



## **Employee Work Rights & the *Employer Amendments (Employer Sanctions) Act 2007 (Cth)***

Generally, only Australian citizens, Permanent Residents and New Zealand citizens (who have entered Australia on a valid passport) have unrestricted work rights in Australia. All other persons in Australia need to have visas which enable them to work lawfully.

On 19 August 2007 the *Employer Amendment (Employer Sanctions) Act 2007 (Cth)* came into effect. The Act provides that employers and labour suppliers who *knowingly* or *recklessly* employ or refer people to work who had no work rights or work in breach of their visa conditions will face substantial criminal sanctions. This can include imprisonment and/or substantial monetary penalties. One area where employers commonly encounter difficulties is in relation to the employment of student visa holders who have restricted work rights.

Non citizens working in breach of their work rights (or working unlawfully) are also subject to visa cancellation and exclusion from Australia.

The Department of Immigration and Citizenship (**DIAC**) regularly conducts compliance checks of Australian employers. These measures augment the continuation of traditional compliance activities of joint field work activities with other departments such as the Workplace Ombudsman, the Australian Taxation Office, WorkSafe and Centrelink.

Therefore, employers, recruitment firms and labour suppliers are strongly advised to check work rights with DIAC prior to the engagement of new employees. If current employees are found to be working in breach of their visa work rights then employers should seek appropriate advice.

### **How do we check work rights?**

DIAC has a number of policy measures in place which aim to reduce illegal worker numbers in Australia, and to assist employers and others to not allow workers to work in breach of their work rights. To check work rights the following facilities are available:

- Visa Entitlement Verification Online (VEVO) - [www.immi.gov.au/e visa/vevo.htm](http://www.immi.gov.au/e visa/vevo.htm)
- Work Rights Fax Back Facility Fax : 1800 505 550
- Telephone Employers Work Right Checking Line: 1800 040 070 (from 8.30 am - 4.30 pm Monday to Friday).

Employers can also use the following documents to confirm a right to work:

1. Australian citizens: Australian birth certificate with photographic ID, Australian citizenship certificate and photo ID or an Australian passport.
2. Australian Permanent Residents: Permanent visa label or certificate or evidence of permanent residence status.
3. New Zealand citizens: Valid New Zealand passport.
4. Non Citizens: Valid current visa with work rights.

### Sanctions/Penalties

If employers employ workers who do not have the appropriate work rights the employer faces:

- The issuing of Warning Notices;
- Suspension from being able to engage foreign nationals within the business; and/or
- Investigation and prosecution by the Commonwealth Director of Public Prosecutions.

In some circumstances, such as where a company expressly, placidly or impliedly authorised or permitted the commission of the offence, and the fault elements of 'knowledge' or 'recklessness' can be attributed to the company, then the company may be found guilty of an Employer Sanctions Offence under the *Employer Amendment (Employer Sanctions) Act 2007* (Cth). An offence may also be committed by a company director or an authorised company agent, if it can be proved that their conduct could be assumed to represent the company's policy.

It is vital that companies have a culture, practice, and procedures to protect itself from liability created by an agent's actions or inactions.

There is considerable risk to a company for not properly checking employees' work rights during the recruitment process. Protocols and checks need to be in place as failure to do so can result in investigation, prosecution and substantial penalties.

Contact David Stratton, Ryan Curtis-Griffiths or Helen Zheng, Lawyers in our Migration Law Work Group, if you require any further information in relation to this issue, or if you require legal advice regarding any aspect of the *Employer Amendment (Employer Sanctions) Act 2007* (Cth).

### Contact:

|  |  |  |
|--|--|--|
| <b>David Stratton</b><br>Director<br>T: 03 9614 7111                                 | <b>Helen Zheng</b><br>Lawyer<br>T: 03 9615 4325                                | <b>Ryan Curtis-Griffiths</b><br>Lawyer<br>T: 03 9615 4309  |
| email:<br><a href="mailto:dstratton@nevetford.com.au">dstratton@nevetford.com.au</a> | email:<br><a href="mailto:hzheng@nevetford.com.au">hzheng@nevetford.com.au</a> | email:<br><a href="mailto:rcurtisgriffiths@nevetford.com.au">rcurtisgriffiths@nevetford.com.au</a> |
| Registered Migration Agent 58007   | Registered Migration Agent 3327  | Registered Migration Agent 741735  |

**Melbourne office**

Level 42 South Tower Rialto  
525 Collins Street  
Melbourne Victoria 3000

T 03 9614 7111

F 03 9614 3192

email:

[melbourne@nevettford.com.au](mailto:melbourne@nevettford.com.au)

**Ballarat office**

40 Armstrong Street North  
Ballarat Victoria 3350

T 03 5331 4444

F 03 5333 2694

email:

[ballarat@nevettford.com.au](mailto:ballarat@nevettford.com.au)

**Bacchus Marsh office**

127 Main Street  
Bacchus Marsh Victoria 3340

T 03 5367 1033

F 03 5367 4991

email:

[bacchusmarsh@nevettford.com.au](mailto:bacchusmarsh@nevettford.com.au)

*"Building quality relationships with clients"*

[www.nevettford.com.au](http://www.nevettford.com.au)

**Disclaimer**

This document has been prepared for the purpose of providing information and is intended as a guide only and not legal advice.

If you have any queries in relation to this article please contact this office to seek legal advice. Accordingly, we accept no responsibility for the accuracy of the information provided nor any liability for any loss or damage suffered as a result of reliance upon this document.