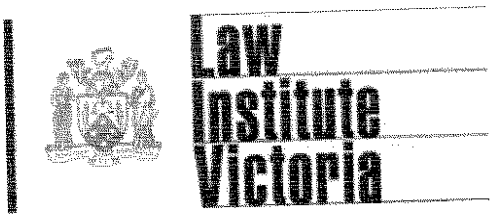

11 July 2007

AP:BN
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Committee Secretary
Senate Standing Committee on Legal and Constitutional Affairs
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600
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Dear Committee Secretary

Inquiry on the Migration Amendment (Sponsorship Obligations) Bill 2007

The Law Institute of Victoria (LIV) welcomes the opportunity to comment on the *Migration Amendment (Sponsorship Obligations) Bill* 2007 (the Bill).

The LIV assumes that the subclass 457 visa (temporary business visas) will be at least one of the visa subclasses to which the proposed amendments will apply. It should be noted that the LIV has made several submissions on the subclass 457 visa scheme which have addressed issues relevant to that visa subclass, including sponsorship obligations.[1] As noted in our past submissions, the LIV considers that problems associated with the subclass 457 visa scheme stem from a lack of funding and human resources to properly implement and enforce the requirements. Any reform of sponsorship obligations and any other aspects of 457 visas must be backed up with a commitment from the Australian government of adequate funding to administer it effectively.

Overall, the LIV considers that the proposed amendments to sponsorship obligations fail to provide the flexibility necessary to facilitate employment, especially employment by small businesses. The LIV is disappointed that its comments in past submissions do not appear to have been taken into account in the preparation of this Bill or in other reforms that will impact on the subclass 457 visa scheme (e.g. English requirements).[2] Moreover, the timeframe for the inquiry by the Senate Legal and Constitutional Affairs Committee has been too short to allow any meaningful consultation on the proposed amendments.[3]

The LIV's detailed comments on the Bill are set out below.

With respect to the obligation to pay certain medical costs (new section 140IF to be inserted into the *Migration Act* 1958 (Cth)), the LIV notes a conflict between subsections (4) and (5). Subsection (4) states that an approved sponsor is taken to have satisfied the obligation to meet medical costs if another person pays some or all of those costs, provided "(b) the approved sponsor fully reimburses that other person for the costs paid within 14 days after being given a receipt." However, subsection 140IF(5) states that an

approved sponsor is taken to have satisfied the obligation to meet medical costs if another person pays some or all of those costs by arrangement with the approved sponsor. An example has been provided in subsection 140IF(5) which states that: "An approved sponsor may obtain insurance that, in certain circumstances, would require another person to pay some or all of the primary person's medical costs. The approved sponsor has satisfied the obligation in subsection (1) if the other person pays the prescribed medical costs of the primary person and the approved sponsor pays the amount of any shortfall." Subsection 140IF(5), and the example provided in subsection 140IF(5), are inconsistent with subsection 140IF(4)(b) which requires 'full reimbursement' of any medical costs paid by another person.

New section 140IG to be inserted into the *Migration Act* requires the approved sponsor to pay the fees of a migration agent involved with the visa application. It is common for people in Australia on working holiday visas or visitor visas to negotiate an offer of employment with employers on the basis that they will be responsible for the costs of engaging professional assistance in relation to the application. Employers who are unfamiliar with the sponsorship process might be reluctant to make an employment offer if they are faced with having to pay professional costs associated with the application. In contrast, the visa applicants have often investigated the issues, obtained a quote for the costs, and are prepared to take on the liability to pay professional and other costs in order to make the decision as easy as possible for the employer. It is unnecessary to prohibit this type of activity with the amendment proposed.

Finally, Item 48 in Part 2 of Schedule 1 of the Bill requires all existing and future approved sponsors to meet the new obligations imposed under the Bill. Sponsorship undertakings pursuant to 140H of the *Migration Act* involve the assumption of responsibility for certain costs and expenses by the sponsor. Sponsors do not enter into these obligations lightly and there are some cases in which prospective sponsors decide not to proceed with applications because of their potential exposure should things go wrong. The LIV questions whether it is appropriate for the government to unilaterally impose obligations on existing sponsors which are additional to those already agreed prior to the Bill becoming law.

Please contact Alice Palmer, the lawyer for the LIV's Administrative Law and Human Rights Section, in connection with this matter on (03) 9607 9381 or at apalmer@liv.asn.au.

Yours faithfully

Geoffrey Provis
President
Law Institute of Victoria

[1] The LIV made a submission on 16 February 2007 to the Joint Standing Committee on Migration in its *Inquiry into Temporary Business Visas* and subsequently appeared at a public hearing conducted by the Committee on 14 March 2007. The LIV also made a submission to the Department of Immigration and Citizenship on 17 May 2007 on the Commonwealth/State Working Party Discussion Paper on '*Temporary Entry and Employment of Skilled Migrants*' of 19 February 2007.
[2] http://www.immi.gov.au/legislation/amendments/lc01072007_20.htm
[3] http://www.aph.gov.au/Senate/committee/legcon_ctte/migration_sponsorship/info.htm