



Immigration: understanding and addressing common sponsorship and compliance issues

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Understanding and addressing common sponsorship and compliance issues

Agenda

- Introduction
- Sponsorship Obligations
- Work Conditions
- Appendices

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■ Introduction

- Sponsorship Obligations
- Work Conditions
- Appendices

Introduction

Universities rely heavily on Australia's immigration laws, in order to invite, hire and employ non-Australians.

These laws impose significant burdens and their practical operation means that Universities:

- Bear the risk of sanctions unless they are proactive in checking and monitoring work rights and other entitlements of workers, trainees and other appointees; and
- Have been co-opted in the regulation of workers, trainees and other appointees.

This presentation looks at the operation of these laws in two (2) relevant contexts:

- Certain sponsorship obligations
- Work conditions attaching to visas

Introduction

Each section will:

- Identify and explain the relevant law and risks of non-compliance
- Provide suggestions on compliance and minimising risk
- Use factual examples and provide solutions, focusing on commonly recurring issues

Ensuring compliance facilitates recruitment:

- In a global market where qualified academics and researchers are difficult to find;

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- Introduction

- **Sponsorship Obligations**

- Work Conditions

- Appendices

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- Sponsorship Obligations

- **Overview**

- Pay travel costs to enabled sponsored persons to leave Australia (Reg. 2.80)
- Secure an offer of a reasonable standard of accommodation (Reg. 2.85)
- Ensure primary sponsored person works or participates in nominated occupation, program or activity (Reg. 2.86)
- Provide information to Immigration when specified events occur (Reg. 2.84)
- Not recover/transfer certain costs from/to sponsored persons or third parties (Reg. 2.87)

Sponsorship Obligations

Overview

A number of visa schemes require a University to become an approved sponsor, before it can employ or appoint certain non-Australian academic or professional staff, researchers or trainees. These include:

- Temporary work (skilled) visa (subclass 457)
- Training and research visa (subclass 402)
 - Occupational trainee stream
 - Research stream

Sponsorship under each of these schemes involves legally binding obligations on the part of the sponsoring University, which necessarily require the University to:

- Understand the scope of the obligations and the events that may trigger their operation;
- Put in place measures to ensure compliance with the obligations.

Sponsorship Obligations

Overview (Cont'd)

- DIBP monitors whether sponsors are complying with their obligations through various means. These include:
 - Audits
 - Scheduled and unscheduled onsite visits
 - Examining financial records
 - Interviewing employees or trainees
- Breaches of sponsorship obligations may, depending on the circumstances of the case and the severity of the breach, have extremely serious consequences, including financial penalties, a bar on sponsoring persons or cancellation of sponsorship agreements. (See [Appendix 1](#)).
- Breaches of sponsorship obligations could also negatively impact on future sponsorship or nomination or visa applications (under the 457, 402, 186 and 187 schemes) – as it may amount to “adverse information” (see [Appendix 2](#))
- While sponsors cannot avoid complying with their sponsorship obligations (for example by contracting responsibility to a third party), sponsors should consider implementing strategies that minimise risk

To meet these legally binding obligations sponsors should establish policies and procedures to ensure compliance

Sponsorship Obligations	457	402 (Research)	402 (OT)
Pay travel costs to enable sponsored persons to leave Australia	✓	✗	✗
Secure an offer of a reasonable standard of accommodation	✗	✗	✓
Ensure primary sponsored person works/participates in nominated occupation/program/activity	✓	✓	✓
Provide information to Immigration when specified events occur	✓	✓	✓
Not recover/transfer certain costs from/to sponsored persons or third parties	✓	✓	✓
Cooperate with inspectors	✓	✓	✓
Keep records	✓	✓	✓
Ensure equivalent terms and conditions of employment	✓	✗	✗
Pay costs incurred by the Commonwealth to locate and remove unlawful non-citizen	✓	✓	✓
Ensure training benchmarks are met	✓	✗	✗
Provide records and information to the Minister	✓	✓	✓

Five sponsorship obligations are examined in detail

Sponsorship Obligations	457	402 (Research)	402 (OT)
Pay travel costs to enable sponsored persons to leave Australia	✓	✗	✗
Secure an offer of a reasonable standard of accommodation	✗	✗	✓
Ensure primary sponsored person works/participates in nominated occupation/program/activity	✓	✓	✓
Provide information to Immigration when specified events occur	✓	✓	✓
Not recover/transfer certain costs from/to sponsored persons or third parties	✓	✓	✓
Cooperate with inspectors	✓	✓	✓
Keep records	✓	✓	✓
Ensure equivalent terms and conditions of employment	✓	✗	✗
Pay costs incurred by the Commonwealth to locate and remove unlawful non-citizen	✓	✓	✓
Ensure training benchmarks are met	✓	✗	✗
Provide records and information to the Minister	✓	✓	✓

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Pay travel costs - What are the sponsorship obligations?

Pay travel costs to enable sponsored persons to leave Australia (Reg. 2.80)

What is the University obliged to do?

- The obligation applies in relation to 457 visa holders only.
- The University must pay the travel costs for a primary 457 sponsored person and any secondary 457 sponsored persons to leave Australia where:
 - A written request has been made by the primary or secondary sponsored person
 - If there is no written request, there is no need to voluntarily pay these costs;
 - The requirements of the written request are set out in [Appendix 3](#) ; and
 - The University has not already paid such costs
 - The obligation arises once in relation to each sponsored 457 visa holder; and
 - Costs are reasonable and necessary – this extends to any mandatory costs associated with one-way travel (e.g. transit visa costs and airport taxes)
 - Allows some room to negotiate choice of carrier and date of travel
- Under policy, following the written request, the University should pay for return travel costs for sponsored persons prior to the purchase of an airline ticket.

Pay travel costs – How are the obligations met?

Pay travel costs to enable sponsored persons to leave Australia (Reg. 2.80)

<p>How is the obligation met?</p>	<ul style="list-style-type: none">• The University is taken to have paid reasonable and necessary costs if:<ul style="list-style-type: none">— One-way travel costs from the sponsored person's usual place of residence in Australia to the place of departure from Australia are paid;— One-way travel costs for sponsored persons from Australia to the country for which the person holds a passport, as specified in the written request, are paid;— The travel costs are paid within 30 days of receiving the written request for costs; and— The travel costs equate to economy class air travel• The obligation commences and ceases on the occurrence of certain events. See Appendix 4
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Pay travel costs – What is not required of the sponsor?

Pay travel costs to enable sponsored persons to leave Australia (Reg. 2.80)

<p>What does the obligation not extend to?</p>	<ul style="list-style-type: none">• The University is not required to:<ul style="list-style-type: none">— Book airline tickets for the sponsored person— Pay costs associated with relocation of personal effects (beyond any included airline baggage allowance)— Pay costs for excess luggage— Pay for rental property expenses (that is, costs for terminating a lease)— Provide for personal choices to include, for example, stopovers on international flights— Provide access to stopover hotels during international flights (if that stopover flight was solely due to the expressed personal preference of the sponsored person)— Pay for the cost of obtaining a travel document (passport)
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Pay travel costs – How can risk be minimised?

Pay travel costs to enable sponsored persons to leave Australia (Reg. 2.80)

<p>How can risk be minimised?</p>	<ul style="list-style-type: none"> • The University appoints a HR officer who is responsible for the University's compliance with this obligation. • All University staff working with sponsored persons are aware of the: <ul style="list-style-type: none"> — Scope of the obligation; and — The name and contact details of the designated HR officer, and refer matters concerning this obligation to the designated HR officer. • Ensure that any request from the sponsored person for payment of travel costs is made in writing and addresses the following matters: <ul style="list-style-type: none"> — The name of the person seeking to travel — They hold a 457 visa — All passports they hold — The country they are travelling to — The date they seek to travel • Undertake a VEVO check to confirm the visa status of the person. • Email the Department seeking confirmation that the person is still sponsored by the University and the obligation remains in effect in relation to the person.
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Pay travel costs – How can risk be minimised? (Cont'd)

Pay travel costs to enable sponsored persons to leave Australia (Reg. 2.80)

<p>How can risk be minimised?</p>	<ul style="list-style-type: none"> • Clarify to the sponsored person the items which the University is obligated to pay/reimburse, and reach agreement on amount • If the travel costs have not been paid by the 457 sponsored person, pay for one-way travel costs for the 457 sponsored person. • If the travel costs have been paid by the 457 sponsored person: <ul style="list-style-type: none"> — Request from the sponsored person, a copy of the tax invoice or payment receipt relating to travel costs — Check to ensure that the invoice or payment receipt relates to items for which the University is obligated to pay/reimburse • Pay/reimburse the agreed travel costs, within 30 days after the date of receiving the written request • Notify the Department within 28 days after the travel costs have been paid/reimbursed (as per separate sponsorship obligation 2.84) • Keep records of all correspondence/documents on the sponsored person's file for at least 5 years. See Appendix 5.
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Pay travel costs – Case Study 1

Pay travel costs to enable sponsored persons to leave Australia (Reg. 2.80)

<p>Is the University obligated to pay?</p>	<p>Secondary sponsored 457 visa holder requests payment of airfare (for secondary and primary sponsored) to leave Australia midway through the term of the primary visa holder's employment (i.e., employment has not ceased).</p>
<p>Response</p>	<ul style="list-style-type: none">• University is obligated to pay the costs of reasonable airfare provided the secondary visa holder is returning to their country of passport. Obligation must be met within 30 days from the date of the written request.• The obligation to pay is not linked to the cessation of employment.• The obligation to pay is owed separately to each sponsored 457 visa holder, including primary and secondary.• The obligation to pay arises once only.

Pay travel costs – Case Study 2

Pay travel costs to enable sponsored persons to leave Australia (Reg. 2.80)

<p>Is the University obligated to pay?</p>	<p>Primary sponsored 457 visa holder ceased employment on 1 October 2014. On 10 May 2015 primary sponsored 457 visa holder requests University to pay the airfare so that they can depart Australia.</p>
<p>Response</p>	<ul style="list-style-type: none">• The obligation may continue to exist well after the cessation of employment.• University should undertake a VEVO check to confirm the person still holds a 457 visa. University may also wish to email the Department to seek confirmation that the University remains obligated to pay the costs of the airfare.• If so, the University is obligated to pay the costs of reasonable airfare provided the secondary visa holder is returning to their country of passport.

Pay travel costs – Case Study 3

Pay travel costs to enable sponsored persons to leave Australia (Reg. 2.80)

<p>Is the University obligated to pay?</p>	<p>Primary sponsored 457 visa holder ceased employment on 1 October 2014. On 10 December 2014 primary sponsored 457 visa holder requests payment of airfare for themselves, their partner, 4 children and mother in law, to leave Australia during the peak Christmas period.</p>
<p>Response</p>	<ul style="list-style-type: none"> • Same considerations as in the previous example arise – especially checking whether the University has sponsored all family members. • The important consideration is whether the costs of the airfare will be reasonable having regard to the wish to travel over the Christmas period. <ul style="list-style-type: none"> — Experience shows that the Department is reluctant to get involved in disputes over whether airfare costs are reasonable. — The University should try and negotiate the airfare costs with the sponsored person.

Pay travel costs – Case Study 4

Pay travel costs to enable sponsored persons to leave Australia (Reg. 2.80)

<p>Is the University obligated to pay?</p>	<p>Primary sponsored 457 visa holder was granted their visa one week ago. Within 2 days of their arrival in Australia and before commencing their role at the University, they resign from their position. The holder verbally requests the University to pay for their airfare to leave Australia to travel to the USA. The sponsored 457 visa holder has a Canadian passport only</p>
<p>Response</p>	<ul style="list-style-type: none"> • Same considerations as in the previous examples arise. • The request is verbal and thus the University's obligation has not arisen. While the University could refuse to pay under these circumstances, it may be prudent to avoid a dispute and ask the person to make their request in writing. • Provided the request is made in writing, the University is required to pay the airfare, even though the person has not formally commenced their role. • The University is obligated to pay the airfare so that the person can return to Canada (their country of passport), not the USA. The University should advise of this requirement and insist that it will pay for the one way trip to Canada only, so as to meet its obligation. Sponsors should avoid the temptation to pay for airfares to a third country, as that would not technically comply with the obligation. If the choice of destination escalates to a dispute, then the University should request the Department to resolve it.

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Accommodation offer - What are the obligations?

Secure an offer of a reasonable standard of accommodation (Reg. 2.85)

What is the University obliged to do?

- This obligation only applies if the primary sponsored person holds a 402 Occupational Trainee Stream visa for a “volunteer role”. See [Appendix 6](#)
- The University must secure one (1) or more offer(s) of accommodation for the primary or secondary sponsored persons that will:
 - Provide a reasonable standard of accommodation (see [Appendix 7](#)); and
 - Ensure that the primary or secondary sponsored persons has/have accommodation while they are in Australia.
- Wording of the obligation suggests an obligation on the part of the University to take proactive step(s) toward the securing of an offer.
- If accommodation that has been secured becomes unavailable, the University must take steps to secure another offer of accommodation for the primary sponsored person or secondary sponsored person.
- This does not require the University to pay for the sponsored person’s accommodation.
- The obligation commences and ceases on the occurrence of certain events. See [Appendix 8](#)

Accommodation offer - How can risk be minimised?

Secure an offer of a reasonable standard of accommodation (Reg. 2.85)

<p>How can risk be minimised?</p>	<ul style="list-style-type: none">• The University appoints a HR officer who is responsible for the University's compliance with this obligation.• All University staff working with sponsored persons are aware of the:<ul style="list-style-type: none">— Scope of the obligation; and— The name and contact details of the designated HR officer, and refer matters concerning this obligation to the designated HR officer.• It is difficult to achieve absolute compliance at all times with this obligation. A breach could theoretically occur where existing premises cease to be of a reasonable standard (even temporarily) and the University is not aware of this occurrence.• The University should aim to demonstrate that it has taken all reasonable steps to ensure its compliance with the obligation. To this end, we recommend that the University sends a letter to the appointee (ie the proposed 402 Occupational Trainee Stream visa holder undertaking a "volunteer role") before commencement of training in Australia (see Appendix 9 for suggested letter).• The designated HR officer should actively follow up with the appointee until they have received confirmation of matters set out in the suggested "accommodation letter".
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Accommodation offer - How can risk be minimised (Cont'd)?

Secure an offer of a reasonable standard of accommodation (Reg. 2.85)

<p>How can risk be minimised?</p>	<ul style="list-style-type: none"> • Ensure that the appointee’s file includes a copy of the “accommodation letter” and all emails to and from the appointee regarding accommodation, and that records of same are held for a period of at least 5 years • If University receives a request from the sponsored person for assistance with accommodation, then University should: <ul style="list-style-type: none"> — Undertake a VEVO check to confirm that the person holds a 402 trainee stream visa and is sponsored by the University and is a “volunteer” trainee (or family member of a volunteer trainee). If so; — Offer to assist the person to secure the relevant offer – suggest reputable rental agents or property managers; and — Follow up with the person to ensure that they have secured the relevant offer; and — Offer the person further assistance in securing the relevant offer; and — Ensure that all communications with the person are in writing.
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Accommodation offer – Case Study 1

Secure an offer of a reasonable standard of accommodation (Reg. 2.85)

What is the University obliged to do?	Sponsored 402 trainee arranges to live free of charge with his friend in Australia for a period of 12 weeks while he undertakes his training at the University. He will be sleeping on the fold away bed in his friend's second lounge room.
Response	<ul style="list-style-type: none">• Before trainee enters Australia, University should inform trainee of its willingness to secure an offer of reasonable accommodation for the trainee.• Obligation is not removed because the trainee will be staying with a friend.• Further details are required to determine reasonableness of accommodation.• Reasonable standard of accommodation does not extend to the visa holder having their own bedroom.• If second lounge room has privacy and other aspects of the accommodation are reasonable, then the obligation is arguably met by the University.

Accommodation offer – Case Study 2

Secure an offer of a reasonable standard of accommodation (Reg. 2.85)

<p>What is the University obliged to do?</p>	<p>Half way through the training program, the premises are burgled and some of the trainee's items are stolen.</p>
<p>Response</p>	<ul style="list-style-type: none">• Questions arise as to reasonableness (ie secure storage facilities) of the accommodation prior to and after the burglary – further facts are required to determine whether the University has breached/is in breach of the obligation.

Accommodation offer – Case Study 3

Secure an offer of a reasonable standard of accommodation (Reg. 2.85)

What is the University obliged to do?	Three quarters of the way through the training program, the trainee is evicted
Response	<ul style="list-style-type: none">• At the time of eviction, the University is technically in breach of the obligation.• The University's obligation is ongoing and it must secure a new offer of a reasonable standard of accommodation for the trainee.

Accommodation offer – Case Study 4

Secure an offer of a reasonable standard of accommodation (Reg. 2.85)

<p>What is the University obliged to do?</p>	<p>The University finds out about the above events at the end of week 11, when the trainee asks the University to locate and pay for his accommodation for the last week of the traineeship.</p>
<p>Response</p>	<ul style="list-style-type: none">• The University's obligation exists whether or not it is aware of the circumstances or the occurrence of the breach.• The University is not obligated to pay for accommodation.<ul style="list-style-type: none">— However, given the events that have occurred, the University may wish to pay for the trainee's accommodation as a good will gesture.• Otherwise the University must fulfil its obligation until the person departs Australia

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Nominated occupation - What are the sponsorship obligations?

Ensure primary sponsored person works/participates in nominated occupation/program/activity (Reg. 2.86)

<p>What is the University obliged to do?</p>	<ul style="list-style-type: none"> • In relation to 457 primary visa holders, the University must ensure that: <ul style="list-style-type: none"> — the 457 visa holder only works in the occupation identified in the approved nomination; — the 457 visa holder is engaged only as an employee of the University or an associated entity; and — the University does not engage in activities that relate to: <ul style="list-style-type: none"> – The recruitment of a visa holder, for the purpose of “on-hiring” that person to a business that is not associated with the University; or – The hire of a visa holder to a business that is not associated with the University. • In relation to 402 visa holders, the University must ensure that the primary sponsored person only works or participates in the nominated occupation, program or activity in which the nomination or visa application was approved. • The obligation commences and ceases on the occurrence of certain events. See Appendix 10
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Nominated occupation – Are temporary higher duties permitted?

Ensure primary sponsored person works/participates in nominated occupation/program/activity (Reg. 2.86)

Are temporary higher duties permitted?	<ul style="list-style-type: none">• Under policy, the 457 primary sponsored person may perform temporary higher duty arrangements where:<ul style="list-style-type: none">— The sponsored person agrees to undertake the higher duties; and— The duties are consistent with the position/occupation for which the sponsored person was nominated; and— The appointment of the sponsored person at a higher level is for a period of two months or less; and— Records are kept regarding the temporary arrangement including duration of the higher duties and any additional salary paid.
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Nominated occupation - How can risk be minimised?

Ensure primary sponsored person works/participates in nominated occupation/program/activity (Reg. 2.86)

<p>How can risk be minimised?</p>	<ul style="list-style-type: none"> • The University appoints a HR officer who is responsible for the University's compliance with this obligation. • All University staff working with sponsored persons are aware of the: <ul style="list-style-type: none"> — Scope of the obligation; and — The name and contact details of the designated HR officer, and refer matters concerning this obligation to the designated HR officer. • Ensure that position descriptions are as broad as possible in terms of the duties/activities/training that the University may require the appointee to perform. • Ensure that the relevant Faculty, where the appointee is based, understands: <ul style="list-style-type: none"> — The scope of the position description and that the appointee is permitted to undertake the specified duties/activities/training only; and — That before any changes are made to the specified duties/activities/training of the appointee, Human Resources must be informed and that approval may need to be sought and obtained from the Department..
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Nominated occupation - How can risk be minimised (Cont'd)?

Ensure primary sponsored person works/participates in nominated occupation/program/activity (Reg. 2.86)

<p>How can risk be minimised?</p>	<ul style="list-style-type: none"> • Undertake a VEVO check to confirm that the appointee continues to be a sponsored person and holds a 457 or 402 visa • Before offering the appointee a new position or changing their position, the University should review the existing position description and compare it against the proposed new duties/activities/training. • If the new duties/activities/training are the same as the existing position, then the sponsored person may work or participate in the new occupation, program or activity. <ul style="list-style-type: none"> — If the matter concerns a 457 visa holder, then within 28 days of the commencement of the new duties, an email should be sent to the Department advising of the change in duties (as per regulation 2.84), and seek confirmation that no further action is required. • If the matter concerns a 457 primary visa holder moving to higher level duties for a period of 2 months or less, then (as per regulation 2.84) the University must inform the Department of a change to the work duties carried out by the visa holder.
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Nominated occupation - How can risk be minimised (Cont'd)?

Ensure primary sponsored person works/participates in nominated occupation/program/activity (Reg. 2.86)

How can risk be minimised?	<ul style="list-style-type: none">• If the matter concerns a 457 primary visa holder and their proposed new position/duties are different to the existing position, then the University will need to lodge a new nomination application.<ul style="list-style-type: none">— Until the nomination application is approved, the sponsored person must continue to perform the duties of their original position.— After the nomination is approved, the sponsored person may perform the duties of their new occupation.• If the matter concerns a 402 primary visa holder and the proposed new duties/activities/training are different to the existing position, then before the visa holder can commence the new appointment:<ul style="list-style-type: none">— A new 402 nomination (for occupational trainees) must be approved; or— A new 402 visa (for researchers) approval will be required.
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Nominated occupation – Case Study 1

Ensure primary sponsored person works/participates in nominated occupation/program/activity (Reg. 2.86)

What is the University obliged to do?	Sponsored 402 researcher is invited to observe an Australian research project involving “Double A span bridge engineering design”. While at the University, the researcher gives a series of lectures in Project Management Engineering.
Response	<ul style="list-style-type: none">• The University must ensure that the sponsored 402 researcher undertakes the research activity that was the subject of their visa application.• The lectures are permissible only if they are primarily based on the findings of the Australian research project.

Nominated occupation – Case Study 2

Ensure primary sponsored person works/participates in nominated occupation/program/activity (Reg. 2.86)

<p>What is the University obliged to do?</p>	<p>Sponsored 402 trainee is invited to undertake a structured training program. Due to funding issues the trainee cannot undertake the training program at the University on a full time basis.</p>
<p>Response</p>	<ul style="list-style-type: none"> • The traineeship (and visa) would have been approved on the basis that the training would be for at least 30 hours per week. If a reduction in the training hours changes the training program then this may amount to a breach. • It may be prudent for the University to seek and obtain approval from the Department for the reduction in training hours. Any exceptional and unforeseen reasons for the reduction in funding (and hence the training hours) should be provided.

Nominated occupation – Case Study 3

Ensure primary sponsored person works/participates in nominated occupation/program/activity (Reg. 2.86)

<p>What is the University obliged to do?</p>	<p>Sponsored primary 457 visa holder is promoted by the University from a Level C Senior Researcher to a Level D Associate Professor.</p>
<p>Response</p>	<ul style="list-style-type: none"> • The University would have nominated the person for the occupation of University Lecturer 242111, which includes Academic Levels A – E inclusive, encompassing teaching and/or research roles. • Provided the duties undertaken by the visa holder are consistent with the duties indicated in the initial nomination application, then the University meets the obligation. • The University should notify the Department of the change in duties (pursuant to regulation 2.84) and seek confirmation that no new nomination is required.

Nominated occupation – Case Study 4

Ensure primary sponsored person works/participates in nominated occupation/program/activity (Reg. 2.86)

<p>What is the University obliged to do?</p>	<p>Sponsored primary 457 visa holder is a Level D Associate Professor and is appointed by the University as a Level E Head of School for a period of 3 months.</p>
<p>Response</p>	<ul style="list-style-type: none">• Higher duties are permitted for a period of 2 months, provided they are consistent with the 457 nominated occupation.• Pursuant to regulation 2.84, the University must inform the Department within 28 days from the date of the commencement of the higher duties.• As the higher duties are for a period of 3 months, the Department should be asked to approve the increase in duties for the full 3 month period.<ul style="list-style-type: none">— In the unlikely event that this is not accepted, the University will need to lodge and have approved a 457 nomination application for the 457 visa holder to work the remaining portion of the 3 month period.— Before the 457 visa holder recommences their original position a new 457 nomination must be lodged and approved.

Nominated occupation – Case Study 5

Ensure primary sponsored person works/participates in nominated occupation/program/activity (Reg. 2.86)

<p>What is the University obliged to do?</p>	<p>Sponsored primary 457 visa holder is nominated by the University as a University Lecturer in a 100% FTE Level E Professor role. During their employment, the Professor's role is renegotiated so that they work 60% FTE at the University and 40% FTE at a Research Institute. All parties agree to the restructured role.</p>
<p>Response</p>	<ul style="list-style-type: none"> • The University must ensure that the Professor is undertaking their nominated duties at all times. • Separately, the University must also maintain direct employment control of the Professor at all times. <ul style="list-style-type: none"> — Unless the Research Institute is a related body corporate of the University, then the University cannot allow the Professor to be directed in their work by a third party. — The Professor will also be in breach of their 457 visa conditions, and liable to have their visa cancelled. • Possible solution (if feasible) is for the Professor to complete their work at the University first and then be sponsored and nominated by the Research Institute for the other role.

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Provide information - What are the obligations?

Provide information to Immigration when specified events occur (Reg. 2.84)

<p>What is the University obliged to do?</p>	<ul style="list-style-type: none">• The University must notify the Department and provide details when specified events occur. See Appendix 11• Notification must be provided:<ul style="list-style-type: none">— By registered post or email; and— Within 28 working days of the event occurring• The specified events for a 457 sponsor include cessation, or expected cessation, of a primary sponsored person's employment<ul style="list-style-type: none">— Cessation means employment that comes to a definite and final end— Cessation of employment does not include periods of approved leave without pay— Cessation includes termination of employment by the sponsor or the visa holder— Cessation also includes the end of employment which occurs at the conclusion of a fixed term period of employment
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Provide information - What are the obligations (Cont'd)?

Provide information to Immigration when specified events occur (Reg. 2.84)

What is the University obliged to do?

- Change to the work duties carried out by a primary sponsored person.
 - Legislative and policy intent is to assist the Department to identify circumstances where a sponsored person may not be working in their nominated ANZSCO occupation.
 - There does not appear to be a requirement to notify the Department of:
 - A change to the working hours - whether they be more or less or different (but the sponsored person must continue to be paid at market rates);
 - A change of work location;
 - A narrower set of existing duties disclosed in the initial nomination application.
 - Change to the work duties would include:
 - A new set of duties which the Department is not aware of having regard to the position description submitted as part of the initial nomination.
 - Existing duties being narrowed to such an extent that the new position aligns more closely with another ANZSCO occupation – in which case a new nomination must be submitted and approved before the 457 sponsored person can work in the new position.

Provide information - What are the obligations (Cont'd)?

Provide information to Immigration when specified events occur (Reg. 2.84)

<p>What is the University obliged to do?</p>	<ul style="list-style-type: none">• The specified events for a 402 sponsor include:<ul style="list-style-type: none">— If primary sponsored person ceases participation or fails to participate in the occupational training or nominated occupation, program or activity or research project<ul style="list-style-type: none">– This seems to require an act or omission on the part of the sponsored person that ends or suspends participation in the training or research– The act or omission need not be intentional or within the control of the sponsored person– Unsatisfactory participation may not amount to a specified event – unless it constitutes a failure to participate• The obligation commences and ceases on the occurrence of specified events (see Appendix 12)• Please note that the University also has a separate obligation to keep records for at least 5 years, of any notification sent to the Department about a specified event (regulation 2.82).
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Provide information – How can risk be minimised?

Provide information to Immigration when specified events occur (Reg. 2.84)

<p>How can risk be minimised?</p>	<ul style="list-style-type: none"> • The University appoints a HR officer who is responsible for the University's compliance with this obligation. • All University staff working with sponsored persons are aware of the: <ul style="list-style-type: none"> — Scope of the obligation; and — The name and contact details of the designated HR officer, and refer matters concerning this obligation to the designated HR officer. • Undertake a VEVO check to confirm that the appointee continues to be a sponsored person and holds a 457 or 402 visa. • Assess whether the obligation has in fact arisen: <ul style="list-style-type: none"> — For example, is the position description broad in terms of the duties that the University may require the appointee to perform – in which case there is no change in duties and no need to notify the Department. — If obligation has arisen, the University must ensure that the notification is sent to the Department within the prescribed timeline (ie 28 working days). — If in doubt, the University should consider seeking advice.
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Provide information – How can risk be minimised (Cont'd)?

Provide information to Immigration when specified events occur (Reg. 2.84)

How can risk be minimised?	<ul style="list-style-type: none">• Each notification to the Department should include the following<ul style="list-style-type: none">— Name of the sponsor— Relevant sponsorship agreement number— Reason for notification— Full name(s) of the visa holder(s)— Date(s) of birth of the visa holder(s)— Passport number— (For 457 holder) if applicable, exact date of cessation of employment— (For 457 holder) if applicable, duties that have changed and exact date duties changed— (For 402 holder) if applicable, sponsored person has ceased participation or failed to participate in activity and date this occurred— Email address or forwarding address of the visa holder(s)• University must ensure that notifications to the Department and any responses from the Department are kept on file for at least 5 years (regulation 2.82)
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Provide information – Case Study 1

Provide information to Immigration when specified events occur (Reg. 2.84)

<p>What is the University obliged to do?</p>	<p>Sponsored primary 457 visa holder ceases employment with his University sponsor. 60 days later the University rehires the 457 visa holder.</p>
<p>Response</p>	<ul style="list-style-type: none">• At the time of cessation of the employment the University's obligation was to<ul style="list-style-type: none">— Notify the Department within 28 days of the employment ceasing; and— Keep a record of notifications to/from the Department for a period of 5 years.• There is no express obligation to notify the Department when a primary 457 visa holder is rehired<ul style="list-style-type: none">— However it is prudent to notify the Department of the event, otherwise the 457 visa holder's may be cancelled by the Department following the initial notification from the University.

Provide information – Case Study 2a

Provide information to Immigration when specified events occur (Reg. 2.84)

<p>What is the University obliged to do?</p>	<p>Sponsored primary 457 visa holder is nominated as a University Lecturer (which role includes research and lecturing) and after 12 months of work she is no longer required to undertake teaching.</p>
<p>Response</p>	<ul style="list-style-type: none">• Assess the position description submitted as part of the nomination application to determine whether:<ul style="list-style-type: none">— Her new duties were expressly specified – if so, there is no need to notify the Department; or— The narrowing of her duties makes her role come within a different ANZSCO occupation – if so, must notify the Department and arrange for a new 457 nomination to be approved before she commences the role.

Provide information – Case Study 2b

Provide information to Immigration when specified events occur (Reg. 2.84)

<p>What is the University obliged to do?</p>	<p>Sponsored primary 457 visa holder is nominated as a University Lecturer (which role includes research and lecturing) and after 12 months of work she is required to work from a different location and 8 additional hours for a period of 8 weeks</p>
<p>Response</p>	<ul style="list-style-type: none">• On the question of her work duties, same considerations as 2a.• Otherwise, no need to notify the Department – however University must ensure that her salary is at market rates.

Provide information – Case Study 3

Provide information to Immigration when specified events occur (Reg. 2.84)

<p>What is the University obliged to do?</p>	<p>Sponsored primary 457 visa holder fails to turn up to work for a period of 45 days and the sponsor has been unable to contact the visa holder</p>
<p>Response</p>	<ul style="list-style-type: none"> • Of itself, this event does not give rise to an obligation to notify the Department. • University should investigate the reason(s) for the visa holder's failure to attend work. If the findings show: <ul style="list-style-type: none"> — Due to personal circumstances the visa holder was unable to attend work (and thus the period should be treated as personal/sick leave a period of paid or unpaid leave), then no need to notify the Department. — The visa holder has definitely abandoned (and thus ceased) their employment – notify the Department

Provide information – Case Study 4a

Provide information to Immigration when specified events occur (Reg. 2.84)

What is the University obliged to do?	Sponsored 402 researcher falls ill and spends 3 months in hospital
Response	<ul style="list-style-type: none">• As the person is not undertaking their research, then the Department must be notified.• The Department is highly unlikely to take any steps to cancel the person's visa in the circumstances.

Provide information – Case Study 4b

Provide information to Immigration when specified events occur (Reg. 2.84)

What is the University obliged to do?	Sponsored 402 researcher completes their research in 2 months out of an expected 9 month stay – the research is substandard.
Response	<ul style="list-style-type: none">• As the person has ceased their research earlier than anticipated, the University must notify the Department.• Unless the substandard nature of their research constitutes a failure to undertake research, then this alone does not amount to a notifiable event

Understanding and addressing common sponsorship and compliance issues

Agenda

- Introduction
- Sponsorship Obligations
 - Overview
 - Pay travel costs to enabled sponsored persons to leave Australia (Reg. 2.80)
 - Secure an offer of a reasonable standard of accommodation (Reg. 2.85)
 - Ensure primary sponsored person works or participates in nominated occupation, program or activity (Reg. 2.86)
 - Provide information to Immigration when specified events occur (Reg
 - **Not recover/transfer certain costs from/to sponsored persons or third parties (Reg. 2.87)**

Not recover costs - What are the sponsorship obligations?

Not recover/transfer certain costs from/to sponsored persons or third parties (Reg. 2.87)

<p>What is the University obliged to do?</p>	<ul style="list-style-type: none">• The University must be solely responsible for the payment of certain sponsorship and recruitment costs under the following visa schemes:<ul style="list-style-type: none">— 402 (Research)— 402 (Occupational Trainee)— 457• The University must not recover, charge or transfer these costs to any other person.• The prohibited costs relate specifically to:<ul style="list-style-type: none">— Recruitment; or— Becoming an approved sponsor (including the application fee); or— Being an approved sponsor; or— Being a former approved sponsor; or— The recruitment of a non-citizen for the purposes of a nomination (including the nomination fee); or— Migration agent fees.
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Not recover costs - What are the obligations (Cont'd)?

Not recover/transfer certain costs from/to sponsored persons or third parties (Reg. 2.87)

<p>What is the University obliged to do?</p>	<ul style="list-style-type: none">• Recruitment costs are considered to be the price which was paid in definite connection with finding and attracting an employee. For a fuller description see Appendix 13• The obligation not to recover, charge or transfer costs cannot be overcome by the sponsored person consenting to the sponsor recovering costs.• The obligation applies even where:<ul style="list-style-type: none">— The visa holder unilaterally ceases their employment or position before their fixed term end date; or— The University terminates the employment or position due to serious misconduct on the part of the visa holder.• As to when the obligation commences and ceases see Appendix 14
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Not recover costs – Which costs are recoverable?

Not recover/transfer certain costs from/to sponsored persons or third parties (Reg. 2.87)

<p>Which costs are recoverable?</p>	<ul style="list-style-type: none">• In other cases, whether a cost specifically relates to the recruitment of a sponsored person, will depend on the specific facts of the individual case.• For example, costs associated with the visa application (including migration agent fees) are usually paid by the visa applicant. However, if the University agreed to pay for the visa application charges and related agent fees in order to attract a 457 visa applicant, then such costs would be considered recruitment costs and the prohibition would apply.• A distinction exists between recruitment costs and relocation expenses. The latter expenses are recoverable subject to agreement. Relocation expenses relate to costs associated with relocating and settling in order to take up an appointment. Examples include:<ul style="list-style-type: none">— Removal and storage and transportation of household effects— Temporary accommodation— Relocation transport• Fees and costs associated with any permanent residency application are recoverable subject to agreement.
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Not recover costs – How can risk be minimised?

Not recover/transfer certain costs from/to sponsored persons or third parties (Reg. 2.87)

<p>How can risk be minimised?</p>	<ul style="list-style-type: none"> • Ensure that employment agreements/offers of appointment do not contain clauses that aim to recover or require the visa holder or third party to pay the non-recoverable costs. • The employment agreement/ offers of appointment should: <ul style="list-style-type: none"> — Specify whether the nominee is responsible for and required to pay the visa application fees. If so, clauses should also specify that the payment of such fees must be made directly by the nominee; and — Clarify whether the University is entitled to recover any “relocation costs” as opposed to “recruitment costs”. If relocation costs are recoverable, then the agreement should describe such costs and indicate the amount. • If visa application charges and migration agent fees relating to permanent residency applications are recoverable, the employment agreement/ offers of appointment should specify same.
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Not recover costs – Case Study 1

Not recover/transfer certain costs from/to sponsored persons or third parties (Reg. 2.87)

<p>What is the University obliged to do?</p>	<p>The father of the primary 402 visa holder paid DIBP the visa application fee. The Australian University reimburses the father the cost of the DIBP fee. The 402 visa holder ceases their appointment without warning and before the conclusion of the research project. The Australian University seeks to recover the cost of the 402 visa application fee from the primary 402 visa holder or the father.</p>
<p>Response</p>	<ul style="list-style-type: none">• The University is prohibited from recovering the visa application fee from the primary 402 visa holder and any third party – even if the visa holder ceased their appointment prematurely or the visa holder or a third party agree to reimburse the University.• Any attempt to recover such costs amounts to a breach of the obligation

Not recover costs – Case Study 2

Not recover/transfer certain costs from/to sponsored persons or third parties (Reg. 2.87)

<p>What is the University obliged to do?</p>	<p>The University sponsors a University Lecturer for a 457 visa and pays their 457 visa application fee, their airfare to Australia and their short term accommodation costs. Two months after the commencement of the role, the University Lecturer marries and the University agrees to extend the sponsorship obligations to the spouse, who is granted a 457 visa. The spouse pays for the 457 visa application fee and airfare to Australia. Two months later the University Lecturer resigns and departs Australia. The University would like to be reimbursed for the 457 visa application fee, the cost of the primary visa holder's airfare to Australia and short term accommodation costs. The University Lecturer would like to be reimbursed for their spouse's 457 visa application fee.</p>
<p>Response</p>	<ul style="list-style-type: none"> • The University cannot recover the 457 visa application fee paid in respect of the University Lecturer. • The University may recover the “relocation costs” of the University Lecturer's airfare to Australia and short term accommodation, so long as provision for recovery was made in the employment agreement. • If the employment agreement required the University to pay for the visa application fees of the University Lecturer's family, then the University is obligated to reimburse the University Lecturer for such costs.

Not recover costs – Case Study 3

Not recover/transfer certain costs from/to sponsored persons or third parties (Reg. 2.87)

<p>What is the University obliged to do?</p>	<p>University pays for an academic's 457 nomination and visa application fees, as well as the ENS 186 nomination and visa application fees. After the academic is granted the ENS 186 visa, the academic ceases employment immediately. The University seeks to recover the cost of all Department application fees from the academic.</p>
<p>Response</p>	<ul style="list-style-type: none">• The University is prohibited from recovering the recruitment costs relating the 457 visa. Any attempt to recover such costs amounts to a breach of the obligation.• The University may recover the relocation costs relating the 457 visa, subject to prior agreement.• The University may recover costs relating the ENS 186 application, subject to prior agreement.

Understanding and addressing common sponsorship and compliance issues

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- Sponsorship Obligations
- **Work Conditions**
- Appendix

Understanding and addressing common sponsorship and compliance issues

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- Introduction
 - Sponsorship Obligations
 - Work Conditions
- **Overview**
 - General recommendations
 - Various Scenarios

Work Conditions – Ensuring that employment is lawful

Overview

- Australian immigration laws require employers/work providers, including Universities, to ensure that any person who performs work for them in Australia holds:
 - Australian citizenship; or
 - Permanent residency; or
 - A visa that permits the person to perform the relevant work
- Work can include
 - Employment;
 - Unpaid work – if the activity is one that is ordinarily remunerated;
 - Hiring a person as an independent contractor.
- Unlawful employment can include:
 - Employing a person who is unlawfully in Australia; or
 - Employing a person who is lawfully in Australia but who has no work rights; or
 - Employing a person whose visa conditions place restrictions on their work rights. For example:
 - Employing a student visa-holder in contravention of their 40 hours per fortnight limitation
 - Employing a 457 primary sponsored visa-holder without being the approved sponsor for that person

Work Conditions – Ensuring that employment is lawful (Cont'd)

Overview

- The prohibition is unconditional and a breach could arise even in the case where:
 - The unlawful employment resulted from a genuine error on the part of the University; or
 - The person provided incorrect documentation concerning their visa status, which the University relied on to employ the person; or
 - Human Resources did not become aware of the person's employment/appointment until well after the person commenced their role.
- Failure to comply with these laws, may give rise to an offence, which may lead to monetary sanctions, and in serious cases imprisonment (see [Appendix 15](#)).
- Breaches of these laws may also lead to a “adverse information” (see Appendix 2) and affect the capacity of the University to:
 - Sponsor and nominate people under the 457 and 402 schemes;
 - Employ persons under the permanent residency employer-nomination visas 186 and 187.

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Work Conditions – Implementing appropriate checks

General recommendations

- The University cannot avoid or contract out of its obligation to ensure that an employee/worker holds legal rights to work in Australia.
- However, the University should incorporate conditions into employment agreements/service contracts/appointment letters which place an obligation on the employee/worker/appointee to inform the University of changes in visa status or work entitlements (see for example [Appendix 16](#)).
- The University should put in place procedures to minimise the risk of breaching the obligation.
 - Such procedures will be taken into account as a relevant factor in determining whether any sanction should be imposed in the event of a breach.

Work Conditions - Implementing appropriate checks (Cont'd)

General recommendations

<p>Procedure before appointment – obtain various documents</p>	<ul style="list-style-type: none"> • The University should request the person to provide the following: <ul style="list-style-type: none"> — Their passport(s) bio pages – original passport should be sighted and noted and a copy of same should be kept on the person's file. — Copies of current and existing visa grant notices (covering the person and all family members) setting out the following: <ul style="list-style-type: none"> – Type of visa granted – Work conditions – Visa expiry date — If the person holds or claims to hold a bridging visa: <ul style="list-style-type: none"> – Letter from the Department confirming grant of the bridging visa; – Letter from the Department and/or tribunal stating the type of visa application the person has lodged
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Work Conditions - Implementing appropriate checks (Cont'd)

General recommendations

<p>Procedure before appointment – obtain various documents</p>	<ul style="list-style-type: none"> • If the person is a secondary visa holder, request all of the above relating to both the primary and secondary visa holders. • If the person claims to be an Australian citizen, but cannot produce an Australian passport or Australian citizenship certificate, the person should obtain a <u>confirmation of Australian citizenship status certificate</u> from the Department and provide it to the University. • If the person claims to an Australian permanent resident, but cannot produce a visa label or Department visa grant letter, the person should obtain a <u>certificate of evidence of residence status</u> from the Department and provide it to the University
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Work Conditions - Implementing appropriate checks (Cont'd)

General recommendations

<p>Procedure before appointment – undertaking VEVO checks</p>	<ul style="list-style-type: none"> • The University should undertake a VEVO (Visa Entitlement Verification Online) check to establish the person's visa status, including the visa subclass, whether they hold the visa as a primary or secondary visa holder, the conditions and work entitlements attached to the visa and the date the visa expires. <ul style="list-style-type: none"> — VEVO may be found at http://www.immi.gov.au/Services/Pages/vevo/vevo-overview.aspx — All VEVO checks are valid for a period of 3 months from date of issue. — If VEVO is not operating an online enquiry form may be submitted at http://www.immi.gov.au/contacts/forms/evo/index.htm • If there is a discrepancy between the VEVO result and the visa/work entitlements/conditions claimed by the person, then the University should ask for verification from the Department by submitting the online enquiry form at http://www.immi.gov.au/contacts/forms/evo/index.htm
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Work Conditions - Implementing appropriate checks (Cont'd)

General recommendations

<p>Procedure during appointment – undertaking <u>regular</u> VEVO checks</p>	<ul style="list-style-type: none"> • Regular VEVO checks should be undertaken in the following circumstances: <ul style="list-style-type: none"> — At 3 monthly intervals if the person holds a Bridging Visa. — If the person informs the University that their visa status or visa conditions have changed (a letter from the Department should also be requested). — If the person informs the University they have obtained a new visa (a letter from the Department should also be requested). — On the date the person’s existing visa (whether substantive or Bridging Visa) expires. — On the date following the expiry of the visa last held by the person - to confirm the person holds another visa, such as a Bridging Visa. • All VEVO checks and Department letters confirming visa status, should be placed on the person’s file and held for a period of at least 5 years. • The University should ensure that it has in place approval to undertake VEVO checks at all times. See suggested letter at Appendix 17.
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Work Conditions - Implementing appropriate checks (Cont'd)

General recommendations

<p>Procedure when a person is discovered to be working / undertaking activities unlawfully</p>	<ul style="list-style-type: none"> • Undertake a VEVO check to establish the person's visa status and work entitlements/conditions • If the person is working unlawfully, ask the person to cease work immediately • There is no obligation to inform the Department that the person has worked unlawfully • Consider visa options available to the person. Is there a visa that will give the person work rights? Person may recommence work only after they have been granted a visa • Consider whether the person can lodge a visa application onshore – if so, application should be prepared and lodged quickly: <ul style="list-style-type: none"> — There may be additional legal criteria that the person needs to meet as part of the onshore visa application. These are known as Schedule 3 criteria. — Note that the person may not be permitted to work during application processing
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Work Conditions - Implementing appropriate checks (Cont'd)

General recommendations

<p>Procedure when a person is discovered to be working / undertaking activities unlawfully</p>	<ul style="list-style-type: none">• If person needs to depart Australia to lodge the application, then prepare visa application groundwork before person departs Australia to avoid processing delays• However, such a person may face a 3 year bar on applying for most temporary visas, while they are overseas<ul style="list-style-type: none">— This bar may be waived if it can be shown there are exceptional circumstances affecting an Australian (includes persons and organisations) should the visa not be granted— This bar does not apply to permanent residency visa applications• Consider whether the person can work overseas (for which no visa is required) while the visa application is being processed
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Case studies – Ensuring work conditions are met

Condition 8101

Background Condition 8101	<ul style="list-style-type: none"> • Condition 8101 provides that the visa holder must not engage in work in Australia. • Work is defined as an activity that, in Australia, normally attracts remuneration. • This means that a person, receiving no payment (in cash or kind), may be considered to be working, if the activity that they are performing would usually be remunerated.
Case Study	<ul style="list-style-type: none"> • Person in Australia holds a 3 month 600 visa which is subject to condition 8101. • University would like to offer the person a 6 week appointment or an 8 week traineeship.
Solution / Approach	<ul style="list-style-type: none"> • As far as the University is concerned: <ul style="list-style-type: none"> — Consider and follow general recommendations, as applicable. — Undertake an objective assessment of the proposed activities and traineeship. — Avoid payments/allowances as these may suggest the person is working. — Allow the person to undertake the activities and/or traineeship at the University, only if the activities and/or traineeship are genuinely voluntary in nature and no remuneration, in cash or kind, is usually received in return. — Otherwise the appointment or traineeship is not permitted.

Case studies – Ensuring work conditions are met

Condition 8104

<p>Background Condition 8104</p>	<ul style="list-style-type: none">• Condition 8104 provides that the holder must not engage in work for more than 40 hours a “fortnight” (defined in Appendix 18)• Condition 8104 may be attached to holders of visas that include (but are not limited to):<ul style="list-style-type: none">— Secondary 402 occupational trainee;— Secondary student visa holders.• In relation to secondary student visa holders, condition 8104:<ul style="list-style-type: none">— Restricts them from undertaking any work until after the primary student visa holder has commenced their course of study in Australia; and— Restricts them to no more than 40 hours of work a fortnight:<ul style="list-style-type: none">– Except for secondary 573 (higher education sector) or 574 (postgraduate research sector) or 576 (foreign affairs or defence sector) visa holders, who may work an unrestricted number of hours after the primary student visa holder has commenced their masters or doctorate degree.– NB: If the primary student visa holder has commenced a preliminary course only (for example an ELICOS course), the secondary student visa holder is restricted to 40 hours a fortnight of work until the primary has commenced their masters or doctorate course.— Does not restrict them from undertaking unpaid and genuine volunteer work that does not ordinarily attract remuneration.
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Case studies – Ensuring work conditions are met

Condition 8104

Case Study	<ul style="list-style-type: none">• Person holds a visa with condition 8104 and is currently in Australia.• University would like to employ the person to work for as many hours as possible during the term of their visa.• During the course of the person's employment at the University, the University is informed by the person that they also undertake "volunteer" work at a third party organisation.
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Case studies – Ensuring work conditions are met

Condition 8104

<p>Solution / Approach</p>	<ul style="list-style-type: none"> • As far as the University is concerned: <ul style="list-style-type: none"> — Consider and follow our general recommendations, as applicable. — If the person is not a secondary student visa holder, they may work no more than 40 hours per fortnight. — If the person is a secondary student visa holder: <ul style="list-style-type: none"> – They may work 40 hours per fortnight provided the primary student visa holder has commenced their course in Australia; or – They may work unrestricted hours provided they hold a secondary 573 (higher education sector) or 574 (postgraduate research sector) or 576 (foreign affairs or defence sector) visa and the primary student visa holder has commenced their masters or doctorate degree in Australia. — If the person is suspected of working for a third party and they have work restrictions attaching to their visa, ask the person to: <ul style="list-style-type: none"> – Clarify whether they are in fact working consistent with the conditions of their visa. If they are not, cease their employment immediately. Consider asking them to chose the employer they wish to work for, having regard to their visa restrictions. – Confirm in writing that when working for the University they are not exceeding the number of permissible work hours under their visa.
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Case studies – Ensuring work conditions are met

Condition 8105

Background Condition 8105	<ul style="list-style-type: none">• Condition 8105 provides:<ul style="list-style-type: none">— The visa holder must not engage in any work before their course of study in Australia commences.<ul style="list-style-type: none">– Work that is genuinely volunteer in nature is permitted.— After the course of study commences the visa holder must not engage in work in Australia for more than 40 hours per fortnight while the holder's course of study is in session (defined in Appendix 19)<ul style="list-style-type: none">– An exception is that the visa holder may work an unlimited number of hours if the work is a registered component of the course.— The visa holder has unrestricted work rights, provided they hold a subclass 574 (Postgraduate Research Sector) visa and they have commenced their masters degree by research or doctoral degree. On the work rights of PhD students, see also Appendix 20.
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Case studies – Ensuring work conditions are met

Condition 8105

Case Study 1	<ul style="list-style-type: none"> • University would like to employ a subclass 573 visa holder subject to condition 8105 to work during: <ul style="list-style-type: none"> — The first 2 months after their arrival in Australia; and — The second semester of their studies.
Solution / Approach	<ul style="list-style-type: none"> • Consider and follow our general recommendations, as applicable. • University should request evidence from the education provider: <ul style="list-style-type: none"> — That the student visa holder’s course has commenced and the type of course they are studying; and — The advertised semesters and session dates. • The student can work in the first 2 months following their arrival in Australia, provided they have officially commenced their course of study. • If they have commenced their course of study, then, as the holder of a 573 visa: <ul style="list-style-type: none"> — They have <u>restricted work rights</u> and may work only 40 hours per fortnight <u>while their course is in session</u>. The only exception is if the work is a registered component of the student’s course, in which case there is no restriction in the number of hours in which the relevant work may be performed. — They have <u>unrestricted</u> work rights when their course is <u>not in session</u>.

Case studies – Ensuring work conditions are met

Condition 8105

Case Study 2	<ul style="list-style-type: none"> • University would like to employ a Masters degree student, subject to condition 8105, on a full time basis for one semester. With the permission and approval of their course provider, the student has deferred their studies for the semester in question.
Solution / Approach	<ul style="list-style-type: none"> • Consider and follow our general recommendations, as applicable. • University should request evidence from the education provider: <ul style="list-style-type: none"> — That the student visa holder’s course has commenced and the type of course they are studying; and — The advertised semesters and session dates. • If the student is a 574 visa holder undertaking a Masters by research, then, whether or not they have deferred their studies, they have unrestricted work rights during the semester in question. • If the student is not a 574 visa holder, then provided the student has deferred their studies with the permission of their education provider (for which evidence should be obtained), then the student’s course is deemed to be out of session for the semester in question and they may work unrestricted hours.

Case studies – Ensuring work conditions are met

Condition 8105

Case Study 3	<ul style="list-style-type: none"> • University would like to employ a subclass 574 PhD degree student, subject to condition 8105, to work on a full time basis after submission of their thesis.
Solution / Approach	<ul style="list-style-type: none"> • Consider and follow our general recommendations, as applicable. • University should request evidence from the education provider: <ul style="list-style-type: none"> — That the student visa holder’s course has commenced and the type of course they are studying; and — The advertised semesters and session dates. • The 574 visa holder may work unrestricted hours after they have commenced their PhD and during the marking of their thesis. If the 574 visa is likely to expire during the thesis marking period, the student should make arrangements to apply for a new 574 visa. Evidence of any new visa application should be provided to the University, including the Department’s decision when made

Case studies – Ensuring work conditions are met

Condition 8107 – Subclass 400

Background Condition 8107	<ul style="list-style-type: none">• The effect of Condition 8107 is that:<ul style="list-style-type: none">— The 400 visa holder must only undertake the activities mentioned in the visa application.— The 400 visa holder must not:<ul style="list-style-type: none">– Cease to undertake the activity in relation to which the visa was granted; or– Engage in an activity inconsistent with the activity in relation to which the visa was granted; or– Engage in work for another person or on the holder’s own account inconsistent with the activity in relation to which the visa was granted
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Case studies – Ensuring work conditions are met

Condition 8107 – Subclass 400

Case Study	<ul style="list-style-type: none"> • USA Professor enters Australia on a 400 visa to undertake highly specialised work at University ABC for a period of 2 months. • The 400 visa is subject to condition 8107. • While in Australia University XYZ invites the Professor to give a series of seminars for 1 week at its campus.
Solution / Approach	<ul style="list-style-type: none"> • Consider and follow our general recommendations, as applicable. • Unless the seminars at University XYZ were disclosed in the 400 visa application, then condition 8107 would appear to prevent the Professor from giving the seminars. <ul style="list-style-type: none"> — It may be difficult to argue that the seminars involve work that is “volunteer” in nature, even if the Professor is not remunerated. — Thus the University cannot allow the Professor to give the seminars. • In 400 cases, we recommend that: <ul style="list-style-type: none"> — Before applying for the visa, applicants consider and plan all likely activities in Australia; and — Obtain invitation letters from all Australian hosts to cover all likely activities; and — Submit such invitation letters with their 400 application. • University XYZ may wish to consider sponsoring the Professor under the 457 scheme, which will require 457 nomination and visa applications to be lodged and approved before the Professor can lawfully deliver the seminars.

Case studies – Ensuring work conditions are met

Work conditions attaching to Bridging Visas

<p>Background Bridging Visa Conditions</p>	<ul style="list-style-type: none">• Generally speaking the purpose of a Bridging visa is to provide lawful status in Australia to a non-citizen who has a visa application that is pending (see also Appendix 21).• There are a number of different types of bridging visas, namely Bridging A – F and R. (See Appendix 22).• An application for a bridging visa (especially BVA, BVB and BVC) is made at the time the applicant is in Australia and lodges a valid application for a substantive visa that can be granted while the person is in Australia• The bridging visa will come into effect and operate after any existing substantive visa held by the person expires or ceases. For example:<ul style="list-style-type: none">— Person holds a 402 visa that expires on 20 May 2015.— Person makes a valid application for a 457 visa on 15 May 2015. On same day the person is granted a Bridging Visa A.— On 20 May 2015 the person’s 402 visa expires and the 457 application is still being processed.— On 21 May 2015 the person’s Bridging Visa A comes into effect and allows the person to remain in Australia until the 457 visa application is finalised.
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Case studies – Ensuring work conditions are met

Work conditions attaching to Bridging Visas

Background Bridging Visa Conditions (Cont'd)	<ul style="list-style-type: none">• Some Bridging Visas carry work restrictions:<ul style="list-style-type: none">— Work conditions will usually depend on a number of factors (including but not limited to):<ul style="list-style-type: none">– The conditions attached to the substantive visa the person held at the time of making their new visa application; or– Whether the person was unlawful or held a bridging visa at the time of making their new visa application; or– The type of substantive visa the person is applying for; or– Whether the person has a compelling need to work.— Work restrictions or any unrestricted work rights on Bridging Visas will come into effect and operate after any existing substantive visa held by the person expires or ceases.
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Case studies – Ensuring work conditions are met

Work conditions attaching to Bridging Visas

Case Study 1	<ul style="list-style-type: none"> • Person holds a Bridging C visa only: <ul style="list-style-type: none"> — Person claims that they have an application with the Migration Review Tribunal. — Person also claims that they have unlimited work rights while their application is before the Tribunal. — University wishes to employ the person on a full time basis.
Solution / Approach	<ul style="list-style-type: none"> • Consider and follow our general recommendations, as applicable. • A review of the VEVO check and paperwork from the person should establish whether the person has unlimited work rights. If so, person may work. • If they do not have unrestricted work rights consider whether the person may apply to the Department for work rights on the basis of compelling need to work. If not granted, person cannot work. • Consider whether it is feasible for the person to travel outside Australia and apply for a work visa (eg under the 457 pathway) and return to Australia when granted the visa. • <i>NB</i> as the person is before the Tribunal and holds a Bridging C only, they cannot apply for a work visa while they are located in Australia.

Case studies – Ensuring work conditions are met

Work conditions attaching to Bridging Visas

Case Study 2	<ul style="list-style-type: none"> • Person holds student visa with condition 8104. <ul style="list-style-type: none"> — Visa expires on 1 September 2015. — Person applied for a 820/801 spouse visa on 1 April 2015 and has been granted a Bridging A Visa. — Person claims that they currently have full time work rights. — University wishes to employ the person on a full time basis from 20 May 2015
Solution / Approach	<ul style="list-style-type: none"> • Consider and follow our general recommendations, as applicable. • The person cannot work more than 40 hours per fortnight before 2 September 2015 – until that date they are subject to condition 8104. • The person will have unrestricted work rights from 2 September, as their Bridging A Visa does not carry any work conditions. Undertake VEVO check on 2 September to confirm. • If the University requires the person to start working full time before 2 September, then the University may need to arrange a 457 visa for the person.

Case studies – Ensuring work conditions are met

Work conditions attaching to Bridging Visas

Case Study 3	<ul style="list-style-type: none"> • Person held a visitor visa that expired on 13 May 2015. <ul style="list-style-type: none"> — On 11 May 2015 University lodged a 457 nomination application nominating the person. — Person applied for a 457 visa on 12 May 2015 and was granted a Bridging A Visa. — University requires the person to work on a full time basis from 14 May 2015. — The Department will take 4 weeks to finalise the 457 visa application.
Solution / Approach	<ul style="list-style-type: none"> • Consider and follow our general recommendations, as applicable. • The person's Bridging A Visa will be subject to condition 8101 and they will have no work rights. • The person could try and have the condition waived on the basis that they have a compelling need to work. If the Department grants a waiver, then the University should ask for written evidence of the waiver. • Alternatively the University and the person could ask the Department to expedite the processing of the 457 visa application.

Case studies – Ensuring work conditions are met

Condition 8102

Background Condition 8102	<ul style="list-style-type: none">• Condition 8102:<ul style="list-style-type: none">— Provides that the visa holder must not engage in work in Australia other than in relation to the holder’s course of study or training.— Requires a direct correlation between the training and the work to be performed.— Allows the visa holder to undertake work with a third party as long as the work is part of their workplace based training.— Volunteer work or tutoring/research work is permitted in limited circumstances. See Appendix 23.
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Case studies – Ensuring work conditions are met

Condition 8102

Case Study	<ul style="list-style-type: none"> • Person is a primary 402 trainee stream visa holder with condition 8102. • University ABC has sponsored the person to undertake training at University ABC in Perth for a period of 6 months. • University ABC would like the person to undertake work for a period of 3 months. • University XYZ would also like the person the undertake work at its campus for a period of 2 months.
Solution / Approach	<ul style="list-style-type: none"> • As far as the University ABC is concerned: <ul style="list-style-type: none"> — Consider and follow our general recommendations, as applicable. — Undertake an assessment of the scope of the traineeship and determine whether the proposed work correlates with the training program. If so, person may undertake the work. — If there is no correlation, the person is not permitted to perform the work, unless it is unremunerated and genuinely volunteer work in nature. — If the University requires the person to undertake work, consider other visa options such as the 457 or 417/462 (working holiday program). • The same applies to University XYZ. In particular, it will need to consider the training program prepared by University ABC which was the subject of the 402 nomination application. If the proposed work correlates with the training program and is not tutoring/research, it may offer the work to the person.

Case studies – Ensuring work conditions are met

Conditions 8103 & 8107 – Subclass 402 research stream

<p>Background Condition 8103</p>	<ul style="list-style-type: none"> • Condition 8103 provides that the visa holder must not receive a salary in Australia without the written permission of the Secretary. See Appendix 24. • The combined effect of condition 8107 and 8103 is that the primary 402 research stream visa holder <u>must not</u>: <ul style="list-style-type: none"> — Cease to engage in their most recently nominated occupation, program or activity. — Engage in work or an activity that is inconsistent with their most recently nominated occupation, program or activity. — Undertake work that ordinarily attracts remuneration. <ul style="list-style-type: none"> – Work that is genuinely volunteer in nature is permitted. — Undertaking work or activities for a third party. <ul style="list-style-type: none"> – Again, activities that are genuinely volunteer in nature appear to be permitted — Receive a salary without the prior permission of the Department.
<p>Background Condition 8107</p>	<ul style="list-style-type: none"> • Condition 8107 prevents the visa holder from: <ul style="list-style-type: none"> — Changing their occupation or activity with their existing sponsor. — Ceasing to engage in the occupation or activity for which they were sponsored. — Engage in work or an activity that is inconsistent with the most recently nominated occupation, program or activity in relation to which the holder is identified

Case studies – Ensuring work conditions are met

Conditions 8103 & 8107 – Subclass 402 research stream

Case Study	<ul style="list-style-type: none">• Person is a primary 402 research stream visa holder with conditions 8107 and 8103 and currently in Australia.<ul style="list-style-type: none">— University ABC has sponsored the person to observe research at University ABC in Sydney for a period of 12 months.— University ABC would like pay the person a sum of money during the course of their stay in Australia.— University ABC would like the person to undertake additional work in Sydney for a period of 4 months.— University XYZ would also like the person the undertake work at its campus in Sydney for a period of 3 weeks.
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Case studies – Ensuring work conditions are met

Conditions 8103 & 8107 – Subclass 402 research stream

<p>Solution / Approach</p>	<ul style="list-style-type: none"> • As far as the University ABC is concerned: <ul style="list-style-type: none"> — Consider and follow our general recommendations, as applicable. — It is unable to pay the visa holder a salary unless prior permission is obtained from the Department. — It may pay the visa holder a living allowance (eg rent and a per diem) as long as the payments do not approximate a salary and are less than the minimum wage (see www.fairwork.gov.au/pay/national-minimum-wage/Pages/default.aspx). — The additional work is not permitted, unless it is unremunerated and genuinely volunteer work in nature — If the role changes from research to work, consider the 457 pathway • As far as the University XYZ is concerned: <ul style="list-style-type: none"> — The visa holder cannot perform work for it. Genuine and unremunerated volunteer work is permitted — If the appointment is work related, consider the 457 visa pathway.
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Background and Contact Details

Visa Lawyers Australia Pty Ltd

- Established in 2001, we are a team of seven lawyers working in Australian immigration and citizenship law.
- Aristotle Paipetis is the Principal Solicitor. His professional qualifications include:
 - Solicitor and Barrister of the Supreme Court of New South Wales and the High Court of Australia
 - Registered Migration Agent (MARA 0006846)
 - Member of the Migration Institute of Australia
 - Master of Laws (University of London)
 - Bachelor of Laws (UNSW)
- Our clients include public and private companies / organisations, including tertiary and research institutes, and individuals from all parts of Australia and overseas.
- We assist Australian companies and organisations to identify and implement immigration solutions that meet their recruitment and business needs.
- We have comprehensive experience in:
 - All possible permanent and temporary visas including:
 - Employer sponsored / nominated
 - Skilled, including Distinguished Talent
 - Business
 - Spouse / Partner
 - Other Family
 - Humanitarian
 - Sponsorship obligations and compliance
 - Legal appeals to immigration Tribunals and Australian Courts
 - Obtaining improved immigration outcomes for unlawful persons
- We are frequently invited to present at Universities / other organisations around Australia on migration opportunities.

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Appendices

Appendix 1. Potential Consequences of Breaching Sponsorship Obligations

- Civil penalty order – This would involve court proceedings. If a court is satisfied that the obligation has been contravened it will order that the sponsor pay a penalty of up to \$76,500 for a corporation and \$15,300 for an individual per instance of breach
- Infringement Notice - These can be issued by DIBP instead of initiating civil court proceedings. They are an administrative penalty of up to \$15,300 for a corporation and \$3,060 for an individual per instance of breach
- Cancellation of current sponsorship agreement – Termination of the existing sponsorship agreement. This causes all visas under that agreement to be cancelled
- Cancellation of other sponsorship agreements – Cancelling all sponsorship agreements held by the sponsor (for example, a breach of 457 sponsorship obligations leads to cancellation of 457 and 402 sponsorship approvals)
- Cancellation of any or all visas sponsored by the sponsor – Where a sponsorship obligation is contravened, DIBP may cancel the visa of any (457 and 402) visa-holder that is sponsored by that sponsor. This can occur regardless of whether another sanction or penalty is imposed on the sponsor
- Bar from sponsoring more persons under an existing sponsorship agreement – Sponsor will not be able to recruit or employ further people using the sponsorship agreement already approved. However, employees already sponsored under the sponsorship agreement would still retain their visas (unlike cancellation)
- Bar from making future applications for sponsorship approval – Sponsor will not be able to secure future sponsorship agreements for as long as the bar is in operation (typically between 3 months and 5 years). It is likely that this bar will be imposed in conjunction with another sanction, for example it could be coupled with the bar from sponsoring more persons under an existing sponsorship approval

Appendix 2. Adverse Information – What is it?

- A requirement of each sponsorship, nomination and visa application under the 457 and 402 temporary visa schemes, as well as applications under permanent residency ENS (186) and RSMS (187) pathways, is that there is no “adverse information” about the sponsor/nominator known to DIBP (unless it is reasonable for DIBP to disregard such information).

- Adverse information may include, but is not limited to, information about a person becoming insolvent, or contravening (or allegedly contravening) a Commonwealth, State/Territory law relating to:
 - discrimination
 - immigration (including sponsorship obligations)
 - industrial relations
 - occupational health and safety
 - people smuggling and related offences
 - slavery, sexual servitude and deceptive recruiting
 - taxation
 - terrorism or
 - trafficking in persons and debt bondage

Appendix 2. Adverse Information – What is it?

- It requires DIBP officers to be satisfied that there is no adverse information known to immigration about the employer, or a person associated with the employer.
 - A person associated with a corporation or equivalent is a director or secretary; or a person who makes decisions that affect the whole or substantial part of the business or has the capacity to affect significantly the corporations financial standing
- Adverse information must have occurred in the 3 years before the application
- Adverse information must be known to immigration
 - The practical effect of this is that the officer need not positively satisfy him or herself that no adverse information exists.
 - The officer need only consider whether information is adverse if that information is known to them
- Officers will review dibp records relating to the applicant sponsor. Officers will review notes or events that indicate potential adverse information and make relevant investigations.
- Dibp will receive information from a range of competent authorities (at state and territory and commonwealth level, e.G. The ATO) to facilitate the exchange of information that may constitute adverse information for the purposes of assessing applications

Appendix 2. Adverse Information – When can it be disregarded?

- Adverse information known to DIBP may be disregarded if the decision maker is satisfied that it is reasonable to do so
- There are no definitive rules in relation to when it will be reasonable to disregard adverse information which is known about an applicant.
- Each case will depend on its own circumstances.
- Factors which may be taken into account in deciding whether it is reasonable to disregard the adverse information include but are not limited to:
 - The nature of the adverse information
 - How the adverse information arose, including the credibility of the source of the adverse information
 - In the case of an alleged contravention of a law, whether the allegations have been substantiated or not
 - Whether the adverse information arose recently or a long time ago
 - Whether the applicant has taken any steps to ensure the circumstances which led to the adverse information did not recur
 - Information about relevant findings made by a competent authority in relation to the adverse information, and the significance attached by the competent authority to the adverse information.

Appendix 3. Requirements of the written request to pay travel costs

For the purposes of regulation 2.80, the written request from the 457 sponsored person must:

- Specify the person(s) whose travel will be funded by the costs;
- Specify the country that the person(s), whose travel will be funded, holds a passport for and will travel to; and
- Be made while the sponsored person, whose travel is funded, is the holder of a 457 visa.

Appendix 4. When does the obligation to pay travel costs commence and when does it cease? (Reg. 2.80)

➤ Commences on one of the following:

- If the person already holds a 457 visa, on the day the 457 nomination is approved; or
- In all other cases, on the day the 457 visa is approved.

➤ Ceases on the earliest of one of the following:

- If the primary sponsored person is nominated by another approved sponsor – the day on which the nomination is approved;
- If the sponsored person is granted a further substantive visa, other than a 457 visa – the day on which that visa was granted;
- If the sponsored person has left Australia – the day on which their 457 visa ceased to be in effect; or
- If the sponsored person held a bridging visa B (BVB) when they left Australia, and their last substantive visa was a 457 visa – the day on which the bridging visa has ceased to be in effect.

Appendix 5. Records of payment of travel costs to be kept on sponsored person's file for a period of 5 years

A combined reading of regulations 2.80 and 2.82 require the sponsor to keep records of payment of travel costs for a period of 5 years.

The records must be verifiable by an independent person. According to policy, an independent person is free from influence or authority of the sponsor, who can establish the correctness of a record on the basis of the presented facts. This would include an external auditor.

The records must include the following:

- All written communications (including emails) to and from the sponsored person and any travel agency or airline or third party concerning travel costs of the sponsored person;
- Tax invoice or receipt;
- Proof of payment, such as bank cheque or online transfer as shown on the University's bank statement or payment shown on the University's credit card statement;
- And all communications to/from the Department

Appendix 6. What is a volunteer role? (Reg. 2.85)

- A person performs a “volunteer role” if:
 - They will not receive remuneration for performing the duties of the position, other than:
 - Reimbursement for reasonable expenses incurred by the person in performing the duties;
 - Prize money; and
 - The duties would not otherwise be carried out by an Australian citizen or permanent resident in return for wages.

- If the above circumstances apply, then the obligation on the University extends to both primary and secondary 402 Occupational Trainee Stream visa holders.

Appendix 7. What is a reasonable standard of accommodation? (Reg. 2.85)

- Accommodation is of a reasonable standard if:
 - Meets all relevant state/ territory and local government regulations regarding fire, health and safety;
 - Offers 24-hour access;
 - Provides meals or a self-catering kitchen;
 - Is clean and well-maintained;
 - Has a lounge area;
 - Has adequate laundry facilities or a laundry service;
 - Provides power for lighting, cooking and refrigeration;
 - Has an adequate ratio of guests to bathroom facilities;
 - Has uncrowded sleeping areas;
 - Provides appropriate gender segregated areas and bathroom facilities; and
 - Allows adequate privacy and secure storage for personal items.

Appendix 8. When does the obligation to secure an offer of a reasonable standard of accommodation commence and when does it cease? (Reg. 2.85)

- Commences on one of the following:
 - If the person already holds a 402 visa, on the day the 402 nomination is approved; or
 - In all other cases, on the day the 402 visa is approved

- Ceases on the earliest of one of the following:
 - If the sponsored person is granted a further substantive visa, other than a 402 visa – the day on which that visa was granted
 - If the sponsored person has left Australia – the day on which their 402 visa ceased to be in effect; or
 - If the sponsored person held a bridging visa B (BVB) when they left Australia, and their last substantive visa was a 402 visa – the day on which the bridging visa has ceased to be in effect.

Appendix 9. Suggested Letter to send to the 402 volunteer trainee (Reg. 2.85)

Dear [XXXX],

We wish to ensure that you and any accompanying family members have received an offer of reasonable standard of accommodation, after you are granted the subclass 402 visa and while you are in Australia on that visa.

Accommodation is considered reasonable if it:

- meets all relevant State/Territory and local government regulations regarding fire, health and safety standards
- offers 24-hour access
- provides meals or a self-catering kitchen
- is clean and well-maintained
- has a lounge area
- has adequate laundry facilities or a laundry service
- provides power for lighting, cooking and refrigeration
- has an adequate ratio of guests to bathroom facilities
- has uncrowded sleeping areas
- provides appropriate gender segregated areas and bathroom facilities
- allows adequate privacy and secure storage for personal items.

We set out below the names and contact details of estate agents and property managers, whom you may wish to contact to enquire about your accommodation needs:

[XX INSERT DETAILS OF AGENTS XX]

Please confirm by email to [SPONSOR'S DESIGNATED HR OFFICER AND THEIR CONTACT DETAILS]:

that you have been provided an offer of a reasonable standard of accommodation; and
that you have accepted the offer.

Please let [SPONSOR'S DESIGNATED HR OFFICER] know if you require the names of further agents or property managers or if you experience any difficulties in finding a reasonable standard of accommodation.

At any time while you are in Australia and hold a 402 visa:
If your accommodation ceases to be of a reasonable standard; or
If your accommodation ceases to be available; or
If you have questions concerning your offer of reasonable standard of accommodation,

then, please contact [SPONSOR'S DESIGNATED HR OFFICER AND THEIR CONTACT DETAILS].

We will take steps to ensure that you receive further offers of reasonable accommodation.

If you have any questions concerning this letter, please contact [SPONSOR'S DESIGNATED HR OFFICER AND THEIR CONTACT DETAILS].

Please confirm by email reply that you have received this letter.
[XX SALUTATION XX]

Appendix 10. When does the obligation to ensure primary sponsored person works in/undertakes nominated occupation/activity commence and when does it cease? (Reg. 2.86)

- Commences on one of the following:
 - If the person already holds a visa, on the day the nomination is approved; or
 - In all other cases, on the day the visa is approved

- Ceases after the first day on which both the following occur:
 - University ceases to be a sponsor; and
 - There is no primary or secondary sponsored person in relation to the University

Appendix 11. Notify the Department of specified events (Reg. 2.84)

- The specified events for a **457** sponsor include:
 - Cessation of employment
 - Change to work duties
 - Change to sponsorship information
 - Travel costs paid
 - Change of director
 - Changes specific to companies (eg winding up and liquidation)

- The specified events for a **402** sponsor include:
 - Cessation of nominated occupational training or research activity
 - Failure to participate in nominated occupational training or research activity
 - Change to sponsor's address or contact details

Appendix 12. When does the obligation to notify the Department of specified events commence and when does it cease? (Reg. 2.84)

- Commences on the day on which the University is approved as a sponsor

- Ceases after the first day on which both the following occur:
 - University ceases to be a sponsor; and
 - There is no primary or secondary sponsored person sponsored the University

Appendix 13. Recruitment Costs (Reg. 2.87)

- Policy defines recruitments costs as administrative and any sundry costs a sponsor incurs when they conduct recruitment exercises, including:
 - Recruitment agent fees
 - The cost of job advertising
 - Screening of candidates, short listing, interviews and reference checks
 - Salaries of recruitment or human resource staff
 - The cost of the University sourcing background, police checks and psychological testing
 - Training of new staff
 - Responding to queries for prospective candidates, and advising unsuccessful applicants
 - Travel costs for the sponsor to interview and/or meet the applicant either overseas or in Australia.

Appendix 14. When does the obligation not recover/transfer certain costs from/to sponsored persons or third parties commence and when does it cease? (Reg. 2.87)

- Commences on the day the University is approved as a sponsor:

- Ceases after the first day on which both the following occur:
 - University ceases to be a sponsor; and
 - There are no sponsored persons in relation to the University

Appendix 15. Sanctions for breaching work conditions

- Penalties for individuals include fines of up to \$20,400 and 2 years imprisonment
- Penalties for companies include fines of up to \$102,000 per illegal worker Appendix 15
- If additional offences of exploitation (such as slavery or forced labour) are established, the penalties are higher:
 - 5 years imprisonment;
 - Fines of up to \$51,000 for individuals and \$255,000 per illegal employee for companies

Appendix 16. Suggested wording to include in employment agreement/appointment letter re informing the University of changes in visa status and work entitlements

By signing and accepting this offer:

- *You understand and accept that the University has legal obligations to ensure that its employees/workers/contractors are legally entitled to work in Australia at all times; and*
- *You are therefore obligated to fully assist the University with any of its enquiries concerning your visa and residency status and work entitlements status; and*
- *You must not undertake any employment/position/work/appointment at the University in breach of Australian laws in general and your visa conditions in particular; and*
- *If at any time your visa status changes or your work entitlements or visa conditions change, you must inform the Human Resources Department of the University immediately; and*
- *If your visa expires or is cancelled or your work entitlements cease, you must inform the Human Resources Department of the University immediately and you must cease work immediately.*

Appendix 17. Suggested letter to obtain approval for VEVO check

Dear [Enter name],

The University has legal obligations to ensure that its appointees are legally entitled to reside and undertake prescribed activities in Australia at all times.

Please assist the University so that it may make enquiries with the Department of Immigration concerning your visa and residency status and visa entitlements status.

Please provide:

- Your current passport
- Your birth certificate
- Your current Australian visa label, or approval email, letter or notification

By signing below, please also provide your consent to the University to verify your visa, residency and entitlements status at any time prior to and during the course of any appointment you may hold at the University. This includes, providing your personal details to the Department of Immigration to undertake such verification.

Yours sincerely,

NAME

POSITION

I, [Enter name], provide my consent to the University undertaking the above mentioned verifications.

Signature:

Date:

Appendix 18. How is a “fortnight” defined?

- Fortnight is defined as the period of 14 days commencing on a Monday. Therefore the end of any fortnight would be at the end of the second following Sunday. The 40 hours a fortnight:
 - Relates to each fortnight during which the course of study or training is in session;
 - Cannot be averaged out over the duration of the course.

- The following scenario illustrates how the fortnight is intended to operate:
 - A visa holder with condition 8104 works the following numbers of hours over a four week period:
 - Week 1: 15 hours work
 - Week 2: 25 hours work
 - Week 3: 25 hours work
 - Week 4: 10 hours work
 - The visa holder would not have breached their work conditions in the fortnight comprising the 14 days of weeks 1 and 2 (40 hours worked) or in the fortnight comprising the 14 days of weeks 3 and 4 (35 hours). However the visa holder would have breached their work conditions in the fortnight comprising the 14 days of weeks 2 and 3 (50 hours worked).

Appendix 19. When is a course “in session”?

- A course is considered to be “in session”
 - For the duration of the education provider’s advertised semesters (including periods when exams are being held); and
 - If the studies have been completed but the confirmation of enrolment is still in effect - with the exception of masters by research or PhD students who have submitted their thesis; and
 - If a student is undertaking another course during a break from their main course and the points will be credited towards their main course

Appendix 20. Condition 8105 and PhD students

Please note the following regarding Condition 8105 for students holding a 574 visa:

- Unrestricted work rights extend to the period the thesis is undergoing marking – provided the student holds a 574 at all times.
- If the 574 student visa holder has commenced a preliminary course only (for example an ELICOS course), they are restricted to 40 hours a fortnight of work until they commence their masters or doctorate course.

Students studying a masters or doctorate degree on a 576 Foreign Affairs or Defence Sector visa must not engage in work in Australia for more than 40 hours per fortnight while the holder's course of study is in session

Appendix 21. When are bridging visas granted?

Circumstances where Bridging visas are granted to applicants include (but are not limited to):

- During the processing of their associated substantive visa application until it is finally determined by:
 - The Department; or
 - Any merits review (for example, before the Migration Review Tribunal (MRT) or Administrative Appeals Tribunal (AAT)); or
- During judicial review proceedings relating to their associated substantive visa application until the proceedings are completed; or
- During the consideration of their application for Minister Intervention; or
- In certain cases, while they seek merits review of a decision to cancel their visa or they are making arrangements to depart Australia.

Appendix 22. Commonly held bridging visas

The following is a broad description of the most commonly held bridging visas

- **Bridging A Visa (BVA)** is for people who have made an application for a relevant substantive visa while holding a substantive visa or who are party to a related tribunal or court review.
- **Bridging B Visa (BVB)** is for BVA or BVB holders who need to travel overseas.
- **Bridging C Visa (BVC)** is for people who have lodged an application for a relevant substantive visa or who are party to a related tribunal or court review, and do not hold a substantive visa or BVE and are not in, or have not escaped from, detention.
- **Bridging E Visa (BVE)** is for certain unlawful non-citizens and existing BE holders, including those who are making arrangements to leave Australia, have or will make a relevant substantive visa application, or who are party to a relevant tribunal or court review or applicable Ministerial intervention request.

Appendix 23. When is volunteering/tutoring/research work permitted? (Condition 8102)

- Under policy volunteer work that is not part of the occupational training program may be permitted if:
 - It is not interfering with the occupational training program
 - It is of benefit to the community
 - It would not otherwise be undertaken in return for wages by an Australian resident
 - It is genuinely voluntary (for example, no financial payment is received - board and lodging is acceptable).

- Some Universities offer occupational trainees unpaid tutoring or research assistant opportunities which are not part of their occupational training program. Policy allows these opportunities if the tutoring or the research assistant role relates to the field of the occupational training program and is beneficial to the training the trainee is undertaking.

- Tutoring or research assistant roles that is unrelated to the training program (such as foreign language tutoring) and/or is not provided by the sponsoring University is not permitted and is considered to be in breach of condition 8102.

Appendix 24. Condition 8103, salary payments and 402 research stream visa holders

- The Research stream is for persons who are or have been employed as academics to observe or participate in an Australian research project and will not receive any form of payment from the inviting institution other than an allowance towards living costs, as well as travel expenses.
 - As visiting academics are assumed to continue to receive a salary from their overseas employer, the level of any living allowance will be carefully assessed to ensure it does not equate to the payment of a salary
 - Policy suggests that payments toward living expenses must be no more than the national minimum wage - currently salary \$640.90 per week (see <https://www.fwc.gov.au/awards-and-agreements/minimum-wages-conditions/national-minimum-wage-orders>)
- The Department rarely provides permission to a 402 research stream visa holder to receive a salary:
 - Reasons for waiving condition 8103 may include that the visa holder is experiencing financial hardship that is out of their control
 - The Department may take the view that a salaried academic should be sponsored under the 457 scheme.
 - The Department must provide its approval before any salary can be paid to the 402 research stream primary visa holder