



Migration Amendment (Charging for a Migration Outcome) Act 2015

No. 161, 2015

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

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

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No. 161, 2015

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

[Assented to 30 November 2015]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Migration Amendment (Charging for a Migration Outcome) Act 2015*.

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.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	30 November 2015
2. Schedule 1	A single day to be fixed by Proclamation. However, if the provisions 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.	14 December 2015 (F2015L01959)

Note: This table relates only to the provisions of this Act as originally enacted.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 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Migration Act 1958

1 After subsection 116(1AB)

Insert:

(1AC) Subject to subsections (2) and (3), the Minister may cancel a visa (the *current visa*) if he or she is satisfied that:

- (a) a benefit was asked for or received by, or on behalf of, the person (the *visa holder*) who holds the current visa from another person in return for the occurrence of a sponsorship-related event; or
- (b) a benefit was offered or provided by, or on behalf of, the person (the *visa holder*) who holds the current visa to another person in return for the occurrence of a sponsorship-related event.

(1AD) Subsection (1AC) applies:

- (a) whether or not the visa holder held the current visa or any previous visa at the time the benefit was asked for, received, offered or provided; and
- (b) whether or not the sponsorship-related event relates to the current visa or any previous visa that the visa holder held; and
- (c) whether or not the sponsorship-related event occurred.

2 Subsections 116(2) and (3)

Omit “(1AA) or (1AB)”, substitute “(1AA), (1AB) or (1AC)”.

3 At the end of section 116

Add:

(4) In this section:

benefit has a meaning affected by section 245AQ.

sponsorship-related event has the meaning given by section 245AQ.

4 Subsection 117(1)

Omit “(1AA), or (1AB)”, substitute “(1AA), (1AB) or (1AC)”.

5 Paragraph 140X(aa)

After “Subdivision C”, insert “or D”.

6 At the end of Division 12 of Part 2

Add:

Subdivision D—Offences and civil penalties in relation to sponsored visas

245AQ Definitions

In this Subdivision:

benefit includes:

- (a) a payment or other valuable consideration; and
- (b) a deduction of an amount; and
- (c) any kind of real or personal property; and
- (d) an advantage; and
- (e) a service; and
- (f) a gift.

executive officer of a body corporate means:

- (a) a director of the body corporate; or
- (b) the chief executive officer (however described) of the body corporate; or
- (c) the chief financial officer (however described) of the body corporate; or
- (d) the secretary of the body corporate.

sponsor class means a prescribed class of sponsor.

sponsored visa means a visa of a prescribed kind (however described).

sponsorship-related event means any of the following events:

- (a) a person applying for approval as a sponsor under section 140E in relation to a sponsor class;

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- (b) a person applying for a variation of a term of an approval as a sponsor under section 140E in relation to a sponsor class;
 - (c) a person becoming, or not ceasing to be, a party to a work agreement;
 - (d) a person agreeing to be, or not withdrawing his or her agreement to be, an approved sponsor in relation to an applicant or proposed applicant for a sponsored visa;
 - (e) a person making a nomination under section 140GB in relation to a holder of, or an applicant or proposed applicant for, a sponsored visa, or including another person in such a nomination;
 - (f) a person not withdrawing a nomination made under section 140GB in relation to a holder of, or an applicant or proposed applicant for, a sponsored visa;
 - (g) a person applying under the regulations for approval of the nomination of a position in relation to the holder of, or an applicant or proposed applicant for, a sponsored visa, or including another person in such a nomination;
 - (h) a person not withdrawing the nomination under the regulations of a position in relation to the holder of, or an applicant or proposed applicant for, a sponsored visa;
 - (i) a person employing or engaging, or not terminating the employment or engagement of, a person to work in an occupation or position in relation to which a sponsored visa has been granted, has been applied for or is to be applied for;
 - (j) a person engaging, or not terminating the engagement of, a person to undertake a program, or carry out an activity, in relation to which a sponsored visa has been granted, has been applied for or is to be applied for;
 - (k) the grant of a sponsored visa;
 - (l) a prescribed event.

245AR Prohibition on asking for or receiving a benefit in return for the occurrence of a sponsorship-related event

- (1) A person (the *first person*) contravenes this subsection if:
 - (a) the first person asks for, or receives, a benefit from another person; and
 - (b) the first person asks for, or receives, the benefit in return for the occurrence of a sponsorship-related event.

- (2) To avoid doubt, the first person contravenes subsection (1) even if the sponsorship-related event does not occur.
- (3) Subsection (1) does not apply if the benefit is a payment of a reasonable amount for a professional service that has been provided, or is to be provided, by the first person or a third person.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

Offence

- (4) A person commits an offence if the person contravenes subsection (1). The physical elements of the offence are set out in that subsection.

Penalty: Imprisonment for 2 years or 360 penalty units, or both.

Civil penalty provision

- (5) A person is liable to a civil penalty if a person contravenes subsection (1).

Civil penalty: 240 penalty units.

- (6) A person who wishes to rely on subsection (3) in proceedings for a civil penalty order bears an evidential burden in relation to the matter in that subsection.

Note: It is not necessary to prove a person's state of mind in proceedings for a civil penalty order (see section 486ZF).

245AS Prohibition on offering to provide or providing a benefit in return for the occurrence of a sponsorship-related event

- (1) A person (the *first person*) contravenes this subsection if:
- (a) the first person offers to provide, or provides, a benefit to another person (the *second person*); and
 - (b) the first person offers to provide, or provides, the benefit in return for the occurrence of a sponsorship-related event.

Civil penalty: 240 penalty units.

- (2) To avoid doubt, the first person contravenes subsection (1) even if the sponsorship-related event does not occur.
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- (3) Subsection (1) does not apply if the benefit is a payment of a reasonable amount for a professional service that has been provided, or is to be provided, by the second person or a third person.
 - (4) A person who wishes to rely on subsection (3) in proceedings for a civil penalty order bears an evidential burden in relation to the matter in that subsection.

Note: It is not necessary to prove a person's state of mind in proceedings for a civil penalty order (see section 486ZF).

245AT Criminal liability of executive officers of bodies corporate

- (1) An executive officer of a body corporate commits an offence if:
 - (a) the body commits an offence (the *sponsorship-related offence*) against this Subdivision; and
 - (b) the officer knew that, or was reckless or negligent as to whether, the sponsorship-related offence would be committed; and
 - (c) the officer was in a position to influence the conduct of the body in relation to the sponsorship-related offence; and
 - (d) the officer failed to take all reasonable steps to prevent the sponsorship-related offence being committed.

Penalty: 360 penalty units.

- (2) In determining whether the executive officer of the body corporate failed to take all reasonable steps to prevent the sponsorship-related offence being committed by the body, a court must have regard to:
 - (a) what action (if any) the officer took towards ensuring that the body's employees, agents and contractors had a reasonable knowledge and understanding of the requirements to comply with this Subdivision, insofar as those requirements affected the employees, agents or contractors concerned; and
 - (b) what action (if any) the officer took when he or she became aware that the body was committing the sponsorship-related offence.
- (3) Subsection (2) does not limit subsection (1).

245AU Civil liability of executive officers of bodies corporate

- (1) An executive officer of a body corporate contravenes this subsection if:
 - (a) the body contravenes (the *sponsorship-related contravention*) a civil penalty provision in this Subdivision; and
 - (b) the officer knew that, or was reckless or negligent as to whether, the sponsorship-related contravention would occur; and
 - (c) the officer was in a position to influence the conduct of the body in relation to the sponsorship-related contravention; and
 - (d) the officer failed to take all reasonable steps to prevent the sponsorship-related contravention.

Note: Section 486ZF (which provides that a person's state of mind does not need to be proven in proceedings for a civil penalty order) does not apply in relation to a contravention of this subsection.

Civil penalty provision

- (2) An executive officer of a body corporate is liable to a civil penalty if the officer contravenes subsection (1).

Civil penalty: 240 penalty units.

Reasonable steps to prevent the contravention

- (3) In determining whether the executive officer of the body corporate failed to take all reasonable steps to prevent the sponsorship-related contravention by the body, a court must have regard to:
 - (a) what action (if any) the officer took towards ensuring that the body's employees, agents and contractors had a reasonable knowledge and understanding of the requirements to comply with this Subdivision, insofar as those requirements affected the employees, agents or contractors concerned; and
 - (b) what action (if any) the officer took when he or she became aware that the body was engaging in the sponsorship-related contravention.
- (4) Subsection (3) does not limit subsection (1).

Definitions

(5) In this section:

negligent: an executive officer of a body corporate is **negligent** as to whether a sponsorship-related contravention would occur if the officer's conduct involves:

- (a) such a great falling short of the standard of care that a reasonable person would exercise in the circumstances; and
- (b) such a high risk that the sponsorship-related contravention would occur;

that the conduct merits the imposition of a pecuniary penalty.

reckless: an executive officer of a body corporate is **reckless** as to whether a sponsorship-related contravention would occur if:

- (a) the officer is aware of a substantial risk that the sponsorship-related contravention would occur; and
- (b) having regard to the circumstances known to the officer, it is unjustifiable to take the risk.

245AV Contravening civil penalty provisions

- (1) This section applies if a civil penalty provision in this Subdivision provides that a person contravening another provision of this Subdivision (the **conduct rule provision**) is liable to a civil penalty.
- (2) For the purposes of this Act, the person is taken to contravene the civil penalty provision if the person contravenes the conduct rule provision.

245AW Geographical scope of offence and civil penalty provisions*Offences*

- (1) Section 15.2 of the *Criminal Code* (extended geographical jurisdiction—category B) applies to an offence against this Subdivision.

Contraventions of civil penalty provisions

- (2) An order must not be made against a person in civil proceedings relating to a contravention by the person of a civil penalty provision in this Subdivision unless:
- (a) the person's conduct that allegedly contravenes the provision occurs:
 - (i) wholly or partly in Australia; or
 - (ii) wholly or partly on board an Australian aircraft or an Australian ship; or
 - (b) the person's conduct that allegedly contravenes the provision occurs wholly outside Australia and, at the time of the alleged contravention, the person is:
 - (i) an Australian citizen; or
 - (ii) a resident of Australia; or
 - (iii) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; or
 - (c) all of the following conditions are satisfied:
 - (i) the person's conduct allegedly contravenes the provision because of section 486ZD (the ***ancillary contravention***);
 - (ii) the conduct occurs wholly outside Australia;
 - (iii) the conduct constituting the primary contravention to which the ancillary contravention relates occurs, or is intended by the person to occur, wholly or partly in Australia or wholly or partly on board an Australian aircraft or an Australian ship.

Defences relating to contraventions of civil penalty provisions

- (3) In civil proceedings relating to a primary contravention by a person, it is a defence if:
- (a) the conduct constituting the alleged primary contravention occurs wholly in a foreign country, but not on board an Australian aircraft or an Australian ship; and
 - (b) the person is neither:
 - (i) an Australian citizen; nor
 - (ii) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; and
 - (c) there is not in force in:

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- (i) the foreign country where the conduct constituting the alleged primary contravention occurs; or
 - (ii) the part of the foreign country where the conduct constituting the alleged primary contravention occurs; a law of that foreign country, or a law of that part of that foreign country, that provides for a pecuniary or criminal penalty for such conduct.
- (4) In civil proceedings relating to a contravention (the ***ancillary contravention***) by a person of a civil penalty provision in this Subdivision because of section 486ZD, it is a defence if:
- (a) the conduct constituting the alleged ancillary contravention occurs wholly in a foreign country, but not on board an Australian aircraft or an Australian ship; and
 - (b) the conduct (the ***primary conduct***) constituting the primary contravention to which the ancillary contravention relates occurs, or is intended by the person to occur, wholly in a foreign country, but not on board an Australian aircraft or an Australian ship; and
 - (c) the person is neither:
 - (i) an Australian citizen; nor
 - (ii) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; and
 - (d) there is not in force in:
 - (i) the foreign country where the primary conduct occurs or is intended by the person to occur; or
 - (ii) the part of the foreign country where the primary conduct occurs or is intended by the person to occur; a law of that foreign country, or a law of that part of that foreign country, that provides for a pecuniary or criminal penalty for the primary conduct.
- (5) A defendant bears an evidential burden in relation to the matter in subsection (3) or (4).

Attorney-General's consent needed for certain proceedings

- (6) Civil proceedings relating to a contravention of a civil penalty provision in this Subdivision must not be commenced without the Attorney-General's written consent if:

- (a) the conduct constituting the alleged contravention occurs wholly in a foreign country; and
- (b) at the time of the alleged contravention, the person alleged to have contravened the provision is neither:
 - (i) an Australian citizen; nor
 - (ii) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory.

When conduct taken to occur partly in Australia

- (7) For the purposes of this section, if a person sends a thing, or causes a thing to be sent:
 - (a) from a point outside Australia to a point in Australia; or
 - (b) from a point in Australia to a point outside Australia;that conduct is taken to have occurred partly in Australia.
- (8) For the purposes of this section, if a person sends, or causes to be sent, an electronic communication:
 - (a) from a point outside Australia to a point in Australia; or
 - (b) from a point in Australia to a point outside Australia;that conduct is taken to have occurred partly in Australia.

Definitions

- (9) In this section:

Australian aircraft has the same meaning as in the *Criminal Code*.

Australian ship has the same meaning as in the *Criminal Code*.

electronic communication has the same meaning as in the *Criminal Code*.

foreign country has the same meaning as in the *Criminal Code*.

point has the same meaning as in section 16.2 of the *Criminal Code*.

primary contravention means a contravention of a civil penalty provision in this Subdivision other than because of section 486ZD.

resident of Australia has the same meaning as in the *Criminal Code*.

245AX Treatment of partnerships

- (1) This Subdivision, and any other provision of this Act to the extent that it relates to this Subdivision, apply to a partnership as if it were a person, but with the changes set out in this section.
- (2) An offence against this Subdivision that would otherwise be committed by a partnership is taken to have been committed by each partner in the partnership, at the time the offence is committed, who:
 - (a) did the relevant act; or
 - (b) aided, abetted, counselled or procured the relevant act; or
 - (c) was in any way knowingly concerned in, or party to, the relevant act (whether directly or indirectly or whether by any act of the partner).
- (3) A civil penalty provision in this Subdivision that would otherwise be contravened by a partnership is taken to have been contravened by each partner in the partnership, at the time of the conduct constituting the contravention, who:
 - (a) engaged in the conduct; or
 - (b) aided, abetted, counselled or procured the conduct; or
 - (c) was in any way knowingly concerned in, or party to, the conduct (whether directly or indirectly or whether by any act of the partner).

245AY Treatment of unincorporated associations

- (1) This Subdivision, and any other provision of this Act to the extent that it relates to this Subdivision, apply to an unincorporated association as if it were a person, but with the changes set out in this section.
- (2) An offence against this Subdivision that would otherwise be committed by an unincorporated association is taken to have been committed by each member of the association's committee of management, at the time the offence is committed, who:
 - (a) did the relevant act; or
 - (b) aided, abetted, counselled or procured the relevant act; or

- (c) was in any way knowingly concerned in, or party to, the relevant act (whether directly or indirectly or whether by any act of the member).
- (3) A civil penalty provision in this Subdivision that would otherwise be contravened by an unincorporated association is taken to have been contravened by each member of the association's committee of management, at the time of the conduct constituting the contravention, who:
 - (a) engaged in the conduct; or
 - (b) aided, abetted, counselled or procured the conduct; or
 - (c) was in any way knowingly concerned in, or party to, the conduct (whether directly or indirectly or whether by any act of the member).

7 Subsection 486ZF(1)

After "subsection 245AK(2)", insert "or 245AU(2)".

8 Part 8E (heading)

Repeal the heading, substitute:

Part 8E—Investigation powers relating to certain offences and provisions

9 Section 487A (paragraph (a) of the definition of *evidential material*)

Before "work-related offence", insert "sponsorship-related offence or a".

10 Section 487A (paragraph (b) of the definition of *evidential material*)

Before "work-related provision", insert "sponsorship-related provision or a".

11 Section 487A (definition of *related provision*)

Repeal the definition, substitute:

related provision means:

- (a) a sponsorship-related offence; or

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- (b) a sponsorship-related provision; or
 - (c) a work-related offence; or
 - (d) a work-related provision.

12 Section 487A

Insert:

sponsorship-related offence means:

- (a) an offence against Subdivision D of Division 12 of Part 2; or
- (b) an offence against section 6 of the *Crimes Act 1914* that relates to an offence against that Subdivision; or
- (c) an ancillary offence (within the meaning of the *Criminal Code*) that is, or relates to, an offence against that Subdivision.

sponsorship-related provision means a civil penalty provision in Subdivision D of Division 12 of Part 2.

13 Paragraphs 487B(1)(a) and (b)

Repeal the paragraphs, substitute:

- (a) a possible sponsorship-related offence; or
- (b) a possible contravention of a sponsorship-related provision;
or
- (c) a possible work-related offence; or
- (d) a possible contravention of a work-related provision;

14 Paragraph 487C(2)(d)

After “Subdivision C”, insert “or D”.

15 Paragraph 487C(2)(e)

Before “work-related provision”, insert “sponsorship-related provision or a”.

16 Subparagraphs 487Z(3)(a)(i) and (ii)

Repeal the subparagraphs, substitute:

- (i) a sponsorship-related offence has been committed; or
- (ii) a sponsorship-related provision has been contravened;
or
- (iii) a work-related offence has been committed; or

(iv) a work-related provision has been contravened; or

17 Paragraph 487ZC(4)(a)

Repeal the paragraph, substitute:

(a) state:

- (i) the sponsorship-related offence or offences; or
 - (ii) the sponsorship-related provision or provisions; or
 - (iii) the work-related offence or offences; or
 - (iv) the work-related provision or provisions;
- to which the warrant relates; and

**18 Application—subsections 116(1AC) and (1AD) of the
*Migration Act 1958***

Subsections 116(1AC) and (1AD) of the *Migration Act 1958*, as inserted by this Schedule, apply in relation to a visa granted before or after commencement if the benefit referred to in subsection 116(1AC) of that Act was asked for, received, offered or provided after commencement.

[*Minister's second reading speech made in—
House of Representatives on 16 September 2015
Senate on 11 November 2015*]

(154/15)
