

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 22 May 2006

IMMIGRATION AND MULTICULTURAL AFFAIRS PORTFOLIO

(55) Output 1.1: Migration and Temporary Entry

Senator George Campbell (L&C 65-66) asked:

Provide the general and specific guidelines that are provided to officers in the Department who are employed on compliance issues in respect of 457 visas.

Answer:

Departmental officers who monitor 457 visa holders and sponsors are provided with specific legislative guidelines including the Procedures Advice Manual 3 (PAM3): Division 1.4A – Temporary Business Entry: Sponsorship and Nomination - Sections 112 through to 146 ([Attachment A](#)), PAM3 GenGuide A: Site Visit Guidelines – Managing and Conducting Site Visits ([Attachment B](#)), together with other locally developed guidelines such as “Guide to Monitoring Finalisation – NSW” ([Attachment C](#)). Additionally, monitoring staff are provided with regular ongoing training by Business Centres and by National Office.

MONITORING OF BUSINESS SPONSORS

This Part - which should be read with the current Statement of Work (SOW) for Monitoring (BC 002-03) - comprises:

- [section 112 Monitoring - Background](#)
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- [section 119 Assessing compliance with undertakings](#)
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- [section 121 Providing information to sponsors](#)
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112 MONITORING - BACKGROUND

112.1 Policy

One of the key principles underpinning the 457 program is to provide business with streamlined arrangements to enable the quick transfer of key personnel. This is, however, backed by robust monitoring measures to ensure the integrity of the program. The measures are aimed at ensuring that business sponsors comply with their sponsorship obligations, and [457 visa holders](#) comply with their visa conditions.

With few exceptions, approved sponsors are to be monitored once in the year following sponsorship approval. In addition, 25% of approved sponsors are to be site visited. Sponsors of concern may be monitored each year while their nominated employees are in Australia. More information on when to monitor is at [section 120 Repeat monitoring](#).

112.2 Legislative basis

Act, s140D	Defines an approved sponsor
Act, s140E	Allows for a person to be approved as a sponsor of another person
Regulations 1.20C & 1.20CA	A person seeking approval as a business sponsor to bring in overseas skilled workers on 457 visas applies using form 1196 or 1196 (Internet). Prior to 1 July 2003, form 1067 was used. These forms require sponsors to sign an undertaking that they will meet certain obligations in relation to sponsored persons and their dependants while in Australia
Act, s140H	Allows for a sponsor to make prescribed undertakings. The business sponsor undertakings are prescribed in regulation 1.20CB. These undertakings apply to sponsorship applications made on or after 1 July 2004
Regulations 1.20D(2)(f) & 1.20DA(2)(e)	Approval of a business sponsor requires the decision-maker to be satisfied that the business sponsor applicant is able to, in relation to each visa holder, comply with the form 1196, 1196 (Internet) (post 1 July 2003 applications) or 1067 (pre 1 July 2003 applications) undertakings and/or the undertakings as prescribed in regulation 1.20CB

Regulations 1.20G, 1.20GA & 1.20H	Nomination of business activities are approved under regulation 1.20H on the basis of the activities nominated under either regulation 1.20GA (regional employment) or regulation 1.20G
Act, s137B	Migration Act subdivision GA (s137A to s137H) relates to cancellation of approval as a business sponsor. Section 137B of the Act enables the approval as a business sponsor to be cancelled if there are prescribed grounds. Regulation 1.20F prescribes these grounds, which include where the sponsor has provided incorrect information, has not complied with the sponsor's undertakings or does not continue to satisfy the requirements for approval as a business sponsor
Act, s137H	Section 137H provides the power to request from any person who has at any time applied for approval as a business sponsor information on any matters relating to the person's business sponsorship application (including related business nominations). This provides the basis for requesting information during the monitoring process
Act, s140J	If a business sponsor has breached an undertaking, s140J allows for action as specified in s140L to be taken, including barring approval as a sponsor. The circumstances and criteria for taking such action are prescribed in regulation 1.20HA
Act, s140K	Section 140K allows for action specified in s140L to be taken against a business sponsor in circumstances other than where an undertaking has been breached. Regulation 1.20HB prescribes the circumstances and criteria for taking such action, including where the business sponsor has provided false information or has failed to continue to satisfy the requirements as a business sponsor
Act, s140L	Section 140L specifies the action that may be taken against a business sponsor under s140J or s140K. This includes barring the sponsor from making further applications for approval as a sponsor and barring the sponsor from making further nominations.
Act, s140O	If a bar has been imposed under s140J or s140K, there is provision under s140O to waive that bar. Regulation 1.20HC prescribes the circumstances and criteria for a bar to be waived.

113 OPERATIONAL OVERVIEW

113.1 What monitoring involves

Monitoring of sponsors includes:

- distributing the monitoring form 1110 and assessing returned forms 1110
- identifying sponsors for site visits through the sponsor's responses to monitoring, DIMA's site visit profiles, receipt of adverse third party information and referrals from Business Centre assessors, other sections of DIMA or other agencies
- referral of cases to DIMA Investigations or other outside agencies
- imposing sanctions on sponsors such as cancellation and/or bars
- cancellation of 457 visas

Monitoring activities must be recorded in ICSE - see [section 122 Reporting](#).

113.2 Site visit priorities

Under policy, the priorities for site visits are:

- newly started businesses without a proven business record
- companies of concern because of marginally acceptable applications (due to such factors as a low capital base or vague business plans, training records or training proposals)
- sponsors or visa holders about whom adverse third party information has been received
- sponsors referred from DEWR because their training record seems unsatisfactory
- sponsors who have not completed and/or returned form 1110 upon request
- recruitment, contract management or labour hire firms
- sponsors from industries sectors of concern - see [section 113.3 Industry sectors of concern](#).

This list is not exhaustive, and there will be other cases Business Centres may identify for site visits.

113.3 Industry sectors of concern

Industry sectors of concern are those where there:

- is a high incidence of employing illegal workers, as reported by Compliance or
- is a high incidence of unsatisfactory monitoring.

Currently these sectors are:

- accommodation, cafes and restaurants
- personal and other services (including labour hire firms)
- manufacturing
- agriculture, forestry and fishing
- retail trade
- construction.

113.4 Use of form 1110

All approved sponsors should be asked to complete a form 1110 between 6 and 12 months of the sponsorship being approved. Generally, monitoring would begin for sponsors about 9 months after sponsorship approval. If:

- concerns are held about the business, eg it is a newly started company or was a marginally acceptable application or
- adverse information on the sponsor is received

it may be more appropriate to monitor the company within 6 months of sponsorship approval. If there are concerns as to the sponsor's ability to comply with their sponsorship undertakings, the sponsor should be monitored each year until either no more concerns are held about the sponsor, the sponsor no longer employs 457 visa holders or the sponsorship is cancelled. For overseas business sponsors, the form 1110 should be sent to the company's intended address in Australia between 6 and 12 months of the visa holder's arrival in Australia.

114 OBTAINING INFORMATION

114.1 Legislative authority

Section [137H](#) of the Act relates to the procedures for requesting certain information that a business sponsor (or any person who has applied for business sponsor status) is required to give to the DIMA Secretary (or delegate). This information is not limited to that required for monitoring purposes.

Section [140V](#) of the Act (which applies only to those sponsors who applied for approval as a business sponsor on or after 1 July 2004) enables:

- personal information on visa holders to be disclosed to sponsors in the circumstances prescribed in regulation [1.20IA](#)
- the sponsor to use or disclose the personal information in the circumstances prescribed in regulation 1.20IA.

Under [s140V\(4\)](#), if personal information is disclosed to a sponsor about a visa holder or former visa holder, the visa holder must also be advised in writing about the details of the disclosure or personal information.

114.2 What information can be requested

Together, [s137H\(1\)](#) and [s137H\(2\)](#) of the Act allow DIMA to seek information from sponsors in relation to all matters arising from the business sponsorship application and sponsorship approval.

These matters may include the business sponsorship applications, the sponsorship undertaking, the business sponsorship approval, any business nomination approvals, any related 457 visa applications and any 457 visa grants. DIMA may require information from sponsors even if that sponsorship has ceased to have effect, as the obligations continue for all sponsored 457 holders.

The types of information commonly requested and permitted under [s137H\(2\)](#) include such documents as:

- evidence of hours worked or total wages paid to overseas employees
- financial records to demonstrate the continuing viability of the sponsoring business
- training logs
- evidence of expenditure on employee training to substantiate claims in meeting regulation [1.20D\(2\)\(c\)\(ii\)](#)
- evidence of recruitment of new graduates and apprentices or trainees and
- details of the “end user” employer and any other intermediary agencies, in the case of recruitment or labour hire firms.

114.3 How the information may be requested

Under [s137H\(1\)](#), the request must be in the form of a written notice.

114.4 How the notice can be given

No specific method has been prescribed as to how the written notice must be given, however, form 1110 *Business Sponsor Monitoring* has been developed for this purpose. Standard letters to be used with form 1110 are available on DIMIANet (or in e-form from Business Employment Section).

114.5 Time allowed for receipt

No specific period has been prescribed under [s137H\(3\)](#) for receipt of notices.

114.6 Time allowed for response

Policy

No period is currently prescribed under s137H(3) or [137H\(4\)](#) for the sponsor to respond to the notice requesting information. It need only be 'a reasonable period'. Under policy, it is considered that a reasonable period for a sponsor (or representative) in Australia to respond to a request for information is 28 days after the sponsor has been deemed to have received the request for information - see [s494C of the Act - \('When a person is taken to have received a document from the Minister'\)](#). Decision-makers may allow more time for a response based upon the circumstances of the case.

Allowing more time to respond

Section 137H(4) allows a decision-maker, following a request from a sponsor, to permit the sponsor to provide information at a date other than the date specified in the notice. Ordinarily, sponsors are expected to comply within the 28 day period, unless an officer considers a sponsor's reason for seeking a later date is sufficient.

If a later period is allowed, decision-makers should wait for this additional period to elapse before taking further action.

If relevant information is received from the sponsors after the deadline, but before a decision is taken, this information should be taken into account when making the decision. This is consistent with the Code of Procedure that applies to visa applications.

If incomplete information is received

If a business provides an incomplete response, Business Centres may wish to send a further request for monitoring information. The time limit for replying to a further request should normally be 14 days.

If no response is received

A business that fails to respond to a request for monitoring information as per form 1110 should be sent a letter reminding them that this is one of the undertakings the sponsor agreed to comply with, and that failure to comply with any sponsorship undertaking is grounds for imposing a sanction on the sponsor. If the request or reminder letter is returned unclaimed, more information about the business should be sought from such sources as telephone contact, ICSE, ASIC, the business' website, etc. A site visit to the business might also be appropriate in these circumstances.

115 SITE VISITS

115.1 About site visits

There are no search powers under migration legislation for conducting site visits in relation to sponsoring temporary overseas employees to Australia. Sponsors do, however, formally agree to undertake certain responsibilities - see [The sponsor's undertakings legislation](#). A sponsor agrees to these undertakings when they complete the form 1196. From a policy perspective, a site visit is in terms of the sponsor complying with the undertakings to which they have agreed. Officers must take into account that the agreement of the business to allow DIMA staff to visit their site, is purely voluntary. Due to the voluntary nature of a site visit, officers

are required to be vigilant in maintaining accurate and up to date records of all contact with the business representative.

A site visit may be appropriate depending on the information provided on the form 1110 or the nature of the adverse information received about a sponsor or visa holder or according to the priorities listed in section [113.2 Site visit priorities](#).

115.2 Arranging and conducting announced site visits

Prior to visiting the business premises, officers must seek the cooperation of the business representative. Officers can do this by making an appointment prior to the site visit and thereby giving reasonable notice (usually one week) of the intended visit. Before undertaking any site visit, Monitoring Units should consult/liaise with the STO's Compliance area (to avoid a conflict with any planned Compliance field activities).

In monitoring sponsors who are in industries of concern, or where concern exists as to the information provided by the sponsor, officers can seek to interview visa holders at site visits. Interviews, however, should only be conducted in the workplace, after the employer has been advised of our intention to conduct an interview.

The exception to onsite interviewing of visa holders is where there is a dob-in about the sponsor's operations indicating possible exploitation, and/or where there is a risk that the visa holder may suffer victimisation as a result of the interview. Such instances need to be handled with sensitivity and common sense. For instance, officers need not advise the sponsor (about the proposed interview) and can provide the visa holder with a business card allowing them to contact DIMA if they so choose. Alternatively, and depending on the seriousness and type of allegations, officers can arrange a private interview at a DIMA office with a visa holder to explore certain issues. On such occasions there would be no need to advise the sponsor of the proposed interview.

Site visits should be conducted having regard to occupational health and safety issues.

Generally only one site visit should be necessary when undertaking monitoring of a business. There might, however, be situations where more than one site visit is required eg:

- if the business is a labour hire company and it is desirable to site visit several end user companies to verify details
- if a sponsor has several premises and concerns are held regarding operating matters in different premises.

DIMA officers need to be thorough in obtaining an invitation to visit a site and recording such on file.

115.3 Admission refused

The business has the right to refuse admission to DIMA officers. If admission is refused, the officer should inform the business representative of DIMA's role regarding monitoring (see [Monitoring of business sponsors](#)) and that their failure to cooperate in the monitoring process has the potential to be considered a breach of the sponsorship undertakings, which may in turn result in:

- the sponsorship being considered for cancellation under [s137B](#) of the Act
- a bar on further sponsorship and nomination approvals
- cancellation of the 457 visas held by their sponsored persons
- the matter being taken into account when evaluating any future sponsorship application.

115.4 Unannounced site visits

Unannounced site visits are not to occur except in special, exceptional circumstances approved by officers at Executive Level 1 and above. In these circumstances, a proposal should be prepared and presented to the EL1 outlining the reasons why an unannounced visit is necessary. After presented to the EL1, this proposal should be kept on the monitoring file whether the visit is approved or not.

116 INTERVIEWING

If adverse information on business sponsors or 457 visa holders is received, it may be appropriate to interview the parties concerned to elicit details of the allegations or matter in dispute.

There may be occasions where it is appropriate to interview 457 visa holders to find out more information on the sponsor's activities. This might include where doubts are held that a sponsor is the direct employer of the sponsored person or about the actual salary being paid to the sponsored person.

Supporting documents such as financial records and evidence of salary, tax and superannuation payments could be requested to verify that sponsorship obligations are being met. Further action will depend on the nature of the allegations/information.

117 REFERRAL TO OTHER AGENCIES

Monitoring, departmental investigations or third party information may provide evidence that some 457 visa holders are not being employed in accordance with legislation administered by another government agency. If this occurs, details are to be forwarded to the relevant Commonwealth, State or Territory government agency for their further investigation and/or action. Possible examples include:

- not paying workers Australian award rates of remuneration
- not complying with Australian conditions of employment (including occupational health and safety obligations)
- failing to meet financial obligations to the Commonwealth relating to tax and superannuation.

Monitoring Units can liaise with Business Employment Section to ascertain current referral contacts in other agencies (e.g. DEWR, ATO).

If cases have been referred to other agencies, this should be recorded in ICSE, including reasons for the referral. Form 993i (Safeguarding Your Personal Information) lists the agencies to which DIMA can disclose information. Business Centres can also seek advice from Business Employment Section to clarify the appropriate agency or agencies for referral. Officers are to notify Business Employment Section of any cases of alleged exploitation.

118 REFERRAL TO FRAUD ANALYSIS & INVESTIGATION

Instances of apparent fraud or malpractice involving business sponsors or 457 visa holders are to be referred to the local Fraud Analysis Unit or Investigations Unit as well as Business Employment Section.

119 ASSESSING COMPLIANCE WITH UNDERTAKINGS

119.1 Rating - Satisfactory or unsatisfactory

Non-DIMA undertakings (eg workplace relations, tax, superannuation, health) are an opportunity for other government agencies to encourage compliance with their laws if they desire. Monitoring Units are not responsible for enforcing these laws. If possible breaches appear to have occurred, however, Monitoring Unit officers are to refer DIMA concerns to the relevant agency for their consideration. If that agency provides advice to DIMA about the conduct of a sponsor, DIMA may be able to consider possible action.

In assessing compliance with the health costs sponsorship undertaking, Monitoring Unit officers are reminded that determining these costs is a State/Territory government issue. Only if the State/Territory health department informs DIMA of outstanding medical costs incurred by a 457 holder can officers ask the sponsor to pay those costs. Before acting on this information, however, officers are to check whether the visa holder applied for the visa before or after 1 November 2005 as this will determine which expenses can be recovered for hospital expenses - see regulation [1.20CB\(1\)\(k\)](#).

If a sponsor does not appear to be meeting taxation or superannuation requirements, the ATO is to be informed. In this circumstance, Monitoring Unit officers should finalise the monitoring activity as satisfactory but also notify the sponsor that the ATO has been informed of particular concerns DIMA had regarding the taxation and/or superannuation information they provided. If more information is received by DIMA (eg from the ATO), the Monitoring Unit is to further reinvestigate and record details in a new ICSE Monitoring Permission Request for the sponsor.

Monitoring Unit officers may receive information indicating that a sponsor might not be complying with workplace relations laws. This information is to be passed to DEWR (or the relevant State/Territory agency). If DEWR confirms in writing that a sponsor has not complied with workplace relations laws or workplace agreements they have entered into with their employees, the Monitoring Unit can consider sanction action/s. The Unit, however, must be satisfied that the non-compliance is a breach of sponsorship undertakings. Sponsors who have only “technically” breached workplace relations laws might not be of concern and discretion can be exercised in considering cancellation/barring action.

119.2 Assessing compliance with DIMA undertakings - MSL

In assessing whether a sponsor is complying with their undertaking to pay at least the Minimum Salary Level (MSL), Monitoring Unit officers should check for any contractual requirement for the 457 holder to pay a “security” or “bond” to the sponsor. Generally, the contractual arrangements between a visa holder and the sponsor are not a matter for DIMA consideration. They can become relevant, however, when calculating the MSL, officers are to exclude deductions that may be taken from the 457 visa holder’s pay (for the purposes of paying a security or bond or money towards a bonus) to the employer/sponsor.

Pay As You Go (PAYG) payment summaries will usually be sufficient evidence of payment of salary and wages. If the PAYG summaries are insufficient, or where further investigation is warranted (eg the sponsor is in an industry of concern), Monitoring Unit officers should seek more information from the sponsor (ie ask for payslips or bank statements etc).

Disputes will occasionally arise between the sponsor and the visa holder/s with regards to payment of return travel costs. Monitoring Unit officers can encourage negotiation/arbitration between the sponsor and visa holder/s but the sponsor, however, remains ultimately liable for return costs. Where a sponsor refuses to meet the costs of return travel, Monitoring Unit

officers can consider whether this is a breach of the sponsorship undertakings and consider possible sanction options.

119.3 Assessing training at Monitoring

Monitoring officers are to consider the following in assessing the sponsor's training record: Look for a clear/quantifiable record on the form 1110. If a clear/quantifiable record of training is completed this should usually be accepted as meeting the training requirement. This may include:

- paying for courses of study
- paying for scholarships in relevant courses of study
- the employment of in-house trainers
- the use of external training providers, including online training or
- the number of apprentices, trainees or graduates recruited in the past 2 years.

On-the-job training would not usually be acceptable as a 'record' of training as it is seldom quantified or recorded, and employers are usually unable to provide documented evidence that on-the-job training has actually occurred.

If the record appears reasonable, there is no need to cross-check with the statements on the original application (form 1196). Monitoring Unit officers should then finalise this aspect of the monitoring as satisfactory.

If no clear/quantifiable record has been provided, Monitoring Unit officers should check the form 1196 for details of the future training plans. Details of these training plans should be put to the sponsor requesting an explanation, and reminding them of their obligations. Where no satisfactory explanation is given, Monitoring Unit officers should finalise this aspect of the monitoring as "satisfactory/met" but re-schedule the sponsor for future monitoring of its training commitment and advise the sponsor accordingly. If a sponsor does not improve their training record, this may be taken into account if they make further sponsorship applications.

Monitoring Unit officers should be mindful that a "reasonable" training record will be different for each business. For example, a small business which is meeting the MSL and other parts of the sponsor's undertakings might have a lower threshold than a larger company. Over-reliance on overseas workers by the sponsor is not, on its own, grounds for finalising the monitoring as unsatisfactory and/or considering sanction/s. An over-reliance on overseas workers might, however, justify more intensive or frequent monitoring to explore any possible exploitation of overseas workers or possible fraud trends within the caseload.

119.4 Determining whether the monitoring outcome is satisfactory

In determining whether a monitoring outcome is satisfactory or unsatisfactory, consideration should be limited to those grounds for imposing sanctions under regulations [1.20F](#), [1.20HA](#) or [1.20HB](#). If it is determined that a sponsor has breached undertakings, failed to satisfy the requirements of a business sponsor or provided incorrect information, monitoring should be finalised as "unsatisfactory" and sanction action should be initiated. If cancellation action does not result from these investigations the Unsatisfactory - Counselling event should be used.

Monitoring should be finalised as satisfactory if it cannot be determined whether a sponsor's actions warrant cancellation action or not. For example, in cases where DIMA officers rely on external agency advice, responses might take some time or not be forthcoming at all.

Irrespective of the outcome, by referring the matter the delegate has finalised it from DIMA's point of view and placed the responsibility for further investigation onto an agency better

placed to do so. After such referral, the monitoring can be finalised as satisfactory and the case scheduled for re-monitoring. A file note should detail the nature of the matter and that it was referred to the relevant agency for investigation.

The “satisfactory/unsatisfactory” rating determines what will appear on the Sponsors Requiring Monitoring Report. If a sponsor has been rated as satisfactory but residual concerns exist, they should be scheduled for early remonitoring (and will appear on the report at that stage).

Notes should be widely used to identify sponsors of concern.

119.5 New sponsorship approval when monitoring in progress

Business Centre assessing officers should not delay the processing of a new sponsorship where monitoring has not been finalised. The exception would be where there is reason to believe that the sponsor is not abiding by their sponsorship obligations. Sponsorship assessing officers should liaise closely with the Monitoring Unit to identify any major concerns where monitoring has not been finalised.

120 REPEAT MONITORING

120.1 If satisfactory

Most sponsors will need to be monitored only once in the 2 year life of the sponsorship provided the outcome of the monitoring is satisfactory and they are not in an industry of concern as described in [section 113.2 Site visit priorities](#).

If the sponsor is a publicly listed company or a government sponsor, they should only be monitored once every four years where:

- they are regularly approved as a sponsor, eg every 2 years and
- they have previously been satisfactorily monitored and
- their activities are not listed under the site visit priorities listed in [section 113.2 Site visit priorities](#).

120.2 If unsatisfactory

A sponsor who has an unsatisfactory monitoring outcome and is counselled should be rescheduled for monitoring at an appropriate time, usually 6 to 12 months after the initial monitoring. At that time, if the sponsor has not rectified the problems previously identified, consideration should be given to imposing a sanction on the sponsor.

If adverse information comes to notice about a sponsor who has already been satisfactorily monitored, the sponsor should be monitored again.

121 PROVIDING INFORMATION TO SPONSORS

121.1 What information can be provided to a business sponsor

Under regulation [1.201A\(a\)](#), the personal information that may be provided to a business sponsor about a current or former 457 visa holder who was sponsored under a sponsorship approved after 1 July 2004 include:

- details of any breaches of visa conditions by the sponsored person
- information as to whether the sponsored person holds a 457 visa
- whether the sponsored person remains in Australia as an unlawful non-citizen

- information as to the sponsored person's salary or other workplace conditions
- details of any hospital or medical expenses for the sponsored person that the sponsor or former sponsor is required to pay, regulation [1.20CB\(1\)\(k\)](#) refers
- details of any costs incurred by the Commonwealth in relation to the sponsored person, regulation [1.20CB\(1\)\(n\)](#) refers.

121.2 The circumstances in which the information may be disclosed

Under [regulation 1.20IA\(b\)](#), this personal information on sponsored persons may only be disclosed to current or former business sponsors:

- to allow the sponsor to respond to a claim that the sponsor has engaged in conduct that may lead to action under s140J or s140K of the Act ie consideration is being given to imposing a sanction against the sponsor or
- to allow the sponsor to meet a liability relating to the sponsorship of the sponsored person, such as the payment of hospital or medical expenses incurred in relation to the sponsored person or the payment of costs incurred by the Commonwealth in relation to the sponsored person
- in connection with a proceeding for review of a decision to impose a sanction against the sponsor under s140J or s140K of the Act.

121.3 Delegations

The delegation to provide personal information to sponsors under s140V is generally held at the APS 5 level (in Monitoring Units) and above. Officers should refer to the current list of delegations before providing such information.

121.4 Use of the information by the sponsor

The sponsor may only use or disclose the personal information described in regulation 1.20IA(a) in the same circumstances as those prescribed in regulation 1.20IA(b), namely:

- in response to the imposition of a sanction against the sponsor being considered or
- to allow the sponsor to meet a liability arising out of the sponsor's undertakings under regulation 1.20CB or
- in connection with review proceedings of a decision to impose a sanction against the sponsor.

121.5 Recording the disclosure of personal information

If such personal information is disclosed to a business sponsor, the information disclosed and the circumstances of the disclosure should be recorded on ICSE. If the information is disclosed in writing, a copy of the letter should be saved electronically in TRIM. If the information is disclosed during an interview, this should be recorded in the record of interview, either as a note in ICSE or as an electronic record in TRIM.

121.6 Notifying the sponsored person regarding the disclosure of personal information

If such personal information on a sponsored person is disclosed to the sponsor, the sponsored person must be notified of this in writing - see [s140V\(4\)](#) of the Act. Under policy, this notification should be either emailed to them or posted to their last notified residential address.

122 REPORTING

All monitoring activity must be recorded in ICSE. This should be done in accordance with service standards outlined in the 457 Monitoring Statement of Work (SOW). Separate exceptional reports should be forwarded to Business Employment Section in the following instances:

- a sponsorship cancellation is being considered
- imposing a bar on further sponsorship approvals is being considered
- a case is likely to be of media interest
- trends have been identified indicating a possible new industry of concern
- evidence of fraud has been identified
- an incident of concern has happened during a site visit.

IMPOSING SANCTIONS

This Part comprises:

- [Imposing sanctions general considerations](#)
- [Imposing sanctions - Procedures](#)
- [Imposing sanctions - Notifying the decision](#)

IMPOSING SANCTIONS GENERAL CONSIDERATIONS

This Part comprises:

- [section 123 Overview - imposing sanctions](#)
- [section 124 Cancellation of Business sponsor](#)
- [section 125 Legislation - Other sanctions against a business sponsor](#)
- [section 126 Third party information](#)
- [section 127 Procedural fairness](#)
- [section 128 The merits of the case](#)
- [section 129 When to invoke these powers](#)
- [section 130 Officer responsibilities](#)
- [section 131 Delegations](#)
- [section 132 Overseas business sponsors.](#)

123 OVERVIEW – IMPOSING SANCTIONS

To finalise the monitoring process, a decision-maker must consider the available sanctions. Monitoring should not be finalised as unsatisfactory unless there are grounds for imposing a sanction.

123.1 Two monitoring regimes

As sponsors applying for sponsorship before 1 July 2004 may nominate positions for 2 years and visa holders who may hold visas in effect for another 4 years two separate monitoring regimes are operating concurrently until 2010.

For the purpose of considering actions against non-complying sponsors, the 4 major situations over this period will be:

- sponsors who applied for sponsorship approval *prior to 1 July 2004* and still have a *current* sponsorship (ie the sponsorship approval has not ceased)
- sponsors who applied for sponsorship approval *prior to 1 July 2004* and have an *expired* sponsorship (ie the sponsorship approval has ceased)
- sponsors who applied for sponsorship approval *on or after 1 July 2004* and still have a *current* sponsorship (ie the sponsorship approval has not ceased)
- sponsors who applied for sponsorship approval *on or after 1 July 2004* and have an *expired* sponsorship (ie the sponsorship approval has ceased).

123.2 Actions that can be considered against non-complying sponsors

<u>Pre July 2004 Sponsorship, still current</u>	<u>Post July 2004 Sponsorship, still current</u>
• monitoring finalised as unsatisfactory • sponsorship cancellation under 137B • visa cancellation considered	• monitoring finalised as unsatisfactory • sponsorship cancellation under s137B • sponsorship bar under s140(c) • sponsorship bar under s140(e) • nomination bar under s140(g) • visa cancellation considered
<u>Pre July 2004 Sponsorship, "expired"</u>	<u>Post July 2004 Sponsorship, "expired"</u>
• monitoring finalised as unsatisfactory • natural justice letter issued • visa cancellation considered	• monitoring finalised as unsatisfactory • sponsorship bar under s140(c) • sponsorship bar under s140(e) • nomination bar under s140(g) • visa cancellation considered

123.3 Natural justice letters

If a sponsorship application was made before 1 July 2004 and the sponsorship approval has since ceased, action cannot be taken to cancel the sponsorship or bar the sponsor from sponsoring or nominating applicants in the future. Instead, the sponsor should be sent written notification that:

- outlines the alleged breaches
- outlines any third party information that has been made available to DIMA
- informs the sponsor of actions available to DIMA (primarily, cancellation of the current visas granted under any subclass 457 nominations) and
- informs the sponsor that the breaches, if proven, may be relevant in considering any future applications for sponsorship approval that the sponsor makes.

A standard letter (title: "Natural justice letter") is available via DIMIANet.

If, after considering the response, a decision-maker remains dissatisfied with the conduct of the sponsor, and would take action to cancel the sponsorship were it still current, they are to notify the sponsor in writing that DIMA will be pursuing visa cancellation action (if applicable) and finalising the monitoring as unsatisfactory.

124 CANCELLATION OF BUSINESS SPONSOR

124.1 Overview

Under certain prescribed circumstances (described in detail elsewhere in this document), action may be taken against a business sponsor to:

- cancel their approval as a business sponsor
- bar further sponsorship or nomination applications being made or being approved or
- cancel the [457 visas](#) of any sponsored persons, including members of the family unit of a nominated employee.

Briefly:

- the power to cancel the approval as a business sponsor is at [s137B](#) of the Act, this power applies to all approvals as a business sponsor, irrespective of the date of the sponsorship application
- for sponsorship applications lodged on or after 1 July 2004 and subsequently approved, [s140J](#) and [s140K](#) of the Act enable other actions (specified in [s140L](#)) to also be taken against an approved business sponsor. This includes imposing bars on sponsors.

In considering taking action against a business sponsor, it is important to *check the date the application was made* so as to determine what action may be taken.

124.2 Section 137B(1)

Section [137B\(1\)](#) of the Act allows for the cancellation of business sponsorship under prescribed grounds, prescribed in regulation 1.20F.

124.3 Reg. 1.20F – prescribed grounds for cancellation

Regulation [1.20F](#) prescribes the grounds for cancellation as a business sponsor. These include if a breach of the sponsor's undertakings has occurred, the sponsor gave incorrect information to DIMA or the sponsor no longer satisfies the requirements for approval as a business sponsor.

124.4 The source of information is irrelevant

Under [s137B\(2\)\(a\)](#), delegates may cancel business sponsorship approval irrespective of whether the information that could provide grounds for cancellation came from the sponsor or a third party. Information from a third party must be put to the sponsor for comment - see section [126 Third party information](#).

124.5 The sponsor's intent is irrelevant

Under [s137B\(2\)\(b\)](#), delegates may cancel business sponsor approval whether the 'act or omission' by the sponsor that could provide grounds for cancellation was made with or without the knowledge of the business sponsor.

If the sponsor has volunteered information relevant to cancellation considerations, however, delegates should consider this voluntary action against the severity of the action or omission when deciding whether to cancel the approval of business sponsorship.

In cases where it is considered that incorrect information was inadvertently provided by the business sponsor, delegates should give this considerable weight when deciding whether to cancel sponsorship. Cancellation action would not generally follow. Exceptions to this,

however, would include cases where clear negligence on the part of the sponsor has led to seriously deficient working conditions or where the sponsor has committed offences or crimes of a serious nature.

124.6 Mandatory & discretionary grounds for cancellation

Section [137B\(3\)](#) provides for mandatory cancellation of a business sponsorship if there are prescribed grounds under which the sponsorship must be cancelled. Currently, there are no such prescribed grounds hence the exercise of powers to cancel sponsor approval is in all cases discretionary.

124.7 s137B & reg.1.20F

In s137B of the Act:

- [s137B\(1\)](#) allows for the cancellation of business sponsorship under grounds prescribed in regulation [1.20F](#)
- s137B(3) provides for mandatory cancellation of a business sponsorship if there are prescribed grounds under which the sponsorship must be cancelled. (Currently, there are no such prescribed grounds hence the exercise of powers to cancel sponsor approval is in all cases discretionary.)

Regulation 1.20F prescribes the grounds, for the purposes of s137B, upon which a delegate has the discretion to cancel approval as a business sponsor, namely:

- the provision of incorrect information to DIMA in relation to the sponsorship application, regulation 1.20F(a)
- the provision of incorrect information in relation to any other matter relating to the sponsor or business, regulation 1.20F(b)
- failure to comply with the undertakings to which the sponsor agreed when signing and submitting the sponsorship application, regulation 1.20F(c)
- failure to continue to satisfy the requirements for approval as a sponsor, regulation 1.20F(d).

124.8 s140J & reg. 1.20HA

Section [140J](#) of the Act allows action as specified in [s140L](#) to be taken if:

- an approved sponsor breaches an undertaking or
- a person who is no longer an approved sponsor, but remains bound by an undertaking, breaches that undertaking.

Regulation [1.20HA](#) prescribes:

- the actions (eg imposing a bar) specified in s140L that may be taken
- the circumstances under which action may be taken and
- the criteria that delegates must consider in deciding what action to take.

Note that s140J specifically does *not* deal with cancellation of approval as a business sponsor, which is dealt with under [s137B](#) - see above.

124.9 s140K & reg. 1.20HB

Section [140K](#) of the Act allows action as specified in [s140L](#) to be taken against an approved sponsor or a former approved sponsor for reasons other than a breach of undertakings.

Regulation [1.20HB](#) prescribes:

- the actions specified in s140L that may be taken
- the circumstances (other than a breach of undertakings) under which action may be taken
- the criteria that delegates must consider in deciding what action to take.

The circumstances that may be considered under regulation 1.20HB include where the sponsor has:

- failed to continue to satisfy the requirements of the sponsorship or
- given false information in relation to the sponsorship or
- given false information in relation to the assessment of the applicant's compliance with the Act and regulations in relation to the applicant's approval or
- given false information in relation to the assessment of the sponsored person's compliance with the conditions to which the person's 457 visa is subject.

Note that s140K specifically does *not* deal with cancellation of approval as a business sponsor, which is dealt with under s137B (see above).

124.10 Waiving a bar

Regulation [1.20HC](#) prescribes the circumstances and criteria to be taken into account where a waiver of a bar has been requested under regulation [1.20HD](#). For more information see [Waiving a bar](#).

125 LEGISLATION - OTHER SANCTIONS AGAINST A BUSINESS SPONSOR

125.1 Action because of a breach of undertakings

Section [140J](#) allows for action as specified in s140L to be taken against a business sponsor who has breached an undertaking. This includes a person who is no longer an approved sponsor, but remains bound by an undertaking. For information on the 457 sponsor's undertakings and when sponsors are no longer bound by the undertakings, see [Sponsor's undertakings](#).

Regulation [1.20HA](#) prescribes the circumstances in which action may be taken against the sponsor and the criteria that must be taken into account when determining what action to take. Regulation 1.20HA also prescribes which of the actions specified in [s140L](#) may be taken against a business sponsor.

125.2 Action because of other grounds

Section [140K](#) allows for action as specified in s140L to be taken against a business sponsor in circumstances other than breaches of undertakings.

Regulation [1.20HB](#) prescribes these other circumstances in which action may be taken and prescribes the criteria to be taken into account when determining what action to take. This regulation allows action to be taken if the sponsor has failed to continue to satisfy the requirements of the sponsorship or if the sponsor has given false information to the department. Regulation 1.20HB also prescribes which of the actions specified in s140L may be taken against a business sponsor.

125.3 Actions under s140L

Section [140L](#) of the Act specifies what actions may be taken against a sponsor under sections 140J or 140K of the Act. Under s140J and s140K, it is specified that these sections do not

deal with cancellation of approval as a business sponsor. Such cancellation action must occur under [s137B](#) of the Act.

Section 140L provides for:

- (a) cancelling the approval of the sponsor for specified kinds of temporary visas – this action may be appropriate if the 457 business sponsor has also sponsored visa holders under other subclasses and the circumstances warrant also cancelling the approval as that type of sponsor. Business Employment Section is to be consulted first if this action is being considered
- (b) cancelling the approval of the sponsor for all temporary visas - this action does not apply to 457 business sponsors as s140J and s140K do not provide for cancellation of approval as a business sponsor. Cancellation of 457 business sponsors occurs only under s137B.
- (c) barring the sponsor, for a specified period, from sponsoring more persons under the terms of one or more existing specified approvals for temporary visas - this bar may be considered if, for example, the sponsorship has not ceased and it has been decided that cancellation of the approval as a business sponsor should not occur. In these circumstances, it may be determined that to stop further approvals of 457 visas against this particular sponsorship is the appropriate action to take. See [Imposing sanctions - Procedures](#).
- (d) barring the sponsor, for a specified period, from sponsoring more persons under the terms of all existing approvals for temporary visas - this bar may be appropriate if the 457 business sponsor has also sponsored visa holders under visa subclasses other than 457 and the circumstances warrant stopping further visa applications in connection with all other types of current sponsorships. Business Employment Section is to be consulted first if this action is being considered.
- (e) barring the sponsor, for a specified period, from making future applications for approval as a sponsor for specified kinds of temporary visa for which sponsorship is a criterion. This is the most likely bar to be considered for 457 business sponsors. It precludes further sponsorship applications from being made for a specified period. See [Imposing sanctions - Procedures](#).
- (f) barring the sponsor, for a specified period, from making future applications for approval as a sponsor for all temporary visas for which sponsorship is a criterion - this action may be considered if the 457 business sponsor is likely to consider sponsoring persons under subclasses other than 457 and the circumstances warrant preventing this from happening for a specified period. Business Employment Section is to be consulted first if this action is being considered.
- (g) barring the sponsor, for a specified period, from nominating a person or activity in relation to a temporary visa where the sponsor would otherwise be entitled to make the nomination under the regulations - this bar is most likely to be imposed while another type of bar or cancellation is being formally considered. This bar may also be imposed if it is decided that other action is not warranted, but no further nomination applications should be made in connection with an existing sponsorship. See [Imposing sanctions - Procedures](#).

It is possible to apply one or more of the actions specified in s140L. It is expected that [s140L\(c\)](#) & [\(e\)](#) and [\(g\)](#) be the actions most likely to be taken against 457 business sponsors.

126 THIRD PARTY INFORMATION

126.1 Types of third party information

In some cases, information relevant to a decision about possible sanctions will be provided to DIMA by a source other than the sponsoring business, eg in circumstances where:

- a third party provides anonymous information regarding the activities of the sponsor or
- another government agency provides information relating to breaches in their area of responsibility eg DEWR advises that a company has breached workplace relations or workplace relations law or
- a sponsored person makes a complaint to DIMA or
- a complaint from a sponsored person is referred to DIMA or
- DIMA obtains information from monitoring activities (site visits or through form 1110).

If a complaint has been made, the complainant should be asked to make and sign a statement detailing the specifics of the complaint. This person should be advised that the complaint may be put to the sponsor.

If a decision to impose a sanction would be based on adverse third party information, the sponsor is to be given the information and an opportunity to comment before the decision is made using this information. This may include providing the sponsor with a copy of any statement of complaint made by a sponsored employee.

Adverse third party information may be provided to the sponsor at an interview or in written form - see [section 136 Notice of intention to consider an action](#).

126.2 Verifying third party information

Due care must be taken in considering third party information. Care must also be taken in disclosing information given by third parties as the Department could be under a duty of confidence. For more information on disclosure - see [PAM3: GenGuideA - Visa application procedures - Information provided without the applicant's knowledge](#).

Officers should take appropriate steps to verify claims made against a business sponsor where the imposition of a sanction is being considered. This may include initiating monitoring of the sponsor to obtain more information on the business sponsor's activities.

Officers may also refer to Lawpoint, the Australian Securities and Investment Commission (ASIC) database, to determine whether a company has been deregistered.

Bankruptcy information is maintained by the Insolvency Trustee Service Australia (ITSA) on the National Personal Insolvency Index (NPII), housed on the Lawpoint database.

Associations (as opposed to companies) are registered with relevant State/ Territory government authorities (eg the relevant State Department of Fair Trading) rather than with ASIC.

126.3 Recording the information

Adverse information received on a business sponsor is to be recorded in ICSE.

127 PROCEDURAL FAIRNESS

127.1 Procedural fairness

The procedures for imposing a sanction are in:

- [Imposing sanctions - Procedures](#)
- [Imposing sanctions - Notifying the decision](#).

Consistent with the Code of Procedure that applies to visa applications, if a decision to impose a sanction is based on adverse third party information, the sponsor should be given that specific information and an opportunity to comment on it before any decision is made.

There may be times when information on an individual visa holder has a direct bearing on the sponsor's liabilities with the undertakings or on the consideration to impose a sanction. For more information on this see [section 121 Providing information to sponsors](#).

128 THE MERITS OF THE CASE

The relevant grounds for imposing sanctions are prescribed in regulations [1.20F](#), [1.20HA](#) and [1.20HB](#). For guidelines on these prescribed grounds (and associated policy considerations), see [Imposing sanctions - Procedures](#).

Officers must consider each case on its merits having regard to:

- the seriousness of the matter
- the past conduct of the sponsor in relation to immigration matters
- the possible effect of the sanction on the sponsor's business operations and
- the possible effect of the sanction on the Australian labour market.

Monitoring Unit officers should be mindful that once a decision has been made to *not* impose a bar or cancel an approved sponsorship, the circumstances which led to the consideration of that barring/cancellation action cannot be revisited. Monitoring officers should ensure that all the circumstances are fully investigated before issuing a Notice of Intention to Consider Cancellation and/or Bars. If the issues of the case are complex and (despite being of concern) do not appear to directly relate to a clear power to cancel and/or bar, further advice from the Business Employment Section should be sought before deciding whether to issue a notice.

129 WHEN TO INVOKE THESE POWERS

129.1 When grounds for sanctions come to notice

When it comes to attention (most likely as a result of monitoring activity but possibly as a result of other third party information) that there may be grounds under regulation 1.20F, 1.20HA or 1.20HB to impose a sanction, the matter must be investigated to ascertain whether the grounds exist.

If it is found that grounds exist to consider imposing a sanction on a business sponsor, officers are, as soon as practicable, to put those grounds and related evidence to the sponsor to answer. This would generally be in the form of a notice as described in [section 136 Notice of intention to consider an action](#).

130 OFFICER RESPONSIBILITIES

130.1 Adherence to policy and procedures

Officers must ensure that they adhere to the procedures prescribed in the Act and Regulations when considering whether or not to impose a sanction on a sponsor. They must adhere to policy guidelines regarding the process for imposing sanctions, treatment of third party information and requests for provision of more information from sponsors. If officers go outside policy guidelines, the reasons for this must be recorded.

130.2 ICSE and TRIM

It is recognised that sponsors operate in a global environment. Staff at various Business Centres, overseas missions and National Office may have cause to interact with business sponsors. For this reason, it is important to record relevant information electronically so that others may access that information when needed.

Officers should ensure that the relevant information is recorded in ICSE and/or electronically stored in TRIM. There are guidelines throughout this document and in the Monitoring Units Statement of Work that provide guidance on what information should be so recorded.

131 DELEGATIONS

The powers to cancel the approval of a business sponsorship, impose a bar on a sponsor or waive a bar has been separately delegated from the power to approve or reject applications for business sponsor status.

The delegation is generally held at the Executive Level 1 and above for [s137B](#), [s140J](#) and [s140K](#) of the Act. Officers should refer to the current list of delegations before considering imposing sanctions or deciding to impose a sanction.

132 OVERSEAS BUSINESS SPONSORS

132.1 s137A & overseas business sponsor

For definitions of pre-qualified business sponsorship and standard business sponsor status see [Division 1.4A defined terms](#).

132.2 Applications lodged before 1 July 2003

Prior to 1 July 2003, the [s137A](#) definitions of business sponsor and approval of a person as a business sponsor did not apply to overseas business sponsors. For applications lodged before 1 July 2003, there is therefore no formal approval as a sponsor that can be (or needs to be) cancelled.

Prior to 1 July 2003, overseas business sponsors were not formally approved under the Regulations as sponsors because they could not meet the requirements of regulation 1.20D(2)(a), which required the business to be lawfully and actively operating in Australia.

This means that, except for [s137H](#), which does include overseas business sponsors - see Provision of information to DIMA - subdivision GA does not apply to overseas business sponsors if the application was lodged before 1 July 2003.

In these cases, overseas businesses were, however, still assessed as to their sponsorship credentials under nomination regulation [1.20G\(1\)\(d\)](#). A nomination approval may be ceased under regulation [1.20H\(5\)\(e\)](#) if the overseas business sponsor has not complied with their undertakings or no longer meets the “sponsorship” requirements under regulation 1.20G(1)(d).

132.3 Applications lodged 1 July 2003 or later

From 1 July 2003, overseas business sponsors are included in the regulation 1.20B definition of [standard business sponsor](#) and can apply for standard business sponsor status under regulation [1.20C](#), for consideration against the criteria prescribed in regulation [1.20DA](#). They are therefore included in the [s137A](#) definition of business sponsor and their business sponsorship may be cancelled in the same way as other business sponsorships may be.

Where the overseas business sponsorship was applied for on or after 1 July 2004, other sanctions may also be considered against the sponsor. Any imposition of sanctions against an overseas business sponsor should be considered in conjunction with the overseas post that approved the original sponsorship.

IMPOSING SANCTIONS - PROCEDURES

This Part comprises:

- [section 133 Breach of undertakings](#)
- [section 134 Incorrect or false information](#)
- [section 135 No longer satisfies requirements of approved sponsor](#)
- [section 136 Notice of intention to consider an action](#)
- [section 137 Mitigating circumstances.](#)

133 BREACH OF UNDERTAKINGS

133.1 Consequences

A sanction may be imposed if the sponsor has failed to comply with the undertakings to which they agreed upon signing and submitting the sponsorship application form 1067 (sponsorships before 1 July 2003), 1196 or 1196(Internet). (If the sponsorship application was made on or after 1 July 2004, these undertakings are prescribed in regulation [1.20CB](#).)

Regulation [1.20F\(c\)](#) enables approval of a business sponsor to be cancelled under [s137B](#) if the sponsor has failed to comply with the undertakings they agreed to when signing and submitting form 1067, 1196 or 1196(Internet).

Regulation [1.20HA](#) enables one or more of the cancelling or barring actions specified in [s140L\(a\), \(c\), \(d\), \(e\), \(f\), or \(g\)](#) to be taken if an undertaking has been breached by a standard business sponsor or former standard business sponsor against whom the undertaking remains enforceable. (For policy guidance on the types of decisions that may be made, see [section 138 Possible decisions](#).)

It is important to first ascertain *when* the sponsorship application was made to determine if the undertakings agreed to were the pre- or post-1 July 2004 wording:

- If the breach refers to undertakings agreed to *before* 1 July 2004, the only direct action that may be taken against the sponsor is cancellation under s137B.
- For breaches of undertakings agreed to on or after 1 July 2004, however, other action such as bars as specified in s140L may also be taken against the sponsor.

133.2 Prescribed considerations

The criteria that must be taken into account under regulation [1.20HA](#) (and under policy for regulation [1.20F](#)) are:

- the severity of the breach of the undertaking and
- the past conduct of the sponsor.

Severity of the breach

Delegates must take into account the effect of the breach of undertaking that has occurred.

Examples:

A sponsor advises DIMA 7 days after a sponsored person has ceased to be in the sponsor's employ, that is, 2 days later than specified in the undertakings (reg. 1.20CB(1)(f)). In this situation, it may be considered that as there has been no adverse effect as a result of this breach, that this is not a severe breach of the undertaking and that any decision on action against the sponsor should reflect that.

A sponsor has been found to have paid several sponsored persons less than the minimum salary level, (reg. 1.20CB(1)(i)). As this is a situation that has strongly adversely affected several sponsored persons, it is expected that strong action against the sponsor would be considered, for example both sponsorship cancellation and a 3 or 5 year bar on further sponsorship applications

Past conduct (breach of undertakings factor)

Delegates must take into account the past conduct of the sponsor.

Examples:

The sponsor has sponsored 457 visa holders over a period of several years and has previously been monitored satisfactorily. There have been no concerns raised about the sponsor in the past. The sponsor advises DIMA 4 weeks after a sponsored person has ceased to be in the sponsor's employ, (reg. 1.20CB(1)(f)). In this situation, it may be considered that this is not a severe breach of the undertaking and that the decision to take any action should reflect that.

The sponsor has previously neglected to advise DIMA that sponsored persons have ceased employment with the sponsor, (reg. 1.20CB(1)(f)). The sponsor was formally counselled at that time. During repeat monitoring, it is found that the sponsor has again neglected to inform DIMA about sponsored persons ceasing employment more than 5 working days ago. As the past conduct of this sponsor has not been exemplary, it may be decided in the circumstances to give significant weight to the sponsor's past conduct and cancel the approval as a business sponsor and impose a 3 or 5 year bar on further sponsorships.

133.3 Policy considerations

In deciding if cancelling or barring approval of a sponsor is warranted, delegates should also consider whether there are mitigating circumstances - see [section 137 Mitigating circumstances](#).

133.4 Nomination bars

Section [140L\(g\)](#) of the Act enables delegates to bar a sponsor from nominating a person or activity in circumstances where the sponsor would otherwise be entitled under the Regulations to nominate the person or activity.

If a breach of an undertaking is found to have occurred, regulation [1.20HA](#) item 2 allows a nomination bar to be imposed if the sponsor has been given a notice stating that cancellation or barring of the sponsor is being considered under s137B or s140L ie a bar on further nominations may be imposed while another sanction on the sponsor is being formally considered.

Alternatively, after taking into account the severity of the breach of undertaking and the past conduct of the sponsor, it may be decided that imposing a nomination bar, rather than other bars specified in s140L, is the appropriate action to take against the sponsor.

133.5 Identifying a breach of undertakings

For the wording of the 2 forms of undertakings, and policy guidelines on what constitutes a breach of undertaking, see [Sponsor's undertakings](#). Officers must have regard to those guidelines if it is considered that grounds exist under either regulations 1.20F or 1.20HA to take action under s137B or s140L against the sponsor.

Information on non-compliance with the undertakings may come from monitoring activities or from third party sources, such as employees of the sponsor. If there is third party information, this must be provided to the sponsor for comment before any decision about cancelling or barring is made - see [section 126 Third party information](#).

134 INCORRECT OR FALSE INFORMATION

134.1 Consequences

A sanction may be imposed if the sponsor has provided incorrect information in relation to an application for approval as sponsor, or in relation to any other matter relating to the sponsor.

Regulations [1.20F\(a\)](#) and [1.20F\(b\)](#) enable the approval of a business sponsorship to be cancelled under [s137B](#) if the sponsor has provided incorrect information in relation to an application for approval as sponsor, or in relation to any other matter relating to the sponsor.

Regulation [1.20HB](#) - which may be used only if the sponsorship and/or nomination application was made on or after 1 July 2004 - enables one or more of the cancelling or barring actions specified in [s140L\(a\), \(c\), \(d\), \(e\), \(f\) or \(g\)](#) to be taken if the sponsor:

- has given false information in relation to the sponsorship or
- has given false information in relation to the sponsor's compliance with the Act and Regulations or
- has given false information in relation to the assessment of the sponsored person's compliance with the conditions to which that person's 457 visa is subject.

(For policy guidance on the types of decisions that may be made, see [section 138 Possible decisions](#).)

134.2 Policy considerations

In assessing this (under either regulation 1.20F or regulation 1.20HB), officers should have regard to:

- the requirements under regulation [1.20D](#) or [1.20DA](#) for approving applications as a business sponsor
- the requirements under regulation [1.20G](#) or [1.20GA](#) for approving nominations
- information provided by the sponsor on forms 1067, 1068, 1196 or 1196(Internet) in relation to their applications for approval as a sponsor or nomination
- information provided on form 1110 in relation to requests for information for monitoring of the sponsor.

134.3 Prescribed considerations

The criteria that must be taken into account under regulation 1.20HB (and under policy for regulation 1.20F(a) and (b)) are:

- the significance of any false information provided and
- the sponsor's past conduct.

Significance of false or incorrect information provided

In considering this factor, the significance of any incorrect information provided must be material to the sponsorship or nomination approval ie if the correct information had been provided, would the application have been approved:

- If the correct information would still have resulted in approval of the sponsorship application, imposing a sanction may be inappropriate, although it may be appropriate to counsel the sponsor about providing correct information in the future.
- If the correct information could have affected the decision to approve the sponsorship or nomination, this would be given significant weight when considering whether to impose a sanction under regulation 1.20F or 1.20HB.

Past conduct (incorrect information factor)

In considering this factor, delegates should take into account the past conduct of the sponsor *and* the sponsor's actions since the sponsorship was approved. The following (not an exhaustive list) may be mitigating circumstances to be taken into account for the sponsor:

- the sponsor is a repeat sponsor and there have not previously been grounds for taking action against the sponsor

- the sponsor has fully cooperated with DIMA and provided the correct information that led to consideration under these grounds
- the incorrect information was given inadvertently or accidentally.

Conversely, past conduct that might strengthen the argument to take action against the sponsor could include:

- if incorrect information has been provided on several occasions
- if incorrect information has been provided in relation to more than one nomination or more than one visa holder
- there have previously been grounds to take action against the sponsor, but the decision was made to counsel the sponsor instead
- there are currently other grounds for taking action.

134.4 Nomination bars

Section [140L\(g\)](#) of the Act enables delegates to bar a sponsor from nominating a person or activity in circumstances where the sponsor would otherwise be entitled under the Regulations to nominate the person or activity.

If it is found that the sponsor no longer satisfies the requirements of the sponsorship, regulation 1.20HB item 2 allows a nomination bar to be imposed if the sponsor has been given a notice stating that cancellation or barring of the sponsor is being considered under s137B or s140L.

Alternatively, a nomination bar may be considered taking into account the significance of any false information provided and the past conduct of the sponsor ie it may be determined that the final outcome for the sponsor is to have a nomination bar imposed in respect of an existing sponsorship

135 NO LONGER SATISFIES REQUIREMENTS OF APPROVED SPONSOR

135.1 Consequences

A sanction may be imposed if a sponsor no longer satisfies the requirements they satisfied for approval as a sponsor, having regard to (as applicable) regulations 1.20D or 1.20DA. Officers must, however, also have regard to the law in force when the sponsorship application was approved. This includes cases to which regulation 1.20CA(1) applied ie pre-qualified business sponsors approved prior to 1 July 2003.

Regulation [1.20F\(d\)](#) enables the approval of a business sponsor to be cancelled under s137B if the sponsor no longer satisfies the requirements they satisfied for approval as a pre-qualified sponsor or a standard business sponsor.

Regulation [1.20HB](#) - which may only be used if the sponsorship application was made on or after 1 July 2004 - enables one or more of the cancelling or barring actions specified in [s140L\(a\), \(c\), \(d\), \(e\), \(f\) or \(g\)](#) to be taken if the sponsor no longer satisfies the requirements of the sponsorship.

135.2 Relevant considerations

Prescribed considerations

The criteria that *must* be taken into account under regulation 1.20HB (and under policy for regulation 1.20F) are:

- the significance of any false information provided - see [Significance of false or incorrect information provided](#) and

- the sponsor's past conduct - see [Past conduct \(breach of undertakings factor\)](#) and [Past conduct \(incorrect information factor\)](#).

Policy considerations

In assessing this (under either regulation 1.20F(d) or regulation 1.20HB), officers should have regard to the following policy:

- [section 135.4 If not lawfully and actively operating](#)
- [section 135.5 Benefit to Australia provisions](#)
- [section 135.6 If not the direct employer](#)
- [section 135.7 Recruitment, labour hire & contract management firms](#)
- [section 135.8 New technology or demonstrated commitment to training](#)
- [section 135.9 Nothing adverse known](#).

135.3 Nomination bars

A bar on further nominations may be imposed while formal consideration is being given to imposing another sanction on the sponsor. Section 140L(g) enables a sponsor to be barred from nominating a person or activity in circumstances where the sponsor would otherwise be entitled under the Regulations to make the nomination. If it is found that the sponsor no longer satisfies the requirements of the sponsorship, regulation 1.20HB item 2 allows for a nomination bar to be imposed if the sponsor has been given a notice stating that cancellation or barring of the sponsor is being considered under s137B or s140L.

Alternatively, a nomination bar may be considered taking into account the significance of any false information provided and the past conduct of the sponsor. That is, it may be determined that the final outcome for the sponsor is to have a nomination bar imposed in respect of an existing sponsorship. See [section 138 Possible decisions](#).

135.4 If not lawfully and actively operating

Business sponsor applicants must demonstrate that the business is lawfully and actively operating - either in Australia, regulation [1.20D\(2\)\(a\)](#) or overseas regulation [1.20DA\(2\)\(a\)](#). Grounds for imposing a sanction may exist if monitoring or other information indicates that the sponsor has used the company for a purpose other than that considered under policy to be legitimate. "Non-legitimate" purposes includes unlawful business activities or activities not generally considered acceptable by the Australian community.

Sanctions may be considered if the company:

- is no longer actively operating in Australia (ie its operations have been taken offshore) (only if approved under regulation [1.20D](#)) or
- has been liquidated, barred from operation or is in receivership.

Sanctions may also be considered if the sponsorship was approved as a start-up company on the basis that it would commence actively operating during the validity of the sponsorship, but it fails to do so.

135.5 Benefit to Australia provisions

Sponsorship approval may be cancelled, or other sanction imposed, on the grounds of failing to meet any of the criteria prescribed in regulation 1.20D(2)(a) or 1.20DA(2)(a) relating to bringing benefit to Australia through the employment of 457 holders in Australia.

Failure to create or maintain employment for Australian citizens or permanent residents, regulation [1.20D\(2\)\(a\)\(i\)](#) or [1.20DA\(2\)\(a\)\(i\)](#), may arise, for example, if the business sponsor

retrenches Australian residents or Australian citizens in order to fill the positions with sponsored overseas workers.

Just because the sponsor does not meet one of these criteria, however, is not in itself grounds for imposing a sanction, unless the sponsor is failing to meet *all* the ‘benefit to Australia’ criteria ie the sponsor might not be creating or maintaining employment for Australian citizens but might be bringing benefit to Australia through the expansion of trade and competitiveness.

135.6 If not the direct employer

Business sponsors must be the direct employer in Australia of the visa applicant or visa holder, or be related (as defined under s50 of the Corporations Act 2001) to the direct employer of the visa holder, eg a parent-subsidary relationship, at the time of application and for the duration of the sponsorship, regulation [1.20D\(2\)\(b\)](#) or [1.20DA\(2\)\(b\)](#).

Grounds for imposing a sanction exist where information reveals that the sponsor is no longer the direct employer or related to the direct employer of the visa holder.

This may occur if a company restructures, is reorganised or is sold. In the case of a body corporate, the part of the company with direct responsibility for matters such as salary, taxation, superannuation and conditions of employment for the visa holder may become detached from the sponsor.

135.7 Recruitment, labour hire & contract management firms

If monitoring recruitment, labour hire or contract management firms, close scrutiny should be given to ensuring that the company is the direct employer.

If the approved sponsor is a recruitment, labour hire firm or contract management company and the visa holder is engaged, paid and supervised by another company, the recruitment or labour hire firm or contract management company would not generally be considered as being the direct employer.

Similarly, if the recruitment, labour hire or contract management firm contracts the nominated employee to another firm (ie an interposed entity), which in turn contracts the nominated employee to work in a third firm (ie the end user employer), the recruitment, labour hire or contract management firm can no longer be considered as being the direct employer.

If the recruitment, labour hire or contract management firm can no longer be considered as the direct employer of one or more nominated employees, consideration should be given to imposing a sanction on the company.

For more information on recruitment and labour hire firms and contract management companies, see:

- [Business sponsorship approval - Australian businesses - Australian businesses - The ‘direct employer’ requirement](#)
- [section 53 Recruitment, labour hire & contract management firms](#)
- [Regional 457 nominations](#)
- [section 107 The employer’s status.](#)

135.8 New technology or demonstrated commitment to training

Business sponsor applicants must meet either the new technology or the training requirement, regulation [1.20D\(2\)\(c\)](#). (Note that this requirement does not apply to overseas businesses approved as standard business sponsors under regulation 1.20DA.)

It is unlikely that a sanction would be imposed on the basis that a sponsor no longer meets the new technology component of regulation 1.20D(2)(c). If, however, a sponsorship has been approved on the basis of training records or training plans but the sponsor has no documentation or other evidence of their training programs, there may be grounds for cancelling or another sanction on the basis that the sponsor no longer satisfies the requirements as an approved sponsor.

Delegates may impose a repeat monitoring regime, rather than imposing a sanction, if genuine efforts have been made to provide training.

135.9 Nothing adverse known

In approving a business sponsor, DIMA must be satisfied that nothing adverse is known about the business background of the business sponsor applicant, or any of the officers of the sponsorship applicant, regulation [1.20D\(2\)\(d\)](#) or [1.20DA\(2\)\(c\)](#).

This is to allow DIMA officers to take into account the possibility of previous company officials associated with a company with an adverse record changing company to avoid refusal on the basis of their past poor performance. 'Officer of the sponsorship applicant' includes any person having a role in the company, such as managers, directors, owners or other functionaries.

Delegates can consider imposing a sanction where information comes to light about the business operations of the sponsor or its officers subsequent to the approval of the business sponsorship.

If it is established that incorrect information was given regarding the business background of the sponsor or its officers in the approval process, delegates should consider imposing a sanction on the grounds that incorrect or false information has been provided to DIMA - see [section 134 Incorrect or false information](#).

Possible databases that can be checked to obtain information on the company and its principals (such as deregistration, insolvency and bankruptcy) are outlined in [section 126.2 Verifying third party information](#).

Officers may also need to check the current status of an employer with the local Compliance section before proceeding to imposing a sanction on this ground.

136 NOTICE OF INTENTION TO CONSIDER AN ACTION

136.1 Invitation to comment

Under s137B, s140J and s140K, when considering imposing sanctions, there is no legislative authority requiring that a notice of intention to consider imposing a sanction be provided to a sponsor. Under policy, however, officers are to notify sponsors of the officer's intention to consider an action under:

- [s137B](#) (cancellation of approval as a business sponsor)
- [s140J](#) or [s140K](#) (cancellation under [s140L\(a\)](#) of approval of other types of sponsorship)
- s140J or s140K (barring a sponsor under [s140L\(e\)](#) from making future applications for approval as a 457 business sponsor) or
- s140J or s140K - barring a sponsor under [s140L\(f\)](#) from making future applications for approval as a sponsor for all temporary visas for which sponsorship is a criterion).

This notice must be in writing. It may be posted (or emailed if the sponsor has given authority for electronic communications) to the sponsor or handed to the sponsor at an interview.

When sending a Notice of Intention to Consider a Bar and/or Cancellation (to either a sponsor or visa holder), Monitoring Unit officers should ensure that *each* sponsorship approval under consideration is clearly specified in the notice.

If a sponsor operating in more than one State/Territory is found to be of concern, Monitoring Unit officers should ensure that each State/Territory operation is informed of any actions regarding the sponsor.

136.2 What to include in the notice

Standard notices are available from Business Employment Section. The notice is to include:

- the grounds under which action is being considered
- details of any evidence that the grounds exist
- details of any adverse third party information, including copies of any statements made by witnesses
- details of all action being considered (note that more than one action may be considered at the one time eg cancellation and imposing a bar)
- whether a nomination bar ([s140L\(g\)](#)) has been imposed
- the time limit for responding to the notice and
- the name and contact details of the delegate and any contact person.

If the sponsor has sponsored 457 visa holders under several agreements, any notice should include a reference to all sponsorships to which 457 visa holders currently in Australia are attached, irrespective of whether the sponsorship is current or has ceased. This is to avoid a situation where certain visa holders sponsored under another, uncanceled, agreement may lawfully remain in Australia, sponsored by an employer who has been found unfit to sponsor.

136.3 Time limit for response

The sponsor must be given reasonable opportunity to respond to the notice. Under policy, this would generally be 28 days plus 7 days notification if the notice is posted but there might be circumstances where it would be reasonable to give the sponsor more time to respond.

137 MITIGATING CIRCUMSTANCES

137.1 Possible factors

If mitigating factors exist, delegates may have grounds for believing that sanctions should not be imposed. Such factors might include:

- the severity of the breach or omission
- the sponsor's past conduct and record of compliance with immigration laws
- whether the sponsor was aware that the information provided or omitted was false, or the actions taken were contrary to immigration laws
- steps taken by the company to rectify the situation
- steps taken by the company to prevent any further breaches or problems
- how well the sponsor has cooperated with DIMA and
- whether the sponsor informed DIMA of circumstances that might lead to cancellation.

As the power to cancel is discretionary, any mitigating factors submitted by the approved sponsor must be considered and these should be reflected in the decision record.

137.2 Adverse information

If adverse information related to a business sponsor becomes evident, delegates should consider whether, had the information come to light prior to deciding the sponsorship application, they would have not approved the sponsor or whether in fact the information would have been considered, but not have prevented, the person being approved as a sponsor. Delegates should also take into account what has happened since the sponsorship was approved eg the outcome of any monitoring activities and whether the sponsor has fully cooperated with DIMA.

IMPOSING SANCTIONS - NOTIFYING THE DECISION

This Part comprises:

- [section 138 Possible decisions](#)
- [section 139 Length of the bar to be imposed](#)
- [section 140 Decision does not preclude later action](#)
- [section 141 Notification of the decision](#)
- [section 142 Merits review](#)
- [section 143 Consequences for sponsored persons](#)

138 POSSIBLE DECISIONS

138.1 Consider the evidence

Once all the evidence has been gathered and the sponsor has had a reasonable opportunity to respond to any allegations, claims or evidence, the delegate must decide the action, if any, to impose. The most likely decisions are as follows.

138.2 No further action required

If it is found that the sponsor has no case to answer, for example, a third party provided erroneous information, the delegate may decide that no further action against the sponsor is required. This should be recorded in ICSE, together with any outstanding monitoring action being finalised as satisfactory and the sponsor informed that no further action will be taken.

138.3 Counselling

The delegate may decide that, although the sponsor may be liable for action to be taken because of a breach of an undertaking or for other reasons, in the circumstances further action is not warranted. This might occur, for example, if it is clear that a sponsor has made a genuine mistake and there are no adverse consequences for any sponsored persons. In such a situation, it may be appropriate to formally counsel the sponsor (in an interview, by letter, or both) as to their obligations as a sponsor. The sponsor should also be informed that any further breaches may result in sanctions being imposed.

The counselling and the reasons for this must be recorded in ICSE. Any monitoring activity should be finalised as unsatisfactory. The sponsor should also be scheduled for repeat monitoring at a reasonable time (usually 3 or 6 months) in the future.

138.4 No further nominations nor persons sponsored under existing sponsorship

If the sponsor has a valid sponsorship and the nomination ceiling has not yet been reached, and the delegate decides not to cancel the current sponsorship, the delegate may decide instead that, in the circumstances, the sponsor should not be able to sponsor or nominate further persons. This might be an option if the sponsor is a high volume sponsor and the delegate has decided that it is not reasonable to (in effect) penalise visa holders currently employed by the sponsor.

In this case, the delegate may decide to bar the sponsor from sponsoring more persons under the current sponsorship ([s140L\(c\)](#)) and/or bar the sponsor from nominating further activities under this sponsorship ([s140L\(g\)](#)). *This option is available only if the sponsorship was made on or after 1 July 2004.*

If this decision is made, the sponsor must be counselled and notified of the decision and scheduled for repeat monitoring at a reasonable time (usually 3 or 6 months) in the future. The reasons for the decision should be noted in ICSE and any monitoring activity should be finalised as unsatisfactory.

138.5 Sponsorship cancelled

Generally, if the delegate finds there are grounds to cancel the sponsorship under regulation [1.20F](#), and the sponsorship is still valid, they should cancel approval as a business sponsor under [s137B](#) unless there are strong mitigating circumstances to do otherwise. Any outstanding monitoring activity should be finalised as unsatisfactory.

138.6 Sponsorship bar imposed

If the delegate finds there are grounds under either or both regulation [1.20HA](#) and [1.20HB](#), after considering the criteria in these regulations for imposing a bar, they should generally bar the sponsor from making further sponsorship applications for [457 visa holders \(s140L\(e\)\)](#) unless there are strong mitigating circumstances to do otherwise. Any unfinalised monitoring activity should be finalised as unsatisfactory. If a sponsorship bar is imposed, the decision letter and record must clearly state the nature of the bar and the application subclasses to which a sponsorship bar relates (eg sponsorship under the subclass 457 visa).

If a decision is made under [s140L\(c\)](#) to bar a sponsor from sponsoring more people under an existing sponsorship or, under [s140L\(e\)](#), to bar a sponsor from making further sponsorship applications, the subclass of temporary visa to which the bar applies is to be specified. The temporary sponsored subclasses that have been specified must be included in the decision letter. If considering including subclasses other than 457, delegates should consult Business Employment Section.

138.7 Other action under s140L

Other action under s140L may also be considered. If such action is being considered, the delegate should consult Business Employment Section.

138.8 More than one action possible

Delegates may consider taking, and decide to take, more than one action against a sponsor. For example, if imposing a s140L(e) bar is being considered and the sponsorship is still valid, cancellation of that sponsorship under s137B should also be considered. While considering

action specified in s140L(e) and/or s137B, delegates may impose a nomination bar (s140L(g)) on the sponsor.

139 LENGTH OF THE BAR TO BE IMPOSED

139.1 Bar on further approvals under a sponsorship (s140L(c))

If it is decided to bar the sponsor from sponsoring more persons under the terms of an existing approval, the period of the bar should be for the remaining period of approval as a sponsor.

139.2 Bar on future sponsorship applications (s140L(e))

3 year bars

If it is decided to bar the sponsor from making future applications for approval as a business sponsor, the period of the bar should generally be for 3 years.

5 year bars

The bar should be for 5 years for:

- repeat offences ie where the sponsor has previously been counselled because grounds existed to take action under s140L or s137B or has previously had action taken under either of those provisions or
- worker exploitation ie where there is evidence that the sponsor has exploited the sponsored persons by significantly underpaying them and providing conditions of employment significantly below the Australian standard.

139.3 Bar on nominations (s140L(g))

If a nomination bar is being imposed on a sponsor while either cancellation or a sponsorship bar is being formally considered, the bar should be imposed until a decision is made on the other action.

If, after considering all the evidence and circumstances, it is decided to bar the sponsor from nominating an activity for a 457 visa in circumstances where the sponsor would otherwise be entitled under the Regulations to make the nomination, the bar should be for the remaining period of approval as a sponsor.

140 DECISION DOES NOT PRECLUDE LATER ACTION

140.1 In regards to cancellation

Under [s137C](#) of the Act, delegates can cancel approval as a business sponsor on a prescribed ground even though they may have decided not to cancel approval on a previous occasion. For example, if a delegate exercises discretion not to cancel a sponsorship where incorrect information was given (eg regarding how many Australian workers are employed), it is possible for a delegate to cancel the sponsorship on other grounds (eg failure to pay the visa holder award rates as required by the sponsor's undertakings) at a later time. Cancellation of sponsorship for providing incorrect information could be pursued at a later date if further evidence is found.

Note, however, if specific evidence is provided indicating a breach of the sponsor's undertakings, and it is decided not to cancel, that specific evidence cannot be used as the basis of any future cancellation consideration.

Officers should ensure that ICSE records and case file notes involving a business sponsor reflect all acts and omissions relevant to the consideration of cancellation, including occasions where cancellation procedures were not formally undertaken.

140.2 In regards to other sanctions

Similarly, if it is decided not to sanction a sponsor in particular circumstances, further sanctions can be considered at a later date only if new evidence arises. Sanctions cannot, however, be imposed at a later date based on the same evidence that was previously used and on which it was decided not to proceed with the sanction.

141 NOTIFICATION OF THE DECISION

141.1 Requirements

The Act and Regulations do not prescribe how notification of the decision to take cancelling or barring action under s140L is to be given. Under policy, the following procedures are to be followed for these actions as well.

In regards to [s137D\(1\)](#) of the Act, the sponsor must be given written notice of the cancellation of their approval as a business sponsor. Similarly, written notice must be provided to the sponsor if other action under s140L is to be taken.

In regards to [s137D\(2\)](#), the notice must be addressed to the sponsor and either hand-delivered or posted to an address taken under [s137E](#) to be appropriate. If the sponsor has authorised a migration agent to act on their behalf, the notice must be sent to the migration agent.

141.2 Statement of reasons must be given

s137D(4)

Under [s137D\(4\)](#), the notice must state the grounds for the barring or cancellation action and the reasons for the decision. If a bar as specified in s140L as been imposed, the notice must also include the period for which the bar will be in force.

141.3 Other matters for inclusion in the notice

Other matters to be included in the notice (standard notices are available from Business Employment Section) are:

- any merits review rights the sponsor has - see section [142 Merits review](#)
- if a bar is imposed, details of waiver provisions for that bar - see [Waiving a bar](#)
- details of the delegate, including position number.

141.4 Where the notice must be delivered

Section [137E](#) of the Act specifies what constitutes an appropriate address where the notice of the decision should be delivered:

- an address provided to DIMA at which the sponsor carries on business, or proposes to carry on business for at least 14 days or
- an address that the business has notified DIMA as being one to which the notification may be sent, including an authorised person such as a migration agent or
- the later or latest of such addresses, where several addresses falling into the alternatives above have been supplied to DIMA.

141.5 Time allowed for receipt

There is no prescribed period in which the sponsor is taken to have received the notice.

141.6 If the sponsor is not notified of the action

Under [s137D\(5\)](#) of the Act, failure to give the sponsor a notice of cancellation does not affect the lawfulness of the decision to cancel. Similarly, for action taken under s140L, failure to give the sponsor a notice of the decision does not affect the lawfulness of the decision made.

142 MERITS REVIEW

142.1 Eligibility

Under regulation [4.02\(4\)\(c\)](#), cancellation of the approval of sponsorship status under s137B of an Australian business is merits reviewable by the MRT.

Under regulation [4.02\(4\)\(i\)](#), a decision under s140J or s140K to take cancellation or barring action as specified in [s140L\(a\)](#), [\(c\)](#), [\(d\)](#), [\(e\)](#), [\(f\)](#) or [\(g\)](#) in relation to a standard business sponsor or a former business sponsor is merits reviewable by the MRT. This means that:

- if a sponsorship or nomination bar has been imposed, that decision is merits reviewable
- if a nomination bar has been imposed while other action is being considered, the decision to impose the nomination bar is merits reviewable.

It is the business sponsor (or former business sponsor) who is eligible to seek the review.

142.2 Overseas businesses

Merits review does not apply to sponsorships lodged by overseas businesses before 1 July 2003, they cannot have their “sponsorship” cancelled because they were not formally approved as sponsors.

Nor does merits review apply to (standard business) sponsorships lodged by overseas businesses on or after 1 July 2003. This is because regulation 4.02(1) does not include overseas businesses in the definition of standard business sponsor (because their application was decided under regulation [1.20DA](#), and the decision is not prescribed under regulation 4.02(4)(a)).

142.3 Notification

Under policy, the notice of decision should state these review rights consistent with s127 procedures. See also [MSI: Merits review by the Migration Review Tribunal](#).

143 CONSEQUENCES FOR SPONSORED PERSONS

143.1 Legislative authority

Whether or not the sponsorship is still current, regulation [2.43\(1\)\(l\)](#) enables a [457 visa](#) to be cancelled if, in effect, the holder’s current business sponsor falls within regulation [1.20F](#).

143.2 If the sponsorship has ceased

A 457 visa may still be cancelled even though the employer's sponsorship approval may have ceased.

If consideration is being given to cancelling the 457 visas of sponsored person because of their sponsor's actions, in the interests of procedural fairness officers should put this information to the sponsor first and obtain the sponsor's comments before notifying the sponsored person and commencing the visa cancellation process. A standard letter for this purpose is available from Business Employment Section.

If the sponsorship application was made on or after 1 July 2004, it may be possible to obtain the sponsor's comments when considering whether to impose a sanction under [s140J](#) or [s140K](#).

For information on visa cancellation procedures and policy, [PAM3: Sch2Visa457 - Visa 457 and the s116 cancellation powers](#).

WAIVING A BAR

This Part comprises:

- [section 144 Legislative authority](#)
- [section 145 Relevant factors](#)
- [section 146 Notification of the decision](#).

144 LEGISLATIVE AUTHORITY

144.1 Power to waive a bar

The power to waive a bar imposed on a person under s140J or s140K is in [s140O](#) of the Act, which also enables circumstances to waive a sponsorship or nomination bar to be prescribed in the Regulations. Section [140P](#) of the Act enables the process for waiving a bar to be prescribed in the Regulations.

144.2 Criteria for waiving

Regulation [1.20HC](#) provides that if:

- a bar has been placed on a 457 business sponsor or former business sponsor and
- that person asks that the bar be waived

certain criteria - prescribed in regulation [1.20HC\(3\)](#) - must be met for the delegate to waive the bar.

Regulation [1.20HD](#) requires that a request to waive a bar be made in writing. There is no prescribed form for such a request to be made.

145 RELEVANT FACTORS

145.1 Prescribed criteria

The following criteria are prescribed in regulation 1.20HC(3) and must be taken into account by the delegate when deciding whether to waive the bar:

- (a) whether Australia's interests would be significantly affected if the bar were not waived
- (b) whether substantial trade opportunity would be lost if the bar were not waived
- (c) whether there would be a significant detriment to the Australian community if the bar were

not waived

- (d) whether the person's inability to be a sponsor would significantly damage Australia's relations with the government of another country
- (e) if a delegate has previously refused to waive the bar - whether the current delegate is satisfied that the circumstances in which the previous delegate took the criteria above into account have changed substantially.

The onus is on the sponsor to make a case under one or more of the prescribed criteria.

145.2 Policy considerations

Each request for waiver of a bar must be considered on its own merits. The policy intention, however, is that for the bar to be waived significant reasons must be given. There must also be a significant effect on Australia or the Australian community if the bar were not waived; it is not enough that the business sponsor or former business sponsor demonstrate that their *business* will be affected by the bar.

The applicant must make written request for a waiver and should address the criteria above. They should also present evidence to support the claims made in the application.

146 NOTIFICATION OF THE DECISION

146.1 Method of notification

There is no method prescribed for informing the applicant of the decision to waive a bar, however under policy they should be notified in writing.

146.2 Merits review

A decision not to waive the bar is not merits reviewable.

146.3 Recording the decision

The decision, and reasons for the decision, must be recorded in ICSE. Business Employment Section must be informed of all requests for waiver of a bar and the outcome of the request.

GenGuide A - Site visit guidelines: Managing & conducting site visits

PAM3: GenGuideA

ABOUT THIS DOCUMENT

Contents

This document comprises:

- [Introduction](#)
- [Global working, case referral & site visits](#)
- [Considering a possible site visit](#)
- [Pre-site visit checks & preparation](#)
- [Conducting the site visit](#)
- [After the site visit](#)
- [Attachment A - Site visits documentation](#)
- [Attachment B - Generic offshore referrals process chart](#)
- [Attachment C - Site visit approval form](#)
- [Attachment D - Preparation for a site visit related to an applicant's work/skills claims](#)
- [Attachment E - Preparation for a site visit related to an applicant's relationships claims](#)
- [Attachment F - Site visit report form](#)
- [Attachment G - ICSE / IRIS Referral outcome values](#)
- [Attachment H - Glossary](#)

Related instructions

- [PAM3: GenGuideA - Global working framework - Output 1.1 case referral management](#)

Recent changes

Legislative

Nil

Policy

This instruction is new to PAM. It was registered as an official instruction on 10/01/06 and took effect from that date.

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Attachment G - ICSE / IRIS Referral outcome values

Attachment H - Glossary

INTRODUCTION

This Part comprises:

- [section 1 About this document](#)
- [section 2 Purpose of the site visit guidelines.](#)

1 ABOUT THIS DOCUMENT

This document provides general guidance for managing and conducting site visits required under Output 1.1: Migration and temporary entry visa processing. The guidelines may, however, also be of use when considering site visits which support other departmental outputs. The guidelines have been drafted primarily for offshore officers involved in site visits, but may also aid officers involved in onshore site visits.

These guidelines are reviewed and updated regularly. Comments or suggestions are welcome and can be emailed to: Global.systems@immi.gov.au

2 PURPOSE OF THE SITE VISIT GUIDELINES

These guidelines aim to ensure that the on and offshore systems and processes that support site visits are coherent, linked and logical. While local conditions at posts may necessitate changes to processes, managers should ensure that all staff involved in site visits conduct activities according to the principles outlined in these guidelines.

The guidelines provide a framework of better practice approaches that should be applied as appropriate. They do not cover all issues that may arise when conducting site visits.

These guidelines have been developed by the Global Systems Section with input from onshore and offshore referrals managers and administrators, processing and referral officers, Legal Services and Coordination Branch and Compliance Analysis Branch, DIMA National Office.

These guidelines complement and should be implemented together with [PAM3: GenGuideA - Global working framework - Output 1.1 Case referral management](#).

If officers have any legal or operational concerns in relation to a particular site visit, specific advice should be sought from their managers/supervisors.

GLOBAL WORKING, CASE REFERRAL & SITE VISITS

3 THE GLOBAL FRAMEWORK

Under global working arrangements, responsibility for processing visa applications is transferred (repatriated) to specialised centres in Australia. Clients either apply directly to the processing centres in Australia, or elsewhere, or for an increasing number of visa subclasses, over the Internet.

A key objective of repatriation is to enable overseas posts to make greater use of knowledge and experience about the local environment, customs and culture in ensuring integrity by reducing their involvement in many of the administrative aspects of visa processing. The case referral management (CRM) system was developed to help refer work relating to cases to other offices - especially posts with this local knowledge.

Referrals are categorised into streams depending on the nature of the work to be undertaken. Referrals requiring officers to undertake site visits are categorised as Stream 2c referrals for offshore site visits and Stream 2b for onshore site visits. Note a site visit referral may be used when the processing office requires a visit to a work place, home or other location to confirm claims made within an application.

CONSIDERING A POSSIBLE SITE VISIT

This Part comprises:

- [section 4 Who initiates site visits](#)
- [section 5 Site visits documentation](#)
- [section 6 The Offshore referrals process flow chart](#)
- [section 7 Site visit approval](#)
- [section 8 Risk assessment](#)
- [section 9 Scheduling a site visit \(and associated regional concerns\)](#)
- [section 10 Staffing for site visits.](#)

4 WHO INITIATES SITE VISITS

A referral to conduct a site visit is initiated at a processing office and sent to a referral office for actioning. In deciding whether to request a site visit, the case officer at the processing office will consider risk profiles, Safeguards alerts and other factors. [Attachment A - Site visits documentation](#) provides a brief description of the types of referrals requests a referral office can expect to receive.

5 SITE VISITS DOCUMENTATION

See [Attachment A - Site visits documentation](#).

At the referral office, in line with the PAM3 guidelines, a referrals manager/administrator should be nominated to be in charge of managing or administering referrals. This officer should be responsible for coordinating and overseeing case referral activities at the office. This officer will receive the initial request for the site visit, via ICSE or IRIS, and should match the request with any supporting documentation that is sent via email, fax or the diplomatic bag. Note in the case of onshore Stream 2b referrals, there are four separate areas within each STO to which a referral could be directed, and therefore may be four referral managers/administrators responsible for coordinating and overseeing the referral activities in their area.

Depending upon the nature of the post, the referrals manager/Principal Migration Officer/Senior Migration Officer may consider whether a site visit is necessary or practicable due to other priorities and whether the processing office's needs can be met through other checks. If the referral office believes that a site visit is not necessary, this should be discussed and alternatives negotiated with the processing office. To help inform these decisions, managers may wish to undertake a comparison of effectiveness of site visits with other forms of investigation undertaken within referral offices.

In general, factors that should be considered at the referral office when considering a site visit include:

- an assessment of the relative risk of the area to be visited
- scheduling and the overall management of site visit requests

- the level of staffing needed to conduct the site visit.

6 THE OFFSHORE REFERRALS PROCESS FLOW CHART

Managers at the referral office should consider the planning and preparation that will need to be undertaken by the office before the site visit is conducted. To effectively manage the site visits process (and other referrals activities), posts may wish to develop procedural documentation that captures the specific issues at their posts. While procedures at posts will vary according to particular circumstances, they would be expected to be similar to those set out in the [Attachment B - Generic offshore referrals process chart](#).

7 SITE VISIT APPROVAL

When a decision has been made to conduct the site visit, referral offices should document this decision. Posts may wish to use a form similar to that set out in the [Attachment C - Site visit approval form](#) to assist in the process.

When a decision to undertake a site visit in a particular region has been made, managers may wish to inform processing officers or other posts so that other site visits to the region can be commissioned to be undertaken at the same time. Managers may wish to use the Overseas Operations Report (OOR) or similar to inform others of these planned site visits. In informing others of a site visit intentions, managers need to be aware that if clients become aware of these intentions this may compromise the effectiveness of the visit.

8 RISK ASSESSMENT

When planning a site visit, an assessment of risk should be conducted in terms of the safety and security of the officers who will undertake the visit, and risks to other stakeholders. This initial analysis should include consideration of factors such as whether the site to be visited is located in or near an area that might threaten the safety or wellbeing of officers, or hinders their ability to undertake the site visit successfully. Posts will generally maintain profiles of risk and consult these profiles when considering site visits.

If it is established that the site visit is not advisable due to security reasons, the referral office should consult with the processing office to determine whether concerns regarding the visa applicant could be addressed using other integrity checks (such as telephone enquiries, internet checks, etc).

Local conditions vary and this makes the analysis of risk involved with conducting a site visit crucial. Officers conducting site visits need to be aware of the possible risks with the proposed site visit's environment and should develop location-specific policies and processes that address these risks. In particular, officers may wish to consult others at the post (eg Overseas Compliance Officers (OSCOs), post security officers, etc), external networks (eg officers of the Department of Foreign Affairs and Trade (DFAT)), and reliable non-government organisations such as friendly overseas missions or United Nations (UN) field staff, to discuss and assess the relative risk of site visits to some locations.

When considering onshore site visits, the initial risk analysis may focus more on the known characteristics of the visa applicant and/or his or her sponsor (where applicable), the ability of officers to undertake the visit successfully, and potential safety risks involved in the proposed site visit.

9 SCHEDULING A SITE VISIT (AND ASSOCIATED REGIONAL CONCERNS)

9.1 Is site visit practicable and feasible

If, as a result of the initial risk analysis, the proposed site visit is considered to be low risk and safe to conduct, the request should be considered on the basis of whether the site visit would be practical and feasible. This analysis may include consideration of factors such as the:

- distance to the site or remoteness of the area to be visited
- volume of other work on hand
- age of the referral
- likelihood of any more referrals being received for the area.

The onus is on referral offices to schedule site visits as appropriate, based on past referral patterns and expected workload.

In cases where the site visit is to an extremely remote area which the referral office is unlikely to be able to easily visit, the office should consult with the processing office to see if the referral could be satisfied using other integrity checks. These checks may include phone checks, verification of documents, internet searches, etc.

9.2 Service standards

Service standards require offices to process referrals within set timeframes. These service standards are revised from time to time and are set out in the Statements of Expectations (SOEs).

If the referral office cannot comply with the service standard, the office must promptly advise the processing office of this and propose an alternative approach and timing. While referral offices aim to meet the service standards, factors such as safety considerations, other work on hand, and the practicalities of sending staff to remote areas may delay site visits.

When processing a referral request in ICSE, if the referral office cannot comply with the service standard:

- the referral status field should be changed to “Consulting” to inform the processing office that the referral request has been received and is being addressed
- in the Notes field in ICSE, the reason for the delay is to be provided. Referral and processing offices must have a system in place to ensure timely identification of overdue referrals.

For more information on service standards and the management of overdue referrals, see [PAM3: GenGuideA - Global working framework - Output 1.1 Case referral management - Outstanding referrals and on-hand referrals.](#)

10 STAFFING FOR SITE VISITS

Generally:

- offshore site visits are undertaken by a team of two officers, with at least one officer having prior experience in conducting site visits
- onshore, it should be possible for most site visits (eg subclass 457 employee site visits) to be done by one experienced officer.

The number of officers undertaking the site visit is, however, at the discretion of the Principal Migration Officer or relevant manager. In deciding on the number of officers to undertake the visit, managers are expected to consider:

- the officers’ safety and security whilst undertaking the site visit

- the ability to provide backup should one team member becomes sick or needs assistance
- the ability to ensure proper notes and records are kept of interviews and proceedings conducted during the site visit
- the ability to provide corroboration or eye-witness accounts of proceedings during the site visit
- the opportunity to train new team members in how to conduct a site visit

Managers should rely in part on the initial risk assessment to select officers to conduct the site visit. It is essential that officers should be selected in light of possible cultural or regional sensitivities in relation to gender, ethnicity, or religious orientation. Inclusion of locally engaged staff may often be appropriate because of their local knowledge and experience.

Consideration should be given to whether an interpreter may be required to accompany officers during the site visit. Officers with good investigative skills are likely to be required. All officers selected should understand the need to respect privacy, and be aware of safety and security issues. Managers may wish to ensure that more experienced A-based staff are selected to undertake site visits involving higher risk, more sensitive cases.

In planning staffing for site visits, managers may wish to request compliance staff to provide advice or training to operational staff on issues such as integrity checking and investigative interviewing. This will help operational staff to conduct site visits more effectively.

PRE-SITE VISIT CHECKS & PREPARATION

This Part comprises:

- [section 11 Pre-site visit checks](#)
- [section 12 Clarifying objectives and the need for clear information](#)
- [section 13 Suggested equipment for use in conducting site visits.](#)

11 PRE-SITE VISIT CHECKS

Once the decision has been made to conduct the site visit and the referral officers who will be responsible for the site visit allocated, a range of checks should be made. These checks will help to ensure that the referral officers are prepared to undertake the visit safely, efficiently and effectively.

The relevant manager should be confident that adequate pre-site visit preparation has been conducted by the referral officers before authorising the visit. Depending on the nature of the site visit, checks may include:

- phone checks
- internet searches
- checks of IRIS and/or ICSE records, MAL and movement records
- updates on case information (eg the visa applicant's new address)
- reviews of relevant DFAT travel advisories prior to undertaking travel for site visits
- for posts managed by DFAT, formal DFAT consultation as to the location of the proposed site visit and any possible diplomatic implications.
- in posts managed by Austrade, consultation with the post's security advisor. (In Australia, advice may be sought from Compliance or Intelligence staff if there are doubts about safety and security. Law enforcement agencies could also be consulted in specific cases.)

For site visits aimed at establishing the integrity of work experience and/or skills, occupations should be verified in compliance with Australian Standard Classification of Occupations (“ASCO”) code. ASCO classifies all occupations in the Australian labour force and is the system used to assist in classifying visa applicants (and, if applicable, visa holders) by occupation.

Prior to undertaking the site visit, referral officers should also familiarise themselves with the subjects’ documents and photos.

Support officers involved in the site visit (eg driver or interpreter) will need to be appropriately briefed on security/safety issues and their role in the site visit (ie driving or interpreting rather than assisting with the conduct of the site visit).

For more information, see the Departmental Information Register available on DIMIANet.

12 CLARIFYING OBJECTIVES AND THE NEED FOR CLEAR INFORMATION

Before undertaking the site visit, referral officers should ensure that they understand the objective of the visit. Processing officers can assist by providing clear information on what is to be achieved from the site visit and any other information that will assist referral officers to conduct the site visit effectively. For example, processing officers could provide a set of questions for referral officers to ask subjects.

If the objective or any other aspect of the request is not clear, referral officers should discuss this with their managers and the processing officer.

Processing officers can also assist referral officers by ensuring that necessary documentation such as birth certificates or work references are accessible at the post and clearly legible.

When preparing for site visits, officers may find it useful to use pro formas or checklists to ensure that they have covered all areas. Suggested pro formas that can be adapted for local requirements are provided at:

- [Attachment D - Preparation for a site visit related to an applicant’s work/skills claims](#)
- [Attachment E - Preparation for a site visit related to an applicant’s relationships claims.](#)

13 SUGGESTED EQUIPMENT FOR USE IN CONDUCTING SITE VISITS

Posts may wish to develop lists of equipment and materials that referral officers should take with them on site visits.

A *mobile phone* (with caller ID blocked) is generally considered essential equipment on a site visit. For example, it could be used to:

- undertake verification of information discovered at the site
- obtain clarification and advice from other officers at post or processing officers, as well as other agencies
- request advice/assistance should officers encounter difficulties during the visit.
- communicate regularly between the site visit team members when managing teams that are conducting multiple site visits in regional areas

Referrals managers/administrators should consider the acquisition of satellite phones if mobile phones are unable to provide adequate coverage.

A *digital camera* is also useful to take on a site visit as it allows referral officers to visually document findings. This is useful in terms of reporting, as pictures provide evidence of what the team actually witnessed during the site visit. Photographic documentation may also be of

value as case study illustrations during the training and to brief teams before other site visits are undertaken.

CONDUCTING THE SITE VISIT

This Part, which provides information on professional entry and behaviour when seeking to gain entry to premises and in conducting site visits, comprises:

- [section 14 Timing](#)
- [section 15 On arrival at the site](#)
- [section 16 Laws of entry](#)
- [section 17 Identification of Departmental officers](#)
- [section 18 Professional & ethical conduct during site visits](#)
- [section 19 Avoiding conflict.](#)

14 TIMING

In general, site visits should not be conducted before 6.00 am or after 9.00 pm.

15 ON ARRIVAL AT THE SITE

On arrival at the site, officers must:

- inform the person/s who is the subject of the visit of their identity and display their departmental identification. (See also [section 17 Identification of Departmental officers.](#))
- inform the person/s of the purpose of the visit and clearly spell out their proposed actions during the site visit
- seek the person's consent to enter the premises and make it clear to the occupier of the premises that the occupier is under no obligation to consent to entry
- explain that information provided by the person during the site visit (if any) will be taken into account by the department in making decisions.

In the absence of a specific power to enter and search premises for the purposes of conducting a site visit, officers may only enter and search private property with the consent of the occupier of the premises. *Failure to obtain such consent prior to entering and searching private premises may expose officers involved to a common law action in trespass.*

Officers should be aware that a minor lacks the necessary legal capacity to consent to officers entering and searching private premises. Officers should not enter private premises until consent to do so has been obtained from an adult occupier.

During the visit, officers must:

- explain that information provided by the interviewees during the course of the site visit (if any) will be taken into account in making the decision on the visa application or other immigration related matter
- leave the premises immediately if asked to do so
- depart the premises immediately if at any stage they believe that they are at risk or if they believe that the situation may escalate out of their control
- ensure that they do not disclose personal information of visa applicants and sponsors (where applicable) to third parties in the course of conducting site visits.

16 LAWS OF ENTRY

Officers at posts must ensure that they comply with any specific laws of the relevant jurisdiction concerning lawful entry to private property. Officers should also be aware of norms regarding cultural norms regarding access to private property in that country/jurisdiction.

17 IDENTIFICATION OF DEPARTMENTAL OFFICERS

In accordance with the DIMA Client Service Charter, in dealing with clients, it is essential officers identify themselves. Identification is crucial for accountability, safety and security issues. This identification is especially relevant for site visits and other activities that take place outside DIMA premises.

Associated with the Charter is an identification matrix that outlines the form of identification officers are required to provide to clients according to their business area (eg visa services) and the way in which they normally interact with clients (eg phone).

The identification policy and matrix are on DIMIANet.

18 PROFESSIONAL & ETHICAL CONDUCT DURING SITE VISITS

18.1 Codes of conduct

This section provides some basic guidelines for ethical behaviour by officers when conducting site visits.

Principle 1 of the DIMA Code of Conduct states: “We will behave honestly and with integrity”.

In overseas environments all officers must observe:

- the DFAT Code of Conduct for Overseas Service
- the DIMA Code of Conduct
- the APS Code of Conduct.

Officers should refer to their supervisors for further information. For more specific information regarding ethical conduct, refer to the DIMA Code of Conduct (currently Administrative Circular 1045) available on the Australian Public Service Commission website www.apsc.gov.au

18.2 Gifts & offers to officers from clients

If visa applicants or other DIMA clients offer gifts or inducements during site visits, these offers should be politely declined in accordance with the codes of conduct. For more specific information regarding these issues, refer to the relevant codes.

18.3 Privacy & confidentiality

It is important that the privacy of the subject of the site visit, and the privacy of other persons, is protected.

Officers must comply with the applicable provisions of the *Privacy Act 1988*. The Information Privacy Principle (IPP) 11 in s14 of the Privacy Act prevents the disclosure of personal information of visa applicants and other persons to a person, body or agency, unless at least one of the specified exceptions exists.

For more information on the Privacy Act, see:

- [PAM3: GenGuideA - Global working framework - Output 1.1 case referral management](#) or
- the Office of the Privacy Commissioner website www.privacy.gov.au

In general, when conducting a site visit, officers should:

- minimise any disturbance of the applicant's workplace or living area
- not disclose to others (such as receptionists or other employees of businesses contacted) the class of visa applied for or any other information regarding the person who is the subject of the site visit
- allow for private meetings and/or demonstrations (as this avoids disruption to other employees, and gives the visiting officer an opportunity to conduct the visit efficiently)
- avoid drawing undue attention, or disrupting other staff members
- ask for permission to take photographs of the premises
- avoid using a camera flash if other employees are around (where possible).

19 AVOIDING CONFLICT

Referral officers must conduct all site visits in a polite and professional manner. They should be aware that the site visit may become a source of contention, particularly if the visa application is ultimately refused or an existing visa is cancelled.

Officers must not become engaged in arguments with, threaten or use physical force against the person who is the subject of the site visit or any other person. Any incident of this nature that occurs during the site visit should be documented in the site visit report (see [section 20 Site visit reporting](#)). If any person becomes aggressive, officers must immediately conclude the site visit and record the incident in the site visit report.

AFTER THE SITE VISIT

This Part comprises:

- [section 20 Site visit reporting](#)
- [section 21 Finalising the report of the site visit on IRIS or ICSE](#)
- [section 22 Reporting on and analysis of report findings.](#)

20 SITE VISIT REPORTING

When preparing reports on site visits, officers must provide a clear and accurate record of the events that occurred prior to and during the site visit. This will provide key information for the processing officer when considering the case. Accuracy is also critical as reports may be required by merits review tribunals, the courts or the Ombudsman (amongst others).

Reports should cover all issues that were raised in the request to conduct the site visit. They should clearly and accurately document:

- that the occupier's consent was obtained to enter the premises (and that the occupier's consent to remain on the premises was maintained throughout the site visit)
- all actions undertaken before and during the site visit (including any phone checks, internet searches and third parties consulted)
- any problems or issues during the site visit and how these were managed.

In documenting cases where visa applicants and others are suspected of providing false information and/or bogus documents, the inclusion of photographic evidence may be particularly useful.

Managers should ensure that reports of site visits are prepared to an appropriate standard. Use of a reporting form along the lines of the [Attachment F - Site visit report form](#) is encouraged.

21 FINALISING THE REPORT OF THE SITE VISIT ON IRIS OR ICSE

When the report of the site visit is completed, officers must ensure that the status of the site visit is recorded according to the relevant system.

For IRIS users, this will involve emailing the processing office with the outcome of the referral and attachments such as the site visit report, photographic evidence and other materials as appropriate. The processing office will record the outcome in IRIS to finalise the referral.

For ICSE users, an appropriate outcome of integrity status must be assigned within the CRM details screen.

The text from the [Attachment F - Site visit report form](#) can be entered to the Notes field. Any attachments such as images should be forwarded to the processing office and copied and recorded on file at post and on ICSE/CRM. This will help to ensure that there is an audit trail for quality assurance purposes.

To assist in appropriately recording the status of the site visit, see [Attachment G - ICSE / IRIS Referral outcome values](#).

22 REPORTING ON AND ANALYSIS OF REPORT FINDINGS

Posts have an obligation under SOEs to provide quarterly performance reports on referrals. Analysis of individual site visit / quarterly reports may be useful in developing local guidelines for conducting site visits, training for officers, and the development and / or updating of Safeguards profiles.

Refer to [MSI: Safeguards Systems](#) for information on how to create or amend Safeguards profiles.

ATTACHMENT A - SITE VISITS DOCUMENTATION

The following can be used to identify the types of referral requests.

Type of referral	Description	Checks	Visa subclass
Bona-fides	Referral relating to the bona-fides of a visa applicant or person seeking to satisfy the secondary criteria for the grant of the visa, or sponsor of concern, or a check on a claim within an application that is a core criterion for the grant of the relevant visa.	Any. For example may relate to: Employment; Evidence of dependencies; Marriage certificate etc.	Any.
Business background	Referral relating to claims about the business background of a visa applicant	Business agreement; Business licence (ie registration); Financial statements.	Long Stay Business; Business Skills
Business sponsorship	Referral relating to business sponsorship	Association membership; Business agreement; Business licence (ie registration); Financial statements.	Professional Development.
Dependents	Referral relating to persons seeking to satisfy the secondary criteria for the grant of the visa (confirming they have the claimed relationship to the person seeking to meet the primary criteria for the grant of the relevant visa) or meet other requirements relating to dependants ie health checks	Adoption papers; Dependency evidence; Dependent authorisation; Family composition; Sole custody papers.	All.
Education level	Referral relating to the claims of education level made in applications for which the applicant requires a certain education level for the grant of a visa. May include confirmation that s/c 571 applicant has completed appropriate level of school education	Association membership; Educational document; English language documents; Evidence of educational qualifications.	Students; Skilled Migration.
Employer	A generic check of claims relating specifically to an employer, ie does the employer exist, is the employer in business, at which address?	Association membership; Bank statements; Business agreement; Business licence.	Skilled; Distinguished Talent; Business.
Employment history	The check of claims of employment history and details.	Employment; Work history/CV; Work experience; Work reference.	Skilled Migration; Business Migration; Long Stay Business; Professional Development.
Family members	May relate to a check on a Parent application that the applicant's balance of family is in Australia as claimed.	Adoption papers; Birth certificates; Blood tests; Custody access documents; Death certificate.	Parent; Remaining Relative.
Processing office profile match	Referral relating to a processing office profile match ie information received may indicate a trend in a visa subclass that the case officer may wish to consider a referral to allay integrity	Any.	All.

ATTACHMENT B

	concerns		
Qualifications	Relates to a check on education, trade, vocation or other qualification, which the applicant must have to meet the prescribed criteria for the grant of the visa for which they have applied.	Qualifications; Scholarship; Skills assessment.	Skilled Migration; Medical Practitioner; Student; Long Stay Business.
Relationships	Relates to a check or interview to confirm the genuineness of a relationship claim, eg for a Partner visa application. Can also relate to checks on status of previous relationships / marriage	Marriage certificate; Death certificates; Evidence of dependencies; Evidence of divorce (decree absolute); Previous marriages and de facto relationships; Cohabitation documents.	Partner; All.
Sponsor	Relates to a check on sponsorship eligibility criteria	AOS + associated documents; Entertainer sponsor requirements; Relationship to sponsor; Sponsor evidence; Previous sponsorships; Previous relationships (including de facto); Cohabitation documents.	Sponsored Temporary Entry; Australian Sponsored; Skilled Migration; Partner; Parents; Other Family; Professional Development; Entertainers.

**ATTACHMENT B - GENERIC OFFSHORE REFERRALS PROCESS
CHART**

This flowchart can be tailored by referral offices to reflect their specific site visit processes.

ATTACHMENT C - SITE VISIT APPROVAL FORM

This form can be used / tailored for use by referral offices to help manage the processes of planning and approving site visits.

SITE VISIT APPROVAL FORM	
Name of client:	File number: IRIS ☐ ICSE ☐
Previously referred to this office: ☐ N ☐ Referral officer: Y:	
Type: DFAT advice been checked about the location of ☐ Y ☐ N proposed site visit: (If yes, provide details)	
Referrals Manager/SMO/PMO(C) comments on referral: ☐ Routine ☐ Complex (if complex, provide details)	
SMOs / OPCs notified of intended visit? ☐ Y ☐ N	
Date of notification: __/__/__ Comments date by: __/__/__	
Comments/Requests (if any):	
Other work/meetings to be scheduled while at the location? ☐ Y ☐ N	
Details: Approved by senior officer ☐ Y ☐ N	
Signature: Date: __/__/__	
Site safety cleared: ☐ Y ☐ N	
Signature: Date: __/__/__	
Proposed staff participation : PMOC / SMO / RM / LECA / Other	
Details: Proposed date: __/__/__	
Approved by PMO:	
Proposed site visit officer/s: Date: __/__/__	
Transport / Travel Arrangements Details (include proposed travel dates, transportation arrangements, etc):	

ATTACHMENT D - PREPARATION FOR A SITE VISIT RELATED TO AN APPLICANT'S WORK/SKILLS CLAIMS

This sheet can be used / tailored for use by posts to assist preparations for site visits.

SITE VISIT -Work/skills preparation

Name of client:

File number:

IRIS ☐ ICSE ☐

Case Officer:

ASCO code:

SMOs / OPCs notified of intended visit?

Date of notification: __/__/__

☐Y ☐N

Comments date by: __/__/__

Comments/Requests (if any):

Background

Name of person to be contacted: _____

Position of person to be contacted: _____

Business Phone:

Home Phone:

Mobile Phone:

Business Address: _____

Complete contact details for the workplace and the contact person for that workplace? ☐Y ☐N

Is the workplace:

- Listed in phone books or with phone companies? ☐Y ☐N
- Do the listed numbers match any of those provided? ☐Y ☐N
- Listed on the internet (if yes, provide details)? ☐Y ☐N

Have you called the provided workplace telephone number (without stating where you are from)

- Contact made with business? ☐Y ☐N
- Directions and hours of operation of the workplace? ☐Y ☐N
- Is the visa applicant going to be present at the workplace when it is visited? (if appropriate) ☐Y ☐N

Have you checked the DFAT post travel advice about the location of the workplace? ☐Y ☐N

(if yes, provide details)

Other advice sought about the location & details of the workplace (if applicable):

What is:

- the main purpose of visiting the workplace

- the information the processing office needs to make a decision on whether or not to approve the site visit

- the main concern(s) about the visa applicant/workplace raised by the processing office

- other concerns have been raised in relation to the workplace by pre-visit investigations

Further details

Manager/Supervisor

- | | | |
|---|----------------------------|----------------------------|
| Is a preliminary list of questions attached? | ☐ Y | ☐ N |
| Do the questions address the purpose of the proposed site visit? | ☐ Y | ☐ N |
| Is there a list of documents to be sighted in conducting the proposed site visit? | ☐ Y | ☐ N |
| Is a copy of the relevant ASCO code information attached? | ☐ Y | ☐ N |

ATTACHMENT E - PREPARATION FOR A SITE VISIT RELATED TO AN APPLICANT'S RELATIONSHIPS CLAIMS

This form can be used / tailored for use by posts to assist preparations for site visits.

SITE VISIT - Relationship visit preparation																	
Name of client: SMOs / OPCs notified of intended visit? ☐ Y ☐ N Comments/Requests (if any): Visa Applicant Name Business ph: Home ph: Mobile ph: Visa subclass: Background	File number: IRIS ☐ ICSE ☐ Date of notification: __/__/__ Comments date by: __/__/__ Spouse / Ex-Spouse Name Business ph: Home ph: Mobile ph:																
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 2px 5px;">Complete contact details (visa applicant, spouse and / or ex spouse)</td> <td style="padding: 2px 5px;">☐ Y ☐ N</td> </tr> <tr> <td style="padding: 2px 5px;">Where / when they work (applicant, spouse and / or ex spouse)</td> <td style="padding: 2px 5px;">☐ Y ☐ N</td> </tr> <tr> <td style="padding: 2px 5px;">Do you have photos of the (applicant, spouse and / or ex spouse)</td> <td style="padding: 2px 5px;">☐ Y ☐ N</td> </tr> <tr> <td style="padding: 2px 5px;">Do you know where the ex spouse lives (where applicable)?</td> <td style="padding: 2px 5px;"></td> </tr> <tr> <td style="padding: 2px 5px;">Checked with third parties (landlord/body corporate, neighbours) about living arrangements?</td> <td style="padding: 2px 5px;"></td> </tr> <tr> <td style="padding: 2px 5px;">Have you made the necessary checks with DFAT about the location of the proposed site visit</td> <td style="padding: 2px 5px;"></td> </tr> <tr> <td style="padding: 2px 5px;">Are you clear on the location of the premises to be visited?</td> <td style="padding: 2px 5px;"></td> </tr> <tr> <td colspan="2" style="padding: 2px 5px;">Other details available:</td> </tr> </table>		Complete contact details (visa applicant, spouse and / or ex spouse)	☐ Y ☐ N	Where / when they work (applicant, spouse and / or ex spouse)	☐ Y ☐ N	Do you have photos of the (applicant, spouse and / or ex spouse)	☐ Y ☐ N	Do you know where the ex spouse lives (where applicable)?		Checked with third parties (landlord/body corporate, neighbours) about living arrangements?		Have you made the necessary checks with DFAT about the location of the proposed site visit		Are you clear on the location of the premises to be visited?		Other details available:	
Complete contact details (visa applicant, spouse and / or ex spouse)	☐ Y ☐ N																
Where / when they work (applicant, spouse and / or ex spouse)	☐ Y ☐ N																
Do you have photos of the (applicant, spouse and / or ex spouse)	☐ Y ☐ N																
Do you know where the ex spouse lives (where applicable)?																	
Checked with third parties (landlord/body corporate, neighbours) about living arrangements?																	
Have you made the necessary checks with DFAT about the location of the proposed site visit																	
Are you clear on the location of the premises to be visited?																	
Other details available:																	
What is: - the main purpose of the site visit - the information the processing office needs to make a decision on whether or not to approve the site visit - the main relationship concern(s) raised by the processing office - other concerns have been raised by pre-visit investigations 																	
Further details Manager/Supervisor Is background information on this case sufficient? ☐ Y ☐ N Do the questions address the purpose of the proposed site visit? ☐ Y ☐ N Is there a list of documents to be sighted in conducting the proposed site visit? ☐ Y ☐ N																	

ATTACHMENT F - SITE VISIT REPORT FORM

This form can be used / tailored for use by Referral Offices to assist in reporting on site visits.

SITE VISIT - Report	
Name of client:	File number:
	IRIS ☐ ICSE ☐
Case officer:	Officers present:
DATE REFERRED: __/__/__	DATE OF VISIT: __/__/__
ADDRESSES VISITED:	
time of visit	PAGE _ OF _
VISIT DETAILS	
VISIT OUTCOME	
Photos attached	
SIGNED	
REPORT DATE	

ATTACHMENT G - ICSE / IRIS REFERRAL OUTCOME VALUES

The following can be entered into ICSE/IRIS to record the outcomes of the site visit.

ICSE Value	IRIS Value	Description
Genuine	G1	When all elements of the check indicate that there are no doubts as to the genuineness of documents and/or claims made by the visa applicant/s.
Non-Genuine	N1	Applies to claims made within the visa application that are not supported by documents / other evidence, eg: • when the non-genuine nature of a claim is confirmed by a credible source or • when conflicting information has been provided by more than one credible source, when it would have been expected that these sources have the same knowledge of the same information or • when a credible source, who should reasonably be able to provide information or corroborate the visa applicant's claims, is unable or unwilling to do so or • when the referral officer is satisfied that the source of a document or claim (eg employer or institution) has never existed or has not existed within the claimed time frame.
Counterfeit	N4	Indicates the document has not been issued or created by the authorised issuing organisation/agency.
Fraudulent Altered	N3	Indicates an original document has been altered to reflect or support claims made by a visa applicant.
Fraudulently Obtained	N2	Indicates the document was genuinely issued by the correct organisation/agency, but information upon which its issue was based is not correct or is fraudulent.
Misleading Information	N6	The document or claim embellishes, omits or provides false information (ie designed to give the impression the visa applicant meets prescribed criteria for the grant of the visa for which they have applied, thereby misleading the department).
Impostor ID fraud	N5	Indicates that either an impostor has assisted the visa applicant to meet the criteria for the grant of the visa or the visa applicant has stolen an identity.
Character – Clear	C1	Relates to a Stream 2a referral in which the result of checks undertaken by the referral office (eg penal or other related character checks) are clear.
Character – Concern	C2	Relates to a Stream 2a referral in which the results of checks undertaken by the referral office, such as penal or other related character checks, indicates the visa applicant may not pass the character test in s501(6) of the Migration Act 1958.
Serious Concerns	U3	Unable to find specific and reliable evidence to confirm or refute veracity of documents given by the visa applicant, or claims made by the visa applicant but the situation encountered/ documents provided/post experience indicate the referral has characteristics of a contrived visa application and referral officer has serious concerns.
Unable to verify	U1	Due to: • conflicting information or • a confusing situation associated with the visa application or • inability to complete the check (eg. former employer of the visa applicant no longer available to answer questions business or educational institution has closed down etc), or the referral office does not feel it is possible to provide any other outcome.
Work conducted	D2	When an item of work requested by the Processing Office has been finalised, but no assessment of the outcome can be reported or needs to be reported, eg in relation to health referrals (forms sent, medical results received etc), certain site visits, interviews etc. In such cases, detailed notes may be required in the notes field.

ATTACHMENT H - GLOSSARY

Case referral	A request from one DIMA work area to another to undertake some activity for a specific purpose related to the processing of a visa application
Referral office	The office responsible for carrying out a referral activity
Processing office	DIMA office with responsibility for the assessing and deciding on a visa application
Service standard	A service standard for referrals that delineates the acceptable performance requirement ie time, quality and performance requirements
SOE (Statement of Expectation)	Agreement made between Output 1.1 Managers in MTE Division and the processing office, that sets out roles and responsibilities and quality assurance requirements
IRIS (Immigration Records Information System)	System used to record off-shore visa processing
ICSE (Integrated Client Service Environment)	System used to record a variety of different transactions that occur throughout DIMA, including case referral management (CRM)
CRM (Case Referral Management)	Formal process involving a request (referral) from one DIMA office to another office to undertake a specific task related to the processing of a visa application.
MAL (Movement Alert List)	This system is a DIMA mainframe system used to alert DIMA decision makers to adverse information that may be relevant to processing of visa and citizenship applications and border clearances.
Movements	Checks which assess the movements of clients in regards to recording arrivals and departures in Australia.
Output 1.1 Visa	A Migration and Temporary Entry Non-Humanitarian Entry and Stay visa.
Safeguards	Computer-based profile/characteristics matching tool which interacts with both ICSE and IRIS designed to alert processing staff to applications that may need closer scrutiny.

GUIDE TO MONITORING FINALISATIONS

PROCESS 1 - NO ISSUES OF CONCERN

SUB-PROCESS	ACTION	STANDARD LETTER	ICSE DATA ENTRY	SPONSOR RESPONSE	FINALISATION
1.1 No outstanding issues	Assess & Finalise Satisfactory	'Satisfactory.doc' (1110 Satisfactory Folder) Reg'd post? No TRIM? No	Event: Monitoring finalised Qualifier: Satisfactory ICSE Note: None Next Monitoring Date: None, unless 'industry of concern' and assessor considers it warranted.	N/A	N/A
1.2 1110 not returned or returned incomplete and undertaking to comply with monitoring has ceased as per reg 1.20DB, Item 1 (i.e. all visas associated with sponsor's approval/s have ceased and vh's have been granted new visas/ departed Australia or 28 days have elapsed since notification of cessation of employment)	Assess & Finalise satisfactory	'Satisfactory – undertaking to comply with monitoring ceased.doc' (1110 Satisfactory folder) Reg'd post? No TRIM? No	Event: Monitoring finalised Qualifier: Satisfactory ICSE Note: '1110 not returned or returned incomplete. Administratively finalised as obligation to comply with monitoring has ceased' Next Monitoring Date(nmd)?: None, unless agreement still in effect; in which case, 12 mths ahead	N/A	N/A

PROCESS 2 - MINOR ISSUES OF CONCERN:

- 1110 returned incomplete or insufficient/no documentary evidence provided;
- DIMA core undertakings: underpayment of msl due to salary packaging issue; slight & first-time underpayment of msl; msl is met but nominated salary is significantly under and may indicate that vh not employed in nominated position; first-time inadequate training record; first-time 'direct employer' issue; cessation of employment not timely notified; and
- DIMIA non-core undertakings: no evidence of superannuation/taxation deductions; no payslips issued but pay (from PAYG) and conditions appear OK.

ACTION	STANDARD LETTER	ICSE DATA ENTRY	SPONSOR RESPONSE	FINALISATION
Request outstanding info and/or negotiate resolution of issues. This action may be by phone, email, letter or site visit (To arrange site visit, attach 'Site Visit Request Checklist.doc' (Site Visit folder) to front of papers & place in site visit tray)	'Request for Further Info.doc'¹ (1110 Request for Further Info (Assessor Use Only) Folder) Reg'd post? No TRIM? Yes, if info is requested by letter	Event: Information Requested Qualifier: Other Note: [Enter notes of phonecon/copy of email or cross ref to TRIMed letter] (If arranging site visit) Event: Information Requested Qualifier: Other Note: 'Referred for site visit. [Enter summary of issue/s]'	(a) If sponsor response resolves issues by showing matters ok/rectified	Proceed as per process 1.1 PLUS Consider entering 'next monitoring date', if you have concerns that sponsor may not continue to meet requirements
			(b) If sponsor response resolves issues by sponsor giving a commitment; or if you decide to resolve issues by counselling sponsor on this occasion	Standard Letter: 'Satisfactory with follow up.doc' (1110 Satisfactory Folder) Event: Monitoring finalised Qualifier: Satisfactory Note: 'Undertaking given by sponsor/sponsor counselled on [list issues]. CLDrefers' Next Monitoring Date: 3; 6; 12 mths, depending on issue Reg'd post? Yes TRIM? Yes
			(c) If DIMIA core issue is not resolved	A non-resolvable minor DIMIA core issue escalates to be handled as significant issue. Proceed as per process 3
			(d) If DIMIA non-core issue is not resolved: 1: Draft Letter for Mgr signature : 'Satisfactory with referral to other agency.doc' (1110 Satisfactory Folder) 2: (after Mgr signs letter) Send email to DEWR contact/complete ATO secure web form as per Attachment A Reg'd post? Yes TRIM? Yes	Event: (1) Referred to other Agency (2) Monitoring finalised Qualifier: Satisfactory Note: '..... issues referred to ATO/DEWR, CLD refers' Next Monitoring Date: None. Monitoring will be initiated if ATO/DEWR advise of breach.

¹ This letter is not mandatory but is available for where assessor wishes to confirm in writing a request made by phone or at a site visit. The wording of requests by email should follow as closely as is reasonable the same wording as the letter. If the request for further info is made by phone only, ensure notes are entered in ICSE.

PROCESS 3 - SIGNIFICANT ISSUES OF CONCERN/APPARENT EXPLOITATION (PRE 1 JUL 04 SPONSORS):

DIMIA core undertakings: significant underpayment of msl; continued underpayment of msl despite resolution of same issue at last monitoring; no satisfactory evidence of msl; training record shows no progress towards clear commitment made at sponsorship approval or training record is inadequate despite resolution of same issue at last monitoring; evidence that vh not working in nominated position/not working in Australia; non-response to monitoring; and

DIMIA non-core undertakings: IR issues suggestive of exploitation, e.g.: msl met but evidence of excessive hours worked; no satisfactory evidence of msl; leave entitlements not given.

ACTION	STANDARD LETTER ²	ICSE DATA ENTRY	SPONSOR RESPONSE	NEXT ACTION
Discuss case with Team Leader for initial direction. If Team Leader agrees the case may warrant 'Notice of Intent to Sanction', prepare case summary and recommendation (or draft correspondence to sponsor) and submit with monitoring paperwork to Manager	(If agreement is in effect): 'NOICC.doc' (1110 Natural Justice folder) If agreement is out of effect): 'NJ letter for PRE Jul 04 Spon with Agrmnt out of effect.doc' (1110 Natural Justice folder)	Following Manager's approval: Event: Notice of Intent to Sanction Qualifier: Warning Note: 'CLD refers' C of I note: 'Notice of Intent to Sanction issued by NSW Monitoring Unit (date). CLD refers. Please consider relevance of issues to any primary application' (If case involves possible exploitation, Manager may request C of I note that requests suspension of primary processing (e.g. 'Sponsor may be exploiting sponsored employees. Please refer to Mgr, NSW Monitoring Unit prior to progressing any primary application') Reg Post? Yes TRIM? Yes	(a) If response resolves issues by showing matters ok/rectified	Finalise as per process 1.1, plus , before recording finalisation, record 'Sanction not pursued' event
			(b) If response resolves issues by sponsor giving a commitment	Finalise as per process 2 (b), plus , before recording finalisation, record 'Sanction not pursued' event
			(c) If response does not resolve issues and Mgr decision is not to sanction	Standard Letter: 'Sanction NOT pursued after NJ.doc' (1110 Unsatisfactory folder) Reg'd Post? No (letter is standard) ICSE Event: (1) Sanction Not Pursued (2) Monitoring finalised Qualifier: Unsatisfactory-counselled (nmd? no, 12-mth repeat monitoring is automatic)
			(d) If response does not resolve issues and Mgr decision is to sanction Finalise sanction action as shown and, if there are current visa holders, proceed to issue NOICC's	(i) If agreement is in effect: Standard Letter: "Spons canx.doc" (1110 Sanction folder) ICSE: <u>1 Monitoring pr:</u> Unsatisfactory-sanction imposed Note: 'Approval cancelled. CLD refers' <u>2 Agreement pr/s:</u> Event: Agreement cancelled Note: 'See monitoring prid for details' C of I: 'Approval as sponsor cancelled on (date). CLD refers. See monitoring prid for further info' (ii) If agreement is out of effect: Standard Letter: 'Breach Decision for PRE Jul 04 Spon with Agrmnt out of Effect.doc' (1110 Sanction folder) ICSE Event: Monitoring finalised-sanction imposed Note: 'CLD refers' CofI: 'Sponsor sanctioned on (date) CLD.....refers. Please consider relevance of issues to any primary appln'

² Unless otherwise indicated, all standard letters used in process 3 are to be drafted for Mgr's signature and, when signed, are to be TRIMed and sent by Registered Post, with TRIM reference and RP number entered in ICSE.

PROCESS 3 - SIGNIFICANT ISSUES OF CONCERN/APPARENT EXPLOITATION (POST 1 JUL 04 SPONSORS):

DIMIA core undertakings: significant underpayment of msl; continued underpayment of msl despite resolution of same issue at last monitoring; no satisfactory evidence of msl; training record shows no progress towards clear commitment made at sponsorship approval or training record is inadequate despite resolution of same issue at last monitoring; evidence that vh not working in nominated position/not working in Australia; non-response to monitoring; and

DIMIA non-core undertakings: IR issues suggestive of exploitation, e.g.: msl met but evidence of excessive hours worked; no satisfactory evidence of msl; leave entitlements not given.

ACTION	STANDARD LETTER ³	ICSE DATA ENTRY	SPONSOR RESPONSE	NEXT ACTION
Discuss case with Team Leader for initial direction. If Team Leader agrees the case may warrant 'Notice of Intent to Sanction', prepare case summary and recommendation (or draft correspondence to sponsor) and submit with monitoring paperwork to Manager	(If term of approval still in effect as per reg 1.20E):'NOICC & NOIIB.doc' (If term of approval out of effect as per reg 1.20E – i.e. canx not an option - but health costs and costs to Commonwealth undertakings still enforceable as per reg 1.20DB, Items 2 & 3): 'NOIIB for POST Jul 04 Spon.doc' Reg Post? Yes TRIM? Yes	Event: Notice of Intent to Sanction Qualifier: Sponsor Bar Note: 'CLD Refers' C of I: 'Notice of Intent to Sanction issued by NSW Monitoring (date). CLD refers. Please consider relevance of issues to any primary application' (If case involves possible exploitation, Manager may request imposition of nomination bar): Event in Monitoring PR: 'Sanction Imposed' (start and end dates are mandatory) Note: 'bar on further nominations against all approvals as business sponsor' Coff? No ('sanction imposed' event places bar in system)	(a) If response resolves issues by showing matters ok/rectified	Finalise as per process 1.1, plus , before recording finalisation, record 'Sanction not pursued' event
			(b) If response resolves issues by sponsor giving a commitment	Finalise as per process 2 (b), plus , before recording finalisation, record 'Sanction not pursued' event
			(c) If response does not resolve issues and Mgr decision is not to sanction	Standard Letter: 'Canx not pursued.doc' (1110 Unsatisfactory folder) Reg'd Post: No ICSE Event: (1) Sanction Not Pursued (2) Monitoring finalised Qualifier: Unsatisfactory-counselled (nmd: no, 12-mth repeat monitoring is automatic)
			(d) If response does not resolve issues and Mgr decision is to sanction	(i) If decision is to cancel: Standard Letter: "Spons canx.doc" (1110 Sanction folder) ICSE: <u>1 Monitoring pr:</u> Unsatisfactory-sanction imposed Note: 'Approval cancelled. CLD refers' <u>2 Agreement pr/s:</u> Event: (if agreement in effect) 'Agreement cancelled'; (if agreement out of effect): 'Sponsorship cancelled' Note: 'CLD ... refers. See monitoring prid ...for further info' (ii) If decision is to bar: Standard Letter: 'Spon bar for POST Jul 04 spon.doc' (1110 Sanction folder) Event: (1) Sanction imposed (including mandatory dates & notes re type of sanction) (2) Monitoring finalised-sanction imposed
			[Note: If decision is to cancel & bar, Standard Letter: 'Spon Cancx & Bar for Post Jul 04 Spon.doc' (1110 Sanction folder) Monitoring pr: Enter events as in (ii) Agreement/s pr: Enter event as in (i) <u>2 Agreement pr/s]</u>	

³ Unless otherwise indicated, all standard letters used in process 3 are to be drafted for Mgr's signature and, when signed, are to be TRIMed and sent by Registered Post, with TRIM reference and RP number entered in ICSE.

Attachment A

Email Referrals to other Agencies

DEWR

In cases where there appears to have been a breach of the undertakings relating to workplace relations laws or a workplace agreement, DIMIA is not in a position to determine whether a breach has occurred. If we believe that a sponsor may be in breach, the details should be emailed in the first instance to kerrie.webb@dewr.gov.au

Ms Webb's other contact details are:

Operations Manager, NSW/ACT

Office of Workplace Services, DEWR

Telephone: (02) 9246 0721

Fax: (02) 6276 9418

Postal address: GPO Box 9879, Sydney NSW 2001

DEWR require the following details:

Registered name of the business

The trading name of the company

the State/Territory of registration

Full details of the reason for our concern.

Contact name and number of the DIMIA officer referring

DEWR will provide initial guidance and refer the matter to the appropriate federal or state industrial relations authorities for their investigation. If a case is urgent or likely to be high profile please let Ms Webb know and she will try and expedite it.

Due to privacy constraints, DEWR can advise the outcome where the sponsor is a company, but not for sole traders or partnerships. If there is a workplace relations issue that is being pursued for a sole trader or partnership, we should request the sponsor to provide us with the outcome directly.

DEWR advise that the majority of cases are resolved, usually through negotiation, within 3 months.

ATO

Superannuation and taxation issues may be referred to the Tax Evasion Referral Centre (TERC) by completing a secure web form at:

www.ato.gov.au/reportevasion

Select "How to contact us" (twice). On the right-hand side of the screen, select "Online tax evasion report". Scroll to the bottom of the page and select "Start online tax evasion report"
