



# Migration Amendment Regulations 2009 (No. )<sup>1</sup>

Select Legislative Instrument 2009 No.

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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

[DRAFT ONLY – NOT FOR SIGNATURE]  
Minister for Immigration and Citizenship

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**DRAFT ONLY**

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**1 Name of Regulations**

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

**2 Commencement**

These Regulations commence on *[date]* September 2009.

**3 Amendment of *Migration Regulations 1994***

Schedule 1 amends the *Migration Regulations 1994*.

**Schedule 1 Amendments**

(regulation 3)

**[1] Division 1.4A**

*omit*

**[2] After Part 2**

*insert*

**Part 2A Sponsorship — *[general title]***

**Division 2.11 Introductory**

**2.56 Application**

For section 140A of the Act, Division 3A of Part 2 of the Act applies to a Subclass 457 (Business (Long Stay)) visa.

**2.57 Interpretation**

In this Part:

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***approved sponsor for a Subclass 457 (Business (Long Stay)) visa holder*** means:

- (a) a standard business sponsor or a former standard business sponsor of a Subclass 457 (Business (Long Stay)) visa holder; and
- (b) a party to a work agreement or a former party to a work agreement (other than a Minister) that is a sponsor of a Subclass 457 (Business (Long Stay)) visa holder.

***primary sponsored person*** means a person who holds a Subclass 457 (Business (Long Stay)) visa and satisfied the criteria for the grant of the visa on the basis of:

- (a) an approved nomination made by a standard business sponsor or a former standard business sponsor; or
- (b) an approved nomination made by a party to a work agreement or a former party to a work agreement.

***secondary sponsored person*** means a person who is:

- (a) a member of the family unit, of a primary sponsored person; or
- (b) the interdependent partner of a primary sponsored person; or
- (c) a dependent child of an interdependent partner of a primary sponsored person.

***standard business sponsor*** means a person that:

- (a) satisfies the criteria for approval as a sponsor specified in regulation 2.59; and
- (b) is approved as a sponsor by the Minister under subsection 140E (1) of the Act.

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

## **Division 2.14      Work agreements**

### **2.65      Requirements**

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:

- (a) the agreement must be between:

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- (i) the Commonwealth, as represented by the Minister, or by the Minister and 1 or more other Ministers; and
  - (ii) a person in Australia; and
- (b) the agreement must authorise the recruitment and employment of a person who is intended to be employed as a Subclass 457 (Business (Long Stay)) visa holder; and
- (c) the agreement must not be an IASS Agreement.

## **Division 2.15 Sponsorship obligations**

### **2.66 Preliminary**

For subsection 140H (1) of the Act, each of the obligations mentioned in this Division is a sponsorship obligation which a person who is or was an approved sponsor for a Subclass 457 (Business (Long Stay)) visa holder must satisfy.

*Note 1* A failure to satisfy the sponsorship obligation in the manner (if any) or within the period (if any) prescribed in this Division is a contravention of subsection 140Q of the Act.

*Note 2* Subregulation 5.20 (3) sets a prescribed penalty for a contravention of subsection 140Q of the Act

### **2.67 Obligation to cooperate with inspectors**

- (1) A person must cooperate with an inspector if:
- (a) the person is or was an approved sponsor for a Subclass 457 (Business (Long Stay)) visa holder; and
  - (b) the inspector is appointed under section 140V of the Act; and
  - (c) the inspector is exercising powers under section 140X of the Act.
- (2) Without limiting subregulation (1), a 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 section 140X of the Act; or

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- (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 section 140X of the Act;
  - (c) the person prevents, or attempts to prevent, another person from assisting an inspector while the inspector is exercising powers under section 140X of the Act;
  - (d) the person assaults an inspector or a person assisting the inspector while the inspector is exercising powers under section 140X of the Act;
  - (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 section 140X of the Act.
- (3) If the person is a standard business sponsor, the obligation mentioned in subregulation (1):
- (a) starts to apply on the day on which the person is approved as a standard business sponsor under section 140E (1) of the Act; and
  - (b) ends 5 years after the day on which the person ceases to be a standard business sponsor.
- (4) If the person is a party to a work agreement, the obligation mentioned in subregulation (1):
- (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 ends.

## **2.68 Obligation to pay minimum salary level**

- (1) A person must pay a minimum salary to a primary sponsored person:
- (a) if the person is or was an approved sponsor for a Subclass 457 (Business (Long Stay)) visa holder; and
  - (b) at or above the level worked out in a way specified in a legislative instrument (if any) made for the purpose of this subsection (as in force from time to time); and

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- (c) in the manner specified by the Minister in a legislative instrument (if any) made for the purpose of this subsection (as in force from time to time).
  - (2) The obligation mentioned in subregulation (1):
    - (a) starts to apply on the day on which the person employs the primary sponsored person; and
    - (b) ends on the earlier of:
      - (i) the day on which the primary sponsored person is granted a further substantive visa; and
      - (ii) the day on which the primary sponsored person ceases employment with the sponsor.

**2.69 Obligation to pay costs incurred by the Commonwealth**

- (1) A person who is or was an approved sponsor for a Subclass 457 (Business (Long Stay)) visa holder must pay costs incurred by the Commonwealth:
  - (a) if the Minister has requested the payment of the costs in the manner specified in subregulation (4); and
  - (b) if the costs were incurred by the Commonwealth in taking either or both of the following actions in relation to a primary sponsored person or a secondary sponsored person:
    - (i) locating the primary sponsored person or secondary sponsored person;
    - (ii) removing the primary sponsored person or secondary sponsored person from Australia; and
  - (c) in the manner, and within the timeframe, requested by the Minister in the notice mentioned in subregulation (4).

*Note* A person is only required to pay costs up to the limit prescribed under paragraph 140J (1) (a) of the Act.

- (2) However, if:
  - (a) a person has already paid the costs of the return travel of the primary sponsored person or a secondary sponsored person; and

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- (b) the Commonwealth needs to pay costs to remove the primary sponsored person or the secondary sponsored person (if any) from Australia because that person failed to use the return travel paid by the person;
- the person is not liable to pay the cost of the removal by the Commonwealth of the primary sponsored person or secondary sponsored person (if any) from Australia.
- (3) For paragraph 140J (1) (a) of the Act, the limit is \$10 000.
- (4) A notice from the Minister requesting the reimbursement of costs must:
- (a) be in writing; and
  - (b) be delivered using a method mentioned in section 494B of the Act; and
  - (c) specify a date for compliance not earlier than 7 days after the date a person will be taken to have received the document by section 494C of the Act.
- (5) The obligation mentioned in subregulation (1):
- (a) starts to apply on the day of the most recent approval by the Minister of a nominated occupation for the primary sponsored person; and
  - (b) ends 5 years after the earliest of:
    - (i) the day on which the primary sponsored person is granted a further substantive visa; and
    - (ii) the day on which the Minister approves a nomination under section 140GB of the Act by another standard business sponsor or a party to a work agreement in relation to the primary sponsored person; and
    - (iii) if the primary sponsored person or secondary sponsored person no longer holds a Subclass 457 (Business (Long Stay)) visa or a Subclass 020 – Bridging B visa — the day on which the primary sponsored person or secondary sponsored person leaves Australia; and

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- (iv) if the primary sponsored person or secondary sponsored person has left Australia and still holds a Subclass 457 (Business (Long Stay)) visa or a Subclass 020 – Bridging B visa — the day on which that visa ceases.

- (6) In this regulation:  
*costs* has the same meaning as in section 207 of the Act.

## **2.70 Obligation to pay travel costs to enable sponsored persons to leave Australia**

- (1) A person who is or was an approved sponsor for a Subclass 457 (Business (Long Stay)) visa holder must pay the travel costs of a primary sponsored person or a secondary sponsored person:
  - (a) if the costs have been requested in writing by a primary sponsored person or a secondary sponsored person to enable travel from their work location within Australia to the country from which they came to Australia; and
  - (b) to the extent that the costs are necessary and reasonable to allow the travel.
- (2) A request from the primary sponsored person or secondary sponsored person to pay travel costs:
  - (a) must be in writing; and
  - (b) must provide for travel within a reasonable period; and
  - (c) must be made while the primary sponsored person is the holder of a Subclass 457 (Business (Long Stay)) visa.
- (3) Without limiting paragraph (1) (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 work location within Australia to the place of departure from Australia; and
  - (b) the costs are paid within 30 days of receiving the request for costs; and
  - (c) the costs are for economy class air travel or the equivalent of economy class air travel.
- (4) The obligation mentioned in subregulation (1):



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- (a) starts to apply on the day on which the Minister approves the nominated occupation for the primary sponsored person; and
  - (b) ceases on the earliest of:
    - (i) the day on which the Minister approves a nomination under section 140GB of the Act by another standard business sponsor or a party to a work agreement in relation to the primary sponsored person; or
    - (ii) the day on which the primary sponsored person is granted a further substantive visa; or
    - (iii) 30 days after the day on which the primary sponsored person leaves Australia (other than temporarily); or
    - (iv) 30 days after the day on which the secondary sponsored person leaves Australia (other than temporarily).

## **2.71 Obligation to keep records**

- (1) A person who is or was an approved sponsor for a Subclass 457 (Business (Long Stay)) visa holder must keep records:
  - (a) of a kind specified by the Minister in a legislative instrument (if any) made for the purpose of this regulation; and
  - (b) in an auditable and reproducible format; and
  - (c) for the period specified in subregulation (2), (3) or (4).
- (2) If the records relate to the primary sponsored person, the obligation mentioned in subregulation (1):
  - (a) starts on the day on which the primary sponsored person is employed by the sponsor; and
  - (b) ends 5 years after the earlier of:
    - (i) the day on which the primary sponsored person is granted a further substantive visa; and
    - (ii) the day on which the primary sponsored person ceases employment with the sponsor.

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- (3) If the records relate to the approval of a person as a standard business sponsor, the obligation mentioned in subregulation (1):
    - (a) starts on the day on which the person is approved as a standard business sponsor under section 140E of the Act; and
    - (b) ends 5 years after the day on which the sponsor ceases to be a standard business sponsor.
  - (4) If the records relate to the commencement of a work agreement, the obligation mentioned in subregulation (1):
    - (a) starts on the day on which the work agreement commences; and
    - (b) ends 5 years after the day on which the sponsor ceases to be an approved sponsor.
  - (5) However, the obligation mentioned in subregulation (1) does not require a person to keep a record for a period of more than 7 years.

## **2.72 Obligation to provide records and information to the Minister**

- (1) A person who is or was an approved sponsor for a Subclass 457 (Business (Long Stay)) visa holder must provide records or information to the Minister:
  - (a) if the person receives a request in writing from the Minister for the provision of records or information; and
  - (b) if the records requested by the Minister are records the person is required to keep:
    - (i) by a legislative instrument made by the Minister for the purpose of regulation 2.69; or
    - (ii) under a law of the Commonwealth or a State or Territory that applies to the person; and
  - (c) if the records or information relates to the administration of Division 3A of Part 2 of the Act; and
  - (d) in the manner, and within the timeframe, requested by the Minister.

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- (2) A notice from the Minister requesting the provision of records or information must:
- (a) be in writing; and
  - (b) be delivered using a method mentioned in section 494B of the Act; and
  - (c) specify a date for compliance not earlier than 7 days after the date on which a person will be taken to have received the document by section 494C of the Act.
- (3) If the records relate to the primary sponsored person, the obligation mentioned in subregulation (1):
- (a) starts on the day on which the primary sponsored person is employed by the sponsor and ends 5 years after the earlier of:
    - (i) the day on which the primary sponsored person is granted a further substantive visa; and
    - (ii) the day on which the primary sponsored person ceases employment with the sponsor.
- (4) If the records relate to the approval of a person as a standard business sponsor, the obligation mentioned in subregulation (1):
- (a) starts on the day on which the person is approved as a standard business sponsor under section 140E of the Act; and
  - (b) ends 5 years after the day on which the sponsor ceases to be a standard business sponsor.
- (5) If the records relate to the approval of a party to a work agreement as a sponsor, the obligation mentioned in subregulation (1):
- (a) starts on the day on which the work agreement commences; and
  - (b) ends 5 years after the day on which the sponsor ceases to be an approved sponsor.

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**2.73 Obligation to provide information to Immigration when certain events occur**

- (1) A person who is or was an approved sponsor for a Subclass 457 (Business (Long Stay)) visa holder must:
- (a) provide information to Immigration when an event mentioned in subregulation (2) occurs; and
  - (b) provide the information:
    - (i) to an address specified by the Minister in a legislative instrument made for the purpose of this paragraph; and
    - (ii) within the period specified in subregulation (5) or (6).
- (2) For paragraph (1) (a), each of the following is an event:
- (a) the cessation, or expected cessation, of a primary sponsored person's employment with the person;
  - (b) a change to the information provided to Immigration in the person's application for approval as a sponsor in relation to:
    - (a) the training requirement mentioned in regulation [^]; and
    - (b) the person's address and contact details;
  - (c) a change to the legal structure of the person;
  - (d) a change to the ownership of the business of the person;
  - (e) the person entering into a scheme of arrangement with creditors, as described Division 6 of Part 4 of the *Bankruptcy Act 1966*;
  - (f) the business of the person being placed under voluntary administration;
  - (g) the business of the person going into receivership;
  - (h) the business of the person being subject to a special resolution or court order that a company be wound up.
- (3) For paragraph (2) (a):
- (a) the person may notify Immigration of the final date of employment of the primary sponsored person prior to that date; but

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- (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.
- (4) The notification of an event mentioned in column 1 of the table must be made within the timeframe mentioned in column 2 for that item.

Item	For an event mentioned in...	The notification must be made...
1	Paragraph 2 (a)	within 10 working days of the primary sponsored person ceasing employment.
2	Paragraphs 2 (b) to (h)	within 10 working days of the change or event occurring.
3	Subregulation (3)	the earlier of: <ul style="list-style-type: none"> <li>(a) within 10 working days of the cease date notified under paragraph 1 (a); or</li> <li>(b) within 10 working days of the actual cease date.</li> </ul>

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- (5) For a standard business sponsor, the obligation mentioned in subregulation (1):
- (a) on the day the person is approved by the Minister as a standard business sponsor; and
  - (b) ends 5 years after the earlier of:
    - (i) the day on which the person ceases to be a standard business sponsor; and
    - (ii) the day on which the person ceases to employ the primary sponsored person.
- (6) For a party to a work agreement, the obligation mentioned in subregulation (1):
- (a) starts on the day on which the work agreement commences; and
  - (b) ends 5 years after the earlier of:
    - (i) the day on which the person ceases to be a standard business sponsor; and

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- (ii) the day on which the person ceases to employ the primary sponsored person.

## **Division 2.16      Enforcement**

### **2.75      Circumstances in which sponsor may be barred or sponsor's approval may be cancelled**

- (1) For subparagraph 140L (1) (a) (i) of the Act, the circumstance in which the Minister may take one or more of the actions mentioned in section 140M of the Act in relation to a person's approval as a sponsor is that the Minister is satisfied that the person has failed to satisfy a sponsorship obligation mentioned in Division 2.15.
- (2) For subparagraph 140L (1) (a) (ii) of the Act, the additional circumstances in which the Minister may take one or more of the actions mentioned in section 140M of the Act in relation to a person's approval as a sponsor are as follows
  - (a) the Minister is satisfied that the person, or another person acting on the person's behalf, has provided, or caused to be provided, false or misleading information to:
    - (i) the Department; or
    - (ii) an inspector; or
    - (iii) an officer; or
    - (iv) an authorized system; or
    - (v) the Migration Review Tribunal;
  - (b) the Minister is satisfied that the person no longer satisfies the criteria prescribed in regulation 2.59;
  - (c) both of the following apply:
    - (i) the person has been found by a Court or a competent authority to have contravened a Commonwealth, State or Territory law;
    - (ii) the law was a law *[add]*
  - (d) all of the following apply:

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- (i) a primary sponsored person of the person has been found by a Court or a competent authority to have contravened a Commonwealth, State or Territory law; and
  - (ii) the law was a law relating to the licensing, registration or membership of the occupation of the primary sponsored person; and
  - (iii) the primary sponsored person was required to comply with the law in order to work in the occupation nominated by the person;
- (e) the Minister is satisfied that the person has recovered, or has sought to recover, from a primary sponsored person or secondary sponsored person:
- (i) some or all of the costs of the recruitment of the primary sponsored person; or
  - (ii) some or all of the costs associated with being the sponsor of the primary sponsored person or the secondary sponsored person;
- (f) the Minister is satisfied that the person has employed a primary sponsored person in an occupation other than the nominated occupation approved by the Minister under section 140M for the primary sponsored person.

**2.76 Criteria for determining whether to bar sponsor or cancel sponsor's approval**

- (1) 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 in relation to a sponsor or a former sponsor are set out in this regulation.

*Breach of sponsorship obligation*

- (2) The criteria that the Minister must take into account in determining what action (if any) to take under section 140M in relation to the circumstances mentioned in subregulation 2.75 (1) are:
- (a) the past and present conduct of the person in relation to the person's ability, willingness or capacity to satisfy sponsorship obligations; and

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- (b) the number of occasions on which the person has failed to satisfy an obligation, and the number of obligations the person has failed to satisfy; and
  - (c) the nature and severity of the failure to satisfy an obligation, including the length of time the person failed to satisfy an obligation; and
  - (d) the extent to which the person has previously used the sponsorship system; and
  - (e) whether, and the extent to which, the failure to satisfy an obligation has had a direct or indirect impact on another person; and
  - (f) whether the failure to satisfy an 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 breach; and
  - (h) the steps (if any) the person has taken to rectify the failure to satisfy an obligation, including whether the steps were taken at the request of Immigration or otherwise; and
  - (i) the processes (if any) the person has implemented to ensure future compliance with sponsorship obligations; and
  - (j) any other relevant factors.

*Provision of false or misleading information*

- (2) The criteria that the Minister must take into account in determining what action (if any) to take under section 140M in relation to the circumstances mentioned in paragraph 2.75 (2) (a) are:
  - (a) the purpose for which the information was provided; and
  - (b) the past and present conduct of the person; and
  - (c) the nature of the information; and
  - (d) the nature and extent of any direct or indirect impact on any other person; and
  - (e) whether the information was provided in good faith; and



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- (g) whether the person notified Immigration immediately upon discovering that the information was false or misleading; and
  - (h) any other relevant factors.

*Application criteria no longer met*

- (3) The criteria that the Minister must take into account in determining what action (if any) to take under section 140M in relation to the circumstances mentioned in paragraph 2.75 (2) (b) are:
  - (a) the nature of the applicable sponsorship criteria that the person no longer meets; and
  - (b) the nature and extent of any direct or indirect impact on any other person; and
  - (c) the reason why the person no longer meets the applicable sponsorship criteria, including whether the failure to meet the criteria is in the person's control; and
  - (d) the steps (in any) the person has taken to ensure they will again meet the applicable criteria.

*Contravention of law*

- (4) The criteria that the Minister must take into account in determining what action (if any) to take under section 140M in relation to the circumstances mentioned in paragraph 2.75 (2) (c) 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.
- (5) The criteria that the Minister must take into account in determining what action (if any) to take under section 140M in relation to the circumstances mentioned in paragraph 2.75 (2) (d) are:
  - (a) whether any other primary sponsored person has been found by a Court or competent authority to have contravened a law relating to a licensing, registration or membership requirement while in the employ of the person; and

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- (b) whether the person took reasonable steps to ensure a primary sponsored person did not contravene a law relating to a licensing, registration or membership requirement of the nominated occupation of the primary sponsored person; and
  - (c) the processes (if any) the person has implemented to ensure future compliance with the mandatory requirements of approved nominated occupations.

*Unlawful recovery of money from sponsored persons*

- (6) The criteria that the Minister must take into account in determining what action (if any) to take under section 140M in relation to the circumstances mentioned in paragraph 2.75 (2) (e) are:
  - (a) whether the costs were for expenses incurred in relation to the recruitment of the primary sponsored person; and
  - (b) whether the costs were for expenses incurred in relation to being the sponsor of a primary sponsored person or secondary sponsored person.

*Failure to employ primary sponsored person in approved nominated occupation*

- (7) The criterion that the Minister must take into account in determining what action (if any) to take under section 140M in relation to the circumstances mentioned in paragraph 2.75 (2) (f) is the past conduct of the sponsor, including whether the sponsor has employed other visa holders in occupations that were not approved by the Minister.