship requirement introduced that can be met by a financially sound overseas person or organisation.

**Changing Sponsors**

4.44 Under current sponsorship arrangements, an employee can change employers, provided that it is agreed to by DIMIA. Such a change would normally be approved provided that the second sponsor met the standard sponsorship requirements. There may be a range of reasons why the original employer-

employee relationship changed after arrival, just as occurs in the employment of Australian workers. Such matters are normally addressed through appropriate contractual relationships between the employer and the employee.

4.45 A number of submissions raised the issue of persons changing employer after arriving in Australia and the overwhelming view was that employees should not be able to move jobs if they are on a temporary resident visa:

*Penalties should occur if an individual changes sponsorship with the organization prior to the completion of sponsorship period. (Submission for Education Queensland) and*

*...the applicant after arrival has always been in a position of being able to transfer his Labour to a new sponsor without the department referring to the original sponsor to ascertain the reasons for transfer and it is left to the original sponsor to:*

- 1) Find the applicant.*
- 2) Take civil action for breach of contract. We feel that considering the amount of time and money spent in getting the applicant to Australia that there should be some sort of department arbitration before sponsorships are transferred. (Submission for the Australian Locum Medical service Pty Ltd)*

- 4.46 There would be many situations where it would not be appropriate to prevent the movement of a temporary resident to another employer, for example:
- the employment relationship does not work out (either for the employer or the employee or both) because the skills required or the work to be undertaken differs from their expectations; or

- the employer can no longer afford to employ that person.
- 4.47 It would be difficult to prescribe some situations and allow others in relation to changing employers. Moreover, any restriction from changing employer after arrival in Australia would need to recognise that an employee could overcome such a restriction by departing Australia and obtaining another visa offshore under the sponsorship of the preferred employer.
- 4.48 In addition to these practical considerations, it would not be appropriate for immigration legislation to hamper the free movement of workers, subject to normal integrity and visa requirements being met. Provided the overseas resident continues to have a sponsor to take responsibility for them and the costs associated with their being in Australia, the integrity of the sponsorship arrangements is retained. It should therefore be possible for an application for a new sponsorship visa and (where appropriate) nomination to be lodged and assessed while the visa holder is in Australia.
- 4.49 Sponsorship arrangements should continue to allow for a second sponsor to take the place of the first sponsor, and that the initial sponsor should be aware that sponsorship and visa arrangements cannot be relied on to prevent this happening. It would not be appropriate for the sponsorship arrangements to be used to prevent employees transferring to another employer provided the subsequent employer is willing to take over the sponsorship undertakings from the initial sponsor and is approved as a sponsor.
- 4.50 Instead, there should be information provided to sponsors that:
- the sponsorship regime will allow for this, and that they should therefore protect their interests through appropriate contracts with their

- employees; and also
- which of their sponsor obligations will cease if another sponsor is approved.

- 4.51 The visa application forms could also include appropriate wording that reinforces the relationship with the sponsor and the mutual obligations of the sponsor and the employee and the need to use contractual arrangements to protect their interests.

**CLIENT SERVICE AND ADMINISTRATIVE EFFICIENCY**

- 4.52 A client friendly regime is one that is clear and consistent while maintaining flexibility. Under current arrangements, there are some inconsistencies in the requirement for a sponsorship across and within visas and this causes some confusion for clients. The nature of sponsorship undertakings, which vary across visas, can also cause confusion for sponsors who sponsor people under different visas.

**Standardisation**

- 4.53 The proposed greater standardisation of the sponsorship requirement and of the sponsorship undertakings will reduce client confusion and contribute to efficiency in the administration of sponsorship arrangements. This Review also proposes standardisation of sponsorship forms and fees, which will simplify arrangements for clients and further contribute to administrative efficiency. Again, this is consistent with DIMIA's strategic plan (see paragraph 1.36). This issue is discussed in greater detail in Chapter 3.

**WHAT SHOULD SPONSORSHIP UNDERTAKINGS COVER?**

- 4.54 The issues raised in relation to sponsorship relate principally to the question of sponsor undertakings, that is, what does the sponsor undertake to do, and be responsible for, in relation to the visa

applicant. Under current arrangements the sponsorship undertakings vary:

- for the temporary business entry visa (subclass 457) – relatively comprehensive sponsor undertakings;
- for some other temporary resident visas – sponsor undertakings which are less comprehensive and not consistent with each other;
- for some other visas – requirements that are effectively sponsor undertakings without being referred to as such;
- for some visas, and some applicants within some visas – no sponsorship-like undertakings and no responsibilities placed on the employer.

4.55 The sponsor undertakings for temporary business visas are the most recently introduced (and refined) set of sponsor undertakings. These are listed at paragraph 5.46. Feedback from sponsors and DIMIA officers indicate these are working well, for example:

*We support the inclusion of all the visa subclass 457-type undertakings in a standard set of obligations, as these undertakings apply whenever the applicant enters Australia for the primary purpose of engaging in work. With appropriate wording, these undertakings can exist on the same form that deals with situations where work is not involved. (Submission from The Vietnamese Community in Australia)*

4.56 Only a few minor refinements are proposed:

- the sponsor should be required to ensure that the visa holder takes out appropriate health insurance for the duration of their period of sponsored stay and accepts financial responsibility for all medical

and hospital costs incurred in Australia that are not covered by that insurance;

- the requirement to notify DIMIA if the sponsored person ceases to be in the sponsor's service should also apply to situations where the visa applicant will not be employed (although different wording may need to be used); and
- the requirement in relation to "complying with immigration requirements" – this undertaking is currently unclear in its intention and departmental policy does not provide any guidance. This requirement should be reworded so that its meaning – that employers should not employ persons who do not have permission to work – is clear.

4.57 Subject to these refinements, the current sponsor undertakings for business entrants provide an appropriate model for other visas, which involve sponsored employees. However, where the sponsor and the visa applicants will not be in an employer-employee relationship, some of these undertakings (for example, the undertaking to abide by Australian industrial relations laws) will not be appropriate. In those cases it is important that the sponsor take on responsibility to ensure that there are appropriate arrangements made for the support of the visa applicant during their stay in Australia (including coverage of their accommodation and living expenses).

4.58 The current sponsorship undertakings for temporary business entrants work well and would be suitable for all sponsored employees, subject to minor refinement as per paragraph 4.56. Subject to appropriate modification, they also provide an appropriate model for sponsorship for those sponsors who will not be employing the visa applicant.

**HOW TO ENSURE COMPLIANCE WITH SPONSORSHIP UNDERTAKINGS**

**Awareness of Sponsorship Undertakings**

4.59 Comments raised in the consultation process made it apparent that the sponsorship undertakings are not as well understood as they could be. DIMIA's strategic plan calls for services that are simple and clear for the client (see paragraph 1.36). Stakeholder comments during this review called for the meaning of some of the sponsor obligations to be clarified, for example in relation to family members of sponsored employees or the duration of the sponsorship obligations, especially if the employee leaves the employment of the sponsor.

4.60 It is critical that sponsors clearly understand the nature of their commitments. This is fundamental to the enforceability of sponsor undertakings. Sponsor understanding of their responsibilities could be improved through clearer information for sponsors as part of the application package, and clearer wording of sponsor undertakings, and more prominent placement, on sponsorship forms. Outlining them in the letter sent to sponsors to inform them they have been approved as a sponsor could perhaps further reinforce these undertakings.

4.61 Enforceability of the sponsor undertakings is another important element of the regime. To date, sponsors have overwhelmingly abided by their undertakings so enforceability has not been a major problem. However a small number of cases where employers have sought to avoid their obligations to pay award wages and conditions have occurred. In developing the new sponsorship arrangements and the wording of the sponsorship undertakings, DIMIA should ensure to the greatest extent possible that

the undertakings are made legally enforceable. This will improve the integrity of the sponsorship process.

4.62 Awareness of the sponsor undertakings is an important element of their effectiveness and measures such as industry seminars and courses should continue to be pursued to ensure that sponsors understand the undertakings, including having them acknowledge that sanctions can be applied to those not abiding by their undertakings.

4.63 Published guidelines on approving, refusing and cancelling sponsorships would provide a firm basis for decision-making and administration and would not only provide a clearer framework for staff but also provide valuable information for clients:

*We support the development of guidelines...such guidelines, in simplified form, may be useful if they are accessible by sponsors and applicants, to aid their understanding and improve the chance of their compliance. (Submission from The Vietnamese Community In Australia)*

4.64 Enforceability of sponsor undertakings would also be enhanced by providing visa applicants with better information about the sponsor undertakings. Employees should be made aware of not only the sponsor's undertakings, including the salary and working conditions of the position as indicated in the nomination, but also the remedies if the sponsor breaches any of their undertakings. This would help to address any area of potential misrepresentation whereby the employer indicates to DIMIA an intention to pay a relatively high salary, in order to support a claim that the position is a skilled one, but subsequently pays the employee much less. This proposed approach would be consistent with an open and transparent sponsorship process, that provided all

parties acknowledge the information exchange, is in accordance with the Privacy Act. The proposed single application package (discussed in Chapter 3) is a simple approach to achieve this because visa applicants would have access to this information automatically.

- 4.65 This need for visa applicants to receive information about their employment rights was also raised in submissions to the Review:

*Many of the overseas workers are vulnerable as they are without social or professional networks that would enable them to seek assistance or representation should they stop receiving their entitlements or in more serious cases, face intimidation by their sponsor. (Submission from the Labor Council of NSW)*

- 4.66 Transparency and enforceability of sponsorship undertakings would be supported by visa applicants being provided with the details of the sponsor undertakings, including the proposed salary and work conditions included in the nomination, and information about remedies in the event of breach of any undertakings.

**Breach of Sponsorship Undertakings**

- 4.67 DIMIA's strategic plan calls for our services to be auditable. Only a handful of cases of sponsors not abiding by their undertakings come to the Department's attention each year through structured monitoring of both sponsors and temporary entrants or through third party information. This would suggest that most sponsors abide by their sponsor undertakings. However, in a small number of cases, sponsors do not abide by one or more of their undertakings, for example, in relation to paying Australian levels of remuneration.

It is critical to the integrity of the sponsorship arrangements that:

- there are mechanisms to ensure that such cases are brought to the attention of relevant agencies including DIMIA; and
- there are appropriate sanctions on sponsors who default on their undertakings.

- 4.68 It is important that all parties be aware of the consequences of not abiding by sponsorship or visa conditions. This is not always the case currently and it would appear to be a straightforward matter to ensure that information regarding the consequences of not abiding by sponsorship obligations be included in the sponsor application package.

**Monitoring of Sponsors and Sponsorships**

- 4.69 Improved monitoring of the temporary business (long stay) visa (subclass 457) was a recommendation of the Roach report (see Chapter 5) as dealing with business visa applications with a 'light touch' needs to be accompanied by a sound monitoring regime. Those visas which this review proposes to incorporate into the long stay business visa would become subject to the same monitoring regime. These arrangements, discussed in Chapter 5, involve a range of mechanisms, for example site visits and regular survey forms and reflect the large number of visas granted each year, and the need for fast processing prior to visa grant, with the emphasis on monitoring after visa grant.

- 4.70 Of the other visas in the Review:
- Special Program visas would be subject to closer scrutiny in the renewal of program status and monitoring arrangements proposed in this Report (see Chapter 9);
  - Entertainers are already closely scrutinised by employer and employee

organisations in current arrangements (see Chapter 10);

- Under the proposed arrangements in this review, Religious organisations would be subject to scrutiny as part of the arrangements for negotiating and renewing agreements and monitoring arrangements (see Chapter 11).

- 4.71 Comments in submissions suggest that stakeholders would not see extensive monitoring of all temporary residence visas as appropriate:

*In introducing monitoring DIMA must be very clear as to the objectives of the monitoring and we must not see monitoring purely for the sake of monitoring. MIA thinks care and sensitivity is needed where monitoring obligations for some forms of temporary entry are concerned. Monitoring activity may be seen to be unwarranted interference or a "big brother is watching" attitude... Extensive, compulsory monitoring has high costs attached for all concerned. (Submission from the Migration Institute of Australia)*

*I totally agree that greater emphasis must be on monitoring and sanctions rather than relying on exhaustive and time consuming checks before approval is given to grant a visa. But having said that, I would also like to stress that the monitoring process should be "self regulatory" to the extent that Migration Rules allow. In other words, monitoring should not become another "complex issue" for DIMA staff and businesses. (Submission from The Australian Lebanese Christian Federation Inc.)*

- 4.72 Because of the diverse nature of the remaining visas and their relatively small numbers, along with a clarification of sponsor obligations, it is not proposed to

introduce a formal monitoring regime for such sponsors. Informal monitoring arrangements should continue and be enhanced where possible, especially in relation to processes where adverse information or allegations are received. Issues arising in relation to particular sponsors will continue to be dealt with on a case by case basis, and the issue of the adequacy of monitoring could be revisited should the need arise. A more flexible approach like this would appear to be supported by stakeholders.

- 4.73 Monitoring arrangements send important messages to sponsors about their responsibilities and mechanisms for monitoring whether sponsors abide by their undertakings should continue to be pursued and enhanced.

### Monitoring by Other Government Agencies

- 4.74 Data access/sharing is supported by DIMIA's strategic plan which calls for decisions to be based on all relevant and necessary information. DIMIA is in a position to provide information to other government agencies to assist them in performing their functions. DIMIA obtains certain information from sponsors and visa applications during the immigration process. DIMIA has recently removed impediments to the transfer of some information by requiring sponsors and applicants to acknowledge in their applications that information may be shared between agencies. This is in accordance with the *Privacy Act 1988*. Steps are also being taken so that mechanisms, including system linkages where appropriate, are introduced to allow for regular access to such information.

- 4.75 The agencies for which transfer of this information is relevant include:
- industrial relations bodies – in relation to industrial relations matters like payment of wages at Australian levels

and appropriate working conditions. DIMIA already provides information to industrial relations bodies about breaches that DIMIA becomes aware of in this regard. In addition, DIMIA recently moved to ensure that it is legally able to pass information about every nomination for a temporary worker (that is, not just in cases of breaches) to the appropriate industrial relations body, for their monitoring purposes. Chapter 3 of this Report recommended that this information be provided to the relevant industrial relations body for every application. The industrial relations body could then do whatever monitoring and analysis it considers appropriate and advise DIMIA of any breaches of industrial relations law. This approach is supported by submissions to the Review:

*It is essential that DIMIA is able to ensure that no employer or director or any company intending to sponsor workers has participated in exploiting local or overseas workers (Submission from the Labor Council of New South Wales)*

Better links between DIMIA and industrial relations bodies will permit this. The improvement of links between DIMIA and the industrial relations bodies will also address concerns raised in the Review that visa processes should ensure that temporary resident visas:

*...are not used by employers to undermine minimum Australian wages and conditions... Without safeguards such visa holders are far more susceptible to exploitation especially if they are employed in industries where their ability to advocate is severely reduced... The CFMEU should not have to police employers who are accessing this program. (Submission from the Construction, Forestry, Mining and Energy Union)*

- the Australian Taxation Office – in relation to wages and salaries being paid to overseas workers. DIMIA obtains this information as part of the nomination process and is in a position to provide it to the ATO for their monitoring purposes, to ensure that appropriate taxation and superannuation is paid. This information could be provided to the Taxation Office for every application. The Taxation Office could then do whatever monitoring and analysis it considers appropriate and could advise DIMIA of any breaches of taxation law (if permitted by law). This would address concerns raised by the Labor Council of New South Wales about monitoring of taxation and superannuation payments to ensure that sponsors are adhering to their responsibilities;
- DEWR and DEST – in relation to information about training undertaken and training plans – this information is relevant to their monitoring of training opportunities for Australian workers. Chapter 2 discussed arrangements whereby this information would be provided to the appropriate Government department for every relevant application so that they can undertake whatever monitoring and analysis they consider appropriate and then advise DIMIA of any 'breaches' where they consider the employer did not demonstrate appropriate commitment to training Australians; and
- DEWR – in relation to information about positions sponsored and salaries being paid, for the purposes of monitoring the Australian labour market. This information could be provided as a matter of course about every application for this purpose without affecting the processing of individual applications.

4.76 Data and information transfer between DIMIA and other relevant government agencies is an important element of

monitoring and enforcing legal responsibilities in relation to temporary residents and their employers and further avenues for regular and systematic transfer, including electronically where possible, should be pursued.

- 4.77 It is key to sponsor awareness that they understand that certain sponsor information can be transferred to external agencies; sponsor information should continue to contain clear warnings about this and specific warning about information being provided to industrial relations agencies (in relation to pay and employment conditions) and the Australian Taxation Office (in relation to the sponsor undertaking to deduct taxation instalments).

### Sanctions Against Sponsors

- 4.78 There was some comment in the context of this review about the need to sanction employers who breach sponsor undertakings and DIMIA's role in this process.
- 4.79 It would be inappropriate for DIMIA to manage remedies and sanctions for breaches of some of the sponsors' undertakings, for example in relation to payment of Australian levels of remuneration or deduction of appropriate taxation payments. These are not functions that DIMIA has any responsibility for, or expertise in, and to take on these functions would duplicate the functions of other Government agencies responsible for these matters.
- 4.80 However, where DIMIA becomes aware that a sponsor is not meeting their sponsor undertakings it can take action, by refusing any visas under that sponsorship, by refusing subsequent sponsorships or by cancelling sponsorships. If a sponsorship is cancelled, visas granted in association with that sponsorship can be subject to

cancellation, so the employer would lose their overseas worker(s). The ability of DIMIA to cancel sponsorships and bar future sponsorships is a key feature of the sponsorship regime and serves to create an appropriate incentive for sponsors to abide by their sponsor undertakings. Submissions to the review support this approach:

*Monitoring and Auditing of sponsors... must be mandatory and we agree that for Businesspersons requiring ongoing access to sponsored Employees, the risk of losing the right to subsequent sponsorship is a strong incentive to comply with requirements. (Submission from Dentists Job Search)*

- 4.81 Some breaches of sponsor undertakings are relatively minor (for example a sponsor may wait several days to advise DIMIA that an employee has left their employment rather than doing so immediately as required by their undertaking); other breaches are more serious (for example, paying their overseas workers salaries that are significantly below Australian standards). The consequences of breaches are assessed on a case-by-case basis. There is a need to retain flexibility to take into account all relevant factors. For example, sponsors may breach in a relatively minor way or sponsors may have 'reformed' since they breached an undertaking and there may be good reason to believe that they would abide by undertakings in the future. However, it is considered that there should be a clear sanction for egregious breaches of sponsor undertakings. These would need to be defined, for example, a slight delay in notifying DIMIA that an employee has left a sponsor's employment, while considered to be a breach of undertaking, would not be considered a serious one. However a sponsor who pays their overseas workers third world country equivalent wages

instead of Australian standard of wages would be considered to have seriously breached a key sponsor undertaking and would be subject to sanction.

- 4.82 The main sanction for sponsors who breach their undertakings is in relation to their ability to sponsor another visa applicant. It is proposed that there be a five-year ban on sponsoring visa applicants for sponsors who are involved in serious breaches of their undertakings. There might be other options for sanctions for less serious breaches, for example, a ban for a shorter period or a limit on the number of applicants that can be sponsored. There would need to be thresholds established for each undertakings, so that it was clear which breaches, and what level of breach, would lead to the ban. These sanctions would need to be made clear to sponsors in the sponsor information. This will address calls for sanctions for sponsors who breach their undertakings:

*The Labor Council of New South Wales endorses the position contained within the Construction, Forestry Mining and Energy Union Construction and General Division's submission that DIMA needs to send a strong message to unscrupulous sponsors and that substantial penalties be introduced to penalise sponsors who breach sponsorship responsibilities. (Submission from the Labor Council of NSW).*

- 4.83 **RECOMMENDATION:**  
*That there be a five year ban on sponsoring introduced in cases of serious breaches of sponsor undertakings and that this be made clear to sponsors in sponsor information.*

## Enforcing Sponsorship Undertakings

- 4.84 The enforceability of the employer sanctions is key to their effectiveness. This issue was raised in the Review, particularly as it relates to issues such as recovery of debts, enforcing undertakings in relation to debts to State Governments and agencies etc.

*There are few mechanisms that are currently available to enforce undertakings due to the conflict between personal privacy laws, commercial reality, immigration, taxation and Australian laws in general. These problems are not unique to any particular class of visa but clearly there is greater opportunities to exploit loop holes in different categories. (Submission from Paul Ingle & Associates)*

- 4.85 In some cases enforceability of sponsor arrangements may require more specific provision in legislation. Legal advice has confirmed that there are some shortcomings in the current arrangements. The legal advice also provides clear advice about changes to certain forms and legislation to address these shortcomings. The necessary changes should be implemented to ensure that sponsor undertakings are fully enforceable.

## Cessation of Obligations

- 4.86 Under current arrangements the sponsor undertakings continue until the visa holder departs Australia (or becomes a permanent resident), even where the visa holder ceases to work for the sponsor – there is no mechanism to cease them. Some sponsors have indicated that they would like this arrangement reviewed as they do not wish to be held responsible for a visa holder whom they no longer employ:

*We would like to see reflected that once the Employer has advised DIMIA of termination of the employment relationship, the Company is no longer held responsible for the behaviour of the visa holder i.e. the only obligation here would be to pay for departure costs. (Submission from Siemens)*

- 4.87 It would not, however, be appropriate for the Australian community to subsidise any costs incurred in respect of such a visa holder.
- 4.88 Most often a visa holder leaves the employ of their sponsor with the intention of taking up a position with another organisation in Australia. Where this employer is willing to become a sponsor and is approved by DIMIA, the visa applicant can remain in Australia and the second sponsor can take over all the sponsorship undertakings. In this case most of the undertakings of the first sponsor in relation to that visa applicant cease. The sponsor should, however, still be bound by certain obligations such as to cooperate in DIMIA monitoring and auditing of sponsors and to pay any debts owed to the Commonwealth arising from the period during which they were the sponsor.
- 4.89 If however the employee leaves the sponsor, and no other sponsor takes over the sponsorship responsibilities the sponsor's undertakings continue to apply under current arrangements. There are two issues in this circumstance:
- which sponsor undertakings should continue where the employee leaves the employment of the sponsor; and
  - how to encourage the sponsor to notify DIMIA as soon as practicable that the employee has left their employment.
- 4.90 When the sponsor notifies DIMIA that the employee is no longer in their employ, certain of their sponsor undertakings should cease from that date, in particular, those in relation to:
- compliance with industrial relations laws (paying Australian wages and employing workers under Australian conditions) – it is no longer appropriate for the employer to be bound by these undertakings when there is no longer any employer-employee relationship;
  - obligations to the Commonwealth including tax instalments, superannuation deductions;
  - ensuring the employee retains necessary license, registration or membership to practice their profession or occupation;
  - responsibility to notify DIMIA of any change in circumstances.
- 4.91 However it is appropriate that the following undertakings should continue:
- responsibility for the visa holders' repatriation costs (which includes any detention, removal and deportation costs);
  - the undertaking to cooperate with DIMIA monitoring and auditing of sponsors; and
  - the need to inform DIMIA if the employee returns to the sponsor for employment or makes contact with them. They should be obliged to notify DIMIA of any contact, to advise if employment has resumed and to notify the visa holder's address if known.
- 4.92 The sponsor would also remain responsible for payment of expenses for which they have responsibility under Australian law such as workers' compensation for injuries sustained while the temporary resident was in their employ.
- 4.93 The more quickly DIMIA is able to consider a visa holder's case and initiate appropriate action the more quickly a sponsor may be relieved of their undertakings by a second sponsor or, where there is not a second sponsor, the lower the likelihood that DIMIA would incur expensive compliance action.

The current arrangements do not provide sponsors with clear incentive to notify DIMIA immediately when a visa holder ceases to work for them. However, the above proposed arrangements would improve incentives for them – it would be in the interests of the employer to notify DIMIA as soon as a visa holder leaves their employment (or ceases to be involved in the activities that were the basis of the visa application). This would minimise compliance costs for DIMIA. Where there is no new sponsor to take over the sponsor undertakings, it would be appropriate to cancel the visa and require the person to leave Australia.

- 4.94 Since a sponsor undertakes to notify DIMIA if their employee leaves their employment, any delays in advising DIMIA that a person is no longer working for them (or has ceased the activities that were the basis of the visa application) should be considered a breach of that undertaking and be taken into consideration in subsequent sponsor applications.

### Review Provisions

- 4.95 Sponsors of temporary business entrants (subclass 457) currently have a separate review right (that is, separate from the review right that the visa applicant has). There is also a separate review right for any refused nomination under these arrangements. This enables an Australian business to pursue merits review of a refused sponsorship, even if the visa applicant does not wish to do so. This separate review right was introduced to allow Australian businesses the right to access review regarding their sponsorships. This review right is only available to Australian sponsors, not overseas sponsors.
- 4.96 Notwithstanding the proposed consolidation of the sponsorship, nomination and visa application and

processing, it is proposed that these separate review rights for sponsors of temporary business entrants (subclass 457) be retained.

- 4.97 Sponsors of those visas that are to be included in the temporary business visa under this review's recommendations will have a separate review right as a result of that change. Sponsors of other temporary resident visa applicants do not have a separate review right from that of the visa applicant. Instead they have a review right through the visa applicant for any refused sponsorship. Therefore if the visa application is refused because the sponsorship is not approved, a review of the refusal of the sponsorship can be encompassed in the review of the visa application.
- 4.98 This means that if the visa applicant chooses not to pursue that review right (for example, if they decide that they no longer wish to come to Australia), the sponsor would not be able to have a refused sponsorship reviewed in their own right. In practice though, since the sponsorship is always in relation to a particular visa application, there would be no point in a sponsorship being reviewed in isolation of the visa application, for example if the visa applicant no longer had an interest in coming to Australia. In these circumstances the sponsor would need to find another visa applicant to sponsor.
- 4.99 The Australian Review Council considers that merits review should be available for all sponsors where sponsorship was relevant to a visa refusal. This is in line with their published guidelines that "administrative decisions that will, or are likely to, affect the interests of a person should be subject to merits review. In the Council's view, assessment of whether an Australian resident business, employer or person satisfies sponsorship requirements for

approval as a sponsor, or a precondition to grant of a temporary resident visa, are clearly decisions within the scope of the guidelines.”

4.100 However, this issue was not raised by any Australian sponsors or temporary residents in their submissions to the Review. The much smaller numbers involved in sponsorships other than the temporary business sponsorships, and the fact that they have a review right through the visa applicant, has meant that the need for a review right has rarely been raised. On balance it is not considered necessary to alter the review rights for these sponsors.

### **Group Discounts for Sponsorship Fees**

4.101 Sponsorship fees and group discounts for sponsorships were discussed in Chapter 3.