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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Migration Legislation Amendment
(Sponsorship Measures) Bill 2003**

No. , 2003

(Immigration and Multicultural and Indigenous Affairs)

**A Bill for an Act to amend the *Migration Act 1958*,
and for related purposes**

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1 **A Bill for an Act to amend the *Migration Act 1958*,**
2 **and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Migration Legislation Amendment*
6 (*Sponsorship Measures*) Act 2003.

7 **2 Commencement**

8 This Act commences on the day on which it receives the Royal
9 Assent.

10 **3 Schedule(s)**

11 Each Act that is specified in a Schedule to this Act is amended or
12 repealed as set out in the applicable items in the Schedule

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concerned, and any other item in a Schedule to this Act has effect according to its terms.

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Schedule 1—The sponsorship system

Migration Act 1958

1 Subsection 5(1)

Insert:

approved sponsor, in relation to a visa of a kind (however described) to which Division 3A of Part 2 applies, has the meaning given by section 140D.

2 After Division 3 of Part 2

Insert:

Division 3A—Sponsorship

Subdivision A—Application of Division

140A Division applies to prescribed kinds of visa

This Division applies to visas of a prescribed kind (however described).

Subdivision B—Sponsorship system

140B Sponsorship as a criterion for prescribed visas

- (1) The regulations may provide that sponsorship by an approved sponsor is a criterion for a visa of a prescribed kind (however described).
- (2) A criterion prescribed under subsection (1) is in addition to any other criteria for the visa that:
 - (a) may be prescribed under any other provision of this or any other Act; or
 - (b) are set out in this or any other Act.

1 **140C Sponsorship as a criterion for valid visa applications**

- 2 (1) The regulations may provide that it is a criterion for a valid
3 application for a visa of a prescribed kind (however described) that
4 the applicant is sponsored by an approved sponsor.
- 5 (2) The regulations may provide that it is a criterion for a valid
6 application for a visa of a prescribed kind (however described) that
7 the applicant's proposed sponsor has applied to be an approved
8 sponsor at, or before, the time the application for the visa is made.
- 9 (3) A criterion prescribed under subsection (1) or (2) is in addition to
10 any other criteria for a valid application for the visa that:
11 (a) may be prescribed under any other provision of this or any
12 other Act; or
13 (b) are set out in this or any other Act.

14 **140D Approved sponsor**

- 15 A person is an *approved sponsor* of another person for a visa at a
16 particular time if:
17 (a) the first person has consented in writing to sponsor the
18 second person for the visa and that consent has not been
19 withdrawn by notice in writing to the Minister; and
20 (b) the first person has been approved by the Minister before that
21 time as a sponsor of the second person for the visa, whether
22 the second person is named in the approval or otherwise
23 described; and
24 (c) the approval has not been cancelled by the Minister before
25 that time; and
26 (d) a bar of a kind mentioned in paragraph 140L(c) or (d) that
27 would affect the sponsorship of the second person is not in
28 force at that time; and
29 (e) the terms on which the sponsorship was approved are
30 satisfied at that time.

31 **140E Approving sponsor**

- 32 (1) The Minister must approve a person as a sponsor if prescribed
33 criteria are satisfied.

- 1 (2) Different criteria may be prescribed for different kinds of visa
2 (however described).

3 **140F Process for approving sponsors**

- 4 (1) The regulations may establish a process for the Minister to approve
5 a person as a sponsor.
6 (2) Different processes may be prescribed for different kinds of visa
7 (however described).

8 **140G Terms of approval as a sponsor**

- 9 (1) An approval as a sponsor may be on terms specified in the
10 approval.
11 (2) The terms must be of a kind prescribed by the regulations.

12 Note: The following are examples of the kinds of terms that might be set out
13 in the regulations:

- 14 (a) the number of people whom the approved sponsor may sponsor
15 under the approval;
16 (b) the duration of the approval.

- 17 (3) Different kinds of terms may be prescribed for different kinds of
18 visa (however described).

19 **140H Sponsorship undertakings**

- 20 (1) The regulations may require an applicant for approval as a sponsor
21 of a person for a visa to make prescribed undertakings.

22 Note: The following are examples of the kinds of undertakings that might be
23 set out in the regulations:

- 24 (a) to pay debts for medical or hospital treatment incurred by a visa
25 holder sponsored by the sponsor;
26 (b) to pay to the Commonwealth the costs of locating, detaining and
27 removing from Australia a visa holder sponsored by the sponsor;
28 (c) to pay the costs of the departure from Australia of a visa holder
29 sponsored by the sponsor;
30 (d) to comply with the Department's requirements to provide
31 information to the Department;
32 (e) to notify the Department of changes in the circumstances of the
33 sponsor or of a visa holder sponsored by the sponsor;

- 1 (f) to cooperate with the Department's monitoring of the sponsor or
2 of a visa holder sponsored by the sponsor.
- 3 (2) The undertakings only have effect if the applicant consents in
4 writing to sponsor that person. The applicant's consent may be
5 given either at the time the application for approval is made, or at a
6 later date.
- 7 (3) The undertakings do not have effect until the visa is granted.
- 8 (4) Different undertakings may be prescribed for different kinds of
9 visa (however described).

10 **140I Amounts payable to the Commonwealth**

- 11 (1) Without limiting the generality of subsection 140H(1), the
12 regulations may prescribe an undertaking to pay to the
13 Commonwealth:
14 (a) an amount of a kind prescribed in the regulations; or
15 (b) an amount in relation to the costs of the Commonwealth
16 worked out in accordance with a method prescribed by
17 reference to a determination by the Minister.
- 18 (2) The Minister may make a determination for the purposes of
19 paragraph (1)(b) by notice in the *Gazette*.
- 20 (3) An undertaking to pay an amount to the Commonwealth is not
21 enforceable against the person who made it to the extent that the
22 amount which the person has undertaken to pay exceeds the costs
23 of the Commonwealth in relation to which the undertaking is
24 made.

25 **140J Cancelling or barring approval as a sponsor if undertakings**
26 **breached**

- 27 (1) This section applies if:
28 (a) an approved sponsor of a person for a temporary visa
29 breaches an undertaking; or
30 (b) a person who is no longer an approved sponsor of a person
31 for a temporary visa, but remains bound by an undertaking,
32 breaches the undertaking.
- 33 (2) The regulations may prescribe:

- 1 (a) circumstances in which the Minister may take one or more of
2 the actions mentioned in section 140L (cancelling or barring
3 approval as a sponsor) as a result of the breach of the
4 undertaking; and
5 (b) the criteria to be taken into account by the Minister in
6 determining what action to take under that section.
- 7 (3) The regulations may prescribe circumstances in which the Minister
8 must take one or more of the actions mentioned in section 140L
9 (cancelling or barring approval as a sponsor) as a result of the
10 breach of the undertaking.
- 11 (4) Different circumstances and different criteria may be prescribed for
12 different kinds of temporary visa (however described).
- 13 (5) This section does not deal with the cancellation of approval as a
14 business sponsor (as defined in section 137A).
- 15 Note: The cancellation of that kind of approval is dealt with by Subdivision
16 GA of Division 3.

17 **140K Cancelling or barring approval as a sponsor in other**
18 **circumstances**

- 19 (1) The regulations may prescribe:
20 (a) other circumstances in which the Minister may take one or
21 more of the actions mentioned in section 140L (cancelling or
22 barring approval as a sponsor); and
23 (b) the criteria to be taken into account by the Minister in
24 determining what action to take under that section.
- 25 (2) The regulations may prescribe other circumstances in which the
26 Minister must take one or more of the actions mentioned in
27 section 140L (cancelling or barring approval as a sponsor).
- 28 (3) No action is to be taken in relation to a person under regulations
29 made under this section unless the person is:
30 (a) an approved sponsor of a person for a temporary visa; or
31 (b) a former approved sponsor of a person for a temporary visa.
- 32 (4) Different circumstances and different criteria may be prescribed for
33 different kinds of temporary visa (however described).

1 (5) This section does not deal with the cancellation of approval as a
2 business sponsor (as defined in section 137A).

3 Note: The cancellation of that kind of approval is dealt with by Subdivision
4 GA of Division 3.

5 **140L Actions under sections 140J and 140K**

6 The actions the Minister may (or must) take under section 140J or
7 140K in relation to a person (the *sponsor*) are:

- 8 (a) cancelling the approval of the sponsor for specified kinds of
9 temporary visas (however described);
10 (b) cancelling the approval of the sponsor for all temporary
11 visas;
12 (c) barring the sponsor, for a specified period, from sponsoring
13 more people under the terms of one or more existing
14 specified approvals for temporary visas;
15 (d) barring the sponsor, for a specified period, from sponsoring
16 more people under the terms of all existing approvals for
17 temporary visas;
18 (e) barring the sponsor, for a specified period, from making
19 future applications for approval as a sponsor for specified
20 kinds of temporary visa (however described) for which
21 sponsorship is a criterion;
22 (f) barring the sponsor, for a specified period, from making
23 future applications for approval as a sponsor for all
24 temporary visas for which sponsorship is a criterion;
25 (g) barring the sponsor, for a specified period, from nominating a
26 person or activity in relation to a temporary visa where the
27 sponsor would otherwise be entitled to make the nomination
28 under the regulations.

29 **140M Right to take security under section 269 etc. not affected**

30 Nothing in section 140J or 140K affects the right to require or take
31 security under section 269, or the right to enforce such a security.

32 **140N Process for cancelling or barring approval as a sponsor**

33 (1) The regulations may establish a process for the Minister to cancel
34 the approval of a person as a sponsor under section 140J or 140K.

1 (2) The regulations may establish a process for the Minister to place a
2 bar on a person under section 140J or 140K.

3 (3) Different processes may be prescribed for different kinds of
4 temporary visa (however described).

5 **140O Waiving a bar**

6 (1) This section applies to temporary visas of a prescribed kind
7 (however described).

8 (2) The Minister may, in prescribed circumstances, waive a bar placed
9 on a person under section 140J or 140K in relation to a visa to
10 which this section applies.

11 (3) The regulations may prescribe the criteria to be taken into account
12 by the Minister in determining whether to waive the bar.

13 (4) Different circumstances and different criteria may be prescribed for
14 different kinds of temporary visa (however described).

15 **140P Process for waiving a bar**

16 (1) The regulations may establish a process for the Minister to waive a
17 bar placed on a person under section 140J or 140K.

18 (2) Different processes may be prescribed for different kinds of
19 temporary visa (however described).

20 **140Q Consequences if the visa holder or the sponsor changes status**

21 (1) The regulations may prescribe the circumstances in which, and for
22 how long, an undertaking arising out of the sponsorship of a
23 particular temporary visa holder remains enforceable against the
24 sponsor concerned if:

25 (a) the visa holder ceases to hold the visa for which he or she
26 was sponsored; or

27 (b) the sponsor ceases to be an approved sponsor of the visa
28 holder for the visa (whether because the approval is cancelled
29 or for any other reason).

30 (2) Different circumstances and periods may be prescribed for
31 different kinds of temporary visa (however described).

1 **140R Joint and several liability for debts**

2 (1) This section applies if:

3 (a) an approved sponsor for a temporary visa is bound by an
4 undertaking to pay debts of another person (the *primary*
5 *debtor*) that are of a kind specified in the undertaking; or

6 (b) a person who is no longer an approved sponsor for a
7 temporary visa remains bound by an undertaking to pay debts
8 of another person (the *primary debtor*) that are of a kind
9 specified in the undertaking.

10 (2) The person bound by the undertaking is jointly and severally liable
11 to pay the debts with the primary debtor.

12 (3) Without limiting any other provision of this Act, debts payable to a
13 person under the undertaking may be recovered by the person as a
14 debt due to the person in a court of competent jurisdiction.

15 **140S Liability to pay other amounts**

16 (1) This section does not apply to a debt dealt with in section 140R.

17 (2) Subject to subsection (1), this section applies if:

18 (a) an approved sponsor for a temporary visa is bound by an
19 undertaking to pay an amount of a kind specified in the
20 undertaking; or

21 (b) a person who is no longer an approved sponsor for a
22 temporary visa remains bound by an undertaking to pay an
23 amount of a kind specified in the undertaking.

24 (3) Without limiting any other provision of this Act, amounts payable
25 to a person under the undertaking may be recovered by the person
26 as a debt due to the person in a court of competent jurisdiction.

27 **140T Notice regarding amount of debt or other amount**

28 (1) Where a debt, or other amount, that a person has undertaken to pay
29 to the Commonwealth becomes payable, the Minister may issue a
30 notice in writing stating the amount of the debt or other amount.

31 (2) In any proceedings a notice under this section is prima facie
32 evidence that the amount of the debt or other amount is that stated
33 in the notice.

1 **140U Liability is in addition to any other liability**

2 Any liability created under this Division is in addition to any
3 liability created under:

- 4 (a) this or any other Act; or
5 (b) regulations made under this or any other Act.

6 **140V Disclosure of personal information in prescribed
7 circumstances etc.**

- 8 (1) The Minister may disclose to an approved sponsor or former
9 approved sponsor personal information of a prescribed kind about
10 a visa holder or former visa holder sponsored.
- 11 (2) The regulations may prescribe circumstances in which the Minister
12 may disclose the personal information.
- 13 (3) The regulations may prescribe circumstances in which the
14 approved sponsor, or former approved sponsor, may use or
15 disclose personal information disclosed under subsection (1).
- 16 (4) If the Minister discloses personal information about a visa holder
17 or former visa holder under subsection (1), the Minister must
18 notify him or her in writing of the disclosure and of the details of
19 the personal information disclosed.
- 20 (5) In this section:
- 21 *personal information* has the same meaning as in the *Privacy Act*
22 *1988*.

23 **140W Other regulation making powers not limited etc.**

- 24 (1) Regulations made for the purposes of this Division do not limit the
25 power to make regulations under any other provision of this or any
26 other Act.
- 27 (2) To avoid doubt, nothing in this Division is intended to affect:
- 28 (a) regulations in force before or after the commencement of this
29 Division that were or are made under any other provision of
30 this or any other Act; or
31 (b) anything done under those regulations.

- 1 (3) Nothing in paragraph (2)(a) affects the power to amend or repeal
2 regulations mentioned in that paragraph.

3 **Subdivision C—Application of the sponsorship system to**
4 **partnerships and unincorporated associations**

5 **140X Application to partnerships**

6 Subdivision B, and regulations made under it, apply to a
7 partnership as if it were a person, but with the changes set out in
8 sections 140Y to 140ZB.

9 **140Y Sponsorship obligations and rights of partnership**

- 10 (1) Subject to section 140ZA, a sponsorship obligation that would
11 otherwise be imposed on a partnership is instead imposed on each
12 person who is a partner:
13 (a) where the obligation arises before the sponsorship is
14 approved—at the time the obligation arises; or
15 (b) where the obligation arises at any other time—at the time the
16 sponsorship is approved.
- 17 (2) Subject to section 140ZA, a sponsorship right that would otherwise
18 be exercisable by a partnership is instead a right exercisable by
19 each person who is a partner:
20 (a) where the right arises before the sponsorship is approved—at
21 the time the right arises; or
22 (b) where the right arises at any other time—at the time the
23 sponsorship is approved.
- 24 (3) Subject to sections 140Z and 140ZA, the following persons are
25 jointly and severally liable to pay an amount that would otherwise
26 be payable by a partnership in relation to sponsorship or as a result
27 of sponsorship:
28 (a) where the liability arises before the sponsorship is
29 approved—each person who is a partner at the time the
30 obligation arises;
31 (b) where the liability arises at any other time—each person who
32 is a partner at the time the sponsorship is approved.

140Z New partners

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- 2 (1) If a person becomes a partner in a partnership after it is approved
3 as a sponsor, the new partner may elect to accept each sponsorship
4 obligation that:
- 5 (a) would, but for subsection 140Y(1) or any previous
6 application of this section, be imposed on the partnership;
7 and
8 (b) arises after the new partner makes the election.
- 9 (2) If the new partner accepts an obligation:
- 10 (a) the obligation is imposed on the new partner instead of on the
11 partnership; and
12 (b) the obligation is imposed on the new partner regardless of
13 whether it is also imposed on any other partner or retired
14 partner.
- 15 (3) If:
- 16 (a) a sponsorship right would, but for subsection 140Y(2) or any
17 previous application of this section, be exercisable by a
18 partnership; and
19 (b) the right arises after the new partner makes an election under
20 subsection (1) and does not arise because of a sponsorship
21 obligation that existed before the election was made;
- 22 the right is:
- 23 (c) exercisable by the new partner instead of by the partnership;
24 and
25 (d) exercisable by the new partner regardless of whether it is also
26 exercisable by any other partner or retired partner.
- 27 (4) If:
- 28 (a) a new partner accepts a sponsorship obligation by election
29 under subsection (1); and
30 (b) a liability to pay an amount arises from the obligation;
31 then the new partner is jointly and severally liable to pay the
32 amount together with:
- 33 (c) any other partner on whom the liability is also imposed under
34 this section or section 140Y; and
35 (d) any retired partner who remains liable for the amount under
36 section 140ZA.

1 **140ZA Retiring partners**

- 2 (1) If a partner leaves a partnership after it is approved as a sponsor,
3 then, despite section 140Y, the regulations may prescribe:
4 (a) the circumstances in which, and for how long, a sponsorship
5 obligation remains enforceable against the retiring partner;
6 and
7 (b) the circumstances in which, and for how long, a sponsorship
8 right is exercisable by the retiring partner; and
9 (c) which debts remain payable by the retiring partner.
10 (2) Different matters may be prescribed for different kinds of visa
11 (however described).

12 **140ZB Discharging sponsorship obligations and exercising**
13 **sponsorship rights—partnerships**

- 14 (1) A sponsorship obligation may be discharged by any of the partners
15 in a partnership on whom the obligation is imposed under this
16 Subdivision.
17 (2) A sponsorship right exercised by one of the partners in a
18 partnership is taken to have been exercised on behalf of all of the
19 partners who are entitled to exercise the right under this
20 Subdivision.

21 **140ZC Application to unincorporated associations**

22 Subdivision B, and regulations made under it, apply to an
23 unincorporated association as if it were a person, but with the
24 changes set out in sections 140ZD to 140ZG.

25 **140ZD Sponsorship obligations and rights of unincorporated**
26 **associations**

- 27 (1) Subject to section 140ZF, a sponsorship obligation that would
28 otherwise be imposed on an unincorporated association is instead
29 imposed on each person who is a member of the association's
30 committee of management:
31 (a) where the obligation arises before the sponsorship is
32 approved—at the time the obligation arises; or

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- 1 (b) where the obligation arises at any other time—at the time the
2 sponsorship is approved.
- 3 (2) Subject to section 140ZF, a sponsorship right that would otherwise
4 be exercisable by an unincorporated association is instead a right
5 exercisable by each person who is a member of the association’s
6 committee of management:
- 7 (a) where the right arises before the sponsorship is approved—at
8 the time the right arises; or
- 9 (b) where the right arises at any other time—at the time the
10 sponsorship is approved.
- 11 (3) Subject to sections 140ZE and 140ZF, the following persons are
12 jointly and severally liable to pay an amount that would otherwise
13 be payable by an unincorporated association in relation to
14 sponsorship or as a result of sponsorship:
- 15 (a) where the liability arises before the sponsorship is
16 approved—each person who is a member of the association’s
17 committee of management at the time the obligation arises;
- 18 (b) where the liability arises at any other time—each person who
19 is a member of the association’s committee of management at
20 the time the sponsorship is approved.

21 **140ZE New members of committees of management**

- 22 (1) If a person becomes a member of the committee of management of
23 an unincorporated association after it is approved as a sponsor, the
24 new member may elect to accept each sponsorship obligation that:
- 25 (a) would, but for subsection 140ZD(1) or any previous
26 application of this section, be imposed on the association;
27 and
- 28 (b) arises after the new member makes the election.
- 29 (2) If the new member accepts an obligation:
- 30 (a) the obligation is imposed on the new member instead of on
31 the association’s committee of management; and
- 32 (b) the obligation is imposed on the new member regardless of
33 whether it is also imposed on any other member or former
34 member.
- 35 (3) If:

- 1 (a) a sponsorship right would, but for subsection 140ZD(2) or
2 any previous application of this section, be exercisable by an
3 unincorporated association; and
4 (b) the right arises after the new member makes an election
5 under subsection (1) and does not arise because of a
6 sponsorship obligation that existed before the election was
7 made;
8 the right is:
9 (c) exercisable by the new member instead of by the
10 association's committee of management; and
11 (d) exercisable by the new member regardless of whether it is
12 also exercisable by any other member or former member.
- 13 (4) If:
14 (a) a new member of the committee of management of an
15 unincorporated association accepts a sponsorship obligation
16 by election under subsection (1); and
17 (b) a liability to pay an amount arises from the obligation;
18 then the new member is jointly and severally liable to pay the
19 amount together with:
20 (c) any other member on whom the liability is also imposed
21 under this section or section 140ZD; and
22 (d) any former member who remains liable for the amount under
23 section 140ZF.

24 **140ZF Former members of committees of management**

- 25 (1) If a member of the committee of management of an unincorporated
26 association leaves the committee after the association is approved
27 as a sponsor, then, despite section 140ZD, the regulations may
28 prescribe:
29 (a) the circumstances in which, and for how long, a sponsorship
30 obligation remains enforceable against the former member;
31 and
32 (b) the circumstances in which, and for how long, a sponsorship
33 right is exercisable by the former member; and
34 (c) which debts remain payable by the former member.
- 35 (2) Different matters may be prescribed for different kinds of visa
36 (however described).

1 **140ZG Discharging sponsorship obligations and exercising**
2 **sponsorship rights—unincorporated associations**

- 3 (1) A sponsorship obligation may be discharged by any of the
4 members of the committee of management of an unincorporated
5 association on whom the obligation is imposed under this
6 Subdivision.
- 7 (2) A sponsorship right exercised by one of the members of the
8 committee of management of an unincorporated association is
9 taken to have been exercised on behalf of all of the members who
10 are entitled to exercise the right under this Subdivision.

11 **140ZH Definitions**

12 In this Subdivision:

13 *committee of management* of an unincorporated association means
14 a body (however described) that governs, manages or conducts the
15 affairs of the association.

16 *sponsorship obligation* means an obligation in relation to
17 sponsorship or as a result of sponsorship.

18 *sponsorship right* means a right in relation to sponsorship or as a
19 result of sponsorship.

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Schedule 2—MRT-reviewable decisions

Migration Act 1958

1 At the end of subsection 338(2)

Add:

- ; and (d) where it is a criterion for the grant of the visa that the non-citizen is sponsored by an approved sponsor, and the visa is a temporary visa of a kind (however described) prescribed for the purposes of this paragraph:
 - (i) the non-citizen is sponsored by an approved sponsor at the time the application to review the decision to refuse to grant the visa is made; or
 - (ii) an application for review of a decision not to approve the sponsor has been made, but, at the time the application to review the decision to refuse to grant the visa is made, review of the sponsorship decision is pending.

2 Application

The amendment made by item 1 applies to decisions to refuse to grant a visa made on or after the commencement of the item.