

Bills Digest
No. 103 2000–01

Migration Legislation Amendment (Integrity of
Regional Migration Schemes) Bill 2000

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I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

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Migration Legislation Amendment (Integrity of Regional
Migration Schemes) Bill 2000

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8 March 2001

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Migration Legislation Amendment (Integrity of Regional Migration Schemes) Bill 2000

Date Introduced: 29 November 2000

House: House of Representatives

Portfolio: Immigration and Multicultural Affairs

Commencement: The amendments outlined in this Digest, other than item 4, commence on Proclamation. However, if those amendments do not commence within 6 months of the Bill receiving Royal Assent, then those amendments will be taken to have commenced on the day after that period. The amendment proposed by item 4 will commence immediately after the commencement of item 3, or the commencement of Parts 4 to 10 of the proposed Administrative Review Tribunal Act 2001.

Purpose

To provide the Minister with power to cancel a regional sponsored migration scheme visa.

Background

Regional Sponsored Migration Scheme

The Regional Sponsored Migration Scheme (RSMS) is one of a number of schemes, collectively called State Specific Migration Mechanisms (SSMMs), which 'provide State/Territory Governments with the opportunity to influence the number and the profile of skilled migrants settling in their areas'.¹ The objectives of these mechanisms are to:

- address skill shortages that may exist in their jurisdictions
- attract overseas business people to establish new or joint ventures, and
- encourage a more balanced dispersal of Australia's skilled migrant intake.

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Under the SSMMs listed below, a total of 3,309 visas were granted in 1999–2000 (up from 1,126 in 1996–97), out of a total planned intake of 82,000. More than half of these have gone to South Australia, the State which has most actively promoted the mechanisms.

• Regional Sponsored Migration Scheme (sponsorship by employer)	664
• State/Territory Nominated Independent (nomination by State/Territory) Skill Matching Visa	9
• Regional Linked and Skilled Regional Sponsored	195
• Skilled Australian Linked (bonus points if family sponsor in designated area)	2384
• State Sponsored Business Skills	44
• Regional Established Business in Australia	13

The applicant for a regional sponsored migration scheme visa must meet certain entry requirements, including:

- the requirements for lodging a valid visa application;
- hold a visa of an acceptable kind or before becoming an unlawful non-citizen have held an acceptable visa (eg. Business (temporary), medical practitioner, business long stay);
- be nominated by an approved employer for an approved appointment in Australia;
- be under 45, except in exceptional circumstances;
- have a diploma or higher qualification that is relevant to the appointment, except in exceptional circumstances;
- arrange an assurance of support if one is requested;
- meet health and character requirements;
- be likely to settle in Australia without undue difficulty or cost; and
- if their application includes a family member under 18, meet the special custody and best interests of the child requirements.

For a sponsorship to be successful, the employer must show that:

- the appointment will provide a full-time employment for at least two years;
- unless the appointment is exceptional, the work requires a person who has a qualification of at least diploma level; and

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- that a gazetted body has certified that the employer nomination meets these requirements.

Employers must have the appointment approved by certain bodies, including Cairns Chamber of Commerce, Illawarra Area Consultative Committee; Pilbara Development Commission, Riverina Regional Development Board and Mount Isa to Townsville Economic Zone.

Rationale for amendments

The stated rationale of the proposed amendments is:

... to safeguard against any potential misuse of the regional sponsored migration scheme and discourage persons who do not have any genuine intention of settling in regional or rural Australia.²

Ministerial Assurances

The Minister in the Second Reading Speech to the Bill provides an explanation as to what would happen to a visa holder where, for example, the nominating employer terminates the employment contract within the two-year period, or employment is terminated because of the closure of the business. The Minister states:

The new power to cancel a Regional Sponsored Migration Scheme visa would not generally be used where a nominating employer terminates the employment contract within the two-year period.

Cancelling a Regional Sponsored Migration Scheme visa in such a situation would not serve the purposes of the scheme, particularly where the circumstances leading to the termination are outside the employer's or visa holder's control.

For example, a failure to commence or remain in employment will not generally lead to visa cancellation where a downturn in business activity, closure of the business, financial loss or bankruptcy is involved.

Note: It should be noted that the above statement of the Minister is not an assurance. Under the provisions of the Bill, it would appear to remain open to the Minister, even in circumstances where employment was terminated through no fault of the visa holder, to cancel the visa.

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Main Provisions

A new subdivision GC (**proposed sections 137Q–137T**), dealing with the cancellation of regional sponsored employment visas, is inserted into Division 3 of Part 2 of the *Migration Act 1958*.

Proposed section 137Q provides the Minister with power to cancel a regional sponsored employment visa where the Minister is:

- satisfied that the visa holder *has not commenced employment* within the prescribed period and the person does not satisfy the Minister that he or she has made a genuine effort to start employment within that period; or
- satisfied that visa holders *employment terminated within two years of commencing that employment* and the person does not satisfy the Minister that he or she has made a genuine effort to be engaged in that employment for the two year period.

Before cancelling a person's visa under **proposed section 137Q** the Minister will be required to give the person written notice:

- stating that he or she proposes to cancel the visa, and
- inviting the person to make representations to him or her within 28 days after notice is given if they are in Australia, or within 70 days if they are outside Australia (**proposed subsection 137R(1)**).

Additionally, the Minister will be required to consider any representations received within the 28 day or 70 day period (**proposed subsection 137R(2)**). Where the Minister decides not to proceed with the cancellation of a visa, the Minister must give the person written notice of the decision (**proposed subsection 137R(3)**).

The notice of cancellation of a visa must:

- specify the reasons for the cancellation
- state whether or not the decision to cancel the visa is reviewable under Part 5 of the *Migration Act 1958*, and
- if the decision to cancel the visa is reviewable under Part 5, state the period within which an application for review can be made, who can apply for the review and where the application for review can be made (**proposed subsection 137S**).

Proposed section 137T provides that if a person's visa is cancelled under **proposed section 137Q**, a visa held by a member of the family unit is also cancelled. The cancellation of a visa held by a member of the family is set aside if the cancellation of the person's visa under proposed section 137Q is set aside under Part 5 of the *Migration Act 1958*.

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Item 4 of Schedule 1 of the Bill substitutes a **new section 137S** in the *Migration Act 1958* which provides that if the Minister decides to cancel a person's visa under **proposed section 137Q**, the Minister must give the person written notice of the decision and provide reasons for the cancellation.

Note: – It may be noted that **proposed section 137S**, as inserted by **item 4 of Schedule 1**, is substantially similar to **proposed section 137S** as inserted by **item 3 of Schedule 1**. The reason for this relates to the Administrative Review Tribunal (Consequential and Transitional Provisions) Bill 2000. On commencement of that proposed Act, **proposed section 137S**, as inserted by **item 3**, will be substituted by **proposed section 137S** as inserted by **item 4**. The reader may note some differences between the two proposed sections, particularly that under the **proposed section 137S**, as inserted by **item 4**, does not require the Minister to state whether or not the decision to cancel the visa is reviewable under Part 5 of the *Migration Act 1958*. The differences can however be explained by reference to **proposed section 340** of the *Administrative Review Tribunal (Consequential and Transitional Provisions) Bill 2000*. This proposed section provides:

If notice of a decision to which this Part applies is given to the person to whom the decision relates (whether under section 339A or any other provision of the Act or the regulations), the notice must:

- (a) state that an application may be made to the Tribunal for review of the decision; and
- (b) state the period within which the application for review can be made; and
- (c) state who can apply; and
- (d) contain, or be accompanied by, such additional information as is prescribed for the purposes of this paragraph.

Concluding Comments

Australia's post-war migrants have settled overwhelmingly in larger urban centres, and especially in Sydney and Melbourne. This tendency has increased with more recent arrivals (after 1986). At the 1996 Census, 52.8 per cent of Australia's overseas-born population lived in Sydney and Melbourne, while these cities' share of the Australian-born population had fallen to 34.1 per cent.³

New migrants are attracted to where they have a network of family and friends, and to where it is perceived that economic opportunities exist. Regional migration schemes in the past have operated by providing bonus points for those willing to settle in designated areas. In the case of the RSMS, lower level skills (diploma) are required, and English language and age criteria can be waived.

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The key requirement for RSMS visas is that the applicant must be nominated by an employer for full-time employment for at least 2 years. A criteria for 'mainstream' temporary skilled employer-nominated visas is that the employee must stay with the sponsoring employer for the duration of their contract. 'Mainstream' permanent employer sponsored skilled migrants face no such restriction. Because they meet strict skills criteria—by definition in areas of skills shortages—it is assumed that they are unlikely to join the ranks of the unemployed should they leave their sponsoring employer.

The problem with expanding schemes such as the RSMS to levels where they might significantly affect settlement patterns—and achieve a more 'balanced dispersal' of the skilled intake—is that the entry criteria required to attract the numbers involved would have to be more significantly lowered. This would lessen the prospects of entrants adjusting to the Australian labour market and settling successfully.

Research in Australia and overseas has demonstrated that the assumption that new migrants will in themselves assist economic growth in lagging regions is questionable. Professor Graeme Hugo, in a research paper commissioned by the Parliamentary Library,⁴ argues against direct intervention to make migrants settle in particular areas. Rather he calls for policies which encourage or discourage economic development in particular areas, which would do more to shift population. He concludes that if States wish to reverse net migration losses, it would be more productive to attract established residents from elsewhere in Australia, rather than focus on recently arrived migrants.

Endnotes

- 1 Department of Immigration and Multicultural Affairs fact sheet 26, 'State/Territory Specific Migration', <http://www.immi.gov.au/facts/26state.htm>.
- 2 Migration Legislation Amendment (Integrity of Regional Migration Schemes) Bill 2000, *Explanatory Memorandum*, p. 2.
- 3 G. Hugo, 'Regional Development Through Immigration? The Reality Behind the Rhetoric', *Research Paper no. 9 1999–2000*, Department of the Parliamentary Library, 30 November 1999.
- 4 *ibid.*

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