



Migration Amendment Regulations 2009 (No.)¹

Select Legislative Instrument 2009 No.

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Migration Act 1958*.

Dated 2009

Governor-General

By Her Excellency's Command

CHRIS EVANS
Minister for Immigration and Citizenship

1 Name of Regulations

These Regulations are the *Migration Amendment Regulations 2009* (No.).

2 Commencement

These Regulations commence on 14 September 2009.

3 Amendment of *Migration Regulations 1994*

- (1) Schedule 1 amends the *Migration Regulations 1994*.
- (2) The amendments made by Schedule 1 apply in relation to:
 - (a) a work agreement:
 - (i) entered into before 14 September 2009 and continuing in effect on 14 September 2009; or
 - (ii) entered into on or after 14 September 2009; and
 - (b) an application for approval as a sponsor:
 - (i) made, but not finally determined (within the meaning of subsection 5 (9) of the *Migration Act 1958*), before 14 September 2009; or
 - (ii) made on or after 14 September 2009; and
 - (c) an application for approval of a nomination of an activity:
 - (i) made under regulation 1.20G or 1.20GA of the *Migration Regulations 1994* as in force immediately before 14 September 2009, but not finally determined (within the meaning of subsection 5 (9) of the *Migration Act 1958*), before 14 September 2009; or
 - (ii) made on or after 14 September 2009; and
 - (d) an application for a variation of a term of approval of sponsorship made on or after 14 September 2009.
- (3) If item [45] or [46] of Schedule 1 to the *Migration Legislation Amendment (Worker Protection) Act 2008* applies to a person,

a sponsorship obligation imposed by the amendments made by Schedule 1 starts to apply to the person on the later of:

- (a) the date on which the obligation commences for the person; and
 - (b) 14 September 2009.
- (4) The amendments made by items [10] to [21] of Schedule 1 apply in relation to a decision subject to merit review made by the Minister on or after 14 September 2009.

Note Part 2 of Schedule 1 to the *Migration Legislation Amendment (Worker Protection) Act 2008* provides transitional matters relevant to the amendments made by that Schedule. The transitional matters include matters relevant to persons who were, immediately before 14 September 2009, approved sponsors, approved professional development sponsors, standard business sponsors and former standard business sponsors.

Schedule 1 Amendments

(regulation 3)

[1] **Regulation 1.03, definition of *approved professional development sponsor***

omit

[2] **Regulation 1.03, after definition of *prescribed form***

insert

professional development sponsor means a person who:

- (a) is an approved sponsor; and
- (b) is approved as a sponsor in relation to the professional development sponsor class.

Note 1 ***Approved sponsor*** is defined in subsection 5 (1) of the Act. A person is no longer an approved sponsor in relation to a class of sponsor if the person's approval to be a sponsor has been cancelled under section 140M of the Act, or has otherwise ceased to have effect under section 140G of the Act.

Note 2 Different classes of sponsor, in relation to which a person may be approved as a sponsor, are prescribed under subsection 140E (2) of the Act. See regulation 2.58.

[3] Regulation 1.03, after definition of *spouse*

insert

standard business sponsor means a person:

- (a) who is an approved sponsor; and
- (b) who is approved as a sponsor in relation to the standard business sponsor class.

Note 1 ***Approved sponsor*** is defined in subsection 5 (1) of the Act. A person is no longer an approved sponsor in relation to a class of sponsor if the person's approval to be a sponsor has been cancelled under section 140M of the Act, or has otherwise ceased to have effect under section 140G of the Act.

Note 2 Different classes of sponsor, in relation to which a person may be approved as a sponsor, are prescribed under subsection 140E (2) of the Act. See regulation 2.58.

Note 3 A person who, immediately before 14 September 2009, was a standard business sponsor or an approved sponsor (other than an approved professional development sponsor), is taken to be approved as a sponsor in relation to the standard business sponsor class under section 140E of the Act. The terms specified in the person's approval, immediately before 14 September 2009, continue to apply. See item 45 of Schedule 1 to the *Migration Legislation Amendment (Worker Protection) Act 2008*.

[4] Division 1.4, heading

substitute

**Division 1.4 Sponsorship not applicable to
Division 3A of Part 2 of the Act**

[5] Regulation 1.20, heading

substitute

1.20 Sponsorship undertakings

[6] Division 1.4A

omit

[7] Division 1.4B, heading

substitute

**Division 1.4B Limitation on certain sponsorships
under Division 1.4**

[8] Divisions 1.4C and 1.4D

omit

[9] After Part 2

insert

**Part 2A Sponsorship applicable to
Division 3A of Part 2 of the Act**

Division 2.11 Introductory

2.56 Application

For section 140A of the Act, Division 3A of Part 2 of the Act applies to the following kinds of visa:

- (a) the Subclass 457 (Business (Long Stay)) visa;
- (b) the Subclass 470 (Professional Development) visa.

2.57 Interpretation

- (1) In this Part:

ASCO means the Australian Standard Classification of Occupations.

associated entity has the same meaning as in section 50AAA of the *Corporations Act 2001*.

Australian organisation means a body corporate or an unincorporated association (other than an individual or a sole trader) that is lawfully established in Australia.

competent authority means a Department or regulatory authority that administers or enforces a law that is alleged to have been contravened.

government agency means an agency of the Commonwealth or of a State or Territory.

officer:

- (a) for a corporation — has the same meaning as in section 9 of the *Corporations Act 2001*; and
- (b) for an entity that is neither an individual nor a corporation — has the same meaning as in section 9 of the *Corporations Act 2001*.

overseas employer, in relation to a person who applies, or proposes to apply, for a Sponsored Training (Temporary) (Class UV) visa, means:

- (a) a body corporate or an unincorporated association (other than an individual or sole trader) that:
 - (i) conducts activities under the auspices of the government of a foreign country or a province, territory or state of a foreign country; and
 - (ii) has agreed to the professional development sponsor, or the proposed professional development sponsor, lodging a visa application on behalf of the person; or
- (b) a multilateral agency that:
 - (i) is operating; and
 - (ii) has operated for a continuous period of 1 year before the date of the application; and
 - (iii) has agreed to the professional development sponsor, or the proposed professional development sponsor, lodging a visa application on behalf of the person; or

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- (c) a registered business that:
- (i) is conducted by a body corporate or unincorporated association (other than an individual or sole trader) outside Australia; and
 - (ii) is actively and lawfully operating outside Australia; and
 - (iii) has actively and lawfully operated outside Australia for a continuous period of 1 year before the date of application; and
 - (iv) employs the person.

participant costs, for a primary sponsored person in a professional development program conducted by a professional development sponsor, means the costs of:

- (a) the primary sponsored person's travel and entry to Australia; and
- (b) the primary sponsored person's tuition for the professional development program; and
- (c) the primary sponsored person's accommodation in Australia; and
- (d) the primary sponsored person's living expenses in Australia; and
- (e) the primary sponsored person's health insurance in Australia; and
- (f) the primary sponsored person's return travel from Australia.

primary sponsored person:

- (a) in relation to a standard business sponsor or a former standard business sponsor — means:
 - (i) a person:
 - (A) who holds a Subclass 457 (Business (Long Stay)) visa; and
 - (B) for whom the last approved nomination was made by the standard business sponsor or the former standard business sponsor; or
 - (ii) a person:
 - (A) who is in the migration zone; and
 - (B) who does not hold a substantive visa; and

- (C) whose last substantive visa was a Subclass 457 (Business (Long Stay)) visa; and
 - (D) for whom the last approved nomination was made by the standard business sponsor or the former standard business sponsor; or
- (b) in relation to a party to a work agreement or a former party to a work agreement (other than a Minister) — means:
- (i) a person:
 - (A) who holds a Subclass 457 (Business (Long Stay)) visa; and
 - (B) for whom the last approved nomination was made by the party to a work agreement or the former party to a work agreement; or
 - (ii) a person:
 - (A) who is in the migration zone; and
 - (B) who does not hold a substantive visa; and
 - (C) whose last substantive visa was a Subclass 457 (Business (Long Stay)) visa; and
 - (D) for whom the last approved nomination was made by the party to the work agreement or the former party to the work agreement; or
- (c) in relation to a professional development sponsor or a former professional development sponsor — means:
- (i) a person:
 - (A) who holds a Subclass 470 (Professional Development) visa; and
 - (B) who satisfied the criteria for the grant of the visa on the basis of the professional development sponsor having agreed, in writing, to be the professional development sponsor for the person; or
 - (ii) a person:
 - (A) who is in the migration zone; and
 - (B) who does not hold a substantive visa; and
 - (C) whose last substantive visa was a Subclass 470 (Professional Development) visa; and

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- (D) who satisfied the criteria for the grant of the visa on the basis of the professional development sponsor having agreed, in writing, to be the professional development sponsor for the person.

professional development agreement means an agreement that meets the requirements mentioned in subregulation 2.60 (2).

professional development program means a program that meets the requirements mentioned in subregulation 2.60 (3).

related body corporate has the same meaning as in section 50 of the *Corporations Act 2001*.

secondary sponsored person:

- (a) in relation to a standard business sponsor or a former standard business sponsor — means:
- (i) a person:
- (A) who holds a Subclass 457 (Business (Long Stay)) visa; and
 - (B) who was granted the visa on the basis of having satisfied the secondary criteria for the grant of the visa; and
 - (C) in relation to whom the standard business sponsor or former standard business sponsor was the last person:
 - (I) to have included the person in an approved nomination; or
 - (II) to have agreed in writing to the person being a secondary sponsored person in relation to the standard business sponsor or former standard business sponsor; or
- (ii) a person:
- (A) who holds a Subclass 457 (Business (Long Stay)) visa that was granted on the basis of being granted the visa at the time of the birth of the person, under section 78 of the Act; and

- (B) who is a member of the family unit of a primary sponsored person whose last approved nomination, made for the primary sponsored person, was made by the standard business sponsor or former standard business sponsor; or
- (iii) a person:
 - (A) who is in the migration zone; and
 - (B) who does not hold a substantive visa; and
 - (C) whose last substantive visa was a Subclass 457 (Business (Long Stay)) visa that was granted on the basis of satisfying the secondary criteria for the grant of the visa; and
 - (D) in relation to whom the standard business sponsor or former standard business sponsor was the last person:
 - (I) to have included the person in an approved nomination; or
 - (II) to have agreed in writing to the person being a secondary sponsored person in relation to the standard business sponsor or former standard business sponsor; or
- (b) in relation to a party to a work agreement or a former party to a work agreement (other than a Minister) — means:
 - (i) a person:
 - (A) who holds a Subclass 457 (Business (Long Stay)) visa; and
 - (B) who was granted the visa on the basis of having satisfied the secondary criteria for the grant of the visa; and
 - (C) in relation to whom the party to the work agreement or former party to the work agreement was the last person:
 - (I) to have included the person in an approved nomination; or

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- (II) to have agreed in writing to the person being a secondary sponsored person in relation to the party to the work agreement or former party to the work agreement; or
- (ii) a person:
- (A) who holds a Subclass 457 (Business (Long Stay)) visa that was granted on the basis of being granted the visa at the time of the birth of the person, under section 78 of the Act; and
- (B) who is a member of the family unit of a primary sponsored person whose last approved nomination, made for the primary sponsored person, was made by the party to the work agreement or the former party to the work agreement; or
- (iii) a person:
- (A) who is in the migration zone; and
- (B) who does not hold a substantive visa; and
- (C) whose last substantive visa was a Subclass 457 (Business (Long Stay)) visa that was granted on the basis of satisfying the secondary criteria for the grant of the visa; and
- (D) in relation to whom the party to the work agreement or former party to the work agreement was the last person:
- (I) to have included the person in an approved nomination; or
- (II) to have agreed in writing to the person being a secondary sponsored person in relation to the party to the work agreement or the former party to the work agreement.

Note **Approved sponsor** is defined in subsection 5 (1) of the Act.

- (2) In this Part:
- (a) a person is *associated with* an applicant that is a corporation if the person is an officer of the corporation, a related body corporate or an associated entity; and
 - (b) a person is *associated with* an applicant that is a partnership if the person is a partner of the partnership; and
 - (c) a person is *associated with* an applicant that is an unincorporated association if the person is a member of the association's committee of management; and
 - (d) a person is *associated with* an applicant that is an entity not mentioned in paragraphs (a), (b) and (c) if the person is an officer of the entity.
- (3) In this Part, *adverse information* means any adverse information relevant to an applicant's suitability as a sponsor in relation to the class of sponsor that the applicant has applied for, and includes information that:
- (a) the applicant, or a person associated with the applicant:
 - (i) has been found guilty by a court of an offence under a Commonwealth, State or Territory law; or
 - (ii) has been found, by a competent authority, to have acted in contravention of a Commonwealth, State or Territory law; or
 - (iii) has been the subject of administrative action (including being issued with a warning), by a competent authority, for a possible contravention of a Commonwealth, State or Territory law; or
 - (iv) is under investigation, subject to disciplinary action or subject to legal proceedings in relation to an alleged contravention of a Commonwealth, State or Territory law; or
 - (v) has become insolvent within the meaning of subsections 5 (2) and (3) of the *Bankruptcy Act 1966* and section 95A of the *Corporations Act 2001*; and
 - (b) the law mentioned in subparagraphs (a) (i) to (iv) relates to one or more of the following matters:
 - (i) discrimination;
 - (ii) immigration;

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- (iii) industrial relations;
 - (iv) occupational health and safety;
 - (v) people smuggling and related offences;
 - (vi) slavery, sexual servitude and deceptive recruiting;
 - (vii) taxation;
 - (viii) terrorism;
 - (ix) trafficking in persons and debt bondage; and
- (c) the conviction, finding of non-compliance, administrative action, investigation, legal proceedings or insolvency occurred within the previous 3 years.

Division 2.12 Classes of sponsor

2.58 Classes of sponsor

For subsection 140E (2) of the Act, the following are classes of sponsor in relation to which a person may be approved as a sponsor:

- (a) a standard business sponsor;
- (b) a professional development sponsor.

Note A party to a work agreement is not required to apply for approval as a sponsor, and is not required to be approved as a sponsor in relation to a class of sponsor.

Division 2.13 Criteria for approval of sponsor

Note A party to a work agreement is not required to apply for approval as a sponsor, and is not required to be approved as a sponsor in relation to a class of sponsor.

2.59 Criteria for approval as a standard business sponsor

For subsection 140E (1) of the Act, the criterion that must be satisfied for the Minister to approve an application by a person (the *applicant*) for approval as a standard business sponsor is that the Minister is satisfied that:

- (a) the applicant has applied for approval as a standard business sponsor in accordance with the process set out in Division 2.14; and

- (b) the applicant:
 - (i) is not a standard business sponsor; or
 - (ii) is a standard business sponsor because of the application of subclause 45 (2) of Part 2 of Schedule 1 to the *Migration Legislation Amendment (Worker Protection) Act 2008*; and
- (c) the applicant:
 - (i) is lawfully operating a business in Australia; or
 - (ii) is lawfully operating a business outside Australia; and
- (d) if the applicant is lawfully operating a business in Australia, and has traded in Australia for 12 months or more — the applicant meets the benchmarks for the training of Australian citizens and Australian permanent residents specified in an instrument in writing made for this paragraph;
- (e) if the applicant is lawfully operating a business in Australia, and has traded in Australia for 12 months or less — the applicant has an auditable plan to meet the benchmarks specified in the instrument, in writing, made for paragraph (d);
- (f) the applicant has attested, in writing, that the applicant has a strong record of, or a demonstrated commitment to:
 - (i) employing local labour; and
 - (ii) non-discriminatory employment practices; and
- (g) either:
 - (i) there is no adverse information known to the Minister about the applicant or a person associated with the applicant; or
 - (ii) it is reasonable to disregard any adverse information known to the Minister about the applicant or a person associated with the applicant.

Note for subparagraph (b) (ii) A person approved as a standard business sponsor before 14 September 2009 can make a new application to become a standard business sponsor on or after 14 September 2009. A person approved as a standard business sponsor on or after 14 September 2009, and who has not ceased to be a standard business sponsor, can apply under section 140GA of the Act for a variation of the terms of approval as a sponsor to extend the duration of the sponsorship approval — see regulation 2.68.

Note for paragraph (g) The meanings of *associated with* and *adverse information* are explained in subregulations 2.57 (2) and (3).

2.60 Criteria for approval as a professional development sponsor

- (1) For subsection 140E (1) of the Act, the criterion that must be satisfied for the Minister to approve an application by a person for approval as a professional development sponsor is that the Minister is satisfied that:
 - (a) the applicant is an Australian organisation or a government agency; and
 - (b) the applicant:
 - (i) is a party to a professional development agreement that meets the requirements mentioned in subregulation (2); and
 - (ii) the agreement is in force at the time of the Minister's consideration of the application; and
 - (c) the applicant is offering to conduct a professional development program that satisfies the requirements mentioned in subregulation (3); and
 - (d) the applicant has demonstrated an overall capacity to conduct a professional development program involving primary sponsored persons; and
 - (e) the applicant:
 - (i) has the capacity to meet its financial commitments; and
 - (ii) has paid any security requested by an authorised officer under section 269 of the Act; and
 - (f) each of the parties to the professional development agreement has the capacity to meet its financial commitments; and

- (g) if an overseas employer that is a party to a professional development agreement with the applicant has previously been required to comply with the immigration laws of Australia — the overseas employer has a satisfactory record of compliance; and
- (h) either:
 - (i) there is no adverse information known to the Minister about the applicant or a person associated with the applicant; or
 - (ii) it is reasonable to disregard any adverse information known to the Minister about the applicant or a person associated with the applicant.

Note for paragraph (h) The meanings of *associated with* and *adverse information* are explained in subregulations 2.57 (2) and (3).

- (2) A professional development agreement must meet the following requirements:
 - (a) the parties to the agreement must include:
 - (i) a person (the *applicant*) intending to apply for approval as a professional development sponsor who is:
 - (A) an Australian organisation that has operated in Australia continuously for a period of 1 year immediately prior to the making of the agreement; or
 - (B) an Australian organisation that has been approved by the Minister for the purpose of this sub-subparagraph; or
 - (C) a government agency; and
 - (ii) an overseas employer of a person intended to be a primary sponsored person;
 - (b) the applicant under subparagraph (a) (i) must be an Australian organisation or a government agency;
 - (c) the agreement must specify the person or persons responsible for paying the participant costs of a primary sponsored person;
 - (d) the agreement must not require a primary sponsored person to pay the costs of the tuition of a professional development program;

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- (e) the agreement must specify:
- (i) particulars of the professional development program to be provided by the professional development sponsor; and
 - (ii) particulars of any other matter to be provided by the professional development sponsor; and
 - (iii) the roles of each of the parties to the agreement; and
 - (iv) the duration of the agreement; and
 - (v) particulars of the conflict resolution arrangements under the agreement, including arrangements for the mediation of disputes; and
 - (vi) particulars of any arrangements for the subcontracting of the delivery of any part of the professional development program; and
 - (vii) particulars of the arrangements for insurance relating to the professional development sponsor; and
 - (viii) particulars of the arrangements for the recovery of costs if the professional development sponsor, or any other provider of the professional development program, ceases operations for any reason; and
 - (ix) a description of the characteristics of the person or persons the overseas employer proposes to select as proposed primary sponsored persons, and how the proposed primary sponsored persons will be selected;
- (f) if it is intended that a primary sponsored person will pay some of their participation costs — the agreement must contain:
- (i) a statement that the proposed primary sponsored person will be expected to meet the costs specified in the agreement; and
 - (ii) a declaration from the overseas employer that only an employee that the employer is satisfied is able to meet the costs specified in the agreement will be selected as a primary sponsored person;
- (g) the agreement must be signed and dated by an authorised representative of each party to the agreement.

- (3) A professional development program must meet the following requirements:
- (a) the program must be relevant to, and consistent with, the development of the skills of the managers or professionals, or both, that it is proposed will participate in the program;
 - (b) the program must provide skills and expertise relevant to, and consistent with, the business and business background of a proposed primary sponsored person's overseas employer;
 - (c) the duration of the program must not exceed:
 - (i) 18 months; or
 - (ii) if the Secretary is satisfied that exceptional circumstances exist that warrant an extension of the period of the program — a longer period approved by the Secretary;
 - (d) the primary form of the program must be the provision of face-to-face teaching in a classroom or similar environment;
 - (e) the primary content of the program must not be a practical component;
 - (f) any practical component of the program:
 - (i) must not exceed 7 hours in any day and 35 hours in any week; and
 - (ii) must not adversely affect the Australian labour market; and
 - (iii) must require or involve the payment of remuneration to a proposed primary sponsored person only by the proposed primary sponsored person's overseas employer.

Division 2.14 Application for approval as a sponsor

2.61 Application for approval as a sponsor

- (1) For subsection 140F (1) of the Act, a person may apply to the Minister for approval as a sponsor in relation to a class of sponsor in accordance with the process set out in this Division.

Note A party to a work agreement is not required to apply for approval as a sponsor, and is not required to apply for approval as a sponsor in relation to a class of sponsor.

- (2) A person mentioned in an item of the table must:
- (a) make the application in accordance with the approved form mentioned in the item; and
 - (b) pay the application fee (if any) mentioned in the item.

Item	If the person makes an application for approval as ...	the approved form is ...	and the application fee is ...
1	(a) a standard business sponsor; and (b) operates a business in Australia	1196S; or 1196 (Internet)	\$285
2	(a) a standard business sponsor; and (b) does not operate a business in Australia	1196S	\$285
3	(a) a professional development sponsor; and (b) is a Commonwealth agency	1226	nil
4	(a) a professional development sponsor; and (b) is not a Commonwealth agency	1226	\$1 145

2.62 Notice of decision

- (1) The Minister must notify an applicant for approval as a sponsor, in writing, of a decision under subsection 140E (1) of the Act:
 - (a) within a reasonable period after making the decision; and
 - (b) by attaching a written copy of the approval or refusal; and
 - (c) if the decision is a refusal — by attaching a statement of reasons for the refusal.
- (2) If the application was made using approved form 1196 (Internet), the Minister may provide the notification to the applicant in an electronic form.

Division 2.15 Terms of approval of sponsorship

2.63 Standard business sponsor

- (1) For subsection 140G (2) of the Act, a kind of term of an approval as a standard business sponsor is the duration of the approval.
- (2) The duration of the approval may be specified:
 - (a) as a period of time; or
 - (b) as ending on a particular date; or
 - (c) as ending on the occurrence of a particular event.

2.64 Professional development sponsor

- (1) For subsection 140G (3) of the Act, the terms of approval as a professional development sponsor are prescribed in this regulation.
- (2) An approval as a professional development sponsor has effect only in relation to:
 - (a) the professional development program specified in the application for approval, as varied from time to time by agreement between the professional development sponsor and the Secretary; and

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- (b) the professional development agreement or agreements specified in the application for approval; and
 - (c) the overseas employer or employers specified in the application for approval.
- (3) An approval as a professional development sponsor ceases on the earlier of:
- (a) 3 years after the day on which the approval is granted; and
 - (b) the day on which the professional development agreement specified in the application for approval ends.

Division 2.16 Variation of terms of approval of sponsorship — standard business sponsor

2.65 Application

This Division applies to a person who is a standard business sponsor.

2.66 Process to apply for variation of terms of approval

- (1) For subsection 140GA (1) of the Act, a person may apply to the Minister for a variation of a term of an approval as a standard business sponsor in accordance with the process set out in this regulation.
- (2) The person must make the application in accordance with approved form 1196S or approved form 1196 (Internet).
- (3) However, if the person does not operate a business in Australia, the person must make the application in accordance with approved form 1196S.
- (4) The application must be accompanied by a fee of \$285.

2.67 Terms of approval that may be varied

For paragraph 140GA (2) (a) of the Act, a term of approval as a standard business sponsor that may be varied is the duration of the approval.

2.68 Criteria for variation of terms of approval

For paragraph 140GA (2) (b) of the Act, the criterion that must be satisfied for the Minister to approve an application for a variation of a term of approval as a standard business sponsor is that the Minister is satisfied that:

- (a) the applicant has applied for the variation in accordance with the process set out in regulation 2.66; and
- (b) the applicant is a standard business sponsor; and
- (c) the approval the applicant is seeking to vary was granted on or after 14 September 2009; and
- (d) the applicant:
 - (i) is lawfully operating a business in Australia; or
 - (ii) is lawfully operating a business outside Australia; and
- (e) if the applicant is lawfully operating a business in Australia, and has traded in Australia for 12 months or more - the applicant meets the benchmarks for the training of Australian citizens and Australian permanent residents specified in an instrument in writing made for this paragraph; and
- (f) if the applicant is lawfully operating a business in Australia, and has traded in Australia for 12 months or less - the applicant has an auditable plan to meet the benchmarks specified in the instrument in writing made for paragraph (e); and
- (g) the applicant has attested in writing that the applicant has a strong record of, or a demonstrated commitment to:
 - (i) employing local labour; and
 - (ii) non-discriminatory employment practices; and
- (h) either:
 - (i) there is no adverse information known to the Minister about the applicant or a person associated with the applicant; or
 - (ii) it is reasonable to disregard any adverse information known to the Minister about the applicant or a person associated with the applicant.

Note for paragraph (h) The meanings of **adverse information** and **associated with** are explained in subregulations 2.57 (2) and (3).

2.69 Notice of decision

- (1) The Minister must notify an applicant for a variation of a term of an approval, in writing, of a decision under subsection 140GA (2) of the Act:
 - (a) within a reasonable period after making the decision; and
 - (b) by attaching a written copy of the decision to vary or not to vary the term of the approval; and
 - (c) by if the decision is not to vary the term of the approval — attaching a statement of reasons for the decision.
- (2) If the application was made using approved form 1196 (Internet), the Minister may provide the notification to the applicant in an electronic form.

Division 2.17 Nominations**2.70 Application**

This Division applies to a person who is:

- (a) a standard business sponsor; or
- (b) a party to a work agreement (other than a Minister).

2.71 Prescribed kind of visa

For paragraph 140GB (1) (a) of the Act, the kind of visa for an applicant, or proposed applicant, is a Subclass 457 (Business (Long Stay)) visa.

2.72 Criteria for approval of nomination - standard business sponsor or party to work agreement

- (1) For subsection 140GB (2) of the Act, the criterion that must be satisfied for the Minister to approve a nomination by a standard business sponsor or a party to a work agreement (other than a Minister) is that the Minister is satisfied that:
 - (a) the person has made the nomination in accordance with the process set out in regulation 2.73; and
 - (b) the person is a standard business sponsor or a party to a work agreement (other than a Minister); and

- (c) if the person is a standard business sponsor:
 - (i) the nominated occupation corresponds to an occupation specified in an instrument in writing made for this subparagraph; and
 - (ii) if required by the instrument mentioned in subparagraph (i) — the nomination of an occupation mentioned in the instrument is supported, in writing to the Minister, by an organisation specified in an instrument in writing made for this subparagraph; and
 - (iii) the terms and conditions of employment will be no less favourable than those that are provided, or would be provided, to an Australian citizen or an Australian permanent resident for performing work in an equivalent position in the person's workplace; and
- (d) if the person is a party to a work agreement (other than a Minister) — the nominated occupation is specified in the work agreement as an occupation that the person may nominate for an applicant or a proposed applicant; and
- (e) if the person proposes to nominate a holder of a Subclass 457 (Business (Long Stay)) visa (the ***primary holder of the visa***) — the person has listed on the nomination each other holder of a visa of that kind who was granted the visa on the basis of being:
 - (i) a member of the family unit of the primary holder of the visa; or
 - (ii) the interdependent partner of the primary holder of the visa; or
 - (iii) a dependent child of the interdependent partner of the primary holder of the visa; and
- (f) the person has provided the following information as part of the nomination:
 - (i) if there is a 6-digit ASCO code for the nominated occupation — the 6-digit ASCO code;

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- (ii) if there is no 6-digit ASCO code for the occupation, and the person is a standard business sponsor — the name of the occupation as it appears in the instrument in writing made for the purpose of subparagraph (c) (i);
 - (iii) if there is no 6-digit ASCO code for the occupation and the person is a party to a work agreement — the name of the occupation as it appears in the work agreement;
 - (iv) the location or locations at which the nominated occupation is to be carried out;
 - (v) information that identifies the applicant or the proposed applicant for the nominated occupation;
 - (g) if the person is a standard business sponsor — the person has certified as part of the nomination, in writing, that:
 - (i) the duties of the position include a significant majority of the duties of the nominated occupation listed in the ASCO; and
 - (ii) if the nominated occupation is an occupation other than an occupation mentioned in an instrument in writing made for the purpose of this subparagraph — the position is a position with a business, or an associated entity, of the person; and
 - (iii) the qualifications and experience of the applicant or proposed applicant in relation to the nominated occupation is commensurate with the qualifications and experience specified:
 - (A) for the occupation in the ASCO; or
 - (B) if there is no ASCO code for the nominated occupation — for the occupation in the instrument in writing made for the purpose of subparagraph (c) (i); and
 - (h) if the person is a party to a work agreement — the person has certified as part of the nomination, in writing, that the qualifications and experience of the applicant or proposed applicant in relation to the nominated occupation is commensurate with the qualifications and experience specified for the occupation in the work agreement; and

(i) either:

- (i) there is no adverse information known to the Minister about the person or a person associated with the person; or
- (ii) it is reasonable to disregard any adverse information known to the Minister about the person or a person associated with the person.

Note for paragraph (i) The meanings of **adverse information** and **associated with** are explained in subregulations 2.57 (2) and (3).

- (2) For paragraph (1) (e), the Minister may disregard the fact that 1 or more persons required to be listed on the nomination are not listed, if the Minister is satisfied it is reasonable in the circumstances to do so.

2.73 Process for nomination

- (1) For subsection 140GB (3) of the Act, the person may nominate a proposed occupation for an applicant, or proposed applicant, in accordance with the process set out in this regulation.
- (2) The person must make the nomination in accordance with approved form 1196N or approved form 1196 (Internet).
- (3) However, if the person does not operate a business in Australia, the person must make the application in accordance with approved form 1196N.
- (4) The person must provide, as part of the nomination:
 - (a) the information mentioned in paragraph 2.72 (1) (f); and
 - (b) if the person is a standard business sponsor — the certification mentioned in paragraph 2.72 (1) (g); and
 - (c) if the person is a party to a work agreement (other than a Minister) — the certification mentioned in paragraph 2.72 (1) (h).
- (5) The application must be accompanied by a fee of \$60.

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- (6) The Minister may refund the fee if:
- (a) both of the following apply:
 - (i) the tasks of the nominated occupation no longer correspond to the tasks of an occupation specified in the instrument in writing made for the purpose of subparagraph 2.72 (1) (c) (i);
 - (ii) the person withdraws the nomination for that reason before a decision is made under section 140GA of the Act; or
 - (b) both of the following apply:
 - (i) the nomination is approved under section 140GA of the Act;
 - (ii) after the Minister has approved the nomination, but before a visa is granted in relation to the approval, the tasks of the nominated occupation no longer correspond to the tasks of an occupation specified in the instrument in writing made for the purpose of subparagraph 2.72 (1) (c) (i).

2.74 Notice of decision

- (1) The Minister must notify an applicant for approval of a nomination, in writing, of a decision under subsection 140GB (2) of the Act:
 - (a) within a reasonable period after making the decision; and
 - (b) by attaching a written copy of the approval or refusal; and
 - (c) if the decision is a refusal — by attaching a statement of reasons for the refusal.
- (2) If the application was made using approved form 1196 (Internet), the Minister may provide the notification to the applicant in an electronic form.

2.75 Period of approval of nomination

An approval of a nomination ceases on the earliest of:

- (a) the day on which Immigration receives notification, in writing, of the withdrawal of the nomination by the person; and

- (b) 12 months after the day on which the nomination is approved; and
- (c) the day on which the applicant, or the proposed applicant, for the nominated occupation, is granted a Subclass 457 (Business (Long Stay)) visa; and
- (d) if the approval of the nomination is given to a standard business sponsor — 3 months after the day on which the person's approval as a standard business sponsor ceases; and
- (e) if the approval of the nomination is given to a standard business sponsor, and the person's approval as a standard business sponsor is cancelled under subsection 140M (1) of the Act — the day on which the person's approval as a standard business sponsor is cancelled; and
- (f) if the approval of the nomination is given to a party to a work agreement (other than a Minister) — the day on which the work agreement ceases.

Division 2.18 Work agreements

2.76 Requirements

- (1) For section 140GC of the Act, and for the definition of *work agreement* in subsection 5 (1) of the Act, the requirements that a work agreement must satisfy are prescribed in this regulation.
- (2) A work agreement:
 - (a) must be between:
 - (i) the Commonwealth, as represented by the Minister, or by the Minister and 1 or more other Ministers; and
 - (ii) a person, an unincorporated association or a partnership in Australia; and
 - (b) must authorise the recruitment, employment, or engagement of services of a person who is intended to be employed or engaged as a holder of a Subclass 457 (Business (Long Stay)) visa; and
 - (c) must be in effect; and
 - (d) must not be an IASS agreement.

Division 2.19 Sponsorship obligations

2.77 Preliminary

For subsection 140H (1) of the Act, each of the obligations mentioned in this Division is a sponsorship obligation that a person to whom the obligation applies must satisfy.

2.78 Obligation to cooperate with inspectors

- (1) This regulation applies to a person who is or was:
 - (a) a standard business sponsor; or
 - (b) a party to a work agreement (other than a Minister); or
 - (c) a professional development sponsor.
- (2) The person must cooperate with an inspector if:
 - (a) the inspector is appointed under section 140V of the Act; and
 - (b) the inspector is exercising powers under Subdivision F of Division 3A of Part 2 of the Act.
- (3) Without limiting subregulation (2), the person is taken not to have cooperated with an inspector if:
 - (a) the person hinders or obstructs an inspector while the inspector is exercising powers under Subdivision F of Division 3A of Part 2 of the Act; or
 - (b) the person conceals, or attempts to conceal, from an inspector the location of a person, document or thing while the inspector is exercising powers under Subdivision F of Division 3A of Part 2 of the Act; or
 - (c) the person prevents, or attempts to prevent, another person from assisting an inspector while the inspector is exercising powers under Subdivision F of Division 3A of Part 2 of the Act; or
 - (d) the person assaults an inspector or a person assisting the inspector while the inspector is exercising powers under Subdivision F of Division 3A of Part 2 of the Act; or

- (e) the person intimidates or threatens, or attempts to intimidate or threaten, an inspector or a person assisting the inspector while the inspector is exercising powers under Subdivision F of Division 3A of Part 2 of the Act.
- (4) If the person is or was a standard business sponsor or a professional development sponsor, the obligation mentioned in subregulation (2):
 - (a) starts to apply on the day on which the person is approved as a sponsor under section 140E of the Act; and
 - (b) ends 5 years after the day on which the person ceases or ceased to be a sponsor.
- (5) If the person is or was a party to a work agreement, the obligation mentioned in subregulation (2):
 - (a) starts to apply on the day on which the work agreement commences; and
 - (b) ends 5 years after the day on which the work agreement ceases or ceased.

2.79 Obligation to ensure equivalent terms and conditions of employment

- (1) This regulation applies to a person who is or was:
 - (a) a standard business sponsor of a primary sponsored person; or
 - (b) a party to a work agreement (other than a Minister) who is or was an approved sponsor of a primary sponsored person.
- (2) The person must ensure that the terms and conditions of employment provided to the primary sponsored person are no less favourable than the terms and conditions the person provides, or would provide, to:
 - (a) an Australian citizen; and
 - (b) an Australian permanent resident;to perform work in an equivalent position in the person's workplace.

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- (3) For subregulation (2), the terms and conditions of employment are *no less favourable* if the terms and conditions are at or above the terms and conditions determined in accordance with the process set out by the Minister in an instrument in writing made for this subregulation.
- (4) The obligation mentioned in subregulation (2):
- (a) starts to apply on:
- (i) the day on which the Minister approves a nomination by the person of an occupation for the primary sponsored person; or
- (ii) if the primary sponsored person does not hold a Subclass 457 (Business (Long Stay)) visa on the day the Minister approves the nomination - the day on which the primary sponsored person is granted a Subclass 457 (Business (Long Stay)) visa on the basis of an approved nomination by the person; and
- (b) ends on the earlier of:
- (i) the day on which the primary sponsored person is granted a further substantive visa that:
- (A) is not a Subclass 457 (Business (Long Stay)) visa; and
- (B) is in effect; and
- (ii) the day on which the primary sponsored person ceases employment with the person.

2.80 Obligation to pay travel costs to enable sponsored persons to leave Australia

- (1) This regulation applies to a person who is or was:
- (a) a standard business sponsor of a primary sponsored person or a secondary sponsored person (if any); or
- (b) a party to a work agreement (other than a Minister) who is or was an approved sponsor of a primary sponsored person or secondary sponsored person (if any).

- (2) The person must pay the travel costs of the primary sponsored person or the secondary sponsored person:
- (a) if the costs have been requested in writing by:
 - (i) the Minister on behalf of the primary sponsored person or the secondary sponsored person; or
 - (ii) the primary sponsored person; or
 - (iii) the primary sponsored person on behalf of the secondary sponsored person; or
 - (iv) the secondary sponsored person; or
 - (v) the secondary sponsored person on behalf of the primary sponsored person; and
 - (b) that have not already been paid in accordance with this regulation; and
 - (c) that are reasonable and necessary.
- (3) The request to pay travel costs must:
- (a) specify the person or persons whose travel will be funded by the costs; and
 - (b) specify the country that the person, whose travel will be funded, holds a passport and will travel to; and
 - (c) if the person is a multiple passport holder — specify the country that the person holds a passport for and wants to travel to; and
 - (d) be made while the person whose travel will be funded is the holder of a Subclass 457 (Business (Long Stay)) visa.
- (4) Without limiting paragraph (2) (c), a person is taken to have paid reasonable and necessary costs if:
- (a) the costs include the cost of travel from the primary sponsored person's usual place of residence in Australia to the place of departure from Australia; and
 - (b) the costs include the cost of travel from Australia to the country the person specifies in accordance with subregulation (3); and
 - (c) the costs are paid within 30 days of receiving the request for costs; and
 - (d) the costs are for economy class air travel or the equivalent of economy class air travel.

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- (5) The obligation mentioned in subregulation (2):
- (a) starts to apply on:
 - (i) the day on which the Minister approves a nomination by the person of an occupation for the primary sponsored person; or
 - (ii) if the primary sponsored person does not hold a Subclass 457 (Business (Long Stay)) visa on the day the Minister approves the nomination – the day on which the primary sponsored person is granted a Subclass 457 (Business (Long Stay)) visa on the basis of an approved nomination by the person; and
 - (b) for a primary sponsored person — ends on the earlier of:
 - (i) the day on which the Minister approves a nomination under section 140GB of the Act by another standard business sponsor or party to a work agreement in relation to the primary sponsored person; and
 - (ii) the day on which the primary sponsored person is granted a further substantive visa that:
 - (A) is not a Subclass 457 (Business (Long Stay)) visa; and
 - (B) is in effect; and
 - (iii) the first day on which each of the following occur concurrently:
 - (A) the primary sponsored person has left Australia;
 - (B) the Subclass 457 (Business (Long Stay)) visa has ceased to be in effect;
 - (C) if the primary sponsored person held a Subclass 020 – Bridging B visa when the primary sponsored person left Australia, and the last substantive visa held by the primary sponsored person was a Subclass 457 (Business (Long Stay)) visa — the bridging visa has ceased to be in effect; and

- (c) for a secondary sponsored person — ends on the earlier of:
- (i) the day on which the Minister approves a nomination under section 140GB of the Act by another standard business sponsor or party to a work agreement in relation to the primary sponsored person;
 - (ii) the day on which the secondary sponsored person is granted a further substantive visa that:
 - (A) is not a Subclass 457 (Business (Long Stay)) visa; and
 - (B) is in effect; and
 - (iii) the first day on which each of the following occur concurrently:
 - (A) the secondary sponsored person has left Australia; and
 - (B) the Subclass 457 (Business (Long Stay)) visa has ceased to be in effect; and
 - (C) if the secondary sponsored person held a Subclass 020 — Bridging B visa when the secondary sponsored person left Australia, and the last substantive visa held by the secondary sponsored person was a Subclass 457 (Business (Long Stay)) visa — the bridging visa has ceased to be in effect.

2.81 Obligation to pay costs incurred by the Commonwealth to locate and remove unlawful non-citizen

- (1) This regulation applies to a person who is or was:
- (a) a standard business sponsor of a primary sponsored person or a secondary sponsored person (if any); or
 - (b) a party to a work agreement (other than a Minister) who is or was an approved sponsor of a primary sponsored person or a secondary sponsored person; or
 - (c) a professional development sponsor of a primary sponsored person.

Note There are no secondary sponsored persons in relation to professional development sponsors.

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- (2) The person must pay costs incurred by the Commonwealth:
- (a) if the costs were incurred by the Commonwealth in taking either or both of the following actions in relation to the primary sponsored person or secondary sponsored person:
 - (i) locating, as an unlawful non-citizen, the primary sponsored person or the secondary sponsored person;
 - (ii) removing, as an unlawful non-citizen, the primary sponsored person or the secondary sponsored person from Australia; and
 - (b) if the Minister has requested the payment of the costs by written notice in the manner specified in subregulation (5); and
 - (c) if the costs were incurred by the Commonwealth within the period mentioned in subregulation (6).
- (3) However, if the person has already paid the costs of return travel in accordance with the sponsorship obligation mentioned in regulation 2.80 (the *return costs*), the person is liable to pay to the Commonwealth only the difference between:
- (a) the lesser of:
 - (i) the actual costs incurred by the Commonwealth in taking 1 or more of the actions mentioned in paragraph (2) (a); or
 - (ii) the costs up to the limit prescribed under paragraph 140J (1) (a) of the Act, as prescribed in regulation (4); and
 - (b) the return costs that have already been paid by the person.
- (4) For paragraph 140J (1) (a) of the Act, the limit in relation to the obligation at subregulation (2) is \$10 000.
- (5) For paragraph (2) (b), the notice from the Minister requesting the payment of costs must:
- (a) be given using a method mentioned in section 494B of the Act; and
 - (b) specify a date for compliance not earlier than 7 days after the date a person will be taken, by section 494C of the Act, to have received the notice.

- (6) For paragraph 2 (c):
- (a) in relation to a primary sponsored person — the period within which the Commonwealth must incur the costs:
 - (i) starts on the day on which the primary sponsored person becomes an unlawful non-citizen; and
 - (ii) ends at the moment when the primary sponsored person leaves Australia; and
 - (b) in relation to a secondary sponsored person — the period within which the Commonwealth must incur the costs:
 - (i) starts on the day on which the secondary sponsored person becomes an unlawful non-citizen; and
 - (ii) ends at the moment when the secondary sponsored person leaves Australia.
- (7) The obligation mentioned in subregulation (2):
- (a) in relation to a primary sponsored person:
 - (i) starts to apply on the day on which the primary sponsored person becomes an unlawful non-citizen; and
 - (ii) ends 5 years after the time at which the primary sponsored person leaves Australia; and
 - (b) in relation to a secondary sponsored person:
 - (i) starts to apply on the day on which the secondary sponsored person becomes an unlawful non-citizen; and
 - (ii) ends 5 years after the time at which the secondary sponsored person leaves Australia.
- (8) In this regulation:
- costs*, in relation to the removal of a former primary sponsored person or a former secondary sponsored person from Australia, has the same meaning as in paragraph (b) of the definition of costs in section 207 of the Act.

2.82 Obligation to keep records

- (1) This regulation applies to a person who is or was:
- (a) a standard business sponsor; or
 - (b) a party to a work agreement (other than a Minister).

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- (2) The person must keep records:
- (a) of a kind:
 - (i) specified in subregulation (3);
 - (ii) specified by the Minister in an instrument in writing (if any) made for the purpose of this subparagraph; and
 - (b) in a reproducible format; and
 - (c) either:
 - (i) in the manner specified by the Minister in an instrument in writing (if any) made for this subparagraph; or
 - (ii) if the record is a record mentioned in subparagraph (3) (a) (iii) — in a manner that is capable of being verified by an independent person; and
 - (d) for the period specified in subregulation (4), (5) or (6).
- (3) For subparagraph (2) (a) (i), the records are:
- (a) in relation to the obligation mentioned in regulation 2.80:
 - (i) a record of the written request by the primary sponsored person or secondary sponsored person for the payment of return travel costs; and
 - (ii) a record of when the written request for the payment of return travel costs was received by the person; and
 - (iii) a record of how the person complied with the request to pay return travel costs, including:
 - (A) the costs paid; and
 - (B) who the costs were paid for; and
 - (C) the date of the payment of the costs; and
 - (b) in relation to the obligation mentioned in regulation 2.84:
 - (i) a record of a notification to Immigration of an event specified in regulation 2.84 for the person; and
 - (ii) a record of the particulars of the notification of the event, including:
 - (A) the date on which the person notified Immigration of the event; and

- (B) the method by which the notification was provided; and
 - (C) where the notification was provided; and
 - (c) a record of the tasks performed by the primary sponsored person in relation to work undertaken as the holder of a Subclass 457 (Business (Long Stay)) visa; and
 - (d) a record of the location or locations at which the tasks mentioned in paragraph (c) were performed.
- (4) If the person is or was a standard business sponsor, the obligation mentioned in subregulation (2):
- (a) starts to apply on the day on which the person is approved as a standard business sponsor under section 140E of the Act; and
 - (b) ends 2 years after the first day on which each of the following occurs concurrently:
 - (i) the person ceases to be a standard business sponsor;
 - (ii) there is no primary sponsored person or secondary sponsored person in relation to the person.
- (5) If the person is or was a party to a work agreement, the obligation mentioned in subregulation (2):
- (a) starts to apply on the day on which the work agreement commences; and
 - (b) ends 2 years after the first day on which each of the following occurs concurrently:
 - (i) the person ceases to be a party to a work agreement;
 - (ii) there is no primary sponsored person or secondary sponsored person in relation to the person.
- (6) However, the obligation mentioned in subregulation (2) does not require a person to keep a record for a period of more than 5 years.

2.83 Obligation to provide records and information to the Minister

- (1) This regulation applies to a person who is or was:
 - (a) a standard business sponsor; or

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- (b) a party to a work agreement (other than a Minister); or
 - (c) a professional development sponsor.
- (2) The person must provide records or information to the Minister:
- (a) if the Minister has requested the provision of the records or information by written notice in the manner specified in subregulation (3); and
 - (b) if the records requested by the Minister:
 - (i) are records the person is required to keep under a law of the Commonwealth or a State or Territory that applies to the person; or
 - (ii) are records the person is required to keep under regulation 2.82; and
 - (c) if the records or information relates to the administration of Division 3A of Part 2 of the Act and the Regulations made under that Division; and
 - (d) in the manner, and within the timeframe, requested by the Minister in the notice mentioned in subregulation (3).

Note Subregulation 2.82 does not apply to a professional development sponsor.

- (3) A notice from the Minister requesting the provision of records or information must:
- (a) be given using a method mentioned in section 494B of the Act; and
 - (b) specify a date for compliance not earlier than 7 days after the date on which a person will be taken, by section 494C of the Act, to have received the document.
- (4) If the person is or was a standard business sponsor or a professional development sponsor, the obligation mentioned in subregulation (2):
- (a) starts to apply on the day on which the person is approved as a sponsor under section 140E of the Act; and
 - (b) ends 2 years after the first day on which each of the following occurs concurrently:
 - (i) the person ceases to be a standard business sponsor or professional development sponsor; and

- (ii) there is no primary sponsored person or secondary sponsored person in relation to the person.
- (5) If the person is or was a party to a work agreement, the obligation mentioned in subregulation (2):
 - (a) starts to apply on the day on which the work agreement commences; and
 - (b) ends 2 years after the first day on which each of the following occurs concurrently:
 - (i) the person ceases to be a party to a work agreement;
 - (ii) there is no primary sponsored person or secondary sponsored person in relation to the person.

2.84 Obligation to provide information to Immigration when certain events occur

- (1) This regulation applies to a person who is or was:
 - (a) a standard business sponsor; or
 - (b) a party to a work agreement (other than a Minister); or
 - (c) a professional development sponsor.
- (2) The person must:
 - (a) provide details of an event to Immigration when an event mentioned in this regulation, and specified for the person, occurs; and
 - (b) provide the details of the event by registered post or electronic mail:
 - (i) to an address specified by the Minister in an instrument in writing made for the purpose of this subparagraph; and
 - (ii) within the period specified in subregulation (6).
- (3) If the person is or was a standard business sponsor or a party to a work agreement, the person must notify Immigration about each of the following events:
 - (a) the cessation, or expected cessation, of a primary sponsored person's employment with the person;

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- (b) a change to the information provided to Immigration in the person's application for approval as a sponsor in relation to:
 - (i) the training requirement mentioned in paragraphs 2.59 (d) and (e); and
 - (ii) the person's address and contact details;
 - (c) a change to the information provided to Immigration in the person's application for a variation of a term of approval in relation to the training requirement mentioned in paragraphs 2.68 (e) and (f);
 - (d) the legal entity of the person ceases to exist;
 - (e) if the legal entity of the person is a company — a new director is appointed;
 - (f) if the legal entity of the person is a partnership — a new partner joins the partnership;
 - (g) if the legal entity of the person is an unincorporated association — a new member is appointed to the managing committee of the association;
 - (h) the person has paid the return travel costs of a primary sponsored person or secondary sponsored person in accordance with the obligation mentioned in regulation 2.80;
 - (i) the person has become insolvent within the meaning of subsections 5 (2) and (3) of the *Bankruptcy Act 1966* and section 95A of the *Corporations Act 2001*;
 - (j) if the person is a natural person — any of the following:
 - (i) the person enters into a personal insolvency agreement under Part X of the *Bankruptcy Act 1966*;
 - (ii) the person enters into a debt agreement under Part IX of the *Bankruptcy Act 1966*;
 - (iii) a sequestration order is made against the estate of the person under Part IV of the *Bankruptcy Act 1966*;
 - (iv) the person becomes a bankrupt by virtue of the presentation of a debtor's petition under Part IV of the *Bankruptcy Act 1966*;

- (v) the person presents a declaration of intention to present a debtor's petition under Part IV of the *Bankruptcy Act 1966*;
- (vi) a composition or scheme of arrangement is presented in relation to the person in accordance with Division 6 of Part IV of the *Bankruptcy Act 1966*;
- (k) if the person is a company — any of the following:
 - (i) an administrator is appointed for the company under Part 5.3A of the *Corporations Act 2001*;
 - (ii) the company resolves by special resolution to be wound up voluntarily under subsection 491 (1) of the *Corporations Act 2001*;
 - (iii) a court has ordered that the company be wound up in insolvency under Part 5.4, or on other grounds under Part 5.4A, of the *Corporations Act 2001*;
 - (iv) a court has appointed an official liquidator to be the provisional liquidator of the company under Part 5.4B of the *Corporations Act 2001*;
 - (v) a court has approved a compromise or arrangement proposed by the company under Part 5.1 of the *Corporations Act 2001*;
 - (vi) the property of the company becomes subject to a receiver or other controller under Part 5.2 of the *Corporations Act 2001*;
 - (vii) procedures are initiated for the deregistration of the company under Part 5A.1 of the *Corporations Act 2001*;
- (l) if the person is a partner of a partnership, or a member of a managing committee for an unincorporated association — any of the events of the kind mentioned in paragraphs (j) and (k).

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- (4) If the person is or was a professional development sponsor of a primary sponsored person, the person must inform Immigration about each of the following events:
- (a) a change to the information provided to Immigration in the person's application for approval as a sponsor in relation to:
 - (i) the person's address and contact details; and
 - (ii) the person's capacity to deliver the approved professional development program; and
 - (iii) the capacity of a sub-contractor involved in the delivery of the approved professional development program to deliver the program or any part of the program;
 - (b) the legal entity of the person ceases to exist;
 - (c) if the legal entity of the person is a company — a new director is appointed;
 - (d) if the legal entity of the person is a partnership — a new partner joins the partnership;
 - (e) if the legal entity of the person is an unincorporated association — a new member is appointed to the managing committee of the association;
 - (f) the person has become insolvent within the meaning of subsections 5 (2) and (3) of the *Bankruptcy Act 1966* and section 95A of the *Corporations Act 2001*;
 - (g) if the person is a natural person — any of the following:
 - (i) the person enters into a personal insolvency agreement under Part X of the *Bankruptcy Act 1966*;
 - (ii) the person enters into a debt agreement under Part IX of the *Bankruptcy Act 1966*;
 - (iii) a sequestration order is made against the estate of the person under Part IV of the *Bankruptcy Act 1966*;
 - (iv) the person becomes a bankrupt by virtue of the presentation of a debtor's petition under Part IV of the *Bankruptcy Act 1966*;
 - (v) the person presents a declaration of intention to present a debtor's petition under Part IV of the *Bankruptcy Act 1966*;

- (vi) a composition or scheme of arrangement is presented in relation to the person in accordance with Division 6 of Part IV of the *Bankruptcy Act 1966*;
- (h) if the person is a company — any of the following:
 - (i) an administrator is appointed for the company under Part 5.3A of the *Corporations Act 2001*;
 - (ii) the company resolves by special resolution to be wound up voluntarily under subsection 491 (1) of the *Corporations Act 2001*;
 - (iii) a court has ordered that the company be wound up in insolvency under Part 5.4, or on other grounds under Part 5.4A, of the *Corporations Act 2001*;
 - (iv) a court has appointed an official liquidator to be the provisional liquidator of the company under Part 5.4B of the *Corporations Act 2001*;
 - (v) a court has approved a compromise or arrangement proposed by the company under Part 5.1 of the *Corporations Act 2001*;
 - (vi) the property of the company becomes subject to a receiver or other controller under Part 5.2 of the *Corporations Act 2001*;
 - (vii) procedures are initiated for the deregistration of the company under Part 5A.1 of the *Corporations Act 2001*;
- (i) if the person is a partner of a partnership, or a member of a managing committee for an unincorporated association — any of the events of the kind mentioned in paragraphs (g) and (h);
- (j) the primary sponsored person is unable to participate in the professional development program;
- (k) the primary sponsored person has ceased participation in the professional development program prior to the ending of the professional development program;
- (l) the primary sponsored person has failed to attend the professional development program, and this absence was not authorised by the professional development sponsor.

- (5) For paragraph (3) (a):
- (a) the person may notify Immigration of the final date of employment of the primary sponsored person before that date; and
 - (b) if the primary sponsored person does not cease employment with the person, or ceases employment on a different date — the person must notify Immigration of the continued employment or the new date of cessation.
- (6) The notification of an event mentioned in an item of the table must be made within the timeframe mentioned in the item.

Item	For an event mentioned in ...	the notification must be made ...
1	paragraph 3 (a)	within 10 working days of the primary sponsored person ceasing employment
2	paragraphs 3 (b) to (l)	within 10 working days of the change or event occurring
3	subregulation (4)	within 10 working days of the change or event occurring
4	subregulation (5)	the earlier of: <ul style="list-style-type: none"> (a) within 10 working days of the cessation date notified under paragraph (3) (a); and (b) within 10 working days of the actual cessation date

- (7) If the person is or was a standard business sponsor or a professional development sponsor, the obligation mentioned in subregulation (2):
- (a) starts to apply on the day on which the person is approved as a sponsor under section 140E of the Act; and
 - (b) ends after the first day on which each of the following occurs concurrently:
 - (i) the person ceases to be a standard business sponsor or a professional development sponsor; and
 - (ii) there is no primary sponsored person or secondary sponsored person in relation to the person.

- (8) If the person is or was a party to a work agreement, the obligation mentioned in subregulation (2):
 - (a) starts to apply on the day on which on which the work agreement commences; and
 - (b) ends after the first day on which each of the following occurs concurrently:
 - (i) the person ceases to be a party to a work agreement; and
 - (ii) there is no primary sponsored person or secondary sponsored person in relation to the person.

2.85 Obligation to secure an offer of a reasonable standard of accommodation for a primary sponsored person

- (1) This regulation applies to a person who is or was a professional development sponsor of a primary sponsored person.
- (2) The person must secure 1 or more offers of accommodation for the primary sponsored person that:
 - (a) will provide for a reasonable standard of accommodation; and
 - (b) will ensure that the primary sponsored person has accommodation during the entire period of participation in a professional development program.

Example

If accommodation that has been secured becomes unavailable, the professional development sponsor must secure another offer of accommodation for the primary sponsored person.

- (3) For subregulation (2) (a), accommodation is of a reasonable standard if the accommodation:
 - (a) meets all relevant State or Territory and local government regulations regarding fire, health and safety; and
 - (b) offers 24-hour access; and
 - (c) provides meals or a self-catering kitchen; and
 - (d) is clean and well-maintained; and
 - (e) has a lounge area; and
 - (f) has adequate laundry facilities or a laundry service; and

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- (g) provides power for lighting, cooking and refrigeration; and
 - (h) has an adequate ratio of guests to bathroom facilities; and
 - (i) has uncrowded sleeping areas; and
 - (j) provides appropriate gender segregated areas and bathroom facilities; and
 - (k) allows adequate privacy and secure storage for personal items.
- (4) The obligation mentioned in subregulation (2):
- (a) starts to apply on the day on which the primary sponsored person is granted a Subclass 470 (Professional Development) visa; and
 - (b) ends on the earlier of:
 - (i) the day on which the primary sponsored person is granted a further substantive visa that:
 - (A) is not a Subclass 470 (Professional Development) visa; and
 - (B) is in effect; and
 - (ii) the first day on which each of the following occur concurrently:
 - (A) the primary sponsored person has left Australia; and
 - (B) the Subclass 470 (Professional Development) visa has ceased to be in effect; and
 - (C) if the primary sponsored person held a Subclass 020 — Bridging B visa when the primary sponsored person left Australia, and the last substantive visa held by the primary sponsored person was a Subclass 470 (Professional Development) visa — the bridging visa has ceased to be in effect.

2.86 Obligation to ensure primary sponsored person does not work in an occupation other than an approved occupation

- (1) This regulation applies to a person who is or was:
 - (a) a standard business sponsor of a primary sponsored person; or
 - (b) a party to a work agreement (other than a Minister) who is or was an approved sponsor of a primary sponsored person.
- (2) The person must ensure that the primary sponsored person does not work in an occupation other than the occupation:
 - (a) nominated by the person for the primary sponsored person under subsection 140GB (1) of the Act; and
 - (b) approved by the Minister under subsection 140GB (2) of the Act.
- (3) The obligation mentioned in subregulation (2):
 - (a) starts to apply on:
 - (i) the day on which the Minister approves a nomination by the person of an occupation for the primary sponsored person; or
 - (ii) if the primary sponsored person does not hold a Subclass 457 (Business (Long Stay)) visa on the day the Minister approves the nomination — the day on which the primary sponsored person is granted a Subclass 457 (Business (Long Stay)) visa on the basis of an approved nomination by the person; and
 - (b) ends on the earlier of:
 - (i) the day on which the Minister approves a nomination under section 140GB of the Act by another standard business sponsor or party to a work agreement in relation to the primary sponsored person; and
 - (ii) the day on which the primary sponsored person is granted a further substantive visa that:
 - (A) is not a Subclass 457 (Business (Long Stay)) visa; and
 - (B) is in effect; and

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- (iii) the first day on which each of the following occurs concurrently:
- (A) the primary sponsored person has left Australia;
 - (B) the Subclass 457 (Business (Long Stay)) visa has ceased to be in effect;
 - (C) if the primary sponsored person held a Subclass 020 — Bridging B visa when the primary sponsored person left Australia, and the last substantive visa held by the primary sponsored person was a Subclass 457 (Business (Long Stay)) visa — the bridging visa has ceased to be in effect.

2.87 Obligation not to recover certain costs from a primary sponsored person or secondary sponsored person

- (1) This regulation applies to a person who is or was:
 - (a) a standard business sponsor of a primary sponsored person or a secondary sponsored person (if any); or
 - (b) a party to a work agreement (other than a Minister) who is or was an approved sponsor of a primary sponsored person or a secondary sponsored person (if any).
- (2) The person must not recover, or seek to recover, from the primary sponsored person or secondary sponsored person, all or part of the following costs:
 - (a) the costs that relate specifically to the recruitment of the primary sponsored person, including migration agent costs;
 - (b) the costs, including migration agent costs, associated with:
 - (i) becoming an approved sponsor; or
 - (ii) being an approved sponsor; or
 - (iii) being a former approved sponsor.

- (3) The obligation mentioned in subregulation (2):
- (a) starts to apply on:
 - (i) the day on which the Minister approves a nomination by the person of an occupation for the primary sponsored person; or
 - (ii) if the primary sponsored person does not hold a Subclass 457 (Business (Long Stay)) visa on the day the Minister approves the nomination – the day on which the primary sponsored person is granted a Subclass 457 (Business (Long Stay)) visa on the basis of an approved nomination by the person; and
 - (b) for a primary sponsored person — ends on the earlier of:
 - (i) the day on which the Minister approves a nomination under section 140GB of the Act by another standard business sponsor or party to a work agreement in relation to the primary sponsored person; and
 - (ii) the day on which the primary sponsored person is granted a further substantive visa that:
 - (A) is not a Subclass 457 (Business (Long Stay)) visa; and
 - (B) is in effect; and
 - (iii) the first day on which each of the following occurs concurrently:
 - (A) the primary sponsored person has left Australia;
 - (B) the Subclass 457 (Business (Long Stay)) visa has ceased to be in effect;
 - (C) if the primary sponsored person held a Subclass 020 — Bridging B visa when the primary sponsored person left Australia, and the last substantive visa held by the primary sponsored person was a Subclass 457 (Business (Long Stay)) visa — the bridging visa has ceased to be in effect; and

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- (c) for a secondary sponsored person — ends on the earlier of:
- (i) the day on which the Minister approves a nomination by another approved sponsor in relation to the primary sponsored person; and
 - (ii) the day on which the secondary sponsored person is granted a further substantive visa that:
 - (A) is not a Subclass 457 (Business (Long Stay)) visa; and
 - (B) is in effect; and
 - (iii) the first day on which each of the following occurs concurrently:
 - (A) the secondary sponsored person has left Australia;
 - (B) the Subclass 457 (Business (Long Stay)) visa has ceased to be in effect;
 - (C) if the secondary sponsored person held a Subclass 020 — Bridging B visa when the secondary sponsored person left Australia, and the last substantive visa held by the primary sponsored person was a Subclass 457 (Business (Long Stay)) visa — the bridging visa has ceased to be in effect.

Division 2.20 Circumstances in which sponsor may be barred or sponsor's approval may be cancelled

2.88 Preliminary

For subparagraphs 140L (1) (a) (i) and (ii) of the Act, each of the circumstances mentioned in this Division is a circumstance in which the Minister may take one or more of the actions mentioned in section 140M of the Act.

Note The Minister cannot take action against a party to a work agreement under section 140M of the Act. The terms of the work agreement will provide for whether the agreement can be cancelled or whether the person can be barred from doing certain things under the agreement.

2.89 Failure to satisfy sponsorship obligation

- (1) This regulation applies to a person who is or was:
 - (a) a standard business sponsor;
 - (b) a standard business sponsor of a primary sponsored person or a secondary sponsored person;
 - (c) a professional development sponsor;
 - (d) a professional development sponsor of a primary sponsored person.
- (2) For subparagraph 140L (1) (a) (i) of the Act, the circumstance is that the Minister is satisfied that the person has failed to satisfy a sponsorship obligation mentioned in Division 2.19.
- (3) For paragraph 140L (1) (b) of the Act, the criteria that the Minister must take into account in determining what action (if any) to take under section 140M of the Act in relation to the circumstance mentioned in subregulation (2) are:
 - (a) the past and present conduct of the person in relation to Immigration; and
 - (b) the number of occasions on which the person has failed to satisfy the sponsorship obligation; and
 - (c) the nature and severity of the circumstances relating to the failure to satisfy the sponsorship obligation, including the period of time over which the failure has occurred; and
 - (d) the period of time over which the person has been an approved sponsor; and
 - (e) whether, and the extent to which, the failure to satisfy the sponsorship obligation has had a direct or indirect impact on another person; and
 - (f) whether, and the extent to which, the failure to satisfy the sponsorship obligation was intentional, reckless or inadvertent; and
 - (g) whether, and the extent to which, the person has cooperated with Immigration, including whether the person informed Immigration of the failure; and
 - (h) the steps (if any) the person has taken to rectify the failure to satisfy the sponsorship obligation, including whether the steps were taken at the request of Immigration or otherwise; and

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- (i) the processes (if any) the person has implemented to ensure future compliance with the sponsorship obligation; and
 - (j) the number of other sponsorship obligations that the person has failed to satisfy, and the number of occasions on which the person has failed to satisfy other sponsorship obligations; and
 - (k) any other relevant factors.

2.90 Provision of false or misleading information

- (1) This regulation applies to a person who is or was:
 - (a) a standard business sponsor; or
 - (b) a professional development sponsor.
- (2) For subparagraph 140L (1) (a) (ii) of the Act, an additional circumstance is that the Minister is satisfied that the person has provided false or misleading information to Immigration or the Migration Review Tribunal.
- (3) For paragraph 140L (1) (b) of the Act, the criteria that the Minister must take into account in determining what action (if any) to take under section 140M of the Act in relation to the circumstance mentioned in subregulation (2) are:
 - (a) the purpose for which the information was provided; and
 - (b) the past and present conduct of the person in relation to Immigration; and
 - (c) the nature of the information; and
 - (d) whether, and the extent to which, the provision of false or misleading information has had a direct or indirect impact on another person; and
 - (e) whether the information was provided in good faith; and
 - (f) whether the person notified Immigration immediately upon discovering that the information was false or misleading; and
 - (g) any other relevant factors.

2.91 Application or variation criteria no longer met

- (1) This regulation applies to a person who is or was:
 - (a) a standard business sponsor; or
 - (b) a professional development sponsor.
- (2) For subparagraph 140L (1) (a) (ii) of the Act, an additional circumstance is that the Minister is satisfied that:
 - (a) the person no longer satisfies the criteria prescribed under section 140E of the Act at the time the person was approved as a sponsor; or
 - (b) if the terms of the approval of the person as a standard business sponsor has been varied — the person no longer satisfies the criteria prescribed under section 140GA of the Act at the time of the approval of the variation.
- (3) For paragraph 140L (1) (b) of the Act, the criteria that the Minister must take into account in determining what action (if any) to take under section 140M of the Act in relation to the circumstance mentioned in subregulation (2) are:
 - (a) the nature of the applicable sponsorship criteria that the person no longer meets; and
 - (b) whether, and the extent to which, the failure to continue to satisfy the criteria for approval as a sponsor, or to continue to satisfy the criteria for approval of a variation, has had a direct or indirect impact on another person; and
 - (c) the reason why the person no longer satisfies the applicable sponsorship criteria, including whether the failure to satisfy the criteria is within the person's control; and
 - (d) the steps (if any) the person has taken to ensure that the person will satisfy the applicable criteria in the future; and
 - (e) any other relevant factors.

2.92 Contravention of law

- (1) This regulation applies to a person who is or was:
 - (a) a standard business sponsor; or
 - (b) a standard business sponsor of a primary sponsored person; or
 - (c) a professional development sponsor.

Standard business sponsors and professional development sponsors

- (2) For subparagraph 140L (1) (a) (ii) of the Act, an additional circumstance for a person who is or was a standard business sponsor or a professional development sponsor is that the Minister is satisfied that the person has been found by a court or a competent authority to have contravened a Commonwealth, State or Territory law.
- (3) For paragraph 140L (1) (b) of the Act, the criteria that the Minister must take into account in determining what action (if any) to take under section 140M of the Act in relation to the circumstances mentioned in subregulation (2) are:
 - (a) the past and present conduct of the person; and
 - (b) the nature of the law that the person has contravened; and
 - (c) the gravity of the unlawful activity; and
 - (d) any other relevant factors.

Standard business sponsors

- (4) For subparagraph 140L (1) (a) (ii) of the Act, an additional circumstance for a standard business sponsor is that the Minister is satisfied that each of the following applies:
 - (a) the primary sponsored person has been found by a court or a competent authority to have contravened a Commonwealth, State or Territory law;
 - (b) the law was a law relating to the licensing, registration or membership of the primary sponsored person in relation to the primary sponsored person's occupation;

- (c) the primary sponsored person was required to comply with the law in order to work in the occupation nominated by the standard business sponsor and approved by the Minister.
- (5) For paragraph 140L (1) (b) of the Act, the criteria that the Minister must take into account in determining what action (if any) to take under section 140M of the Act in relation to the circumstances mentioned in subregulation (4) are:
 - (a) whether the person took reasonable steps to prevent the primary sponsored person from contravening a law relating to a licensing, registration or membership requirement of the primary sponsored person's approved occupation; and
 - (b) whether any other primary sponsored person, while in the employ of the person, has been found by a court or a competent authority to have contravened a law relating to a licensing, registration or membership requirement; and
 - (c) the processes (if any) the person has implemented to ensure future compliance with the licensing, registration or membership requirements of a primary sponsored person's approved occupation; and
 - (d) any other relevant factors.

2.93 Unapproved change to professional development program

- (1) This regulation applies to a person who is or was a professional development sponsor.
- (2) For subparagraph 140L (1) (a) (ii) of the Act, an additional circumstance is that the Minister is satisfied that the person has made a change to the professional development program without approval in writing from the Secretary.
- (3) For paragraph 140L (1) (b) of the Act, the criteria that the Minister must take into account in determining what action (if any) to take under section 140M of the Act in relation to the circumstance mentioned in subregulation (2) are:
 - (a) the severity of the conduct; and

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- (b) the past conduct of the person in relation to Immigration; and
 - (c) the impact, if any, that the taking of the action may have on the Australian community; and
 - (d) the extent to which the barring of the person as a sponsor will be an adequate means of dealing with the matter, having regard to:
 - (i) the seriousness of the inability, or of the failure, to comply; and
 - (ii) the past conduct of the person; and
 - (e) any other relevant factors.

2.94 Failure to pay additional security

- (1) This regulation applies to a person who is or was a professional development sponsor.
- (2) For subparagraph 140L (1) (a) (ii) of the Act, an additional circumstance is that the Minister is satisfied that the person has failed to pay an additional security requested by an authorised officer under section 269 of the Act.
- (3) For subregulation (2), a person has failed to pay an additional security if the person has failed to pay the security:
 - (a) within 28 days of the day on which the person was requested to pay the security; or
 - (b) within a longer period as allowed by an authorised officer in the request.
- (4) For paragraph 140L (1) (b) of the Act, the criteria that the Minister must take into account in determining what action (if any) to take under section 140M of the Act in relation to the circumstance mentioned in subregulation (2) are:
 - (a) the severity of the conduct; and
 - (b) the past conduct of the person in relation to Immigration; and
 - (c) the impact, if any, that the taking of the action may have on the Australian community; and

- (d) the extent to which the barring of the person as a sponsor will be an adequate means of dealing with the matter, having regard to:
 - (i) the seriousness of the inability, or of the failure, to comply; and
 - (ii) the past conduct of the person; and
- (e) any other relevant factors.

Division 2.21 Process to bar sponsor or cancel sponsor's approval

2.95 Preliminary

- (1) This Division applies to a person who is or was an approved sponsor (other than a party to a work agreement).

Note The Minister cannot take action against a party to a work agreement under section 140M of the Act. The terms of the work agreement will provide for whether the agreement can be cancelled or whether the person can be barred from doing certain things under the agreement.

- (2) If the Minister is taking action against a person under section 140M of the Act, the Minister must do so in accordance with the process set out in this Division.

2.96 Notice of intention to take action

- (1) If the Minister is considering taking action under section 140M of the Act in relation to the person, the Minister must give a written notice to the person.
- (2) The notice must:
 - (a) specify details of the circumstances prescribed under section 140L of the Act in relation to which action is being considered; and
 - (b) specify details of the actions that the Minister may take; and
 - (c) specify the address for providing a response to the Minister; and
 - (d) be given using a method mentioned in section 494B of the Act; and

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- (e) specify a date for a response not earlier than 7 days after the date a person is taken to have received the notice by section 494C of the Act.

2.97 Decision

The Minister must consider a response before making a decision if the person:

- (a) provides a response to the Minister before the date mentioned in paragraph 2.96 (2) (e); or
- (b) provides a response:
 - (i) after the date mentioned in paragraph 2.96 (2) (e); and
 - (ii) before the Minister has made the decision.

2.98 Notice of decision

- (1) If the Minister decides to take action under section 140M of the Act, the Minister must notify the person, in writing, of the following matters:
 - (a) the decision taken by the Minister, including the effect of the decision;
 - (b) the grounds for making the decision;
 - (c) if the person has a right to have the decision reviewed under Part 5 of the Act — state:
 - (i) that the decision can be reviewed; and
 - (ii) the time in which the application for review may be made; and
 - (iii) who can apply for the review; and
 - (iv) where the application for review may be made;
 - (d) if an action is to bar the person:
 - (i) details of how the person can apply for a waiver of the bar; and
 - (ii) the address to which a request for a waiver, if made, must be sent.

- (2) If a notice is issued under regulation 2.96, and the Minister decides to take no action under section 140M of the Act, the Minister must notify the person, in writing, of the decision to take no action.

Division 2.22 Waiving a bar on sponsor's approval

2.99 Application

This Division applies to a person who is or was an approved sponsor other than a party to a work agreement.

2.100 Circumstances in which a bar may be waived

For subsection 140O (2) of the Act, a circumstance in which the Minister may waive a bar is that the Minister has received a request from the person to waive the bar.

2.101 Criteria for waiving a bar

For subsection 140O (3) of the Act, the criteria to be taken into account by the Minister in determining whether to waive a bar are:

- (a) whether the person has made the request to waive the bar in accordance with the process set out in regulation 2.102; and
- (b) if the Minister has not previously refused to waive the bar:
 - (i) whether the interests of Australia would be significantly affected if the bar were not waived; and
 - (ii) whether a substantial trade opportunity would be lost if the bar were not waived; and
 - (iii) whether there would be a significant detriment to the Australian community if the bar were not waived; and
 - (iv) whether the person's inability to sponsor a proposed primary sponsored person would significantly damage Australia's relations with the government of another country; and

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- (v) whether significant new evidence or information has come to light which was not available at the time the decision to place the bar was made; and
 - (c) if the Minister has previously refused to waive the bar, whether the circumstances relevant to the making of the earlier decision have changed substantially.

2.102 Process to waive a bar

- (1) For section 140P of the Act, the Minister may waive a bar placed on the person under section 140M of the Act in accordance with the process set out in this regulation.
- (2) A request from the person to the Minister to waive the bar must:
 - (a) be in writing; and
 - (b) be sent to the address specified in the notice from the Minister mentioned in regulation 2.98.

Division 2.23 Disclosure of personal information

2.103 Disclosure of personal information by Minister

- (1) For subsection 140ZH (1) of the Act, the kinds of information about a visa holder or a former visa holder that may be disclosed by the Minister to a person mentioned in column 3 of items 1 and 2 of the table in subsection 140ZH (1), and to an agency mentioned in subregulation (3), are:
 - (a) information relating to a failure to comply with a visa condition; and
 - (b) information about the immigration status of the visa holder or former visa holder; and
 - (c) information about the terms and conditions of employment of the visa holder or former visa holder; and
 - (d) information about costs incurred by the Commonwealth in relation to the visa holder or former visa holder; and

- (e) information about an allegation made by the visa holder or former visa holder (or presumed to be made by the visa holder or former visa holder) that:
 - (i) an approved sponsor or a former approved sponsor has failed to satisfy a sponsorship obligation; or
 - (ii) a circumstance prescribed under section 140L of the Act may exist; and
 - (f) information about a debt, relating to the visa holder or former visa holder, owed by an approved sponsor or former approved sponsor.
- (2) For subsection 140ZH (1) of the Act, the kinds of information about an approved sponsor, or former approved sponsor, of a visa holder or a former visa holder that may be disclosed by the Minister to a person mentioned in column 3 for items 3 and 4 of the table in subsection 140ZH (1), and to an agency mentioned in subregulation (3), are:
- (a) information relating to a failure, or a possible failure, to satisfy a sponsorship obligation prescribed under subsection 140H (1) of the Act; and
 - (b) information that a circumstance prescribed under section 140L of the Act may exist; and
 - (c) information about a warning given in relation to the possible existence of a circumstance prescribed under section 140L of the Act; and
 - (d) information about an action taken under section 140M of the Act; and
 - (e) information about a pecuniary penalty imposed for a contravention of section 140Q of the Act; and
 - (f) information about a warning given in relation to a possible contravention of section 140Q of the Act; and
 - (g) information about an infringement notice issued under section 140R of the Act; and
 - (h) information about the outcome of monitoring by an inspector exercising powers under Subdivision F of Division 3A of Part 2 of the Act; and
 - (i) information provided to the Minister in accordance with regulation 2.83; and

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- (j) information provided to Immigration in accordance with regulation 2.84; and
 - (k) information relevant to the performance of a function by a Commonwealth, State or Territory agency relating to the regulation of 1 or more of the matters mentioned in subregulation (3).

Note Regulation 2.83 prescribes a sponsorship obligation to provide records and information to the Minister. Regulation 2.84 prescribes a sponsorship obligation to provide information to Immigration when certain events occur.

- (3) For subsection 140ZH (1) of the Act, an agency that the Minister may disclose information to is a Commonwealth, State or Territory agency responsible for the regulation of 1 or more of the following matters:
 - (a) education;
 - (b) fair trading;
 - (c) health;
 - (d) industrial relations;
 - (e) law enforcement;
 - (f) public safety;
 - (g) registration and licensing in relation to an occupation;
 - (h) taxation;
 - (i) trade practices;
 - (j) workplace safety;
 - (k) workplace training.

2.104 Circumstances in which the Minister may disclose personal information

- (1) For subsection 140ZH (2) of the Act, this regulation sets out the circumstances in which the Minister may disclose personal information to which subsection 140ZH (1) of the Act applies.

- (2) Each of the following are circumstances in which the Minister may disclose personal information to a visa holder or a former visa holder:
- (a) the disclosure of the information may assist Immigration in determining:
 - (i) whether an approved sponsor or a former approved sponsor has failed to satisfy a sponsorship obligation; or
 - (ii) whether a circumstance prescribed under section 140L of the Act exists in relation to an approved sponsor or a former approved sponsor of the visa holder or the former visa holder;
 - (b) the disclosure of the information may assist the visa holder or former visa holder to recover a debt under section 140S of the Act;
 - (c) the disclosure of the information will notify the visa holder or the former visa holder that their approved sponsor or former approved sponsor has been sanctioned:
 - (i) for a failure to satisfy a sponsorship obligation prescribed under section 140H of the Act; or
 - (ii) due to the existence of a circumstance prescribed under section 140L of the Act;
 - (d) the disclosure of the information will notify the visa holder or the former visa holder of the outcome of an allegation made by the visa holder or the former visa holder in relation to an approved sponsor or a former approved sponsor.
- (3) Each of the following are circumstances in which the Minister may disclose personal information to an approved sponsor or a former approved sponsor:
- (a) the disclosure of the information may assist the approved sponsor or former approved sponsor:
 - (i) to respond to a claim that a sponsorship obligation has not been satisfied; or
 - (ii) to respond to a claim that a circumstance prescribed under section 140L of the Act exists; or
 - (iii) to satisfy a sponsorship obligation; or

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- (iv) to meet a liability to a visa holder or a former visa holder;
 - (b) the disclosure of the information will notify the approved sponsor or former approved sponsor that he or she is no longer the approved sponsor of a visa holder or a former visa holder;
 - (c) the disclosure of the information will notify the approved sponsor or former approved sponsor of the cancellation of a visa held by a person who is or was a primary sponsored person or a secondary sponsored person.
- (4) Each of the following are circumstances in which the Minister may disclose personal information to an agency of the Commonwealth or a State or Territory:
- (a) the disclosure of the information may assist the agency to perform a regulatory function in relation to the matters mentioned at subregulation 2.103 (3);
 - (b) the disclosure of the information may assist Immigration in determining:
 - (i) whether an approved sponsor or a former approved sponsor has satisfied a sponsorship obligation; or
 - (ii) whether a circumstance prescribed under section 140L of the Act exists.

2.105 Circumstances in which a recipient may use or disclose personal information

For subsection 140ZH (3) of the Act, the circumstance in which a recipient of personal information may use or disclose information to which subsection 140ZH (1) of the Act applies is that the information is to be used or disclosed by the recipient in the same circumstances in which it was disclosed to the recipient.

2.106 Disclosure of personal information to Minister

For subsection 140ZI (1) of the Act, the kind of personal information that the Minister may request an approved sponsor or a former approved sponsor of a visa holder or a former visa holder to disclose to the Minister is the contact details of the visa holder or the former visa holder.

Examples

- 1 a postal address
- 2 a residential address
- 3 a telephone number
- 4 a personal website
- 5 an email address.

[10] Subregulation 4.02 (1), including the note

omit

[11] Paragraphs 4.02 (4) (a) to (d)

substitute

- (a) a decision under subsection 140E (1) of the Act to refuse a person's application for approval as a sponsor in relation to one or more classes of sponsor;
- (d) a decision under subsection 140GB (2) of the Act to refuse to approve a nomination;

[12] Paragraphs 4.02 (4) (g) to (i)

substitute

- (h) a decision under section 140M of the Act to take 1 or more actions to cancel a sponsor's approval or to bar a sponsor;

[13] Paragraph 4.02 (4) (m)

omit

applicant.

insert

applicant;

[14] After paragraph 4.02 (4) (m)

insert

- (n) a decision under subsection 140GA (2) of the Act not to vary a term specified in an approval.

[15] After subregulation 4.02 (4)

insert

- (4A) For paragraph (4) (a), the decision is not an MRT-reviewable decision if the decision relates to a person:

- (a) whose application for approval as an approved sponsor in relation to the standard business sponsor class has been refused; and
- (b) in making the decision, the Minister did not consider the criteria at paragraphs 2.59 (d) and (e).

Note The Minister is required to consider the criteria at paragraphs 2.59 (d) and (e) only if the applicant is lawfully operating a business in Australia.

- (4B) For paragraphs (4) (d) and (h), the decision is not an MRT-reviewable decision:

- (a) if the decision relates to a person who is:
- (i) a standard business sponsor; or
- (ii) a former standard business sponsor; and
- (b) either:
- (i) in making the decision under subsection 140E (1) of the Act (whether to approve the person as a standard business sponsor), the Minister did not consider the criteria at paragraphs 2.59 (d) and (e); or

- (ii) in making the decision under subsection 140GA (2) of the Act (whether to vary the terms of approval), the Minister did not consider the criteria at paragraphs 2.68 (e) and (f).

Note The Minister is required to consider the criteria at paragraphs 2.59 (d) and (e) or paragraphs 2.68 (e) and (f) only if the applicant is lawfully operating a business in Australia.

- (4C) For paragraph (4) (n), the decision is not an MRT-reviewable decision if:

- (a) the decision relates to a person who is:
 - (i) a standard business sponsor; or
 - (ii) a former standard business sponsor; and
- (b) in making the decision under subsection 140GA (2) of the Act (whether to vary the terms of approval), the Minister did not consider the criteria at paragraphs 2.68 (e) and (f).

Note The Minister is required to consider the criteria at paragraphs 2.68 (e) and (f) only if the applicant is lawfully operating a business in Australia.

[16] Paragraph 4.02 (5) (b)

omit

[17] Paragraph 4.02 (5) (c)

substitute

- (c) in the case of a decision mentioned in paragraph (4) (d) — the approved sponsor who made the nomination;

[18] Paragraphs 4.02 (5) (f) and (g)

substitute

- (g) in the case of a decision mentioned in paragraph (4) (h) — the person whose approval is cancelled or who has been barred;

[19] Paragraph 4.02 (5) (j)

omit

[20] Paragraph 4.02 (5) (l)

omit

relates.

insert

relates;

[21] After paragraph 4.02 (5) (l)

insert

(m) in the case of a decision to which paragraph (4) (n) applies — the approved sponsor who applied for a variation of the term.

[22] Regulation 5.20, heading

substitute

5.20 Prescribed penalties — offences (Act, ss 137, 229, 230 and 245N)

[23] After regulation 5.20

insert

5.20A Prescribed penalties — civil penalties (Act, s 140Q)

For subsection 140R (1) of the Act, the penalty to be paid as an alternative to the Minister applying to a Court for an order that a pecuniary penalty be paid for a contravention of subsection 140Q (1) or (2) of the Act is:

- (a) if the person has previously been issued an infringement notice for an alleged contravention of a civil penalty provision, or has been ordered by a Court to pay a pecuniary penalty for a failure to satisfy a sponsorship obligation:
 - (i) in the case of a natural person — 12 penalty units; or
 - (ii) in the case of a body corporate — 60 penalty units; or
- (b) if paragraph (a) does not apply to the person:
 - (i) in the case of a natural person — 6 penalty units; or
 - (ii) in the case of a body corporate — 30 penalty units.

Note Subsections 140Q (1) and (2) of the Act are civil penalty provisions, which are contravened if an approved sponsor or a former approved sponsor fails to satisfy a sponsorship obligation.

[24] Subregulation 5.21 (1), definition of *prescribed penalty*

substitute

prescribed penalty means:

- (a) in relation to an offence — the penalty prescribed by regulation 5.20 for the offence; or
- (b) in relation to a civil penalty provision — the penalty prescribed by regulation 5.20A for a contravention of the civil penalty provision.

[25] Subregulation 5.21 (1), note

omit

Note

insert

Note 1

[26] Subregulation 5.21 (1), note

after

of a business visa.

insert

Subsections 140Q (1) and (2) are civil penalty provisions, which are contravened if an approved sponsor or a former approved sponsor fails to satisfy a sponsorship obligation.

[27] Subregulation 5.21 (1), after the note

insert

Note 2 *Civil penalty provision* is defined in subsection 5 (1) of the Act.

[28] Regulation 5.22

Substitute

5.22 When can an infringement notice be served?

- (1) If an authorised officer has reason to believe that a person has committed an offence or has contravened a civil penalty provision, the officer may cause an infringement notice to be served on the person in accordance with this Division.
- (2) An infringement notice must be served within 12 months of the date on which, or the last day of the period over which, an offence is alleged to have been committed or a civil penalty provision is alleged to have been contravened.

- (3) An infringement notice must not be served on a person in relation to:
- (a) a failure to satisfy a sponsorship obligation prescribed in regulation 2.78; or
 - (b) a failure to satisfy a sponsorship obligation prescribed in regulation 2.85.

Note Regulation 2.78 prescribes an obligation to cooperate with inspectors. Regulation 2.85 prescribes an obligation to secure an offer of a reasonable standard of accommodation for a primary sponsored person.

[29] Paragraph 5.23 (1) (b)

substitute

- (b) if the notice is for the commission of an offence — set out:
 - (i) the day on which the offence is alleged to have been committed; and
 - (ii) if the offence is against section 229 or 230 of the Act, the place at which the offence is alleged to have been committed; or
- (ba) if the notice is for a contravention of a civil penalty provision — set out the day on which, or the period over which, the civil penalty provision is alleged to have been contravened; and

[30] Paragraph 5.23 (1) (c)

after

particulars of the alleged offence

insert

or the alleged contravention of a civil penalty provision

[31] Paragraph 5.23 (1) (g)

omit

notice.

insert

notice; and

[32] After paragraph 5.23 (1) (g)

insert

- (h) if the notice is for a contravention of a civil penalty provision — state that if the provision is contravened after the day on which, or the period over which, the contravention specified in the notice occurred, the person will have contravened the provision again and further action may be taken to sanction the person as mentioned in section 140K of the Act.

[33] Regulation 5.25

substitute

5.25 What happens if the prescribed penalty is paid?

If the person on whom an infringement notice is served pays the prescribed penalty in relation to the alleged offence or the alleged contravention of a civil penalty provision before:

- (a) the end of:
- (i) the period of 28 days after the date of service of the notice; or
 - (ii) if a further period has been allowed under regulation 5.24 — that further period; or
- (b) the notice is withdrawn;
whichever happens first, then:
- (c) any liability of the person in respect of the alleged offence or the alleged contravention of the civil penalty provision is discharged; and
- (d) no further proceedings may be taken in respect of the alleged offence or the alleged contravention of the civil penalty provision; and
- (e) the person is not to be taken to have been convicted of the alleged offence.

[34] Subregulation 5.26 (2)

substitute

An infringement notice for:

- (a) an alleged offence against section 229 or 230 of the Act;
or
- (b) an alleged contravention of a civil penalty provision;
must not be withdrawn under subregulation (1) after the expiry of 3 months commencing on the day on which the notice was served.

[35] Regulation 5.28

substitute

5.28 Evidence

- (1) In the hearing of proceedings for:
 - (a) a prosecution for an offence specified in an infringement notice; or
 - (b) an application for a pecuniary penalty order in relation to a contravention of a civil penalty provision specified in an infringement notice;
a certificate signed by an authorised officer and stating a matter mentioned in subregulation (2) is evidence of the matter.
- (2) The matter is that the authorised officer:
 - (a) did not allow further time for payment of the penalty specified in the infringement notice under regulation 5.24 and the penalty was not paid within the time allowed for payment of the notice; or
 - (b) allowed a further period (as specified in the certificate) for payment of the penalty specified in the infringement notice and the penalty was not paid within that further period; or
 - (c) withdrew the infringement notice on a day specified in the certificate.

-
- (3) A certificate that purports to have been signed by an authorised officer is taken to have been signed by that person unless the contrary is proved.

[36] Regulation 5.29, heading

substitute

5.29 Can there be more than one infringement notice for the same offence or contravention of a civil penalty provision?

[37] Regulation 5.29

after

for the same offence

insert

or the same contravention of a civil penalty provision

[38] Regulation 5.31

substitute

5.31 Infringement notice not compulsory

Nothing in this Division:

- (a) requires an infringement notice to be served on a person in relation to an offence or a contravention of a civil penalty provision; or
- (b) affects the liability of a person to be prosecuted for an offence or to be subject to proceedings in relation to a contravention of a civil penalty provision if the person does not comply with an infringement notice; or

- (c) affects the liability of a person to be prosecuted for an offence or to be subject to proceedings in relation to a contravention of a civil penalty provision if an infringement notice is not served on the person in relation to the offence or in relation to a contravention of a civil penalty provision; or
- (d) affects the liability of a person to be prosecuted for an offence or to be subject to proceedings in relation to a contravention of a civil penalty provision if an infringement notice is served and withdrawn; or
- (e) limits the amount of:
 - (i) the fine that may be imposed by a court on a person convicted of an offence; or
 - (ii) the pecuniary penalty that may be imposed by a court on a person for a contravention of a civil penalty provision.

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.