



**uniting
church**
in Australia,
Synod of NSW & ACT

Sponsorship of Foreign Workers Subclass 457 Temporary Work (Skilled) visa

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1. Introduction

Under prevailing immigration legislation, any entitlement to sponsor foreign workers to work in Australia under the Subclass 457 Temporary Work (Skilled) visa category is restricted to organisations that meet Department of Immigration and Border Protection (“DIBP”) requirements.

Very few Uniting Church organisations within the bounds of the Synod will meet the stringent criteria set by DIBP.

Where an organisation may meet DIBP criteria, such organisations must obtain written approval from the Synod before applying to the DIBP for approval as Standard Business Sponsors. If approval is obtained, the organisation can only sponsor foreign workers where that foreign worker will be directly employed by the sponsoring organisation.

Foreign workers cannot commence employment with a Uniting Church organisation until after the foreign worker has received formal written notification from DIBP that their application for subclass 457 visa has been approved.

2. Policy

Synod approval for the sponsorship of foreign workers under the subclass 457 visa pathway will only be given to Uniting Church organisations in exceptional circumstances and each request will be judged upon its individual merits.

Nominations and applications for the sponsorship of foreign workers will only be accepted for consideration by the Synod where:

- due to an acute shortage of specifically skilled labour within Australia, it is demonstrated by a Uniting Church organisation that there is an operational necessity to sponsor a foreign worker to fill a skilled position listed in DIBP’s “Consolidated Sponsored Occupations List” (Subclass 457 visa Temporary Work (Skilled)); and
- the nomination and application is in accordance with prevailing Immigration Law

All nominations and applications for the sponsorship of foreign workers within the Synod will be applied for under the name and ABN of the individual Uniting Church organisation, providing:

- The individual Uniting Church organisation meets all criteria set down under immigration legislation by DIBP, and
- All nominations and applications are endorsed by Uniting Resources prior to lodgment; and
- All nominations and applications are applied for through the Synod’s designated external immigration representative; and
- There will be a specifically designated person within the Uniting Church organisation responsible for the central management of all nominations and applications for sponsorship lodged by that organisation. (**“authorised person”**)

The individual Uniting Church organisation will be financially responsible for meeting all costs associated with the payment of salary and wages to foreign workers sponsored by them.

The sponsoring organisations must also ensure that they are complying with DIBP requirements in relation to the payment of salaries and wages at all times without exception.

Failure to comply with DIBP requirements could result in the right to sponsor being withdrawn and a prohibition being placed on future sponsorship nominations.

In addition, The Migration Amendment (Reform of Employer Sanctions) Act 2013 (the Act) came into effect on 1 June 2013. The Act is aimed at tightening the regulatory regime

governing the employment of non-Australian citizens and permanent residents. The key points of the new legislation follow:

- No-fault provision which means that an offence can be committed even if a person employed or referred an illegal worker in good faith, without knowledge or recklessness
- Liability will be extended to cover individuals, bodies corporate, partners in partnerships and members of an unincorporated association. This means that corporate officers, including CEOs, CFOs and company directors can be held individually liable for breaches
- Increased powers afforded to the immigration department enabling them to obtain a warrant to search and enter premises and issue a notice to produce documents within 14 days
- Statutory defences are available where it can be demonstrated that the person has made a genuine effort and took reasonable steps to verify work rights
- Employers found in contravention of the Act may be liable for criminal (up to 5 years imprisonment) and civil penalties (up to \$49,500 for a body corporate or \$9,900 for an individual) or face an infringement notice (up to \$9,900 for a body corporate or \$1,980 for an individual)
- Under the infringement notice scheme, persons found to have committed an offence will be able to elect to pay a penalty as an alternative to proceedings for a civil penalty

Where a sponsored worker requires a new subclass 457 visa, prior Synod approval will be required and the application for a new subclass 457 visa will be facilitated through the Synod's designated external immigration representative.

Requests for a new subclass 457 visa must be commenced at least six (6) months before the current subclass 457 visa is due to expire.

The Synod will only consider granting approval to a Uniting Church organisation to sponsor an employee for permanent residency under the Employer Nomination Scheme in exceptional circumstances and each case will be judged upon its individual merits.

Where a sponsored worker meets DIBP requirements for permanent residency, and the employing Uniting Church organisation is authorised by the Synod to sponsor the employee under the Employer Nomination Scheme, all costs associated with the application will be the sole responsibility of the individual sponsored foreign worker and the Uniting Church organisation.

Costs include, but are not limited to costs incurred by the:

- Uniting Church organisation in its role as the sponsor of foreign workers, including costs associated with the engagement of the Synod's external immigration representative: and
- Costs associated with the sponsorship of the foreign worker being sponsored including but not limited to items such as health and character checks, translation of documents, and
- DIBP fees

Alternative pathways to Permanent Residence are available under Independent visa pathways and do not require the sponsorship of the Uniting Church organisation. All applications for permanent residency under Independent pathways are the sole responsibility of the foreign worker.

3. Procedure

Any Uniting Church organisation that meets DIBP requirements for an employer sponsor under subclass 457 visa pathway will apply to Uniting Resources, in writing, and seek Synod

endorsement of their intent to sponsor foreign worker(s) to fill a skilled position listed in DIBP's "Consolidated Sponsored Occupations List".

Such application will include a business case to support the rationale as to why there is an operational need to sponsor foreign workers in preference to recruiting locally, including but not limited to a cost benefit analysis of the proposal and compliance with Immigration legislation.

Once Synod approval to sponsor has been provided, the Uniting Church organisation will commence the Standard Business Sponsor application process through the Synod's designated external immigration representative.

The Uniting Church organisations authorised person will be responsible for ensuring that all requisite documentation necessary to progress an application to sponsor, is provided to Uniting Resources and/or the Synod's designated external immigration representative within the timeframes specified by either party.

Any failure to comply with these timeframes will result in the delay or cancellation of the sponsorship application.

Once the Standard Business Sponsorship application has been granted by the DIBP, the Uniting Church organisation is able to nominate foreign workers to work within its organisation.

There are three steps involved:

1. the employer must apply to be approved as a sponsor;
2. the employer must lodge a nomination application for each position to be filled in Australia; and
3. a subclass 457 visa application for each individual including family members to be lodged.

The sponsored worker can only commence working for the Uniting Church organisation when the subclass 457 visa has been granted.

The authorised person will be responsible for ensuring that all DIBP requirements in relation to the sponsored foreign worker are complied with without exception.

4. Further Information

For further information please contact Risk and Compliance - Uniting Resources on 8267 4365 or e-mail vickir@nsw.uca.org.au

5. See Annexure

Annexure A Employer Obligations Visa Subclass 457