



## Migration Amendment (Temporary Sponsored Visas) Commencement Proclamation 2013

I, RADM Kevin Scarce AC CSC RANR, Administrator of the Government of the Commonwealth of Australia, acting with the advice of the Federal Executive Council and under item 3 of the table in subsection 2(1) of the *Migration Amendment (Temporary Sponsored Visas) Act 2013*, fix **23 November 2013** as the day on which Schedule 2 to that Act commences.

Signed and sealed with the Great Seal  
of Australia on 08 November 2013

Rear Admiral Kevin Scarce  
Administrator

By His Excellency's Command

Michaelia Cash  
Assistant Minister for Immigration and Border Protection

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## EXPLANATORY STATEMENT

### *Migration Amendment (Temporary Sponsored Visas) Act 2013*

#### Proclamation

Item 3 of the table in subsection 2(1) of the *Migration Amendment (Temporary Sponsored Visas) Act 2013* (the Act) provides that Schedule 2 to the Act is to commence on a single day to be fixed by Proclamation. However, if the provisions(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period. The Act received the Royal Assent on 29 June 2013.

The purpose of the Proclamation is to fix 23 November 2013 as the day on which Schedule 2 to the Act will commence.

Schedule 2 to the Act introduces **labour market testing** to ensure that Australian citizens and Australian permanent residents have the first opportunity to fill job vacancies. Labour market testing, in relation to a position nominated by a sponsor, means testing the labour market to demonstrate whether a suitably qualified and experienced Australian citizen or Australian permanent resident is readily available to fill the position.

Schedule 2 to the Act contains the operative provisions of the Act, which will amend the *Migration Act 1958* and the *Migration Regulations 1994* to require **sponsors of Subclass 457 visas to undertake labour market testing, prior to nominating an overseas worker for a Subclass 457 visa.** Sponsors will be required to provide evidence of their attempts to recruit suitably qualified and experienced Australian citizens or Australian permanent residents to the position, specifically details of any advertising (paid or unpaid) of the position or any other similar position.

To ensure Australia meets its international trade obligations, including such an obligation that arises under any agreement between Australia and another country, or other countries, the labour market requirement will not apply where it would be inconsistent with Australia's international trade obligations. The relevant obligations are determined by the Minister in a legislative instrument as an international trade obligation of Australia. Exemptions from the labour market testing requirement may apply where:

- the Minister is satisfied that a major disaster has occurred in Australia and the exemption is necessary or desirable in order to assist disaster relief or recovery; or
- the Minister has specified, by way of legislative instrument, the nominated occupation based on skill and occupational level – that is, the nominated occupation is within the 'Skill Level 1' or 'Skill Level 2' classification of Australian and New Zealand Standard Classification of Occupations (ANZSCO) and it is specified in a legislative instrument.

**Schedule 2 to the Act prescribes standard business sponsors (the term used for Subclass 457 visa sponsors) as the class of sponsors required to undertake labour market testing.**

Consultations have taken place with various Commonwealth agencies including the Attorney-General's Department, the Department of the Prime Minister and Cabinet, the Department of Foreign Affairs and Trade, the former Department of Education,

Employment and Workplace Relations, the Fair Work Ombudsman, the Department of Treasury, the Department of Resources, Energy and Tourism, the Department of Finance and Deregulation and the Office of Best Practice Regulation.

The Office of Best Practice Regulation (the OBPR) has been consulted in relation to the amendments contained in Schedule 2 to the Act but the former Prime Minister granted an exemption on the basis of exceptional circumstances. A post-implementation review will be required within 1 to 2 years of implementation.

The Proclamation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.



# **Migration Amendment (Temporary Sponsored Visas) Act 2013**

**No. 122, 2013**

**An Act to amend the *Migration Act 1958*, and for  
related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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# Migration Amendment (Temporary Sponsored Visas) Act 2013

No. 122, 2013

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**An Act to amend the *Migration Act 1958*, and for related purposes**

[Assented to 29 June 2013]

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Migration Amendment (Temporary Sponsored Visas) Act 2013*.



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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	29 June 2013
2. Schedule 1	The day after this Act receives the Royal Assent.	30 June 2013
3. Schedule 2	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	23 November 2013 (see F2013L01915)
4. Schedules 3 and 4	The day after this Act receives the Royal Assent.	30 June 2013
5. Schedule 5, Part 1	The day this Act receives the Royal Assent.	29 June 2013
6. Schedule 5, Part 2	The later of: (a) the start of the day after this Act receives the Royal Assent; and (b) immediately after the commencement of Part 6 of the <i>Regulatory Powers (Standard Provisions) Act 2013</i> .  However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	
7. Schedule 6	The day after this Act receives the Royal Assent.	30 June 2013

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Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

### **3 Schedule(s)**

- (1) Each Act, and each set of regulations, that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.
- (2) The amendment of any regulation under subsection (1) does not prevent the regulation, as so amended, from being amended or repealed by the Governor-General.

## Schedule 1—Sponsorship visas: preliminary

### *Migration Act 1958*

#### **1 At the end of Subdivision A of Division 3A of Part 2**

Add:

#### **140AA Division 3A—purposes**

The purposes of this Division are as follows:

- (a) to provide a framework for a temporary sponsored work visa program in order to address genuine skills shortages;
- (b) to address genuine skills shortages in the Australian labour market:
  - (i) without displacing employment and training opportunities for Australian citizens and Australian permanent residents (within the meaning of the regulations); and
  - (ii) without the temporary sponsored work visa program serving as a mainstay of the skilled migration program;
- (c) to balance the objective of ensuring employment and training opportunities for Australian citizens and Australian permanent residents with that of upholding the rights of non-citizens sponsored to work in Australia under the program;
- (d) to impose obligations on sponsors to ensure that:
  - (i) non-citizens sponsored to work in Australia under the program are protected; and
  - (ii) the program is not used inappropriately;
- (e) to enable monitoring, detection, deterrence and enforcement in relation to any inappropriate use of the program;
- (f) to give Fair Work Inspectors (including the Fair Work Ombudsman) and inspectors appointed under this Division the necessary powers and functions to investigate compliance with the program.

**140AB Ministerial Advisory Council on Skilled Migration**

- (1) The Minister must take all reasonable steps to ensure that, at all times, there is in existence a council that:
  - (a) is known as the Ministerial Advisory Council on Skilled Migration; and
  - (b) is established under the executive power of the Commonwealth; and
  - (c) includes representatives of unions, industry and State and Territory governments and other members (if any) nominated by the Minister; and
  - (d) meets at least quarterly.
- (2) Without limiting its functions apart from this section, the Ministerial Advisory Council on Skilled Migration is to provide advice to the Minister in relation to the temporary sponsored work visa program.

## Schedule 2—Labour market testing

### Part 1—Amendment of the Migration Act 1958

#### 1 Subsection 140GB(2)

Repeal the subsection, substitute:

- (2) The Minister must approve an approved sponsor's nomination if:
- (a) in a case to which section 140GBA applies, unless the sponsor is exempt under section 140GBB or 140GBC—the labour market testing condition under section 140GBA is satisfied; and
  - (b) in any case—the prescribed criteria are satisfied.

Note: Section 140GBB provides an exemption from the labour market testing condition in the case of a major disaster. Section 140GBC provides for exemptions from the labour market testing condition to apply in relation to the required skill level and occupation for a nominated position.

#### 2 After section 140GB

Insert:

#### 140GBA Labour market testing—condition

##### *Scope*

- (1) This section applies to a nomination by an approved sponsor, under section 140GB, if:
- (a) the approved sponsor is in a class of sponsors prescribed by the regulations; and
  - (b) the sponsor nominates:
    - (i) a proposed occupation for the purposes of paragraph 140GB(1)(b); and
    - (ii) a particular position, associated with the nominated occupation, that is to be filled by a visa holder, or applicant or proposed applicant for a visa, identified in the nomination; and
  - (c) it would not be inconsistent with any international trade obligation of Australia determined under subsection (2) to require the sponsor to satisfy the labour market testing

condition in this section, in relation to the nominated position.

- (2) For the purposes of paragraph (1)(c), the Minister may, by legislative instrument, determine (as an international trade obligation of Australia) an obligation of Australia under international law that relates to international trade, including such an obligation that arises under any agreement between Australia and another country, or other countries.

*Labour market testing condition*

- (3) The labour market testing condition is satisfied if:
- (a) the Minister is satisfied that the approved sponsor has undertaken labour market testing in relation to the nominated position within a period determined under subsection (4) in relation to the nominated occupation; and
  - (b) the nomination is accompanied by:
    - (i) evidence in relation to that labour market testing (see subsections (5) and (6)); and
    - (ii) if one or more Australian citizens or Australian permanent residents were, in the previous 4 months, made redundant or retrenched from positions in the nominated occupation in a business, or an associated entity, of the approved sponsor—information about those redundancies or retrenchments; and
  - (d) having regard to that evidence, and information (if any), the Minister is satisfied that:
    - (i) a suitably qualified and experienced Australian citizen or Australian permanent resident is not readily available to fill the nominated position; and
    - (ii) a suitably qualified and experienced eligible temporary visa holder is not readily available to fill the nominated position.
- (4) For the purposes of paragraph (3)(a), the Minister may, by legislative instrument, determine a period within which labour market testing is required in relation to a nominated occupation.
- (4A) Despite paragraph (3)(a) and subsection (4), if there have been redundancies or retrenchments as mentioned in

subparagraph (3)(b)(ii), the labour market testing must be undertaken after those redundancies and retrenchments.

*Evidence of labour market testing*

- (5) For the purposes of subparagraph (3)(b)(i), the evidence in relation to the labour market testing:
- (a) must include information about the approved sponsor's attempts to recruit suitably qualified and experienced Australian citizens or Australian permanent residents to the position and any other similar positions (see also subsection (6)); and
  - (b) may also include other evidence, such as:
    - (i) copies of, or references to, any research released in the previous 4 months relating to labour market trends generally and in relation to the nominated occupation; or
    - (ii) expressions of support from Commonwealth, State and Territory government authorities with responsibility for employment matters; or
    - (iii) any other type of evidence determined by the Minister, by legislative instrument, for this subparagraph.
- (6) For the purposes of paragraph (5)(a), the information mentioned:
- (a) must include details of:
    - (i) any advertising (paid or unpaid) of the position, and any similar positions, commissioned or authorised by the approved sponsor; and
    - (ii) fees and other expenses paid (or payable) for that advertising; and
  - (b) may also include other information, such as:
    - (i) information about the approved sponsor's participation in relevant job and career expositions; or
    - (ii) details of any other fees and expenses paid (or payable) for any recruitment attempts mentioned in paragraph (5)(a) (including any participation mentioned in subparagraph (i) of this paragraph); or
    - (iii) details of the results of such recruitment attempts, including details of any positions filled as a result.

- (6A) If the approved sponsor elects to provide other evidence and information as mentioned in paragraphs (5)(b) and (6)(b), the Minister may take that evidence and information into account. But if the approved sponsor elects not to provide such other evidence or information, the Minister is not to treat the nomination less favourably merely because of that fact.

*Definitions*

- (7) In this section:

***associated entity*** has the same meaning as in Part 2A of the regulations.

***Australian permanent resident*** means an Australian permanent resident within the meaning of the regulations.

***eligible temporary visa holder***: a person is an ***eligible temporary visa holder*** in relation to a nomination by an approved sponsor if, at the time when the nomination is made:

- (a) the person is the holder of a temporary visa referred to in the regulations as a Subclass 417 (Working Holiday) visa or a Subclass 462 (Work and Holiday) visa; and
- (b) the person is employed in the agricultural sector by the approved sponsor (or an associated entity of the approved sponsor); and
- (c) the temporary visa does not prohibit the person from performing that employment.

***labour market testing***, in relation to a nominated position, means testing of the Australian labour market to demonstrate whether a suitably qualified and experienced Australian citizen or Australian permanent resident is readily available to fill the position.

### **140GBB Labour market testing—major disaster exemption**

- (1) An approved sponsor is exempt from the requirement to satisfy the labour market testing condition in section 140GBA if an exemption under subsection (2) of this section is in force in relation to the sponsor.



- (2) The Minister may, in writing, exempt a sponsor from the requirement to satisfy the labour market testing condition in section 140GBA if the Minister is satisfied that:
  - (a) an event (a *major disaster*) has occurred in Australia, whether naturally or otherwise, that has such a significant impact on individuals that a government response is required; and
  - (b) the exemption is necessary or desirable in order to assist disaster relief or recovery.
- (3) In deciding whether a major disaster has occurred, the Minister must have regard to matters including the following:
  - (a) the number of individuals affected;
  - (b) the extent to which the nature or extent of the disaster is unusual.
- (4) An exemption of an approved sponsor under subsection (2):
  - (a) may be expressed to apply in relation to:
    - (i) a specified nomination by the sponsor; or
    - (ii) a specified class of nominations by the sponsor; and
  - (b) must be expressed to apply to a particular sponsor specified in the exemption rather than a class of sponsors, despite subsections 33(3A) and (3AB) of the *Acts Interpretation Act 1901*.
- (5) An exemption made under subsection (2) is not a legislative instrument.

### **140GBC Labour market testing—skill and occupational exemptions**

#### *Scope*

- (1) This section applies to a nomination by an approved sponsor, under section 140GB, if the sponsor nominates:
  - (a) a proposed occupation for the purposes of paragraph 140GB(1)(b); and
  - (b) a particular position, associated with the nominated occupation, that is to be filled by a visa holder, or applicant or proposed applicant for a visa, identified in the nomination.

*Skill and occupational exemptions*

- (2) The approved sponsor is exempt from the requirement to satisfy the labour market testing condition in section 140GBA if:
  - (a) either or both of the following are required for the nominated position, in relation to the nominated occupation:
    - (i) a relevant bachelor degree or higher qualification, other than a protected qualification;
    - (ii) 5 years or more of relevant experience, other than protected experience; and
  - (b) the nominated occupation is specified for the purposes of this subsection under subsection (4).
- (3) The approved sponsor is exempt from the requirement to satisfy the labour market testing condition in section 140GBA if:
  - (a) either or both of the following are required for the nominated position, in relation to the nominated occupation:
    - (i) a relevant associate degree, advanced diploma or diploma covered by the AQF, other than a protected qualification;
    - (ii) 3 years or more of relevant experience, other than protected experience; and
  - (b) the nominated occupation is specified for the purposes of this subsection under subsection (4).

*Legislative instrument*

- (4) The Minister may, by legislative instrument:
  - (a) specify an occupation (or occupations) for the purposes of subsection (2); and
  - (b) specify an occupation (or occupations) for the purposes of subsection (3).
- (5) Despite subsection 44(2) of the *Legislative Instruments Act 2003*, section 42 (disallowance) of that Act applies to an instrument made under subsection (4).

*Definitions*

- (6) In this section:

*AQF* means the Australian Qualifications Framework within the meaning of the *Higher Education Support Act 2003*.

*protected experience* means experience in the field of engineering (including shipping engineering) or nursing.

*protected qualification* means a qualification (however described) in engineering (including shipping engineering) or nursing.

## **Part 2—Amendment of the Migration Regulations 1994**

### **3 After regulation 2.72**

Insert:

#### **2.72AA Labour market testing**

For paragraph 140GBA(1)(a) of the Act, the class of standard business sponsors is a prescribed class of sponsor.

## Part 3—Saving and application

### 4 Saving of regulations

Despite the amendment made by item 1, regulations in force for the purposes of subsection 140GB(2) of the *Migration Act 1958* immediately before the commencement of this Schedule continue in effect, on and after that commencement, as if they had been made for the purposes of paragraph 140GB(2)(b) of that Act, as in force after that commencement.

### 5 Application—nominations by approved sponsors

The amendments of the *Migration Act 1958* and the *Migration Regulations 1994* made by Parts 1 and 2 of this Schedule apply in relation to a nomination under section 140GB of that Act that is made on or after the commencement of this Schedule.

### 6 Application—determined labour market testing periods

- (1) This item applies if, on or after the commencement of this Schedule, an approved sponsor makes a nomination under section 140GB of the *Migration Act 1958* to which section 140GBA of that Act (which covers the labour market testing condition) applies.
- (2) Paragraph 140GBA(3)(a) of the *Migration Act 1958* applies (subject to subsection 140GBA(4A)) in relation to a period determined for the purposes of that paragraph whether the period, as applied in relation to the nomination, starts before, on or after the day this Act is given the Royal Assent.

Note: Subsection 140GBA(3) of the *Migration Act 1958* provides (among other things) that in order to satisfy the labour market testing condition for a nomination, an approved sponsor must undertake labour market testing within a period determined under subsection 140GBA(4) for the purposes of paragraph 140GBA(3)(a).

## **Schedule 3—Subclass 457 visa conditions**

### ***Migration Regulations 1994***

#### **1 Paragraphs 8107(3)(b) and (3B)(b) of Schedule 8**

Omit “28 consecutive days”, substitute “90 consecutive days”.

#### **2 Application**

The amendment of the *Migration Regulations 1994* made by item 1 of this Schedule applies in relation to a visa:

- (a) that is in force on or after the commencement of this Schedule; and
- (b) with effect from the time the visa was granted, whether before, on or after the commencement of this Schedule.

## Schedule 4—Sponsorship obligations

### Part 1—Amendments

#### *Migration Act 1958*

##### **1 Section 140H (heading)**

Repeal the heading, substitute:

##### **140H Sponsorship obligations—general**

##### **2 Before subsection 140H(1)**

Insert:

*Requirement to satisfy sponsorship obligations*

##### **3 Subsection 140H(1) (note)**

Repeal the note.

##### **4 Before subsection 140H(2)**

Insert:

*Work agreements and sponsorship obligations*

##### **5 Before subsection 140H(4)**

Insert:

*Sponsorship obligation regulations*

##### **6 After section 140H**

Insert:

##### **140HA Sponsorship obligations—Minister’s responsibility**

- (1) Subject to subsection (2), the Minister must take all reasonable steps to ensure that regulations made under section 504 for the purposes of subsection 140H(1) include obligations in relation to the following matters:

- (a) paying a market salary rate (however described) to a visa holder;
  - (b) paying prescribed costs to the Commonwealth in relation to locating a former visa holder, and removing a former visa holder from Australia;
  - (c) paying prescribed costs of the departure of a visa holder (or a former visa holder) from Australia;
  - (d) complying with prescribed requirements to keep information, and provide information to the Minister;
  - (e) notifying the Department of prescribed changes in the circumstances of an approved sponsor, a former approved sponsor, a visa holder or a former visa holder;
  - (f) cooperating with the exercise of powers under or for the purposes of Subdivision F (which deals with inspector powers);
  - (g) ensuring that a visa holder participates in an occupation, program or activity nominated by an approved sponsor (including by preventing the on-hire of a visa holder);
  - (h) requiring an approved sponsor or former approved sponsor not to transfer, charge or recover prescribed costs;
  - (i) requiring an approved sponsor or former approved sponsor to meet prescribed training requirements.
- (2) For any particular matter mentioned in subsection (1), the Minister must take all reasonable steps to ensure that the obligations in the relevant regulations apply in relation to:
- (a) all approved sponsors or former approved sponsors; or
  - (b) a specified class (or classes) of approved sponsors or former approved sponsors, and not to all approved sponsors or former approved sponsors.
- (3) Subsection (1) does not limit the sponsorship obligations that may be prescribed for the purposes of subsection 140H(1).



## Part 2—Saving

### 7 Saving

The amendments of the *Migration Act 1958* made by Part 1 do not affect the validity of any regulations made under section 504 of that Act for the purposes of subsection 140H(1) of that Act that are in force immediately before the commencement of this Schedule.

## **Schedule 5—Enforceable undertakings by sponsors**

### **Part 1—Amendments commencing on day of Royal Assent**

#### **Division 1—Amendments**

##### *Migration Act 1958*

#### **1 At the end of paragraph 140K(1)(a)**

Add:

- (iv) accept an undertaking under section 140RA from the person;
- (v) if the Minister considers that the person has breached such an undertaking—apply for an order under section 140RB;

#### **2 Paragraph 140K(2)(a)**

Omit “either or both”, substitute “one or more”.

#### **3 At the end of paragraph 140K(2)(a)**

Add:

- (iii) accept an undertaking under section 140RA from the person;
- (iv) if the Minister considers that the person has breached such an undertaking—apply for an order under section 140RB;

#### **4 At the end of Subdivision D of Division 3A of Part 2**

Add:

##### **140RA Accepting undertakings**

- (1) The Minister may accept any of the following undertakings:
  - (a) a written undertaking given by a person that the person will, in order to comply with section 140H in relation to a sponsorship obligation, take specified action;

- (b) a written undertaking given by a person that the person will, in order to comply with section 140H in relation to a sponsorship obligation, refrain from taking specified action;
  - (c) a written undertaking given by a person that the person will take specified action directed towards ensuring that the person does not contravene section 140H in relation to a sponsorship obligation, or is unlikely to contravene that section in relation to such an obligation, in the future.
- (2) The undertaking must be expressed to be an undertaking under this section.
  - (3) The person may withdraw or vary the undertaking at any time, but only with the written consent of the Minister.
  - (4) The Minister may, by written notice given to the person, cancel the undertaking.
  - (5) A consent or notice under this section is not a legislative instrument.
  - (6) The Minister may publish an undertaking on the Department's website.

#### **140RB Enforcing undertakings**

- (1) The Minister may apply to an eligible court for an order under subsection (2) if:
  - (a) a person has given an undertaking under section 140RA; and
  - (b) the undertaking has not been withdrawn or cancelled; and
  - (c) the Minister considers that the person has breached the undertaking.
- (2) If the court is satisfied that the person has breached the undertaking, the court may make any or all of the following orders:
  - (a) an order directing the person to comply with the undertaking;
  - (b) an order directing the person to pay to the Commonwealth an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;
  - (c) any order that the court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;

(d) any other order that the court considers appropriate.

## **Division 2—Application**

### **5 Application**

The amendments of the *Migration Act 1958* made by this Part apply in relation to a sponsorship obligation whether the obligation arose before, on or after the commencement of this Part.

## **Part 2—Amendments contingent on the commencement of Part 6 of the Regulatory Powers (Standard Provisions) Act 2013**

### **Division 1—Amendments**

#### ***Migration Act 1958***

##### **6 Subsection 5(1)**

Insert:

*Regulatory Powers Act* means the *Regulatory Powers (Standard Provisions) Act 2013*.

##### **7 Subparagraph 140K(1)(a)(iv)**

Omit “section 140RA”, substitute “section 119 of the Regulatory Powers Act, for the purposes of this Subdivision”.

##### **8 Subparagraph 140K(1)(a)(v)**

Omit “section 140RB”, substitute “section 120 of the Regulatory Powers Act, for the purposes of this Subdivision”.

##### **9 Subparagraph 140K(2)(a)(iii)**

Omit “section 140RA”, substitute “section 119 of the Regulatory Powers Act, for the purposes of this Subdivision”.

##### **10 Subparagraph 140K(2)(a)(iv)**

Omit “section 140RB”, substitute “section 120 of the Regulatory Powers Act, for the purposes of this Subdivision”.

##### **11 Sections 140RA and 140RB**

Repeal the sections, substitute:

## **140RA Enforceable undertakings**

### *Enforceable provision*

- (1) Section 140H is **enforceable**, in relation to a sponsorship obligation, under Part 6 of the Regulatory Powers Act.

Note: Part 6 of the Regulatory Powers Act creates a framework for accepting and enforcing undertakings relating to compliance with provisions.

### *Authorised person*

- (2) For the purposes of Part 6 of the Regulatory Powers Act, the Minister is an **authorised person** in relation to the provision mentioned in subsection (1).

### *Relevant court*

- (3) For the purposes of Part 6 of the Regulatory Powers Act, an eligible court is a **relevant court** in relation to the provision mentioned in subsection (1).

### *Enforceable undertaking may be published on the internet*

- (4) The authorised person in relation to the provision mentioned in subsection (1) may publish an undertaking given in relation to the provision on the Department's website.

### *Extension to external Territories*

- (5) Part 6 of the Regulatory Powers Act, as it applies in relation to the provision mentioned in subsection (1), extends to a Territory to which this Act extends.

Note: See section 7 of this Act.

## **Division 2—Application and saving**

### **12 Application and saving**

- (1) The amendments of the *Migration Act 1958* made by this Part apply in relation to a sponsorship obligation whether the obligation arose before, on or after the commencement of this Part.
- (2) However, sections 140RA and 140RB of the *Migration Act 1958* as in force immediately before the commencement of this Part continue to

**Schedule 5** Enforceable undertakings by sponsors

**Part 2** Amendments contingent on the commencement of Part 6 of the Regulatory Powers (Standard Provisions) Act 2013

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apply, on and after that commencement, in relation to an undertaking accepted under section 140RA before that commencement.

## **Schedule 6—Sponsorship inspector powers**

### **Part 1—Amendments**

#### *Migration Act 1958*

##### **1 Subsection 5(1)**

Insert:

*appointed inspector* has the meaning given by section 140V.

*Fair Work Inspector* has the same meaning as in the *Fair Work Act 2009*.

*inspector* has the meaning given by section 140V.

##### **2 Subdivision F of Division 3A of Part 2 (heading)**

Repeal the heading, substitute:

#### **Subdivision F—Inspector powers**

##### **3 Before section 140V**

Insert:

#### **140UA Exercise of inspector powers**

- (1) An inspector may exercise powers under this Subdivision for a purpose set out in section 140X.

Note: Inspectors include Fair Work Inspectors (see section 140V).

- (2) A Fair Work Inspector may, subject to section 706 of the *Fair Work Act 2009*, exercise compliance powers under Subdivision D of Division 3 of Part 5-2 of that Act for the purposes of this Subdivision.

Note: Under paragraph 706(1)(d) of the *Fair Work Act 2009*, a Fair Work Inspector may exercise certain compliance powers for the purposes of a provision of another Act that confers functions or powers on Fair Work Inspectors.

##### **4 Before subsection 140V(1)**

Insert:

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*Who is an inspector?*

- (1A) For the purposes of this Act, each of the following is an *inspector*:
- (a) a person, or a member of a class of persons, appointed under subsection (1) (an *appointed inspector*);
  - (b) a Fair Work Inspector.

*Appointed inspectors*

**5 Subsection 140V(2)**

Omit “A person, or a class of persons,”, substitute “An appointed inspector”.

**6 Subsection 140V(3)**

Omit “An inspector”, substitute “An appointed inspector”.

**7 Section 140V (before the note)**

Insert:

*Fair Work Inspectors*

- (4) An inspector who is a Fair Work Inspector has the powers conferred on an inspector by this Division or the regulations.
- (5) A Fair Work Inspector continues to be an inspector for the purposes of this Act while he or she continues to be a Fair Work Inspector (under the *Fair Work Act 2009*).

**8 Before subsection 140W(1)**

Insert:

*General*

- (1A) An inspector’s identity card is:
- (a) for an appointed inspector—the identity card issued to the inspector under subsection (1); or
  - (b) for an inspector who is a Fair Work Inspector—the identity card issued to the inspector under the *Fair Work Act 2009* (see section 702 of that Act).

**9 Subsection 140W(1) (heading)**

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Repeal the heading, substitute:

*Identity cards—appointed inspectors*

**10 Subsection 140W(1)**

Omit “an inspector”, substitute “an appointed inspector”.

**11 Subsection 140W(2) (heading)**

Repeal the heading.

**12 Subsection 140W(2)**

After “identity card”, insert “for an appointed inspector”.

**13 Paragraph 140W(4)(a)**

After “identity card”, insert “under subsection (1)”.

**14 Paragraph 140X(a)**

Omit “determining”, substitute “investigating”.

**15 After paragraph 140X(a)**

Insert:

- (aa) for the purpose of investigating whether a person who is required under subsection 140H(1) to satisfy a sponsorship obligation has committed an offence, or contravened a civil penalty provision, under Subdivision C of Division 12 of this Part; or

**16 Section 140XC**

Omit “An inspector”, substitute “(1) An inspector”.

**17 Section 140XC (before the note)**

Insert:

- (2) A Fair Work Inspector who enters premises or a place under the *Fair Work Act 2009* for any compliance purpose under section 706 of that Act may, for a purpose mentioned in section 140X of this Act, exercise any of the powers mentioned in subsection (1) of this section while on the premises or at the place.

**18 Subsection 140XD(1)**

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Repeal the subsection, substitute:

- (1) A person (the *assistant*) may accompany an inspector onto premises or to a place mentioned in subsection 140XC(1) to assist the inspector if:
  - (a) for any inspector—the Secretary is satisfied that:
    - (i) the assistance is necessary and reasonable; and
    - (ii) the assistant has suitable qualifications and experience to properly assist the inspector; or
  - (b) for an inspector who is a Fair Work Inspector—the assistant is authorised to accompany the inspector onto the premises or to the place under section 710 of the *Fair Work Act 2009* for any compliance purpose under section 706 of that Act.

## **Part 2—Application**

### **19 Application of amendments**

- (1) The amendments of the *Migration Act 1958* made by Part 1 of this Schedule apply in relation to:
  - (a) a person who is a Fair Work Inspector, whether the person became such an inspector before, on or after the commencement of the amendments; and
  - (b) the exercise of a power, or the performance of a function, by an inspector under the *Migration Act 1958* on or after the commencement of the amendments; and
  - (c) the exercise of a compliance power by a Fair Work Inspector under Subdivision D of Division 3 of Part 5-2 of the *Fair Work Act 2009* on or after the commencement of the amendments.
  
- (2) The amendments of the *Migration Act 1958* made by Part 1 of this Schedule apply in relation to the powers and functions mentioned in paragraphs (1)(b) and (c) of this item whether they are exercised or performed in relation to conduct, an event or circumstances that occurred or started occurring before, on or after the commencement of the amendments.

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[*Minister's second reading speech made in—  
House of Representatives on 6 June 2013  
Senate on 28 June 2013*]

(132/13)

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