

Memorandum of Understanding

In relation to exchange of information for Subclass 457 visa monitoring and compliance

(‘MOU’)

between

Department of Justice and Attorney-General

and

The Commonwealth of Australia, as represented by the Department of
Immigration and Citizenship

1. Signatories – Roles of Parties

The Department of Justice and Attorney-General (DJAG) is responsible for administering and ensuring compliance with the *Industrial Relations Act 1999*; *Trading (Allowable Hours) Act 1990*; *Child Employment Act 2006*; *Anzac Day Act 1995*; *Private Employment Agents Act 2005*; *Holidays Act 1983*; *Pastoral Workers’ Accommodation Act 1980*; *Workers’ Accommodation Act 1952*; *Workplace Health and Safety Act 1995*; *Electrical Safety Act 2002*; *Workers’ Compensation and Rehabilitation Act 2003*; *Dangerous Goods Safety Management Act 2001*.

The Commonwealth Department of Immigration and Citizenship (‘DIAC’) is responsible for administering and ensuring compliance with the *Aliens Act Repeal Act 1984*, *Australian Citizenship Act 2007*, *Australian Citizenship Act (Transitionals and Consequentials) Act 2007*, *Immigration (Education) Act 1971*, *Immigration (Education) Charge Act 1992*, *Immigration (Guardianship of Children) Act 1946*, *Migration Act 1958*, *Migration Agents Registration Application Charge Act 1997*, *Migration (Health Services) Charge Act 1991*, *Migration (Sponsorship Fees) Act 2007* and the *Migration (Visa Application) Charge Act 1997* and associated Regulations. DIAC is committed to enriching Australia through the well-managed entry and settlement of people in to Australia.

2. Definitions

‘**Interagency Guidelines**’ mean the guidelines set out in the Schedule and are specific guidelines that govern the relationship between DIAC and DJAG and set out the role of each Party where there is an overlap of legislative responsibilities, duties or powers under the Relevant Legislation.

‘**Party**’ means a party to this MOU.

‘**Relevant Legislation**’ means the legislation that each Party has responsibility for administering and enforcing compliance with.

3. Purpose

The purposes of this MOU are to:

- a) outline the basic functions of DJAG and DIAC;

- b) set out a framework to govern the collaborative relationship between DJAG and DIAC; and
- c) facilitate the exchange of information between DJAG and DIAC in relation to Subclass 457 visa monitoring and compliance.

4. Interagency Guidelines

The Interagency Guidelines form part of this MOU and are specific to the relationship between DIAC and DJAG.

5. Status

This MOU is a voluntary statement of the intent of the Parties at the time of signature of this MOU. However, this MOU is not intended to create, and does not create, any legally binding obligations between the parties, nor is this MOU enforceable in any court or tribunal.

Legislation, as amended from time to time, takes precedence over any inconsistency between this MOU and legislation.

Any ambiguity or uncertainty arising out of a reading of this MOU is to be resolved in a way consistent with the relevant legislation.

Nothing in this MOU will affect the statutory duties or obligations of any agency of the Commonwealth or the State of Queensland.

This MOU represents the entire agreement between the Parties in relation to its subject matter and replaces all previous agreements, whether oral or in writing.

All Attachments and Schedules to this MOU form part of this MOU.

6. Exchange of information

DJAG and DIAC agree to:

- a) work co-operatively to exchange information, in accordance with this MOU, regarding the Subclass 457 – Business (Long Stay) temporary visa program;
- b) work together to ensure that this information is exchanged in a timely manner; and
- c) inform each other of changes to their respective Relevant Legislation that may impact on the operation of this MOU.

Specifically, DIAC agrees to provide the following information to DJAG:

- a) the name, date of birth, contact details and locations of the Subclass (s) 457 visa holders in Queensland, their sponsoring employer and the address of Queensland sponsored workplace/s where s457 visa holders conduct work, the numbers of s457 visa holders employed at that workplace and the nature and duration of work (where known);
- b) the occupations of the s457 visa holders, whether they hold licences or qualifications and whether they have been sponsored under labour agreements, through regional certifying bodies or other avenues;

- c) notification of any work-related fatality or workplace safety incident that is reported to DIAC, including the location of the incident, number of people involved, nature of work and other information;
- c) any family members accompanying the s457 visa holders who will require educational or vocational services, and
- d) regular updates of the information provided by DIAC, specifically that may impact on the administration of legislation, policy and services delivered by DJAG;
- e) information required to be provided under the *Migration Act 1958* and in accordance with the *Privacy Act 1988*.

Specifically, DJAG agrees to provide the following information to DIAC:

- a) details of any prior offences under the workplace health and safety, electrical safety and industrial relations jurisdictions in Queensland committed by the sponsoring employer;
- b) referral of any complaints received from s457 visa holders concerning industrial relations matters under the Federal industrial relations jurisdiction
- c) details of any offences under the workplace health and safety and industrial relations jurisdictions in Queensland committed by the sponsoring employer in relation to s457 visa holder/s during the sponsoring period together with details of incident/s, such as location and nature of work undertaken at the time of the incident, number or employees injured and nature of injuries;
- d) advice provided by DJAG of any issues involving s 457 visa holders that arise in the course of administering the legislation, policy and services; and
- d) information required to be provided under the *Workplace Health and Safety Act 1995* and the *Industrial Relations Act 1999*.

7. Privacy and Confidentiality

Each Party acknowledges that the other Party must comply with their respective Relevant Legislation and other relevant laws of their jurisdiction.

The Parties accept that each Party should be responsible for their role in the acts and omissions that give rise to such claims made against them by third parties in respect of the use and disclosure of the information made under this MOU.

DJAG must comply with the provisions of the *Information Privacy Act 2009* and any relevant Direction issued under the DJAG Privacy Plan

DJAG may also be subject to other requirements regarding the disclosure of information under legislation it administers.

DIAC must comply with the provisions of the *Privacy Act 1988* (Cth).

DJAG and DIAC may also be subject to other requirements regarding the disclosure of information under legislation they administer.

8. Security of Information

- 8.1 DJAG is responsible for ensuring that information received from DIAC under this MOU will be kept secure and will be protected by such security safeguards as is reasonable to prevent loss, unauthorised access, unauthorised use, modification, disclosure or other misuse, including unauthorised reproduction by any means.
- 8.2 The level of protection provided by DJAG, will be in accordance with, and fulfil the requirements of its obligations under the *Information Privacy Act 2009*.

9. Term

- 9.1 This MOU takes effect from the date of signing by the final signatories and continues to operate until terminated in writing by either Party.

10. Review

- 10.1 DJAG and DIAC agree that this MOU will be reviewed within the first twelve months of it being signed and then every three years or as otherwise agreed.

11. Amendment

- 11.1 Amendment of any term in this MOU may occur only with the written agreement of both DJAG and DIAC.

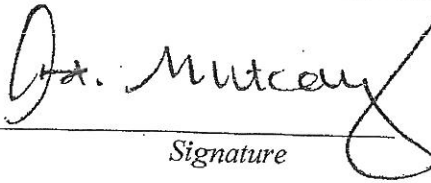
12. Dispute Resolution

- 12.1 Any dispute that is related to the content or operation of this MOU will be referred to the Parties' contact liaison officers, referred to in clause 13, for resolution.
- 12.2 Notwithstanding the existence of a dispute, the Parties will continue to comply with their obligations under this MOU.

13. Contact Liaison Officers

- 13.1 The contact liaison officers for DJAG and DIAC, to whom disputes and notices in writing (as stipulated by this MOU) should be directed, are:
 - DJAG – Director-General, Department of Justice and Attorney-General
 - DIAC – Director, Temporary Skilled Program Implementation Section, Labour Market Branch

SIGNED on behalf of the
COMMONWEALTH OF AUSTRALIA AS REPRESENTED BY THE DEPARTMENT
OF IMMIGRATION AND CITIZENSHIP by


Signature

Andrew Metcalfe, Secretary

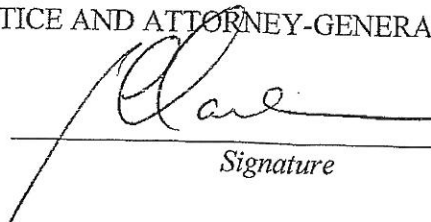
in the presence of


Signature

KIM NADURAK
Please print name

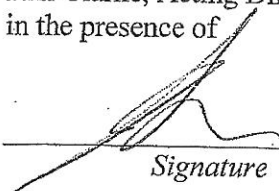
30 19/2010
Date

SIGNED on behalf of DEPARTMENT OF JUSTICE AND ATTORNEY-GENERAL by


Signature

[name]

Phil Clarke, Acting Director-General
in the presence of


Signature

Jasmine Love
Please print name

18/3/10
Date

Schedule of Interagency Guidelines

NIL TO DATE [JULY 2008]