

QUESTION TAKEN ON NOTICE

SUPPLEMENTARY BUDGET ESTIMATES – 20 OCTOBER 2014

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

(SE14/177) PROGRAMME – Internal Product

Senator Cameron (Written) asked:

With reference to a report in the Sun-Herald newspaper on 19th October 2014 entitled, “Billbong CEO on visa, but system ‘abused’”, in which the Assistant Minister for Immigration and Border Protection, Senator the Hon. Michaelia Cash is quoted as saying, “There could be a number of reasons why a visa holder may not be with their original sponsor and this does not indicate inappropriate behaviour or a breach of an applicant’s obligations.”:

- a. What are the reasons a Subclass 457 visa holder may not be with their original sponsor?
- b. In what circumstances would a Subclass 457 visa holder who is no longer employed by the employing sponsor be in breach of their obligations?
- c. Are Subclass 457 visa holders required to inform the Department of any change in their employment or other circumstances?
- d. What changes in circumstances are Subclass 457 visa holders required to report to the Department and within what period of time from which the change occurred?
- e. Do all Subclass 457 visa holders meet their obligations to inform the Department of changes in their circumstances?
- f. How many Subclass 457 visa holders have been found to have not complied with their obligation to inform the Department of changes to their circumstances in 2013-14 and 2014-15 to date?
- g. Does the Department record changes of circumstances and/or employment that are reported to the Department by Subclass 457 visa holders?
- h. Is information about changes in employment and other relevant circumstances of Subclass 457 visa holders and/or their sponsoring employers made available to the Fair Work Ombudsman?

Answer:

- a. The visa holder has ceased employment with their original sponsor and is within the allowable 90 day period which they may remain in Australia following cessation of employment or they may have been nominated/sponsored by a new employer as approved by the department or they may have applied for another visa.
- b. Visa condition 8107 requires 457 visa holders to only work in the occupation that they have most recently been nominated for by their sponsor. If they work in another occupation, for someone other than the sponsor who has most recently nominated them or cease employment for more than 90 consecutive days, they will be in breach of this visa condition.

- c. Regulation 2.86 of the *Migration Regulations 1994* (the Regulations) requires the 457 sponsor, rather than the visa holder, to ensure that the visa holder works in their nominated occupation and to inform the department of changes to the visa holder's employment circumstances, work duties or nominated occupation.
- d. The sponsor, rather than the visa holder, must notify the department of changes within 10 working days of the event occurring. Regulation 2.84 of the Regulations (Obligation to provide information to Immigration when certain events occur) requires the sponsor to notify the department of the following events:
- cessation, or expected cessation, of a primary sponsored person's employment;
 - if an expected cessation does not take place or the primary sponsored person will cease employment on a different date than previously notified, notify the department of the continued employment or new cessation date;
 - a change to the work duties carried out by a primary sponsored person;
 - a change to information in the sponsor's application for approval as a sponsor, or variation, relating to the training requirement or the sponsor's address and contact details;
 - a change to training information provided in a work agreement or the sponsor's address and contact details;
 - the legal entity of the sponsor ceases to exist;
 - the sponsor has paid return travel costs to enable the sponsored persons to leave Australia;
 - the sponsor has become insolvent, bankrupt or gone into administration; and
 - a new partner, director or member to the managing committee is appointed.
- e. 457 visa holders are not required to inform the department of changes in their circumstances. In relation to the sponsors' obligation to inform the department of the changes as detailed in the response to questions (c) and (d), the department is not able to report on whether all sponsors meet their obligation to inform the department as we may not be aware of a change if the sponsor does not inform the department of it.
- f. 457 visa holders are not required to inform the department of changes in their circumstances. The department is not able to report on the number of sponsors who have been found to have breached a reporting obligation as this information cannot be extracted from departmental systems for reporting purposes.
- g. The department records a change of employment circumstances reported by the visa holder where they are in breach of condition 8107 as explained in the response to question (b). The department records a change of employment circumstances of the visa holder reported by the sponsor at any time.
- h. The department does not provide information about changes in the employment of individual 457 visa holders to the Fair Work Ombudsman (FWO) as they occur. However, the department does provide information about other relevant circumstances to the FWO to assist in sponsor monitoring including monthly reports on 457 sponsors, the number of visa holders they sponsor and occupation information. More detailed information is also made available to the FWO on request.