

Submissions

Dr Kees NYDAM

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Queensland Government

Your ref:
Our ref: CS5/HEA027/5744/DZP
Contact: Peter Dwyer
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BY:

Department of
Justice and Attorney-General

26 October 2005

Mr David Groth
Secretary
Queensland Public Hospitals Commission of Inquiry
Level 9
Brisbane Magistrates Courts Building
363 George Street
BRISBANE Q 4000

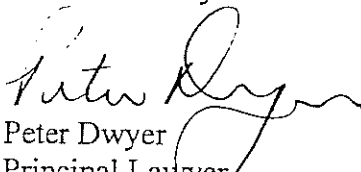
Dear Mr Groth

Submissions in response to Notices of Potential Adverse Findings

I enclose submissions on behalf of Drs Fitzgerald, Nydam, Krishna and Huxley, Ms Erwin-Jones, Mr Allsopp and Ms Miller in response to Notices of Potential Adverse Findings (or, as the case may be, Notices of Potential Adverse Findings and Recommendations) given to each of those individuals.

The submissions were drawn by Mr Farr of counsel and settled by Mr Boddice SC.

Yours faithfully


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QUEENSLAND PUBLIC HOSPITALS COMMISSION OF INQUIRY

SUBMISSIONS ON BEHALF OF DR KEES NYDAM

Non appointment of Dr Jayasekera to the position of Director of Surgery

1. The evidence relevant to this issue from Dr Nydam appears at:
 - (a) Exhibit 51 – Statement of Dr Nydam – paragraph 32;
 - (b) Transcript 4110/49 – 4118/44; 4122/10 – 4124/10; 4125/25 – 45; 4168/36 – 4170/46; 4188/1 – 60.

2. The evidence from Dr Jayasekera on this issue appears at:
 - (a) Exhibits 308 and 381 – Statements of Dr Jayasekera – paragraphs 32 – 37;
 - (b) Transcript – 5965/45 – 5966/31; 5970/1 – 5791/40; 5978/30 – 5981/1; 5981/25 – 5984/10.

3. The evidence establishes the following:
 - (a) The position of Director of Surgery was advertised three times in 2002. The second time had a closing date of 16 September 2002 and the third time had a closing date of 2 December 2002¹;
 - (b) When the position was advertised with the closing date of 16 September 2002, there were three applicants. The first was a Dr Strekov². The second was Dr Jayasekera. The third applicant did not meet the selection criteria³;
 - (c) Whilst Doctors Strekov and Jayasekera both satisfied the selection criteria, the selection committee, comprised of Dr Nydam, Dr Anderson and Mr Leck, chose Dr Strekov⁴;
 - (d) Dr Jayasekera was advised by letter dated 15 October 2002 that he had been unsuccessful in securing the position⁵;

¹ T4112/40.

² T4112/55.

³ T4113/30.

⁴ T4113/40.

⁵ T4115/40.

- (e) Dr Strekov declined the position and the position was readvertised with a closing date of 2 December 2002⁶;
 - (f) There were no applicants when the position was readvertised with a closing date of 2 December 2002⁷;
 - (g) Whilst Dr Jayasekera applied for the position in circumstances where he had been encouraged to do so by Dr Nydam, Dr Nydam gave evidence that he urged everybody *“to apply for a position because I think it’s a part of their professional development to experience the process of a formal interview”*⁸;
 - (h) Dr Nydam had reservations about Dr Jayasekera⁹. He did not think he was the most ideal candidate for lots of reasons not only concerning his level of skill¹⁰;
 - (i) Significantly, Dr Nydam gave evidence that even if he was being asked *“right now”* whether or not he would recommend Dr Jayasekera for the position, his answer would be no¹¹;
 - (j) Dr Nydam had informal discussions with Dr Jayasekera following his failed application in which he indicated that his performance at interview did not really reflect well in terms of his capabilities and skills¹². During this conversation, Dr Jayasekera indicated to Dr Nydam that he wasn’t disappointed because he wanted to move back to Brisbane closer to his family¹³;
 - (k) Dr Jayasekera did not apply when the position was readvertised¹⁴.
4. Dr Jayasekera gave evidence that he:
- (a) Did not want the position¹⁵;
 - (b) Did not feel he could perform it in all of its requirements¹⁶;

⁶ T4113/50.

⁷ T4115/45.

⁸ T4117/5.

⁹ T4116/50.

¹⁰ T4117/25.

¹¹ T4117/10.

¹² T4168/50.

¹³ T4169/55.

¹⁴ T4170/5.

¹⁵ T5970/13; 5971/22-30.

¹⁶ T5971/22-30.

- (c) Had no intention of remaining in Bundaberg even if he had been offered the position of Director of Surgery¹⁷;
 - (d) Only applied at the urging of others¹⁸;
 - (e) Was not interested in reapplying when the position was readvertised¹⁹.
5. The fact that Dr Jayasekera satisfied the selection criteria did not mean that he should be appointed to the position of Director of Surgery, after Dr Strekov declined the position. Part of the selection process included an interview. Dr Nydam gave evidence that Dr Jayasekera performed poorly in that interview, and he gave Dr Jayasekera feedback to that effect²⁰.
 6. Further, Dr Nydam gave evidence that notwithstanding that Dr Jayasekera satisfied all of the selection criteria, he was of the view that Dr Jayasekera would not be an appropriate person to hold the position. This view is one formed after the benefit of the interview process, and there is no evidence before this Commission that this view was not a genuinely held view on the part of Dr Nydam. Mr Leck gave evidence that Dr Nydam expressed the view that Dr Jayasekera was not suitably experienced to undertake the position²¹.
 7. When Dr Strekov declined the position, a decision was made to re-advertise the position. This is not unreasonable having regard to Dr Nydam's views. His preference was to "*have the best person we could recruit*"²². Dr Jayasekera did not reapply for the position when it was subsequently readvertised²³. Dr Nydam was entitled to have regard to that fact.
 8. In circumstances where:
 - (a) The selection panel recommended that the position be offered to an applicant other than Dr Jayasekera;
 - (b) When that applicant declined the offer, and the position was readvertised, Dr Jayasekera did not reapply;

¹⁷ T5979/1 – 5981/14.

¹⁸ T5970/12-22; 5971/31 – 38.

¹⁹ T5979/10.

²⁰ T4168/50.

²¹ T7139/55 – 7140/1.

²² T4111/30.

²³ T5979/10

- (c) Dr Jayasekera had performed poorly at interview and was known to be wanting to move closer to Brisbane,

Dr Nydam's failure to appoint Dr Jayasekera to the position of Director of Surgery was reasonable, and did not constitute carelessness, inefficiency or a lack of competence.

The appointment of Dr Patel

9. The evidence relevant to this issue from Dr Nydam appears at:
- (a) Exhibit 51 – Statement of Dr Nydam – paragraphs 7 – 35;
 - (b) Transcript 4119/60 – 4120/20; 4120/40 – 4122/8; 4123/42 – 4124/40; 4125/48 – 4126/15; 4127/10 – 4128/10; 4129/29 – 43; 4132/10 – 4133/20; 4181/40 – 4182/3.
10. The evidence relevant to this issue from Dr Bethel of Wavelength appears at:
- (a) Exhibit 41 – Statement of Dr Bethel;
 - (b) Transcript - T671 – 699, 717 - 727
11. It is conceded that the documentation submitted to the Medical Board of Queensland indicated that the position to which Dr Patel would be appointed reported to the Director of Surgery.
12. However, the evidence does not support a finding that Dr Nydam at all relevant times intended to appoint Dr Patel as Director of Surgery:
- (a) Bundaberg Base Hospital had retained Wavelength in November 2002 to recruit a Senior Medical Officer – Surgery²⁴. This was at a time when Dr Nydam was readvertising the position of Director of Surgery.
 - (b) The reference in the e-mail of 20 December 2002 to "*Payment in the first instance will be as an SMO*" referred to Dr Nydam's expectation that Dr Patel would, after a period of time, apply through the college to become an Australian recognised Fellow and the payments would change thereafter²⁵;

²⁴ Exhibit 41 – para 4.

²⁵ T4132/30.

- (c) When the Director of Surgery position failed to produce any applicants following its readvertising in December 2002, it was necessary to obtain a second staff surgeon. That position was filled on 9 January 2003 by Dr Gaffield²⁶;
- (d) The Bundaberg Base Hospital only had two staff surgeon positions. The Director of Surgery position is not a separate position. When both staff surgeon positions are occupied, one of the staff surgeons would usually take on responsibility of Director of Surgery²⁷. It is an administrative position, carrying a small allowance²⁸.
- (e) Dr Patel was the more senior of the two and was more experienced and did more general surgery²⁹. Out of those two, he was the natural choice to undertake the duties of Director of Surgery³⁰;
- (f) Dr Nydam signed material that was submitted to the Medical Board on 8 January 2003. This was just prior to the appointment of Dr Gaffield. It was not his intention to mislead or deceive the Board³¹. His failure to notify the Medical Board of Queensland of Dr Patel's subsequent appointment to the vacant position of Director of Surgery was an "oversight"³²;
- (g) While Dr Nydam accepted a suggestion that from at least December 2002 he had Dr Patel earmarked as the likely Director of Surgery, this acceptance, in the context of all of the evidence, amounts merely to an acknowledgement that once two staff surgeons are appointed, the position would be filled by one of the staff surgeons.
13. On the whole of the evidence it should be accepted that Dr Nydam at all times acted conscientiously and in good faith, in an effort to ensure the proper workings of the Bundaberg Base Hospital. Any errors by him in the performance of those duties do not justify a conclusion that he intentionally misrepresented Dr Patel's position to the Medical Board. The failure to notify the Medical Board of Dr Patel's appointment as

²⁶ T4126/35.

²⁷ T4171/10.

²⁸ T4171/20 – 40.

²⁹ T4126/50.

³⁰ T4126 – 4127.

³¹ T4181/45.

³² T4133/15

Director of Surgery is properly to be characterised as an “oversight”. It does not constitute carelessness, inefficiency or incompetence. In this context, it is relevant that Dr Nydam only remained as the Acting Director of Medical Services for approximately two weeks after Dr Patel commenced duties, some six days after Dr Patel was appointed to the vacant position of Director of Surgery.

Dr Patel’s references

14. The evidence relevant to this issue from Dr Nydam appears at:
 - (a) Exhibit 51 – Statement of Dr Nydam – paragraph 15 – 17;
 - (b) Transcript – 4137/44 – 4138/10.
15. Dr Bethel gave evidence that during the recruitment process Wavelength ran reference checks on Dr Patel. On 20 December 2002 the references, as well as the result of reference checks, were forwarded to Dr Nydam³³.
16. Dr Nydam received these reference checks from Wavelength³⁴. Dr Bethel accepted that Dr Nydam’s instructions to offer Dr Patel the position occurred after Dr Nydam had been supplied with the references and reference checks³⁵.
17. In circumstances where a recruitment agency is engaged for the purposes of obtaining a suitable candidate to fill a position, it is not unreasonable that the relevant reference checks be undertaken by that agency particularly where, as here, copies of the references and details of the reference checks are provided to the prospective employer prior to any offer of employment being made. Dr Nydam knew that such checks had been performed by a highly regarded recruitment agency³⁶. His acceptance of the results of those reference checks was entirely reasonable in the circumstances, and does not constitute carelessness, inefficiency or incompetence.

The credentialling and privileging process

18. The evidence relevant to this issue from Dr Nydam appears at:

³³ T720/1 – 721/30.

³⁴ Exhibit 51, para 17.

³⁵ T721/10 – 31.

³⁶ T4137/45.

- (a) Exhibit 51 – Statement of Dr Nydam – paragraphs 36 – 37
 - (b) Transcript T4135/38 – 4137/8; 4139/19 – 42; 4140/10 -32; 4141/20 – 4146/19; 4186/13 -4187/30.
19. The evidence of Dr Wakefield relevant to this matter appears at:
- (a) Exhibit 290 B – Statement of Dr Wakefield – paragraph 16(c)
 - (b) Transcript – T4487/50 – 4489/5; 4555/2 -4557/5; 4569/20 -4570/50.
20. The evidence of Dr Thiele relevant to this matter appears at:
- (a) Exhibit 118 – Statement of Dr Thiele – paragraph 51 – 52.
 - (b) Transcript – T1857/23 – 1859/35.
21. It is unclear what, if any, system of credentialling and privileging was in place at the time that Dr Thiele held the position of Director of Medical Services. Dr Wakefield, who replaced Dr Thiele, stated that there was no formal credentialling and privileging process in place at the time that he commenced as Director of Medical Services³⁷.
22. Dr Wakefield introduced a system of credentialling and privileging whilst he held the position of the Director of Medical Services.³⁸
23. In July 2002, Queensland Health introduced a standard policy of credentialling and privileging³⁹. Pursuant to that policy, the responsibility for credentialling and privileging lay with the District Manger.
24. Dr Nydam did not fail to maintain a credentialling and privileging process. On the contrary, he took steps to improve the previous system such that a degree of independence and impartiality was introduced.
25. Dr Nydam gave evidence that he attempted to improve the credentialling process when he was the Acting Director of Medical Services by incorporating Hervey Bay, Maryborough and Bundaberg into one process. This was an attempt to minimise the risk of “*mate credentialling mate*”⁴⁰, thereby increasing the degree of impartiality in the process. That process was subsequently developed into a policy in 2003.⁴¹

³⁷ T4569/55.

³⁸ Exhibit 290B, paragraph 16(c) and attachment JGW – B and T4555/1 – 20.

³⁹ Exhibit 279.

⁴⁰ T4139/36.

⁴¹ Exhibit 276.

26. Whilst Dr Nydam did not ensure that Dr Patel was subject to the process of credentialling and privileging prior to his employment at the Bundaberg Base Hospital, this must be viewed against the background of there being a joint committee which was endeavouring to have a College representative appointed to allow credentialling or privileging to be undertaken.
27. Importantly, Dr Nydam ceased acting as the Director of Medical Services two (2) weeks after Dr Patel arrival.
28. Further, the District Manager, Mr Leck, gave evidence that he later issued temporary privileges for Dr Patel (and others) at the relevant time. This is a practice which accords with Section 7.3 of Exhibit 279.
29. Having regard to all of the evidence, there is no sufficient evidential basis to find that Dr Nydam acted carelessly, inefficiently or incompetently in relation to the credentialling and privileging of Dr Patel.

The death of Mr Bramich

30. The evidence in relevant to this issue from Dr Nydam appears at:
 - (a) Exhibit 51 – paragraphs 49 – 54;
 - (b) Transcript – T4150/50, 4151/50, 4172/1 – 50.
31. The evidence relevant to this issue from Dr Keating appears at:
 - (a) Exhibit 448 – Statement of Dr Keating paras 132 - 160;
 - (b) Transcript – T 6999.
32. Dr Nydam was not directed, or even requested, to investigate the death of Mr Bramich, or to obtain reports from Dr Carter and Dr Patel. Dr Keating forwarded a memorandum to those Doctors requesting they undertake an audit and report to Dr Keating and Dr Nydam⁴².
33. Dr Keating gave evidence that he was later directed by Mr Leck to cease any investigation⁴³.

⁴² Exhibit 448, attachment DWK 39.

⁴³ T 6999.

34. There is no evidence before the Inquiry as to any recommendations made by Dr Nydam in relation to the death of Mr Bramich.
35. There is no evidence that Dr Nydam failed to investigate the death of Mr Bramich, or that he was careless, inefficient or incompetent.

Conclusions

36. In performing his duties as Acting Director of Medical Services, Dr Nydam acted conscientiously and in good faith. There is no basis to properly find that any deficiencies in his actions were other than errors of judgement. No adverse finding or recommendation should be made against him.



Crown Law

Queensland Government

Your ref:
Our ref: CS5/HEA027/5744/DZP
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Department of
Justice and Attorney-General

31 October 2005

BY:-----

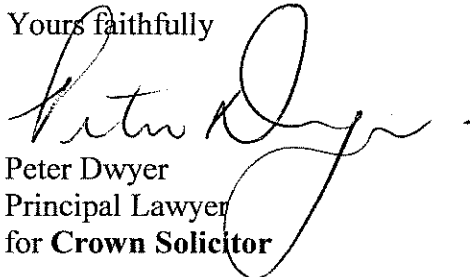
Mr David Groth
Secretary
Queensland Public Hospitals Commission of Inquiry
Level 9, Brisbane Magistrates Court
PO Box 13147 George Street
BRISBANE QLD 4003

Dear Mr Groth

Dr Kees Nydam

I **enclose** further submissions on behalf of Dr Kees Nydam in response to a subsequent Notice of Potential Adverse Findings dated 24 October 2005.

Yours faithfully



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Principal Lawyer
for **Crown Solicitor**

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QUEENSLAND PUBLIC HOSPITALS COMMISSION OF INQUIRY

FURTHER SUBMISSIONS ON BEHALF OF DR KEES NYDAM

Sponsorship form for Dr Patel (Form 55)

1. During the period Dr Nydam held the position of Acting Director of Medical Services, he spent a considerable portion of his time trying to maintain staffing levels and rosters. He often utilized locums to fill short term contracts and was in frequent contact with recruitment consultants at three different recruitment agencies as well as having regular contact with other Directors of Medical Services¹. Consequently, Dr Nydam considered that he had a good knowledge of the market and the difficulties in filling vacant positions².
2. On 8th January, 2003, Dr Nydam signed a document entitled "**Sponsorship for Temporary Residence in Australia (Non Business) Form 55**". That form related to Dr Patel's proposed employment. Prior to signing the document Dr Nydam had approached three recruitment agencies in relation to the position of Senior Medical Officer - Surgery³.
3. The document had been forwarded to Dr Nydam for his signature on 3rd January, 2003 by Ms Suzy Tawse of Wavelength Consulting Pty. Ltd. Ms Tawse had already completed the relevant sections⁴. Dr Nydam signed and returned it.
4. There is no evidence before the Inquiry as to whether Dr Nydam supplied the information to Ms Tawse that appears in paragraph 17 of Form 55 or whether it had simply been assumed by her that the advertising had occurred or whether Ms Tawse may have confused the advertising which had occurred for the Director of Surgery position with the Senior Medical Officer position.

¹ Paragraphs 10 and 11 Exhibit 487

² Paragraph 12 Exhibit 487

³ Paragraph 13 Exhibit 487

⁴ Paragraphs 5 and 6 of Exhibit 487

5. Further, examination of paragraph 17 reveals an inconsistency within itself. It asks the question:

“Was Labour Market Testing required?”

The answer provided is “No.” The “detail” which the form then requires to accompany such an answer was not given. The form clearly indicates that one of the explanatory boxes must be ticked in such a case. It is only when the answer to the above question is “Yes” that a written explanation is required and copies of advertisements need to be attached.

6. Whether Labour Market Testing in fact was required as a prerequisite is explained on pages 3 and 4 of Form 55. Unfortunately, the exhibit does not have these pages attached. An updated copy of Form 55 is attached to this submission. Whilst its layout is slightly different, its contents are apparently similar to the contents of the exhibited form. (It may be appropriate for this form to be made an Exhibit).
7. Labour Market Testing is not required if the position is in “**an area of need**” identified by the relevant State/Territory health authority⁵. This was such a position.
8. Whilst it is conceded that Dr Nydam should have checked the accuracy of the document before signing it, the evidence would not allow a finding to the effect that Dr Nydam intended to mislead or deceive. Dr Nydam had no such intention.
9. Dr Nydam believed the relevant position had been advertised. There is no evidence to support a finding that he is being dishonest in that regard. Further, the form contains an inconsistency, and may contain information that was not even required in the first place.
10. Against this background, this is not an occasion that would, or should, result in any adverse finding or recommendation against Dr Nydam.

⁵ See page 4 of Form.



Sponsorship for temporary residence in Australia (non-business)

Please Note:

If your applicant's intended stay is for 3 months or less, then a Business (short stay) visa (subclass 456) may be more appropriate (see pages 4 and 5).

It does not include personal debts that a sponsored person might owe to private individuals or organisations in Australia.

Who should be included in the sponsorship?

All family unit members (accompanying your sponsored person) need to be listed on the sponsorship form, including family members who may wish to join their family later.

Who should use this form?

Use this form to sponsor a person for temporary employment in Australia under one of the following non-business visa subclasses:

- foreign government agency
- educational
- sport
- media and film staff
- public lecturer
- domestic worker for overseas executive
- religious worker
- temporary medical practitioner.

Details about each subclass are on pages 4 and 5.

Other sponsorship arrangements NOT covered by this form

If you want to sponsor a skilled person for long stay temporary business employment in Australia, you should complete a sponsorship form 1196 *Sponsoring temporary overseas employees to Australia*.

If you want to sponsor the entry of an overseas entertainer, you should complete form 148 *Sponsorship for temporary entry of overseas entertainers to perform in Australia*.

All DIMIA forms are available from www.immi.gov.au/allforms/index.htm

Who can be a sponsor?

Any business which is a legally operating entity in Australia who needs to recruit non-resident temporary personnel and who will be offering employment to the person can be the sponsor.

A company which is recruiting people from overseas to be employed by another company cannot be the sponsor.

Sponsorship undertaking

The sponsor must sign the undertaking at the end of the form.

The undertaking is provided to support the principle that the entry of temporary residents should not result in financial cost to the Australian community. This means that the Australian government can request a sponsor to reimburse it for any outstanding debts owed to the Commonwealth which are accrued by the sponsored person during their stay in Australia.

This could include medical costs related to the sponsored person or their dependants, or travel costs if repatriation became necessary and the employee was unable or unwilling to pay for the costs involved.

How to apply

Step 1

Check if sponsorship and Labour Market Testing are required

Check the details for each visa subclass on pages 4 and 5 to see if sponsorship is required for the proposed length of stay in Australia. In most cases it is needed for a stay of more than 3 months.

Also check to see if Labour Market Testing (LMT) is required for the proposed visa subclass and proposed period of stay.

If you require further information you should contact the nearest DIMIA office.

Step 2

Check if a charge is required

You may be required to pay the non-refundable charge when you lodge the sponsorship application.

Method of payment

Payment must accompany your application and is generally not refunded if the application is unsuccessful. To make a payment in Australia, please pay by credit card, debit card or by bank cheque or money order payable to Department of Immigration and Multicultural and Indigenous Affairs. **Please do not pay by cash or personal cheque.**

Payment of the charge does not guarantee approval of the sponsorship.

Step 3

If required, carry out Labour Market Testing

If LMT is required, you must:

- lodge the vacancy with a job placement provider for national listing for a minimum of 4 weeks during the 8 weeks before lodging the nomination, or
- obtain a waiver of this requirement from a job placement service provider,

and

- advertise the vacancy in a Saturday and a weekday edition of both a metropolitan and a national daily newspaper (*a total of 4 separate advertisements*), or

Continued on the next page ▶

- if the business is outside major metropolitan areas, advertise the vacancy in both the Saturday edition and a weekday edition of both a major local or regional and a national daily newspaper (*again a total of 4 separate advertisements*),
- advertise the vacancy through other appropriate means. For example, in trade or professional journals, private employment agencies or union consultations. Advertisements in local community language newspapers may also be appropriate.

Advertisements must accurately reflect the duties of the position, salary and other benefits offered. They must be prominently displayed to attract as big a response as possible. You should provide copies of all the advertisements you have lodged and evidence that they have appeared in the last 6 months.

When LMT is complete, the employer must provide with this sponsorship, original advertisements, details of all local applicants including whether they were Australian permanent residents, and reasons for non-suitability of the applicants.

Step 4

Complete your sponsorship form

Please use a pen and write neatly in English using BLOCK LETTERS.

Give all the information requested. If you need more space to answer, attach a sheet giving the required details.

Use the Checklist at **Part I** to make sure you have answered all the questions and provided everything required.

Step 5

Lodge your application

Your completed sponsorship form, charge, and any relevant documentation, may be lodged in person or by a representative or sent by mail, to the office of the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) nearest to your place of business in Australia.

What happens then?

You will be advised in writing whether your sponsorship has been approved or not. The letter will explain the steps your sponsored person will need to follow to obtain their visa.

Your sponsored person will need to satisfy certain regulatory criteria in order to have their application for a visa approved.

This may include the need to undergo a medical check.

Step 6

Make sure the sponsored person lodges a visa application

The sponsored person should lodge form 147 *Application for temporary residence visa (non-business)* as soon as possible after you receive advice that your sponsorship has been approved.

Medical Practitioner (subclass 422) only

If your sponsored person will be applying for a temporary Medical Practitioner (subclass 422) visa, you should inform them that their visa application (on form 147 *Application for a temporary residence visa non-business*) should be lodged in Australia at the same DIMIA office where you lodged this sponsorship application. This applies to all 422 applicants, regardless of whether they are in Australia or overseas.

If the sponsored person is overseas

You should advise the sponsored person to lodge their visa application as soon as you receive advice that your sponsorship has been approved.

If the sponsored person is in Australia

It will save time if your sponsored person's visa application (*and appropriate charge*) is lodged when you lodge this sponsorship application. However, you should be aware that if your sponsorship application is refused, there will be no refund of any charges.

About the information you give in this form

DIMIA is authorised to collect information provided on this form under Part 2 of the *Migration Act 1958* 'Control of Arrival and Presence of Non-Citizens'. The information provided will be used for assessing your application, and for other purposes relating to the administration of the Migration Act.

The information provided might also be disclosed to agencies who are authorised to receive information relating to adoption, border control, business skills, citizenship, education, health assessment, health insurance, health services, law enforcement, payment of pensions and benefits, taxation, review of decisions and registration of migration agents.

The collection, access, storage, use and disclosure by DIMIA of the information you provide in this form is governed by the *Privacy Act 1988* and, in particular, by the 11 Information Privacy Principles. The information form 993i *Safeguarding your personal information*, available from DIMIA offices, gives details of agencies to which your personal information might be disclosed.

The *Freedom of Information Act 1982* also relates to your personal information. Under this Act you can apply for access to documents containing your personal information. You or someone authorised to access information on your behalf can apply to do this at any DIMIA office in Australia. There is no fee for accessing your own information. If you are overseas, you must provide an address in Australia to which copies of your personal records can be sent. More information on how to make a request under the *Freedom of Information Act 1982* is given on the form 424 *Request for access to documents*. The outcome of this application may be made known to the person/organisation who has submitted a sponsorship form regarding your application.

Authorisation of a person to receive written communications

You may authorise another person to receive all written communications about your sponsorship with DIMIA. To do this you will need to complete **Part F** *Options for receiving written communications* and **Part G** *Authorised recipient details* in this form. The authorised recipient will need to sign at **Part H**. You can only appoint one authorised recipient at any time. DIMIA will communicate with the most recently appointed authorised recipient.

DIMIA is required under section 494D of the *Migration Act 1958* to send to your authorised recipient any written communications relating to your application that would otherwise have been sent to you. DIMIA will only send to your authorised recipient information which you are entitled to receive. For example, if you are a visa applicant and have a sponsor, your authorised recipient will not receive personal information about your sponsor, unless your sponsor also appointed the same authorised recipient.

If you decide to change the authorised recipient that you have nominated after you have lodged your application, you must promptly advise DIMIA in writing of the details of that person. You may use form 1231 *Appointment of authorised recipient* for this purpose.

Authorisation of a migration agent to act on your behalf

If you have a migration agent acting on your behalf in relation to your sponsorship you need to complete **Part F Options for receiving written communications** and **Part I Migration agent details**. The migration agent will need to sign at **Part J**.

Appointing a migration agent to act on your behalf includes authorising DIMIA to send to that agent any written communication about your sponsorship that would otherwise have been sent to you. You will be taken to have received any documents sent to that agent as if they had been sent to you.

When you provide details of the migration agent please make sure you give the agent's 7-digit migration agent registration number (MARN) and the agent's full name.

If you change your migration agent or end his/her appointment after you have lodged this application you must promptly advise DIMIA by using the form 956 *Appointment of migration agent or exempted agent*, which is available on the DIMIA website or from your migration agent. You should also notify the agent of this, preferably in writing.

Appointing a migration agent to act on your behalf includes authorising DIMIA to:

- discuss your sponsorship with your agent and seek further information via your agent; and
- send to your agent any written communication about your sponsorship that would otherwise have been sent to you.

This means your migration agent will be your authorised recipient for written communication under section 494D of the *Migration Act 1958* and you will be taken to have received any documents sent to the migration agent as if they were sent to you.

DIMIA will communicate with your agent about your application, including your personal information, financial viability and sponsoring relationships. If your agent authorises it, this communication may take place by e-mail. DIMIA will only send to your agent information which you are entitled to receive.

In some situations DIMIA staff will need to speak with you directly, rather than your migration agent, for example, if you are applying for a visa DIMIA may interview you about your personal circumstances relevant to the visa application. In some situations DIMIA staff will also send the documents to you directly instead of sending these to your agent, but will inform your agent that it has done so.

If you have appointed a migration agent to act for you, you are still responsible for the accuracy of information and supporting documentation that you provide to your agent so that your agent can provide it to DIMIA.

Using a migration agent

You are not required to use a migration agent. However, if you intend to use a migration agent you are advised to use a registered migration agent.

Under Australian law, anyone who uses knowledge of migration procedures to offer immigration assistance to a person wishing to obtain a visa to enter or remain in Australia must be registered.

A list of registered migration agents is available from the Migration Agents Registration Authority (MARA) website www.themara.com.au

You can contact the MARA at:

PO Box Q1551
QVB NSW 1230
AUSTRALIA

Telephone: 61 2 9299 5446

Facsimile: 61 2 9299 8448

E-mail: themara@themara.com.au

Registered migration agents are bound by the Migration Agents Code of Conduct and generally charge for their services. The MARA investigates complaints against registered migration agents and may take disciplinary action against them. If you have a concern about a registered migration agent, you should contact the MARA. You can also download a copy of the complaint form from MARA's website.

Using an agent exempted from registration

Only registered migration agents can provide immigration assistance for a fee or gift. However, certain people, such as sponsors of visa applicants, are able to provide immigration assistance as exempted agents so long as they do not receive a fee or gift.

If you wish to appoint an exempted agent you must complete form 956 *Appointment of migration agent or exempted agent* and attach it to this application form.

Consent to communicate electronically

DIMIA may use a range of means to communicate with you. However, electronic means such as fax or e-mail will only be used if you indicate your agreement to receiving communication in this way.

To process your application DIMIA may need to communicate with you about sensitive information, for example, health, police checks, financial viability and personal relationships. Electronic communications, unless adequately encrypted, are not secure and may be viewed by others or interfered with. If you agree to DIMIA communicating with you by electronic means, the details you provide will only be used by DIMIA for the purpose for which you have provided them, unless there is a legal obligation or necessity to use them for another purpose, or you have consented to use for another purpose. They will not be added to any mailing list.

The Commonwealth Government accepts no responsibility for the security or integrity of any information sent to DIMIA over the internet or by other electronic means.

If you authorise another person to receive documents on your behalf and they wish to be contacted electronically, their signature is required on the form to indicate their consent to this form of communication.

Continued on the next page ►

SUBCLASS	PURPOSE	SPONSORSHIP AND OTHER REQUIREMENTS
415 Foreign Government Agency	For foreign government officials to conduct official business on behalf of their government where the officials do not have diplomatic or official status in Australia. It includes cultural institutions such as the Alliance Française, Goethe Institute, British Council, Italian Cultural Institute and other tourist offices and cultural institutions as well as foreign government agencies and departments.	<p>Sponsorship – for stays of up to 3 months, or cases involving directors of Alliance Française, Goethe Institute or Italian Cultural Institute a statement of support is required from the Foreign Ministry. In all other cases sponsorship is required.</p> <p>Labour Market Testing – not required.</p> <p>Condition 8107¹ is a mandatory condition attached to all visas in this subclass.</p>
418 Educational	<p>For qualified people to join educational and research institutions or organisations to fill academic, teaching or research positions which are unable to be filled from the Australian Labour Market.</p> <p>Note: The Temporary Business (Long Stay) visa (Subclass 457) is the preferred visa for this group. For stays of under 3 months, the 456 Business (Short Stay) is also an option.</p>	<p>Sponsorship – is required for a stay of more than 3 months.</p> <p>Labour Market Testing – is required except where the:</p> <ul style="list-style-type: none"> - stay is for less than 12 months; - position is for senior academic/research staff; or - position forms part of a labour agreement. <p>Details that must be attached to the sponsorship application:</p> <p>The employing institute must provide a letter of appointment detailing: the duration and type of employment (ie. full or part-time), title of position offered, duties, remuneration and reason why overseas recruitment is required.</p> <p>Condition 8107¹ is a mandatory condition attached to all visas in this subclass.</p>
421 Sport	<p>Temporary stay of elite sports people with an established reputation to engage in competition with Australian residents, and to improve the quality of sport in Australia through high calibre participation in competition and training.</p> <p>Note: Non-elite players and coaches should apply for a 456 Business (Short Stay) for under 3 months or 457 Temporary Business (Long Stay) for over 3 months.</p>	<p>Sponsorship is not required if the sports person has an established sporting reputation.</p> <p>Sponsorship – All persons coming to be a player, coach or instructor in relation to an Australian team or organisation, or to participate in a structured sport-training program. In most other cases, sponsorship is required for stays of more than 3 months.</p> <p>Monitoring – to evaluate the integrity of this visa subclass, sponsors will be monitored by DIMIA to ensure that they comply with their sponsorship undertakings in relation to the visa holder and accompanying family members.</p> <p>A letter of endorsement from the peak sporting body in Australia is required. Condition 8107¹ is a mandatory condition attached to all visas in this subclass. Sponsored persons can only undertake 'incidental work' for the sponsor.</p>
422 Medical Practitioner	For qualified medical practitioners where there is a demonstrated need for employing practitioners from overseas.	<p>Sponsorship – required in all cases.</p> <p>Labour Market Testing – is not required if:</p> <ul style="list-style-type: none"> – the position is part of a labour agreement, or – is in an 'area of need' identified by the relevant State/Territory health authorities, or – the occupation is on the Migration Occupations in Demand List (MODL). <p>Condition 8107¹ is a mandatory condition attached to all visas in this subclass.</p>

¹ Condition 8107 states you must not:

- i) cease to be employed, or cease to undertake the activity, in relation to which your visa was granted; or
- ii) work in a position, or engage in an activity, that is inconsistent with the position or activity in relation to which your visa was granted; or
- iii) engage in work for another person or on your own account while undertaking the employment or activity in relation to which your visa was granted.

SUBCLASS	PURPOSE	SPONSORSHIP AND OTHER REQUIREMENTS
423 Media and Film Staff	<p>For correspondents and other professional media staff posted to Australia by overseas news organisations, and photographers and film and television crews making documentaries or commercials for overseas consumption.</p> <p>Note: Media staff (only) can be considered for a 456 Business (Short Stay) for under 3 months or 457 Temporary Business (Long Stay) for over 3 months.</p>	<p>Sponsorship – is required for a stay of more than 3 months.</p> <p>Labour Market Testing – is not required.</p> <p>Details that must be attached to sponsorship application:</p> <p>The proposed subject matter and intended locations in Australia; the purpose for which the film/videotape is to be used; where the film is to be processed; conditions of employment for crew members; and Australian technical staff and/or entertainers to be hired (including numbers and positions).</p> <p>Condition 8107¹ is a mandatory condition attached to all visas in this subclass.</p>
424 Public Lecturer	<p>For professional lecturers or subject experts invited to make public presentations.</p> <p>Note: If the period of stay is for less than 3 months, the 456 Business (Short Stay) is appropriate.</p>	<p>Sponsorship – is required for a stay of more than 3 months, unless the sponsored person seeks to enter Australia under a bilateral agreement between Australia and another country.</p> <p>Labour Market Testing – may be requested by DIMIA.</p> <p>Details that must be attached to sponsorship application:</p> <p>The itinerary showing details of venues and appearances; details of the fee or salary to be paid to the sponsored person; and a brief biography of the sponsored person.</p> <p>Condition 8107¹ is a mandatory condition attached to all visas in this subclass.</p>
427 Domestic worker for overseas executive	<p>For domestic staff of holders of visas in subclass 457 Long-stay temporary business entry (executives only). A visa in this subclass may only be granted where it can be shown that the entry of domestic staff is necessary for the proper discharge of the executive's representational duties.</p>	<p>Sponsorship – is required if the executive is sponsored.</p> <p>If the executive is not sponsored an acceptable employment agreement must be provided. The agreement is between the applicant and the executive and should outline details of the position including the salary package, which must be commensurate with the awards and standards for equivalent positions in the Australian labour market.</p> <p>Labour Market Testing – may be requested by DIMIA.</p> <p>Condition 8107¹ is a mandatory condition attached to all visas in this subclass. The holder of the visa must not remain in Australia after the permanent departure of their employer.</p>
428 Religious Worker	<p>For religious workers, including ministers, priests and spiritual leaders to serve the spiritual needs of people of their faith in Australia.</p>	<p>Sponsorship – required in all cases.</p> <p>Religious Worker agreement – may be negotiated with the sponsoring organisation. An agreement would specify the number and type of religious workers to be sponsored over a period of time, and annual monitoring arrangements.</p> <p>Monitoring – to evaluate the integrity of this visa subclass, sponsors with Agreements will be monitored by DIMIA to ensure that they comply with their sponsorship undertakings in relation to the visa holder and accompanying family members.</p> <p>Labour Market Testing – may be requested by DIMIA.</p> <p>Details that must be attached to sponsorship application:</p> <p>Evidence that: the sponsorship is supported by a senior authority of the religious organisation in the relevant State/Territory; a written undertaking guaranteeing provision of applicants travel expenses on leaving Australia if required, and a guarantee not to attempt to recover any costs from the applicant related to any travel costs and support in Australia; and if sponsoring for the first time, evidence that the organisation is a 'religious' organisation.</p> <p>Condition 8107¹ is a mandatory condition attached to all visas in this subclass.</p>

¹ Condition 8107 states you must not:

- i) cease to be employed, or cease to undertake the activity, in relation to which your visa was granted; or
- ii) work in a position, or engage in an activity, that is inconsistent with the position or activity in relation to which your visa was granted; or
- iii) engage in work for another person or on your own account while undertaking the employment or activity in relation to which your visa was granted.



Sponsorship for temporary residence in Australia (non-business)

Part A – Details of sponsor

1 Details of sponsoring organisation or sponsor in Australia

Name of organisation or sponsor

Street address of organisation or sponsor

Postal address of organisation or sponsor.

(if same as street address, write 'AS ABOVE')

2 Australian Business Number / Australian Company Number (if applicable)

3 Do you agree to DIMIA communicating with you by facsimile, e-mail or other electronic means?

No

Yes Give details

Facsimile number (AREA CODE)

E-mail address

4 Is this your first sponsorship?

No

Yes Refer to Part L for documentation that must be attached

5 Nature of business

6 Details of employees

How many people are employed by the organisation/sponsor in Australia?

How many are in the same occupation as the sponsored position?

How many employees are not Australian citizens or residents?

Part B – Details of sponsored position

7 Job title

8 Occupation (if not described by job title)

9 Is the position Full-time Part-time

10 Proposed period of employment in Australia (years, months)

11 Address of workplace

12 Will the sponsored person receive a salary?

No

Yes Give details

13 Details of salary package

Annual salary

Other benefits

OR tick if details are attached

14 Job description

OR tick if details are attached

15 Qualifications and essential skills required for the position

OR tick if details are attached

Continued on the next page ▶

Part C – Labour market details

16 Is the position part of a Labour agreement or Religious Worker agreement?

No

Yes Give details

Labour agreement

Religious Worker agreement

▶▶ Now go to Part D

17 Was Labour Market Testing required?

(Refer to the Notes on pages 4 and 5 of this form which detail the requirements for each visa subclass)

No Give details

Not required for the subclass of visa Visa subclass

Not required for the intended period of stay

Other Please attach details

Yes Give details of the efforts you made to obtain suitable staff from the Australian workforce

- Attach copies of newspaper and other advertisements, the list of applicants and the reasons for non-selection.
- If you were required to lodge the vacancy with a job placement service provider, attach a printout of the vacancy record, or a lodgement waiver *(certified by a job placement service provider)*.
- If Labour Market Testing was required but NOT done, attach a statement giving reasons why it was not done and why it is necessary to engage staff from overseas.

Part D – Details of sponsored person and family members included in the sponsorship

18 Details of sponsored person

Family name

Given names

Sex Male Female

Date of birth DAY MONTH YEAR

Country of birth

Citizenship

Current residential address

 POSTCODE

Office hours COUNTRY CODE AREA CODE NUMBER

After hours

19 Where will the sponsored person apply for the visa?

20 Proposed date of arrival in Australia *(if overseas)*

 DAY MONTH YEAR

21 Give details of family members who will accompany or may join the sponsored person in Australia during the term of the sponsorship *'Family member' includes spouse, unmarried dependent children and certain unmarried dependent relatives)*

Family name

Given names

Sex Male Female

Date of birth DAY MONTH YEAR

Relationship to sponsored person

Citizenship of passport

Family name

Given names

Sex Male Female

Date of birth DAY MONTH YEAR

Relationship to sponsored person

Citizenship of passport

Family name

Given names

Sex Male Female

Date of birth DAY MONTH YEAR

Relationship to sponsored person

Citizenship of passport

Family name

Given names

Sex Male Female

Date of birth DAY MONTH YEAR

Relationship to sponsored person

Citizenship of passport

Part F – Options for receiving written communications

- 25 All written communications about this application should be sent to: *(Tick one box only)*
- Sponsor All written communications will be sent to the address for communications that you have provided in this form. Go to Part K
- Migration agent Go to Part I
- Agents exempted from registration You must complete form 956 *Appointment of migration agent or exempted agent* and attach it to this application form. Go to Part K
- Authorised recipient This is a person authorised to receive written communications other than a migration agent. All written communications that would otherwise have been sent to you in relation to this application will be sent to that person.

Continued on the next page ▶

Part E – Assistance with this form

- 22 Did you receive assistance in completing this form?
- No Go to Part F
- Yes Please give details of the person who assisted you

Family name (not a business or company name)

Given names

Address

POSTCODE

23 Is the person a registered migration agent?

- No
- Yes Go to Part F

- 24 Did you pay the person and/or give a gift for this assistance?

- No
- Yes How much did you pay?

A\$ AND/OR

What kind of gift did you give? *(eg. jewellery)*

Value of gift *(approximately)*

A\$

Part G – Authorised recipient details

Note: Do NOT complete this section if you are a migration agent, go to Part I

26 Provide the name and address of the person who is authorised on your behalf to receive all written communications about this application.

Title: Mr Mrs Miss Ms Other

Family name

Given names

Authorised recipient's postal address

 POSTCODE

Telephone number or daytime contact

Office hours (AREA CODE)

Mobile phone

Part H – Authorised recipient consent

27 As the authorised recipient named on this form, do you agree to DIMIA communicating with you by facsimile, e-mail or other electronic means?

No

Yes Give details

Facsimile (AREA CODE)

E-mail address

28 **Signature of authorised recipient**

Date

DAY	MONTH	YEAR
/	/	/

▶▶ Now go to Part K

Part I – Migration agent details

29 Provide the details requested below about the migration agent who is authorised to act on your behalf and to receive all written communications about this application.

Migration Agent Registration Number (MARN) : : : : (7 DIGITS)

Title: Mr Mrs Miss Ms Other

Family name

Given names

Business or company name

Postal address

 POSTCODE

Telephone number or daytime contact

Office hours (AREA CODE)

Mobile phone

Part J – Migration agent consent

30 As the migration agent named on this form, do you agree to DIMIA communicating with you by facsimile, e-mail or other electronic means?

No

Yes Give details

Facsimile (AREA CODE)

E-mail address

31 I understand and accept that I am the person appointed by the applicant to receive all written communications and act as his/her migration agent.

Signature of migration agent

Date

DAY	MONTH	YEAR
/	/	/

Part K – Payment details

32 How will you pay your application charge?

- Bank cheque Please make payable to: Department of
Immigration and Multicultural and
Indigenous Affairs
- Money order
- EFTPOS
- Credit card Give details below

Payment by (tick one box)

MasterCard <input type="checkbox"/>	Visa <input type="checkbox"/>	Australian Dollars A\$
Bankcard <input type="checkbox"/>	Diners Club <input type="checkbox"/>	
American Express <input type="checkbox"/>	JCB <input type="checkbox"/>	

Credit card number

Expiry date MONTH / YEAR

Cardholder's name

Telephone (AREA CODE)

Address

Signature of cardholder

Credit card information will be used for charge paying purposes only.

Part L – Documents you must attach

33 Please attach the following documents to this application if you have ticked the 'attached' box in response to any question or if the document is listed as a requirement for your sponsored person's visa subclass.

Take a copy of the documents for your own records.

	Documents	Attached?
Q4	Evidence, such as financial or annual reports, bank statements, audit reports, a statement on company letterhead, or other material to show: <ul style="list-style-type: none"> the type of business the company is operating; recent business undertakings; financial status; the size of the business including the number of employees and the location of offices or plants; and how long the company has been operating. 	<input type="checkbox"/>
Q13	Details of salary package	<input type="checkbox"/>
Q14	Job description	<input type="checkbox"/>
Q15	Details of qualifications and essential skills required for the position	<input type="checkbox"/>
Q16	For religious organisations only – evidence of tax exemption status from the Australian Taxation Office.	<input type="checkbox"/>
Q21	Details of additional family members	<input type="checkbox"/>
	Other attachments as listed for the sponsored person's visa subclass	<input type="checkbox"/>

Continued on the next page ►

Part M – Your sponsorship undertaking

34 I/We accept responsibility for:

- all financial obligations to the Commonwealth incurred by the sponsored person arising out of that person's stay in Australia;
- compliance by the sponsored person with all relevant legislation and awards in relation to any employment entered into by the sponsored person in Australia;
- unless the Minister otherwise decides, compliance by the sponsored person with the conditions under which that person was allowed to enter Australia; and
- the provision of information about the sponsorship (or any information relating to the sponsorship application or approval) to assist DIMIA in the monitoring process.

Signature of
sponsor or
delegated
officer of
sponsor

DAY MONTH YEAR
Date / /

Name

Job title/
position



If this form was completed by a **business** with fewer than 20 employees, please provide an **estimate** of the time taken to complete this form.

Include:

- the time actually spent reading the instructions, working on the questions and obtaining the information
- the time spent by all employees in collecting and providing this information.

Hours Minutes