



Migration Amendment (Abolishing Detention Debt) Bill 2009

Harriet Spinks
Social Policy Section

Elibritt Karlsen
Law and Bills Digest Section

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Migration Amendment (Abolishing Detention Debt) Bill 2009

Date introduced: 18 March 2009

House: Senate

Portfolio: Immigration and Citizenship

Commencement: Sections 1 to 3 commence on the day of Royal Assent. Part 1 of Schedule 1 commences on a day to be fixed by proclamation, or six (6) months after the day of Royal Assent, whichever is the sooner. The commencement (if at all) of Parts 2 and 3 to Schedule 1 (relating to sponsorship undertakings/obligations) are dependant upon the commencement of Schedule 1 to the *Migration Legislation Amendment (Worker Protection Act) 2008*, as discussed in further detail under 'main provisions'.

Links: The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

The purpose of the Bill is to amend the *Migration Act 1958 (Cth)* (Migration Act) to remove the requirement that certain persons held in immigration detention in Australia be liable for the costs of their detention.¹ The Bill would also extinguish all immigration detention debts outstanding at the time of commencement of the legislation.

Background

The Migration Act currently provides that a non-citizen who is held in immigration detention is liable to pay the Commonwealth the costs of his or her detention. Under the Migration Act immigration detention includes not only immigration detention centres (including the centre on Christmas Island), but also alternative detention arrangements under which people may be released into community detention under a residence determination, as well as being held on behalf of a relevant officer, in a prison or remand

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1. Under the proposed amendments, persons convicted of illegal foreign fishing or people smuggling offences will still be liable for the cost of their detention.

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centre, a police station or watch house, or any other place as approved by the Minister in writing.²

The policy of billing people for the cost of their immigration detention was introduced in 1992 and was formalised in the *Migration Reform Act 1992*. The intention was to minimise the significant cost to government of holding people in immigration detention. This intention was made clear in the Explanatory Memorandum to the Migration Reform Bill 1992:

56. The Bill provides that non-citizens unlawfully in Australia be liable for the costs of their maintenance, detention and removal. The Bill contains a power to waive such costs which will be exercised by the Minister for Immigration, Local Government and Ethnic Affairs.

57. At present not all persons unlawfully in Australia are so liable and it is the intention of these charges to ensure that all unlawful non-citizens bear primary responsibility for the costs associated with their detention, deportation or removal...

59. The new arrangements will help to minimise the costs to the Australian community of the detention, maintenance and removal or deportation of unlawful non-citizens.³

Under the current arrangements an unlawful non-citizen in immigration detention is charged a set daily maintenance amount for the entirety of their detention. As at June 2008 the charge per individual (including spouses and dependent children) in immigration detention was \$125.40 per day.⁴ Unlawful non-citizens who are removed or deported from Australia are also currently liable to pay for the cost of their removal—this will remain unchanged.

Despite the Government's intentions in introducing the detention debt regime, detention debt recovery policy has not been effective in significantly reducing detention costs as the level of debt recovery over the years has never been high—about 4 per cent on average.⁵ Since 2004–05 less than 2.5 per cent of detention debt invoiced has been recovered.⁶ The Minister for Immigration and Citizenship has said that:

2. *Migration Act 1958*, Section 5 (1).

3. Explanatory Memorandum, Migration Reform Bill 1992, pp. 10–11.

4. Joint Standing Committee on Migration (JSCM), *Immigration detention in Australia: a new beginning – criteria for release from detention*, Commonwealth of Australia, Canberra, 1 December 2008, p. 112.

5. Senate Legal and Constitutional Affairs Committee, *The Administration and Operation of the Migration Act 1958*, Commonwealth of Australia, Canberra, 2 March 2006, p. 350.

6. JSCM, *Immigration detention in Australia: a new beginning – criteria for release from detention*, p. 117.

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It seems that the cost of administering the scheme to raise the debt either outweighs or is close to a break-even point in terms of the money brought in. It does seem to be a crazy situation to run a system to raise debt when it costs us as much to raise the debt as it does to generate income from it.⁷

Recovering Debt

Persons who have incurred a detention debt are invoiced by the Department of Immigration, and encouraged, through a range of mechanisms, to pay the debt. These include recording debts on the Movement Alert List (MAL) so that the information is available to all departmental employees; advising Bridging Visa E and Bridging Visa R holders subject to condition 8507⁸ that they must pay, or make arrangements to pay, the costs of their detention within a period specified by the Minister; and advising debtors that Public Interest Criterion (PIC) 4004⁹ (where it is a criterion for grant) will prevent the grant of a visa unless the Minister is satisfied that appropriate arrangements have been made for payment.

If the debt remains unpaid, there are a number of mechanisms under the Migration Act to facilitate the recovery of debts owed to the Commonwealth by non-citizens in relation to their detention and removal or deportation costs, including seizing of valuables and restraints on the use of property in Australia.

As a last resort the Department of Immigration and Citizenship (DIAC) can pursue the recovery of debt through the courts, however it does not ordinarily do this as it is deemed uneconomical to pursue recovery of many debts.¹⁰

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7. C Evans, Questions without notice, Senate, *Debates*, 19 June 2008, p. 2885.
 8. Visa Condition 8507 states: The holder must, within the period specified by the Minister for the purpose:
 - (a) pay; or
 - (b) make an arrangement that is satisfactory to the Minister to pay;
 the costs (within the meaning of Division 10 of Part 2 of the Act) of the holder's detention.
 9. Nearly all visa subclasses require that applicants satisfy PIC 4004 which states:

The applicant does not have outstanding debts to the Commonwealth unless the Minister is satisfied that appropriate arrangements have been made for payment.
 10. Commonwealth and Immigration Ombudsman, *Administration of Detention Debt Waiver and Write-Off*, Report prepared by Professor J McMillan, Commonwealth and Immigration Ombudsman, Commonwealth of Australia, Canberra, April 2008, p. 3.

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Debt waiver and write-off

There are a number of circumstances under which detention debts may be waived or written off. Indeed, either waiver or write-off is the ultimate outcome for the majority of detention debt raised.

Generally, a detention debt will be written-off by DIAC as being uneconomical to pursue if a person has left Australia or cannot be traced, or if their financial situation is such that there is little likelihood of recovering the debt. In the case of persons who have left Australia, the Department's Procedures Advice Manual *PAM3: Act - Compliance - NCOI - Liability to repay detention & removal costs* states that:

Departmental policy is that consideration should be given to writing off debts if the debtor:

- resides overseas and cannot be traced or
- is known to be destitute and there is no prospect of their financial situation improving in the near future.

However, the debt can be reinstated if circumstances change - for example, if the debtor applies for a visa to re-enter Australia and that visa is subject to Public Interest Criterion 4004. In these circumstances, the Minister must be satisfied that appropriate arrangements have been made for the payment of any outstanding debts in order for the visa to be granted.

The Department has also noted that it is departmental policy to write-off the detention debt of a person held in detention and subsequently found to be a refugee:

The department recognises the Refugee Convention of 1951 not to penalise asylum seekers, including those holding visas such as Temporary Protection, Protection or Special Global Humanitarian. In these instances, the department records the debt but does not issue an invoice or pursue the debt. These debts are written off.¹¹

A debt that is written off is not permanently expunged. The debt remains, and may be pursued again at a later date if it becomes practicable to do so.

In addition to those debts which are written-off by the Department, detention debt may also be waived. A debt that has been waived is permanently expunged and cannot be reinstated at a later date. The authority to waive the right of the Commonwealth to recover debts owing to it is vested in the Finance Minister under Section 34 (1) of the *Financial Management and Accountability Act 1997*. In order for a debt to be waived, the debtor must lodge a waiver request, either through DIAC or directly to the Department of Finance. A debt is generally waived where it is considered that there is a moral (rather

11. Senate Legal and Constitutional Affairs Committee, Answers to Questions on Notice, Immigration and Citizenship Portfolio, Budget Estimates 2007–08, 21 and 22 May 2007, Question 146.

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than financial) obligation to do so. Where it has been found that person was lawfully in Australia and should not have been detained, or when it is considered that repayment of a person's debt would cause them undue financial hardship, the debt may be waived. For example, *PAM3: Act - Compliance - NCOI - Liability to repay detention & removal costs* states that:

Departmental policy is that consideration should be given for requesting a waiver of debts when ... a non-citizen was detained on reasonable suspicion of being an unlawful non-citizen, but was later found to be lawfully in Australia.

Due to the difficulties associated with recovering detention debts, and the high incidence of debt write-off and waiver, the amount of detention debt actually recovered is extremely low. During 2006-2007 and 2007-2008 only about 3.3 per cent of immigration detention debt raised was actually recovered. Approximately 88.8% was written off by the Department as uneconomical to pursue and 7.4% was waived.¹²

Basis of policy commitment

In the lead up to the 2007 federal election the Australian Labor party (ALP) committed to implementing immigration detention reform should they win Government:

Detention of asylum seekers should only be used for health, identity and security checks. Children and family groups should initially be placed under supervision within the community. In other circumstances, detention would remain mandatory for the duration of these initial check [sic].

Conditions of detention must be humane and appropriate to the needs of asylum seekers, with appropriate alternatives to detention centres made to meet the needs of unaccompanied children and family groups.

The length and conditions of detention must be subject to review and detention centres managed by the public sector.¹³

The ALP has, both before the election and since forming Government, consistently maintained that it is committed to establishing a fairer and more humane system of immigration detention. In this context the Rudd Government has: ended the 'Pacific Solution' policy under which asylum seekers who arrived at offshore excised places were processed on Nauru or Manus Island; abolished Temporary Protection Visas for asylum seekers who arrived unauthorised; and announced reforms to the policy of mandatory

12. Explanatory Memorandum, Migration Amendment (Abolishing Detention Debt) Bill 2009, p.4.

13. Australian Labor Party, *2007 Policy Platform and Constitution*, Chapter 13: Respecting Human Rights and a Fair Go for All, paragraph 153, viewed 29 April 2009, http://www.alp.org.au/platform/chapter_13.php#13migrant_australians_responding_to_their_needs

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immigration detention for unauthorised arrivals, under which people are to be detained only for as long as is necessary to perform initial health, identity and security checks. Beyond this, detention in an immigration detention centre is to be used only as a last resort, and for the shortest practicable time.

In June 2008 the Minister for Immigration and Citizenship acknowledged, in response to a question without notice from Greens Senator Kerry Nettle, that there was a need for a review of the detention debt regime, and noted that he had ‘asked for further advice on it’.¹⁴ The Minister further commented in November 2008 that ‘this government is acutely aware of the inequities and injustices that flow from the detention debt policy. I have been actively exploring the resolution of that issue.’¹⁵

This Bill is a further component of the Government’s promised agenda of immigration detention reform. The Minister stated, when announcing the Government’s intention to abolish detention debt, that ‘the Bill represents the first legislative step in the Government’s reforms’ in the area of immigration detention.¹⁶

Committee consideration

At its meeting of 19 March 2009, the Senate Selection of Bills Committee decided not to refer the Bill for inquiry.¹⁷

Joint Standing Committee on Migration

In 2008 the Joint Standing Committee on Migration (JSCM) commenced an inquiry into immigration detention in Australia. The first report of the inquiry, *Immigration detention in Australia: A new beginning – criteria for release from detention*, was released in December 2008.¹⁸ The report contains a detailed analysis of the detention debt regime, including an outline of many shortcomings of the system. These include the practical difficulties of recovering debt and the fact that most debt is not recovered, and the mental,

14. C Evans, Questions without Notice, Senate, *Debates*, 19 June 2008, p.2885.

15. C Evans (Minister for Immigration and Citizenship), *Refugee Policy under the Rudd Government – the First Year*, address to the Refugee Council of Australia, Parramatta, 17 November 2008, viewed 29 April 2009, <http://www.minister.immi.gov.au/media/speeches/2008/ce081117.htm>

16. C Evans (Minister for Immigration and Citizenship) *Detention debt regime to be scrapped*, media release, Canberra, 18 March 2009, viewed 29 April 2009, <http://www.minister.immi.gov.au/media/media-releases/2009/ce09031.htm>

17. Senate Selection of Bills Committee, Report No. 4 of 2009, 19 March 2009.

18. JSCM, *Immigration detention in Australia: a new beginning – criteria for release from detention*.

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financial and practical impacts of detention debt on ex-detainees.¹⁹ The report of the inquiry also notes that ‘Australia appears to be the only country to apply costs for immigration detention.’²⁰ The Committee ultimately recommended that:

... as a priority, the Australian Government introduce legislation to repeal the liability of immigration detention costs.

The Committee further recommends that the Minister for Finance and Deregulation make the determination to waive existing detention debts for all current and former detainees, effective immediately, and that all reasonable efforts be made to advise existing debtors of this decision.²¹

Position of significant interest groups

Commonwealth Ombudsman

In April 2008 the Commonwealth Ombudsman released a report on the *Administration of Detention Debt Waiver and Write-Off*. It notes a number of shortcomings in the way the Department administers the waiver and write-off of detention debts, and makes a number of recommendations for improvement.²²

While consideration of whether the detention debt regime should be abolished entirely was outside the scope of the Ombudsman’s inquiry, the report does note concerns about the impact of the system on ex-detainees:

Complaints to the Ombudsman’s office indicate that the size of some debts cause stress, anxiety and financial hardship to many individuals who are now living lawfully in the Australian community, as well as for those who have left Australia.²³

The report also observes that the majority of debt raised is never recovered, a point which is also made in the Ombudsman’s submission to the JSCM 2008 inquiry into immigration detention. In that submission the Ombudsman reiterated the recommendations of its 2008 inquiry into the administration of detention debt waiver and write-off, and further stated that:

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19. JSCM, Immigration detention in Australia: a new beginning – criteria for release from detention, pp. 112–126.
 20. JSCM, Immigration detention in Australia: a new beginning – criteria for release from detention, p. 125.
 21. JSCM, Immigration detention in Australia: a new beginning – criteria for release from detention, p. 126.
 22. Commonwealth and Immigration Ombudsman, *Administration of Detention Debt Waiver and Write-Off*.
 23. Commonwealth and Immigration Ombudsman, *Administration of Detention Debt Waiver and Write-Off*, p. 2.

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It is timely however, given the government's broader review of immigration detention that consideration is given to a more fundamental review of detention debts. As part of the review consideration should be given to the fact that most debts are either written off or are waived. It is also worth re-examining the policy basis for the imposition of detention debts. It is important in any policy review to note that detention debt seems not to serve as an incentive to either cooperate with removal or to minimise the number of attempts to challenge visa refusals or seek judicial or ministerial intervention.²⁴

Community and non-government organisations

The requirement that immigration detainees be charged for the cost of their detention has been roundly criticised by a large number of refugee advocates, human rights bodies, and other community and non-government organisations. In 2007 for example, the Castan Centre for Human Rights argued that charging immigration detainees for the cost of their detention was punitive, discriminatory, and a breach of international human rights law.²⁵

A number of submissions to the JSCM inquiry, from both organisations and individuals, expressed criticism of the detention debt regime, arguing that it is punitive and discriminatory, and that it exacerbates stress and mental health problems in detainees.²⁶ For example, the Edmund Rice Centre argues in its submission that asylum seekers:

... should not be burdened with debts: debts that they have little chance of paying without undergoing further severe hardship, debts which deny them access to other rights of participation and freedom of movement, debts which deny them any possibility of reuniting with their families.²⁷

The Forum of Australian Services for Survivors of Torture and Trauma states in its submission that the policy of charging detainees for the cost of their detention 'reinforces

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24. Commonwealth and Immigration Ombudsman, Submission to the Joint Standing Committee on Migration, *Inquiry into immigration detention in Australia*, August 2008, p. 16, viewed 29 April 2009, <http://www.aph.gov.au/house/committee/mig/detention/subs/sub126.pdf>.
 25. K. Mitchell and A. Dastyari, 'Paying their debt to society: Billing asylum seekers for their time in detention' *Castan Centre for Human Rights Law Newsletter*, April 2007, p. 13, viewed 29 April 2009, <http://www.law.monash.edu.au/castancentre/newsletter/newsletter-apr-07.pdf>.
 26. JSCM, Immigration detention in Australia: a new beginning – criteria for release from detention, pp. 117–126.
 27. Edmund Rice Centre, Submission to the Joint Standing Committee on Migration, *Inquiry into immigration detention in Australia*, July 2008, p. 6, viewed 29 April 2009, <http://www.aph.gov.au/house/committee/mig/detention/subs/sub053.pdf>.

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and prolongs emotions such as shame and guilt which are common effects of torture and trauma, and impedes the recovery of survivors' and that it should be abolished.²⁸

Coalition/Greens/policy position/commitments

The Coalition has not made any public announcement of its position on this Bill, nor have any specific policy commitments been made regarding detention debt. However, it is significant to note that the membership of the Joint Standing Committee on Migration, which recommended that detention debt be abolished, includes several Coalition MPs, including the Opposition spokesperson for Immigration, the Hon. Dr Sharman Stone MP.²⁹

The Australian Greens have for many years been vocal advocates of reform to the system of immigration detention. The Greens' spokesperson for immigration and refugees, Senator Sarah Hanson-Young, has welcomed the introduction of this Bill, stating that:

The Greens have long opposed the imposition of detention debts and have been calling for this policy to be changed for years. ... Detention debts have been a flagrant form of adding insult to injury to those who come to Australia seeking our assistance and protection.³⁰

Senator Hanson-Young has said that the legislation appears to be 'a necessary and overdue step forward' and that the Greens would be looking at the Bill in further detail.³¹

Financial implications

The Explanatory Memorandum to the Bill states that the financial impact of the proposed amendments is low due largely to the fact that the recovery of detention debts is not very effective.³² Though the precise amount of debt to be extinguished by the Bill is not known,

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28. Forum of Australian Services for Survivors of Torture and Trauma, Submission to the Joint Standing Committee on Migration, *Inquiry into immigration detention in Australia*, August 2008, p. 22, viewed 29 April 2009, <http://www.aph.gov.au/house/committee/mig/detention/subs/sub115.pdf>.
 29. Dr Stone became a member of the Committee on 10 November, some three weeks before the Committee's report was released.
 30. S Hanson-Young, *Greens welcome move to abolish detention debts*, media release, 18 March 2009, viewed 29 April 2009, http://parlinfo.aph.gov.au/parlInfo/download/media/pressrel/OK2T6/upload_binary/0k2t60.pdf;fileType=application%2Fpdf#search=%22media/pressrel/OK2T6%22.
 31. S Hanson-Young, Greens welcome move to abolish detention debts.
 32. Explanatory Memorandum, Migration Amendment (Abolishing Detention Debt) Bill 2009, p.4.

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it is estimated to be approximately \$350 million, of which less than 5 per cent is actually recoverable. As the Explanatory Memorandum notes:

During 2006-2007 and 2007-2008 immigration detention debt raised was \$54.3 million of which \$1.8 million (or 3.3 per cent) was recovered. \$48.2 million was written off by the Department as uneconomical to pursue and \$4 million was waived.³³

Main provisions

Part 1 – General Amendments

Items 2 and 5 insert **proposed new subsections 145(2) and 147(2)** which clarify that in relation to the issuance of *Commonwealth* criminal justice entry or stay certificates to non-citizens who are either required to enter or stay in Australia for the purposes of the administration of criminal justice, the assessment as to whether satisfactory arrangements have been made for the cost of keeping the non-citizen in Australia, such cost does not include the cost of immigration detention (if any).

Items 3 and 7 similarly insert **proposed new subsections 146(3) and 148(2)** which clarify that in relation to the issuance of *State* criminal justice entry or stay certificates to non-citizens who are either required to enter or stay in Australia for the purposes of the administration of criminal justice, the assessment as to whether satisfactory arrangements have been made for the cost of keeping the non-citizen in Australia, such cost does not include the cost of immigration detention (if any).

Item 8 (relating to transitional arrangements) provides that existing arrangements for meeting the cost of keeping a non-citizen in Australia ceases to have effect upon commencement of this Part if such an arrangement would have involved payment to the Commonwealth for the cost of the person's immigration detention.

Item 9 amends existing subsection 151(3) to clarify that if a court issues a warrant to stay the removal or deportation of a non-citizen for the purposes of the administration of criminal justice in relation to an offence, the applicant for the warrant is no longer responsible for the costs of the immigration detention while the warrant is in force.

Item 11 replaces the definition of 'costs' in existing section 207 for the purposes of **proposed Division 10— Costs etc. of removal and deportation**. The proposed new definition of 'costs' will encompass simply the fares and other costs to the Commonwealth

33. Explanatory Memorandum, Migration Amendment (Abolishing Detention Debt) Bill 2009, p.4.

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of transporting a non-citizen and their custodian from Australia. Under the existing definition, ‘costs’ includes the costs associated with transporting a non-citizen within and from Australia and the daily cost of the non-citizen’s detention.

Items 12 and 13 make consequential amendments to existing section 207 (by removing the definition of ‘daily maintenance amount’ and by repealing sections:

- 208 (determination of ‘daily maintenance amount’); and
- 209 (detainees liable for costs of detention); and
- 211 (costs of detained spouses and dependants).

Item 14 amends existing subsection 213(1) by removing reference to a carrier’s possible liability for costs associated with a non-citizen’s detention.³⁴ **Item 15** makes a minor consequential amendment relating to joint liability of same.

Items 16 to 20 make consequential amendments to existing sections 222 to 224 by removing reference to existing sections 209 (detainees liable for costs of detention) and 211 (costs of detained spouses and dependants). As non-citizens will no longer be liable for the cost of their immigration detention, under this proposed amendment only existing liability for removal or deportation will enable a non-citizen’s individual property rights to be potentially curtailed for the purposes of reducing the risk associated with recovering such an amount owed to the Commonwealth.

Items 21 to 23 make amendments to existing section 262 which relates to the liability to the Commonwealth for the cost of keeping, maintaining and removing certain persons in immigration detention because of existing section 250. Such persons include those that travelled, or were brought to the migration zone³⁵ and are believed to have been on board a vessel (not an aircraft) when it was used in connection with the commission of an offence (such as people-smugglers and illegal foreign fishers).

Under the proposed amendment to section 262, liability to the Commonwealth for the cost of keeping such convicted persons in immigration detention will no longer be quantified as ‘a fair amount’.³⁶ Rather, pursuant to **proposed new subsections 262(2) and (3)** the daily amount for keeping and maintaining a person in immigration detention may be determined by the Minister by way of a legislative instrument.³⁷ The amount prescribed by the Minister can not exceed the actual cost to the Commonwealth of detaining the person.

34. ‘Carrier, in relation to an unlawful non-citizen, means a controller of the vessel on which the non-citizen was last brought to Australia’: *Migration Act 1958* section 207.

35. ‘Migration zone’ is defined in *Migration Act 1958* section 5.

36. *Migration Act 1958* paragraph 262(c)

37. As to disallowance of legislative instruments, see *Legislative Instruments Act 2003* sections 42, 44.

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The rationale for maintaining liability in this respect is outlined in the Explanatory Memorandum:

...section 262 of the Migration Act which creates a liability in part for immigration detention, is being retained because the nature of these offences and the high rate of recidivism from among masters and crew involved in illegal foreign fishing and offences relating to the bringing of unauthorised arrivals into Australia, calls for a significant deterrent.³⁸

Item 25 clarifies that existing ‘immigration detention liability’ (as defined) under one or more of the listed provisions (including section 209 and 211) ceases upon commencement of Part 1. Importantly, **note 3** states that item 25 ‘does not apply to a liability to the extent that a person had already discharged it’. In other words, there will be no refunds of debts that have been paid. However, as the Explanatory Memorandum notes:

Existing frameworks will continue to be available to allow for the recovery of an amount where there has been a mistake or illegality because of which an amount for immigration detention costs has been paid. For example, if after extinguishment of a person’s debt under this item, it is found that the person was unlawfully detained, any immigration detention debt paid in relation to the unlawful detention may be recoverable through legal action, settlement, the Compensation for Detriment caused by Defective Administration Scheme or act of grace payments through section 33 of the *Financial Management and Accountability Act 1997*. This may also extend to third parties who were liable and previously paid for the costs in relation to immigration detention and is no different from remedies currently available.³⁹

Part 2 – Amendments relating to sponsorship undertakings

This Part makes amendments in relation to the sponsorship *undertakings* regime that currently operates under Division 3A of the Migration Act. As noted in the Explanatory Memorandum, Schedules 1 and 2 to the *Migration Legislation Amendment (Worker Protection) Act 2008* will commence either by Proclamation or 9 months from Royal Assent (18 December 2008) and will replace the current scheme with a sponsorship *obligations* regime.⁴⁰

Items 26 and 27 make minor amendments to existing section 140H relating to sponsorship undertakings. Significantly, **proposed new subsection 140H(5)** clarifies that regulations prescribing undertakings for a sponsor under existing subsection (1) can not include an undertaking to pay the cost of a person’s immigration detention.

38. Explanatory Memorandum, p.14, paragraph 70.

39. Explanatory Memorandum, p.15, paragraph 84.

40. Explanatory Memorandum, p.16, paragraph 88.

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Item 28 makes a consequential amendment to existing subsection 140I(4) to confirm that a sponsor can not make an undertaking in relation to the costs of the Commonwealth in detaining another person.

Item 29 is a transitional provision which provides that an existing undertaking (to pay the Commonwealth an amount relating to the cost of a person's immigration detention) made pursuant to subsection 140H(1) of the Migration Act ceases to have effect upon commencement of this Part.

Commencement:

This Part commences on a day to be fixed by Proclamation, or six (6) months after the day of Royal Assent, whichever is the sooner. However, this Part does not commence at all if Schedule 1 to the Worker Protection Act commences before (or at the same time as) Part 1 of this Bill. If that happens, the corresponding amendments in Part 3 commence instead.

Part 3 – Amendments relating to sponsorship obligations

This Part makes transitional arrangements for any sponsorship undertakings that remain after the commencement of Schedule 1 to the Worker Protection Act and the new sponsorship *obligations* regime.⁴¹

Items 30 to 31 make minor amendments to new section 140H relating to sponsorship obligations. Significantly, **proposed new subsection 140H(7)** clarifies that regulations prescribing obligations for a sponsor can not include an obligation to pay to the Commonwealth an amount relating to the cost of a person's immigration detention.

Item 32 makes a consequential amendment to new subsection 140J(1) to remove uncertainty by providing that a sponsor is not liable to pay to the Commonwealth an amount relating to the cost of detaining the visa holder they have sponsored.

Item 33 is a transitional provision which provides that an existing undertaking prescribed by the Regulations that continued to have effect on commencement of Schedule 1 to the Workers Protection Act ceases to have effect upon commencement of this Part to the extent that it was an undertaking to pay an amount for the cost of a person's immigration detention.

Commencement:

Items 30 to 33 commence at the later of either the commencement of Schedule 1 to the Workers Protection Act and the start of the day on which Part 1 of this Bill commences. However, **item 33** will not commence at all if Schedule 1 to the Workers Protection Act commences *after* the commencement of Part 1 of this Bill. To this end, the **Note** explains

41. Explanatory Memorandum, p. 16, paragraph 89.

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that if this happens, any sponsorship undertakings to pay the costs of immigration detention will already have ceased by virtue of Part 2 of this Bill.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

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