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18 July 2007

Chairman
Senate Legal and Constitutional Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Senator Barnett,

**Re: Submission to the Senate Legal and Constitutional Affairs Committee Migration Amendment (Sponsorship Obligations) Bill 2007**

I wish to make a brief submission about the proposed section 140IG of the above Bill. This section deals with the issue of costs for work done for 457 visa applicants.

Briefly, section 140IG states:

**140IG Obligation to pay certain other fees and costs**

(1) An approved sponsor of a primary person for a visa must pay:
   (a) the fees (including licence, registration, membership or other fees) (if any) that must be paid under a law of the Commonwealth or of a State or Territory for the primary person to work in the nominated activity in respect of which the visa is granted; and
   (b) the costs (if any) associated with recruiting the primary person for the nominated activity in respect of which the visa is granted; and
   (c) the fees of a migration agent (if any) involved with the visa application.

   Civil penalty:
   (a) for an individual—60 penalty units;
   (b) for a body corporate—300 penalty units.

(2) An approved sponsor of a secondary person for a visa must pay the fees of a migration agent (if any) involved with the visa application.

Civil penalty:

(a) for an individual—60 penalty units;

(b) for a body corporate—300 penalty units.

(3) For the purposes of subsections (1) and (2), an approved sponsor of a primary person or secondary person for a visa is taken to have satisfied the obligation in subsection (1) or (2) (as the case may be) to the extent that:

(a) another person (whether or not the primary person or secondary person) pays some or all of the fees or costs concerned; and

(b) the approved sponsor fully reimburses that person for the fees or costs paid within 14 days after being given a receipt.

This section makes it a civil offence for an employer sponsor to fail to pay the fees of a lawyer migration agent who is acting NOT for the employer, but for the visa applicant(s). This raises all sorts of questions as to how the various Legal Profession Acts and Professional Conduct and Practice Rules relating to costing and costs agreements between lawyers and their clients – will work. This Bill seems to be bereft of any consideration of those careful rules worked out by the legal profession and the Parliaments over hundreds of years to protect consumers and govern the legal profession. It ushers in a new set of "Cowboy" rules placing arbitrary requirements on third parties (backed by serious civil sanctions) to pay an immigration lawyer's fees when that lawyer may not even act for the party forced to pay his/her bill.

For example, if the lawyer has overcharged for his/her services or hasn't provided an itemised bill, will this third party (the employer) be allowed any of the rights of a "client" in a solicitor/client relationship - to be able to demand an itemised bill or to otherwise challenge the costs charged and/or paid? Such rights are not contemplated by the Bill at all. Contrary to some views, most lawyers are not looking for the support of mandatory civil sanction "penalty units" to enforce their debts - but this is apparently what they will get and the poor sponsoring employer who has never been a client of the lawyer, can't even argue that the fees might be excessive because the employer is not a client.

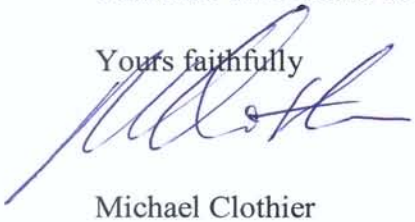
It seems to me that this Bill has been introduced to deal with certain persons off-shore who are "ripping off" subclass 457 visa applicants and charging excessive sums to make off-shore 457 visa applications. It purports to fix the problem by making the proposed Australian employer responsible for ensuring that this doesn't happen and forcing the employer to pay the bill or re-imburse the visa applicant, no matter what amount has been paid. The Bill however, has a profound effect on the on-shore professions of lawyers and migration agents, when nobody is arguing that on-shore provisions need to be tightened. A simple way of ensuring this Bill doesn't interfere with the legitimate activities of the lawyers and migration agents in Australia – is to limit its effect to off-shore activities. Why this hasn't been done – completely escapes the writer.

Of course, in my view, this Bill won't even achieve the object of stopping off-shore 457 visa applicants from being "ripped off". This is because only registered migration agents are subject to its terms and only fees paid to them can be recovered. Surely it would have been easier to simply discipline the erring registered lawyer/migration agent rather than place serious mandatory sanctions on an employer to pay or re-imburse?

This Bill has got to be carefully studied by Committee because, in its present form it is likely to completely miss out on achieving anything other than to put thousands of Australian employers up for civil sanctions in situations where they are innocent. For example, one can posit a scenario, where the visa applicant doesn't tell the employer that he/she was charged any money for the application, but later, tells the employer that he/she paid $20,000.00 to an off-shore migration agent to prepare and lodge the visa application and thereupon presents the employer with a receipt for payment of that sum. It will then constitute a serious civil offence with mandatory penalties for the employer not to re-imburse the visa applicant within 14 days. One can imagine this occurring months or years after the visa applicant has entered Australia and possibly when the employer is struggling to meet costs and simply can't afford to pay within 14 days. The poor employer would then owe automatically, a "civil penalty" of 60 penalty units and if it's a family business run by the family company it is a whopping 300 penalty units with no discretion for anyone to lower it. At $110.00 per penalty unit that is an extraordinary amount of money and tens of thousands of small businesses in Australia which are currently employing 457 visa holders are not going to thank the Parliament for such unjust and ridiculously prescriptive additions to their burdens.

I do hope the Committee can persuade the Government that this Bill is going to be a very bad law and needs to be far more carefully thought out and perhaps even delayed until after the Federal election so that a more careful consideration can be given to it?

Yours faithfully



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Encl.