Migration Amendment Regulations 2003 (No. 5) 2003 No. 154

EXPLANATORY STATEMENT

STATUTORY RULES 2003 No. 154

Issued by the Minister for Immigration and Multicultural and Indigenous Affairs

Migration Act 1958

Migration Amendment Regulations 2003 (No. 5)

Subsection 504(1) of the *Migration Act 1958* (the Act) provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters which by the Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

In addition, regulations may be made pursuant to the powers listed at Attachment A.

The purpose of these regulations is to amend the *Migration Regulations 1994* (the Migration Regulations) with respect to certain requirements for visa applications, criteria for grant and sponsorship arrangements.

These regulations effect changes to the Migration Regulations to:

- amend temporary business entry sponsorship, nomination and visa application arrangements to merge the pre-qualified business sponsor, standard business sponsor and overseas business nomination arrangements into one business sponsorship.

- The sponsored entry arrangements under the subclass 457 Business (Long Stay) visa have been in place since 1996, following the report of the Committee of Inquiry into the Temporary Entry of Business People and Highly Skilled Specialists, *Business Temporary Entry: Future Directions* (August 1995).

- While the arrangements were generally successful in meeting the needs of Australian businesses in most areas, the different sponsorship options and complex structure resulted in a degree of confusion for clients about sponsorship and nomination requirements.

- In response to concerns raised by sponsors, these amendments streamline the Long Stay Temporary Business sponsorship and nomination structure, including the fees payable, to reduce complexity and increase user comprehension, particularly in the context of the move to electronic lodgement of applications;

- create a new temporary visa, Sponsored Training (Temporary)(Class UV) and Subclass 470 (Professional Development), and sponsorship requirements specific to this visa, to:

- permit certain organisations in Australia, that are approved by the Minister under the new sponsorship requirements (sponsors), to offer professional development programs to employees of foreign government agencies and large overseas organisations;

- specify the criteria to be satisfied by applicants for the grant of this new subclass of visa;

- specify the obligations that a sponsor must comply with; and

- provide the Minister with powers to suspend or cancel sponsorship approval where such obligations are not complied with; and

- make minor technical amendments.

Details of the regulations are set out in Attachment B.

Two Regulation Impact Statements have been prepared and are set out in Attachment C.

These regulations commence on 1 July 2003. These changes constitute part of the "July Round". Having fixed commencement dates (1 March, 1 July and 1 November) minimises the impact on clients and staff.

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ATTACHMENT A

Subsection 504(1) of the *Migration Act 1958* (the Act) provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters which by the Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

In addition, the following provisions may apply:

- subsection 29(2) of the Act provides that the regulations may prescribe a period during which the holder of a visa may travel to and enter Australia;

- subsection 31(1) of the Act provides that the regulations are to prescribe classes of visas;

- subsection 31(3) of the Act provides that the regulations may prescribe criteria for a visa or visas of a specified class;

- subsection 31(5) of the Act provides that the regulations specify that a visa is a visa of a particular class;

- subsection 40(1) of the Act provides that the regulations may provide that visas or visas of a specified class may only be granted in specified circumstances;

- subsection 41(1) of the Act provides that the regulations may provide that visas or visas of a specified class are subject to specified conditions;

- subsection 41(2) of the Act provides that, without limiting subsection 41(1), the regulations may provide that a visa, or visas of a specified class, are subject to:

- a condition that the holder of the visa will not, after entering Australia, be entitled to be granted a substantive visa, other than a protection visa or a temporary visa of a specified kind, while he or she remains in Australia; or

- a condition imposing restrictions about the work that may be done in Australia by the holder which may be restrictions on doing any work or work other than specified work or work of a specified kind;

- section 45B of the Act provides that the amount of visa application charge is the amount, not exceeding the visa application charge limit, prescribed in relation to the application;

- section 46 of the Act deals with when an application for a visa is a valid application; in particular:

- subsection 46(2) provides that an application for a visa is valid if it is an application for a visa of a class prescribed for the purposes of this subsection, and under the regulations and under the regulations the application is taken to have been validly made;

- subsection 46(3) provides that the regulations may prescribe criteria that must be satisfied for an application for a visa of a specified class to be a valid application; and

- subsection 46(4) provides that, without limiting subsection 46(3), the regulations may also prescribe the circumstances that must exist for an application for a visa of a specified class to be

a valid application, how and where an application for a visa of a specified class must be made, and where an applicant must be when an application for a visa of a specified class is made;

- subsection 52(1) of the Act provides that a visa applicant or interested person must communicate to the Minister in the prescribed way;

- subsection 52(2) of the Act provides that the regulations may prescribe different ways of communicating and specify the circumstances when communication is to be in a particular way;

- section 70 of the Act provides that if a non-citizen is granted a visa, an officer is to give the non-citizen evidence of the visa, subject to the regulations;

- subsection 71(2) of the Act provides for the regulations to prescribe the way in which evidence of a visa is to be given;

- subsection 71(2) of the Act provides that the regulations may provide that the way in which evidence of a visa or a visa of a class is to be given is to depend on the circumstances in which it is given;

- subsection 93(1) of the Act provides that the regulations prescribe a number of points and prescribe qualifications for the purposes of section 93 (determination of applicant's score);

- section 137A of the Act provides that approval of a person as a business sponsor means approval as a pre-qualified business sponsor or standard business sponsor as provided for in the regulations;

- subsection 137B(1) of the Act provides that the Minister may cancel an approval as a business sponsor if the Minister is satisfied that a prescribed ground for cancelling the approval applies to the person;

- subsection 166(1) requires a person, where that person is a non-citizen, who enters Australia to show a clearance officer evidence of the person's identity and of a visa that is in effect and is held by the person, and any information required to be given by the Act or the regulations;

- subsection 166(2) requires a person to comply with subsection 166(1) in a prescribed way;

- subsection 338(9) of the Act provides that the regulations may prescribe a decision as an MRT-reviewable decision;

- section 504 of the Act provides that the Governor-General may make regulations, not inconsistent with the Act, to prescribe all matters which are required or permitted to be prescribed by the Act or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act, and specifically:

- paragraph 504(1)(a) of the Act provides that the regulations may provide for the charging of fees in respect of any matter under the Act;

- paragraph 504(1)(e) of the Act provides that the Governor-General may make regulations which make provision for and in relation to the giving of documents to, the lodging of documents with or the service of documents on, the Minister, the Secretary or any other person or body, for the purposes of this Act.

ATTACHMENT B

Regulation 1 - Name of Regulations

This regulation provides that these regulations are the *Migration Amendment Regulations 2003 (No. 5)*.

Regulation 2 - Commencement

This regulation provides that regulations 1 to 4 commence on gazettal, and Schedules 1 to 6 to these regulations commences on 1 July 2003.

Regulation 3 - Amendment of *Migration Regulations 1994*

This regulation provides that Schedules 1 to 6 to these regulations amend the *Migration Regulations 1994* as amended by *Migration Amendment Regulations 2003 (No.2)*, *Migration Amendment Regulations 2003 (No.3)* and *Migration Amendment Regulations 2003 (No.4)*.

Regulation 4 - Transitional

This regulation provides that:

- the amendments made by items [1], [2], [14], [21], [22], [23] and [24] of Schedule 1 to these regulations apply in relation to an application for approval as an approved professional development sponsor made on or after 1 July 2003;

- the amendments made by items [1], [2], [3], [17], [18], [21], [22], [23] and [24] of Schedule 1 apply in relation to an application for a visa made on or after 1 July 2003;

- the amendments made by items [15] and [16] of Schedule 1 apply in relation to an assessment made for subsection 93(1) of the Act on or after 1 July 2003; and

- the amendments made by Schedules 2, 3, 5 and 6 apply in relation to an application for a visa made on or after 1 July 2003.

Schedule 1 - Amendments of Parts 1,2,3, and 4

Item [1] - Regulation 1.03, after definition of *approved form*

This item inserts a new definition into regulation 1.03 of Part 1 of the Migration Regulations.

The new definition defines *approved professional development sponsor* to mean an organisation that has been approved as a professional development sponsor under regulation 1.20O.

This amendment is consequential to amendments made by these regulations to insert a new sponsored training visa class, professional development subclass and corresponding sponsorship requirements.

New regulation 1.20N inserted by these regulations provides that an applicant may apply for approval as an approved professional development sponsor (sponsor) and sets out the requirements that must be met to be approved. New regulation 1.20O inserted by these regulations provides that the Minister may approve or refuse an application for approval as a sponsor.

Item [2] - Paragraph 1.20(2)(b)

This item amends paragraph 1.20(2)(b) of Part 1 of the Migration Regulations. It inserts a reference to the new Sponsored Training (Temporary)(Class UV) visa (sponsored training visa).

Subregulation 1.20(2) sets out the obligations of a sponsor in relation to applicants for permanent and temporary visas, excepting certain specified visas. This amendment adds the sponsored training visa to the list of excepted visas.

This amendment is consequential to amendments made by these regulations to insert a new sponsored training visa class, professional development subclass and corresponding sponsorship requirements. The sponsorship requirements and obligations for this visa are set out in new Division 1.4C. The obligations in regulation 1.20 therefore do not apply to this visa.

Item [3] - Regulation 1.20B, definitions of pre-qualified business sponsor and standard business sponsor

New definition of pre-qualified business sponsor

This item substitutes new definitions of *pre-qualified business sponsor* and *standard business sponsor* into regulation 1.20B in Part 1 of the Migration Regulations.

The new definition of *pre-qualified business sponsor* is only relevant to:

- a person who applied for approval as a pre-qualified business sponsor prior to 1 July 2003, where that application was approved prior to 1 July 2003;

- a person who applied for approval as a pre-qualified business sponsor prior to 1 July 2003, where that application is approved on or after 1 July 2003; and

- a person who renewed their approval as a pre-qualified business sponsor:

- where the renewal was sought and approved prior to 1 July 2003; or

- where the renewal was sought prior to 1 July 2003, but approved on or after 1 July 2003. It is not possible to seek renewal of approval as a pre-qualified business sponsor on or after 1 July 2003.

The note under the definition of *pre-qualified business sponsor* outlines a transitional arrangement that is intended to ease the transition from the old temporary business entry sponsorship, nomination and visa application arrangements to the new business sponsorship arrangements.

In relation to the above, approval as a pre-qualified business sponsor where the application is made on or after 1 July 2003 will no longer be possible. This is because, in relation to *new applications for approval as a business sponsor*, from 1 July 2003 there will only be one kind of business sponsorship: the new standard business sponsorship.

However, transitional arrangements mean that where an application for approval as a pre-qualified business sponsor was made prior to 1 July 2003, then approval as a pre-qualified business sponsor (according to the pre-1 July 2003 Migration Regulations) is still possible on or after 1 July 2003.

New definition of standard business sponsor

The new definition of *standard business sponsor* is relevant to:

- a person who applied for approval as a standard business sponsor prior to 1 July 2003, where that application was approved prior to 1 July 2003;

- a person who applied for approval as a standard business sponsor prior to 1 July 2003, where that application is approved (in accordance with regulation 1.20D as in force before 1 July 2003) on or after 1 July 2003; and

- a person who both applied for approval as a standard business sponsor on and was approved as a standard business sponsor on or after 1 July 2003.

The note under the definition of *standard business sponsor* outlines a transitional arrangement that is intended to ease the transition from the old temporary business entry sponsorship, nomination and visa application arrangements to the new business sponsorship arrangements.

Where an application for approval as a business sponsor is made on or after 1 July 2003, approval as a *standard business sponsor* (incorporating the new arrangements made by these Regulations) is the only approval available.

However, transitional arrangements mean that where an application for approval as a standard business sponsor was made prior to 1 July 2003, then approval as a standard business sponsor (according to the pre-1 July 2003 Migration Regulations) is still possible on or after 1 July 2003.

The New Arrangements

The changes to the above definitions form part of the amendments to temporary business entry sponsorship, nomination and visa application arrangements by these Regulations. The effect is to merge the pre-qualified business sponsor, standard business sponsor and overseas business nomination arrangements into one new business sponsorship: the new standard business sponsorship.

The sponsored entry arrangements under the subclass 457 (Temporary Business (Long Stay) visa have been in place since 1996, following the report of the Committee of Inquiry into the Temporary Entry of Business People and Highly Skilled Specialists, *Business Temporary Entry: Future Directions* (August 1995).

While the arrangements were generally successful in meeting the needs of Australian businesses in most areas, the different sponsorship options and complex structure resulted in a degree of confusion for clients about sponsorship and nomination requirements.

In response to concerns raised by sponsors, the amendments to the temporary business entry sponsorship, nomination and visa application arrangements by these Regulations therefore streamline the Long Stay Temporary Business sponsorship and nomination structure, including the fees payable, to reduce complexity and increase user comprehension, particularly in the context of the move to electronic lodgement of applications.

Item [4] - Regulations 1.20C, 1.20D, 1.20E and 1.20F

This item substitutes regulations 1.20C, 1.20D, 1.20E and 1.20F with new regulations 1.20C, 1.20CA, 1.20D, 1.20DA, and 1.20F.

New regulation 1.20C - Application for approval as standard business sponsor

New regulation 1.20C deals with how a person may apply for approval as a *standard business sponsor* on or after 1 July 2003.

To apply for the new *standard business sponsorship* under regulation 1.20C, an application must be made in accordance with either form 1067, 1196 or 1196 (internet), and be accompanied by a fee of $250.

While form 1067 was the approved form for the making of an application for approval as a pre-qualified business sponsor or standard business sponsor under the pre-1 July 2003 regulations, its retention under new regulation 1.20C as an approved form for the making of an application for approval under the new standard business sponsorship arrangements ensures that an applicant applying on the old form can still be considered for approval under the new sponsorship arrangements.

An application for approval as a *standard business sponsor* made under regulation 1.20C may be approved, or rejected, under regulations 1.20D and 1.20DA. Approval under regulation 1.20D may be given for applicants operating a business in Australia. Approval under regulation 1.20DA relates to applicants operating a business outside of Australia.

From 1 July 2003 it will no longer be possible to apply for approval as a *pre-qualified business sponsor*.

New regulation 1.20CA - Business sponsors - transitional arrangements for 1 July 2003

New regulation 1.20CA sets out the transitional arrangements that are intended to ease the transition from the old temporary business entry sponsorship, nomination and visa application arrangements to the new business sponsorship arrangements.

Subregulation 1.20CA(1) provides for an application for approval as a standard business sponsor or as a pre-qualified business sponsor made (but not approved or rejected) prior to 1 July 2003, to be dealt with under the pre-1 July 2003

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Migration Regulations. A pre-1 July 2003 application for approval as a standard business sponsor or as a pre-qualified business sponsor, therefore, may be approved on or after 1 July 2003 under the old business sponsor arrangements.

Subregulation 1.20CA(1) also provides that the pre-1 July 2003 provisions for the approval of an applicant as a pre-qualified business sponsor or standard business sponsor will apply for the purposes of review under Part 5 of the Migration Regulations.

Subregulation 1.20CA(2) provides that if form 1067 was given to the Minister before 1 July 2003 for a purpose other than to apply for approval as a business sponsor, and the form was not dealt with prior to 1 July 2003, the form is to be dealt with in accordance with regulation 1.20G as it was immediately before 1 July 2003. This provision ensures that where, prior to 1 July 2003, an overseas business has given undertakings as required by form 1067 for the purpose of nominating a business activity in which an individual is proposed to be employed in Australia, that nomination may be considered for approval in accordance with the pre-1 July 2003 nomination provisions on or after 1 July 2003.

From 1 July 2003 the separate arrangements for approval of nominations by overseas businesses (except for in transitional instances like the one mentioned above) will not be necessary as an overseas business will be able to apply for approval as a standard business sponsor.

Subregulation 1.20CA(3) provides for a pre-qualified business sponsor to be able to renew his or her approval as a pre-qualified business sponsor on or after 1 July 2003 in certain circumstances. Although regulation 1.20E is repealed with effect from 1 July 2003, a person can still have his or her approval as a pre-qualified business sponsor renewed under the pre-1 July 2003 Migration Regulations (ie, regulation 1.20E) in accordance with subregulation 1.20CA(3).

Under this subregulation, renewal of the approval can occur, provided that the person sought renewal of his or her approval as a pre-qualified business sponsor prior to 1 July 2003. Therefore, renewal of the approval as a pre-qualified business sponsor can occur on or after 1 July 2003. However, it is not possible to *seek renewal* of approval as a pre-qualified business sponsor on or after 1 July 2003.

Subregulation 1.20CA(4) ensures that where a decision in relation to an application for approval as a pre-qualified business sponsor or standard business sponsor was made prior to 1 July 2003, that decision may be reviewed in accordance with the provisions for approval at regulation 1.20D that were in force immediately before 1 July 2003.

New regulation 1.20D - Approval as standard business sponsor

New regulation 1.20D provides for the approval (or rejection) of an application for approval as a standard business sponsor where the application for approval was made on or after 1 July 2003. This new regulation is relevant to where the standard business sponsor is actively operating a business in Australia. However, where the standard business sponsor is only actively operating a business outside Australia, the person's application will be approved or rejected under new regulation 1.20DA.

New regulation 1.20D substantially mirrors the repealed and substituted regulation 1.20D, with the following differences:

- the new regulation relates only to the new type of standard business sponsorship, in existence from 1 July 2003. It does not relate to an application for approval as a pre-qualified business sponsor or an application for approval as a standard business sponsor where the application was made prior to 1 July 2003, but not approved or rejected by that date;

- subregulation 1.20D(1) provides that the Minister may approve or reject an application for approval as a standard business sponsor made under regulation 1.20C, and therefore relates only to the new type of standard business sponsorship;

- under subregulation 1.20D(2), the Minister must approve the application if paragraphs 1.20D(2)(a) to (f) are satisfied. The new approved forms mentioned in new paragraph 1.20D(2)(f) (that is, forms 1196 and 1196 (internet)) relate only to an application for approval as a standard business sponsor that is made on or after 1 July 2003. The reference to old approved form 1067 has been retained, as it will be accepted for a short period of time from 1 July 2003 in relation to an application for approval as a standard business sponsor (of the new kind);

- where an application was made using the internet form, that is, form 1196 (internet), paragraph 1.20D(5)(b) allows the Minister to provide to the applicant *in electronic form* a copy of the written approval or rejection of the application and, if the application is rejected, a statement of the reasons why the application was not approved;

- there is no reference to the renewal of approval of a business sponsorship, as the reference to this in the pre-1 July 2003 provisions related solely to pre-qualified business sponsorships; and

- the period at the end of which the approval of a person as a standard business sponsor may end has been increased to the end of the period of *24 months* commencing on the day on which the approval is given (paragraph 1.20D(6)(b) refers):

- The intention behind this increase is to make the transition to the new type of business sponsorship as smooth as possible. Pre-qualified business sponsors have had the benefit of a 2 year validity for their sponsorship, and so this greater period of validity is being applied to the new type of business sponsorship.

New regulation 1.20DA - Approval as standard business sponsor - overseas business

New regulation 1.20DA also provides for the approval of a person as a standard business sponsor where the application for approval was made on or after 1 July 2003. However, this regulation is relevant to where the standard business sponsor is operating a business outside Australia. Where the standard business sponsor is actively operating a business in Australia, the person's application will be approved or rejected under new regulation 1.20D.

New regulation 1.20DA also substantially mirrors the repealed and substituted regulation 1.20D, with the following differences:

- the new regulation relates only to the new type of standard business sponsorship, in existence from 1 July 2003, where the applicant for approval is actively and lawfully operating a business outside Australia:

- Whilst overseas business "sponsors" were - prior to 1 July 2003 - able to nominate business activities in certain circumstances, they were not able to be approved as business sponsors under the Migration Regulations.

- This new regulation therefore provides, for the first time, the ability for a person operating an overseas business to be able to be approved as a business sponsor.

- In accordance with the merger of the different types of sponsorship from 1 July 2003, any approval of a person operating a business outside Australia (as mentioned above) will be as a standard business sponsor;

- subregulation 1.20DA(1) provides that the Minister may approve or reject an application for approval as a standard business sponsor made under regulation 1.20C, and therefore relates only to the new type of standard business sponsorship;

- under subregulation 1.20DA(2), the Minister must approve the application if the applicant for approval is actively and lawfully operating *outside Australia* a business in which the employment *in Australia* of the holder of a Subclass 457 (Business (Long Stay)) visa would contribute to the circumstances outlined in subparagraphs 1.20DA(2)(a)(i) to (iv);

- the reference to the relevant subclause of Part 457 in subparagraph 1.20DA(2)(b)(i) is a reference to subclause 457.223(5), as this is the subclause that pertains to overseas businesses;

- there is no equivalent provision in respect of repealed paragraph 1.20D(2)(c), which deals with new or improved technology or business skills in Australia and a satisfactory record of (or

demonstrated commitment towards) training Australian citizens and Australian permanent residents in the operations of the business in Australia. This is because overseas businesses are not necessarily in a position to demonstrate a record of training Australian citizens or Australian permanent residents. For example:

- An offshore company might have won a contract to supply a service in Australia, and will only have a presence here (with offshore employees) until the contract is fulfilled.

- The requirement for new business skills or improved technology would also be harder to assess for overseas companies;

- there is a requirement in subparagraph 1.20DA(2)(c)(ii) that the Minister is satisfied that nothing adverse is known to Immigration about the business background of any officer or other senior or responsible person in relation to the applicant. That is, the requirement is not the same as repealed subparagraph 1.20D(2)(d)(ii) because business structures overseas are often different to those in Australia;

- the reference to the relevant subclause of Part 457 in subparagraph 1.20DA(2)(e)(i) is a reference to subclause 457.223(5), as this is the subclause that pertains to overseas businesses;

- the approved forms mentioned in new paragraph 1.20DA(2)(e) are forms 1067 and 1196. Form 1196 is the new form to be used when applying for approval as a standard business sponsor under this new regulation from 1 July 2003. The reference to old approved form 1067 has been retained, as it will be accepted for a short period of time from 1 July 2003 in relation to an application for approval as a standard business sponsor (of the new kind);

- there is no equivalent to repealed subregulation 1.20D(5), as new regulation 1.20DA does not deal with pre-qualified business sponsorship;

- the reference to the relevant subclause of Part 457 in subparagraph 1.20DA(5)(a)(ii) is a reference to subclause 457.223(5), as this is the subclause that pertains to overseas businesses; and

- the period at the end of which the approval of a person as a standard business sponsor may cease has been increased to the end of the period of *24 months* commencing on the day on which the approval is given (paragraph 1.20DA(5)(b) refers). This is consistent with the cessation period in new regulation 1.20D for the new type of standard business sponsorship where the standard business sponsor is actively operating a business in Australia.

Repeal of regulation 1.20E - Renewal of approvals as pre-qualified business sponsors

This item repeals regulation 1.20E, as no renewals of approvals of persons as pre-qualified business sponsors are possible on or after 1 July 2003 where renewal of the approval is sought on or after 1 July 2003.

However, where the renewal was sought prior to 1 July 2003 (and the renewal has not been decided prior to 1 July 2003), the pre-qualified business sponsor will be able to have his or her approval renewed on or after 1 July 2003 (new subregulation 1.20CA(3) refers).

On or after 1 July 2003, an application for approval as a standard business sponsor is the only type of business sponsor application that can be made.

Regulation 1.20F - Prescribed grounds for cancellation of approval as a business sponsor (Act s 137B)

New regulation 1.20F sets out the prescribed grounds for cancellation of approval as a business sponsor, pursuant to section 137B of the Act.

Under subsection 137B(1) of the Act, the Minister may cancel an approval of a person as a business sponsor if the Minister is satisfied that a prescribed ground for cancelling the approval applies to the person. Subsection 137B(4) of the Act provides that - to avoid doubt - the cancellation under subsection 137B(1) of an approval of a person as a business sponsor terminates the approval in the same way as the revocation of such an approval under the regulations.

The new regulation is substantially based upon its predecessor, with the following differences:

- it has been re-ordered;

- it relates to the following sponsorships:

- new standard business sponsorships (where the application for approval as a business sponsor was made on or after 1 July 2003);

- pre-qualified business sponsorships;

- pre-1 July 2003 standard business sponsorships (where the application for approval as a business sponsor was made prior to 1 July 2003 and was approved prior to, on, or after 1 July 2003); and

- new form references have been added (that is, forms 1196 and 1196 (internet)).

The ability to cancel an approval as a business sponsor of any of the types listed in the second dot point above is necessary, despite the fact that from 1 July 2003 a person will only be able to apply for approval as a standard business sponsor. This is because the other types of sponsorships will nonetheless be in existence for several years.

Item [5] - Paragraph 1.20G(1)(d)

This item substitutes paragraph 1.20G(1)(d) with new paragraph 1.20G(1)(d).

Regulation 1.20G provides for the nomination of business activities.

New paragraph 1.20G(1)(d) relates to overseas businesses. Prior to 1 July 2003, overseas businesses were not able to be approved as business sponsors, but were nonetheless required to make sponsorship undertakings as if they had applied for sponsorship approval. From 1 July 2003, such businesses will make formal undertakings in relation to their application for approval as a standard business sponsor. As such, they will nominate business activities pursuant to paragraph 1.20G(1)(c).

Therefore, paragraph 1.20G(1)(d) is amended to ensure that under this paragraph, a person who, *prior to 1 July 2003*:

- operated an overseas business;

- gave the Minister undertakings in accordance with approved form 1067; and

- was a person whom the Minister was satisfied would have been likely to have been approved as a standard business sponsor

can still nominate an activity to the Minister on or after 1 July 2003.

Item [6] - Subregulation 1.20G(3)

This item replaces the reference to form 1068 in subregulation 1.20G(3) with references to forms 1068, 1196 and 1196 (internet).

The effect of this item is to add references to new forms 1196 and 1196 (internet).

Item [7] - Subregulation 1.20G(5)

This item substitutes subregulation 1.20G(5) with new subregulations 1.20G(5) and (6).

Subregulation 1.20G(5) sets out the fees for nominating a business activity.

Under new paragraph 1.20G(5)(a), a fee of $50 is imposed where the person became a party to a labour agreement on or after 1 July 2003. This fee is being imposed in order to spread the fee-paying burden more evenly across those persons nominating business activities. The effect of this is to relieve the burden on some of the smaller to medium-sized business enterprises. Labour agreements are usually entered into by larger businesses or industry sector representatives.

New paragraph 1.20G(5)(b) sets out the nomination fee in relation to standard business sponsors who made their application for approval as a standard business sponsor prior to 1 July 2003. The fee is the same as the fee contained in repealed subregulation 1.20G(5).

New paragraph (5)(c) sets out the fee for nominating a business activity where the person is a person mentioned in repealed paragraph 1.20G(1)(d), provided that the person did not operate a business in Australia and the requirements mentioned in repealed paragraphs 1.20G(1)(d)(i) and (ii) were met prior to 1 July 2003. That is, the new paragraph imposes a fee of $240 for the nomination of a business activity where the person meets the requirements of new subparagraphs 1.20G(5)(c)(i), (ii) and (iii), provided that these requirements were met prior to 1 July 2003. The new paragraph is largely based on repealed paragraph 1.20G(1)(d) and imposes the same fee as previously imposed for this group.

New paragraph (5)(d) sets out the fee for nominating a business activity where the business sponsor is a standard business sponsor who made his or her application for approval as a standard business sponsor on or after 1 July 2003.

New paragraph 1.20G(6) provides that no fee is payable for the nomination of a business activity where the person became a party to a labour agreement before 1 July 2003, and is a party to the agreement when the person nominates the activity, or where the person is a pre-qualified business sponsor. This subregulation therefore maintains the status quo in relation to the nil fee for the aforementioned people in respect of pre-1 July 2003 arrangements.

The new fee structure is designed to minimise the costs for sponsors across the board, while having no impact on revenue collected by the Department (that is, no significant increase or decrease).

Item [8] - Paragraph 1.20GA(2)(b)

This item substitutes paragraph 1.20GA(2)(b) with new paragraph 1.20GA(2)(b).

The new paragraph refers to regulation 1.20D. As such, a standard business sponsor provided for in new regulation 1.20DA is unable to nominate a business activity under regulation 1.20GA. In effect, this maintains the status quo, as overseas business prior to 1 July 2003 could only nominate business activities under regulation 1.20G.

Item [9] - Subregulation 1.20GA(3)

This item replaces the reference to form 1068 in subregulation 1.20GA(3) with references to forms 1068, 1196 and 1196 (internet).

The effect of this item is to add references to new forms 1196 and 1196 (internet).

Item [10] - Subregulation 1.20GA(4)

This item replaces subregulation 1.20GA(4) with new subregulations 1.20GA(4), (5) and (6). The new provisions set out the fees for making a nomination under this regulation, which relates to nomination of business activities for certified regional employment.

The fees mentioned in the new subregulations mirror the fees contained in new paragraphs 1.20G(5)(b), 1.20G(5)(d) and 1.20G(6)(b).

Item [11] - Subregulations 1.20H(4) and (5)

This item substitutes subregulations 1.20H(4) and (5) with new subregulation 1.20H(4).

The effect of this amendment is to merge repealed subregulations 1.20H(4) and (5), and to insert new paragraph 1.20H(4)(b). New paragraph 1.20H(4)(b) provides that where a nomination was made using the internet form, that is, form 1196 (internet), the Minister may provide the person who made the nomination *in electronic form* with a copy of the written approval or refusal of the nomination and, if the nomination is refused, a statement of the reasons why the nomination was refused;

Item [12] - Paragraphs 1.20H(6)(d) and (e)

This item replaces paragraphs 1.20H(6)(d) and (e) with new paragraphs 1.20H(6)(d) and (e).

Regulation 1.20H provides for the approval of nominations of business activities made under regulation 1.20G or 1.20GA.

Subregulation 1.20H(6) provides for when an approval of a nomination ceases to have effect. It does so at the earliest of any of the situations outlined in paragraphs (a) to (f).

New paragraph 1.20H(6)(d) is effectively the same as the replaced paragraph 1.20H(6)(d), except that the reference to a standard business sponsor has also become a reference to the new type of standard business sponsorship that will be available from 1 July 2003 (see the new definition of standard business sponsor in regulation 1.20B).

New paragraph 1.20H(6)(e) is substantially the same as the replaced paragraph 1.20H(6)(e), except that it includes a requirement that the undertakings the person gave in accordance with

approved form 1067 must have been given before 1 July 2003. This covers overseas businesses which, prior to 1 July 2003, were not approved as business sponsors, but were nonetheless required - if they wished to nominate business activities - to make sponsorship undertakings as if they had applied for sponsorship approval.

After 1 July 2003, a business which has not given undertakings in accordance with form 1067 prior to 1 July 2003 will have to apply for approval as a standard business sponsor under new regulation 1.20DA and will therefore make formal undertakings in relation to their sponsorship application. Such businesses will nominate business activities as a person mentioned in subregulation 1.20G(1)(c).

This amendment provides for the cessation of a nomination of a business activity by an overseas business which made undertakings prior to 1 July 2003 in accordance with approved form 1067, where, after 1 July 2003, the Minister becomes satisfied that the business is no longer able to comply with the undertakings which were entered into before 1 July 2003.

Item [13] - Subregulation 1.20H(6)

This item renumbers subregulation 1.20H(6) as subregulation 1.20H(5) as a consequence of the replacement of subregulations 1.20H(4) and 1.20H(5) with new subregulation 1.20H(4), above.

Item [14] - After Division 1.4B

This item inserts new Division 1.4C titled "Professional development: sponsorship" into Part 1 of the Migration Regulations. New Division 1.4C sets out provisions relating to sponsorship for a Subclass 470 (Professional Development) visa. New Subclass 470 (Professional Development) is inserted by these regulations.

Regulation 1.20M - Interpretation

This item also inserts new regulation 1.20M into new Division 1.4C. New regulation 1.20M is an interpretation provision setting out the following defined terms for the purposes of the new Division.

The term *employed* in relation to an overseas employer is defined to include a person who has been nominated by their overseas employer to be a member of an established training program. The purpose is to use "employed" as a short-hand term to cover both people who are employed by an overseas organisation *and* people who have been nominated by that organisation to be member of the established training program. These people are not "employed" in the ordinary use of the word, so "employed" is defined here to include such people.

An "established training program" is to be defined in policy and is intended to cover training programs usually conducted by an overseas government organisation to train employees of government-owned organisations, for example schools or hospitals. Such training programs are usually ongoing (not a one-off) and are recognised as a country or state-wide training program.

The term *organisation* is defined to mean two different things in different circumstances.

In relation to an applicant for approval as an approved professional development sponsor (sponsor), new paragraph 1.20M(a) provides that organisation means a body that is lawfully established and actively operating in Australia (including an unincorporated body of persons) and does not include an individual or sole trader.

New paragraph 1.20M(b) provides that, in any other case, organisation means a body (including an unincorporated body of persons) and does not include an individual or sole trader.

The intention is to ensure that where "organisation" is used in relation to an applicant for approval as sponsor, it means an organisation lawfully established and actively operating in Australia. Where "organisation" is used elsewhere it may mean an overseas organisation. For example, where new subregulation 1.20N(1), also inserted by this item, provides that an "organisation" may apply for approval as a sponsor - it means only an organisation that is lawfully established and actively operating in Australia.

The term *overseas agreement* is defined to mean an agreement entered into between an organisation that proposes to be a sponsor and the overseas employer of a person who would be an overseas participant in relation to the sponsor.

New paragraph 1.20N(4)(c), also inserted by this item, provides that an applicant for approval as a sponsor must have an overseas agreement in place as a requirement for approval. The agreement must be between the applicant sponsor and an overseas employer of a person who would be sponsored by the sponsor.

Under this definition, the overseas agreement must be signed by representatives of each party who are authorised to sign the agreement. The agreement must include:

- the financial arrangements between the parties, including costs relating to travel and entry, tuition, accommodation and living, health insurance and return travel;

- a description of the professional development program and what is intended to be provided by the approved professional development sponsor;

- a description of the roles of each of the parties under the agreement;

- the duration of the agreement;

- arrangements for mediation of disputes and other conflict resolution arrangements;

- any arrangements made by the approved professional development sponsor to subcontract any part of the provision of the professional development program;

- a description of the arrangements for insurance relating to the approved professional development sponsor;

- a description of the arrangements for recovery of costs if the approved professional development sponsor, or another provider of the professional development program acting for the approved professional development sponsor, ceases operations for any reason;

- a description of the characteristics of the persons whom the overseas employer proposes to select as overseas participants, and how overseas participants will be selected. For example the agreement may provide that the overseas employer will be selecting executive level staff to undertake the professional development program offered by the sponsor.

The term *overseas employer* is defined, in relation to a person who applies, or proposes to apply, for a Sponsored Training (Temporary)(Class UV) visa, to mean either:

- an organisation, the activities of which are conducted under the auspices of the government of a foreign country or a province, territory or state of a foreign country that either employs the person or has nominated the person to be a member of an established training program the costs of which are met wholly by the organisation; or

- a registered business that is conducted outside Australia by an organisation and employs the person. Immigration will determine whether the business is registered by looking to that government's equivalent of the Australian Business Register.

Under new paragraph 1.20N(4)(c), also inserted by this item, a sponsor must have in place an agreement with an overseas employer. That is, an agreement with an overseas organisation that may be either a private or government organisation (limited to Provincial, Territory or State level and above). That organisation must either have employed persons or have nominated persons for an established training program (the costs of which are wholly met by the organisation).

The term *overseas participant* is defined, in relation to an approved professional development sponsor, to mean a person who participates in a professional development program conducted by or for the sponsor and who is employed by an overseas employer.

This term is defined in order to refer to persons who will be undertaking a professional development program while sponsored by the sponsor. Only persons "employed" by an overseas employer with whom the sponsor has an agreement may undertake the professional development program.

The purpose of the phrase "conducted by or for the sponsor" is to recognise that the sponsor may contract out the providing of the program. So the program may be conducted by the sponsor or for the sponsor.

Regulation 1.20N - Applications for approval as approved professional development sponsor

This item also inserts new regulation 1.20N into new Division 1.4C. New regulation 1.20N provides that an organisation may apply to be approved as a sponsor and sets out the requirements that the organisation must meet in order to be approved.

New subregulation 1.20N(1) provides that an organisation may apply to the Minister for approval as a sponsor.

New subregulations 1.20N(2), (3) and (4) respectively provide that in order to meet the requirements for approval as a sponsor:

- the application must be made in accordance with approved form 1226;

- the application must include an undertaking that if the applicant is approved as a sponsor, the applicant will comply with the obligations set out in regulation 1.20P, also inserted by this item; and

- the applicant must satisfy the Minister of a number of requirements.

The requirements set out in subregulation 1.20N(4) to be satisfied by the applicant relate to the:

- professional development program that the applicant sponsor is proposing to offer. New paragraph 1.20N(4)(a) sets out the requirements that a program must meet in order to be a

professional development program for the purpose of this visa. In summary, these requirements mainly relate to the subject matter and duration of the program and the manner in which it is conducted;

- organisation applying to be approved as a sponsor. Paragraphs 1.20N(4)(b), (c), (d), (e), (f),(h), (j) and (k) set out provisions specifically relating to the organisation applying to be approved as a sponsor. In summary, these requirements mainly relate to the capacity of the organisation to provide a professional development program (this does not require the sponsor to have previously provided a professional development program), the character of the organisation and its immigration history (including the character and history of persons associated with organisation and previous visa holders sponsored by the organisation), whether the organisation has entered into an overseas agreement, whether the organisation is subject to a notice under regulation 1.20Q and the capacity of the organisation to comply with the sponsorship obligations set out in regulation 1.20P; and

- overseas employer with whom the applicant has entered an overseas agreement. Paragraphs 1.20N(4)(g) and (i) set out provisions specifically relating to the overseas employer. In summary, these requirements mainly relate to the character and immigration history of the overseas employer. In addition, the definition of overseas agreement in regulation 1.20M, inserted by these regulations, comprehensively sets out what must be contained in the agreement between the overseas employer and the applicant sponsor.

New subregulations 1.20N(5) and (6) respectively set out the fee for an application for approval as a sponsor and the place at which the application must be made.

Regultaion 1.20O - Approval as approved professional development sponsor

This item also inserts new regulation 1.20O into new Division 1.4C.

New subregulation 1.20O(1) provides that the Minister may approve or refuse an application by an organisation for approval as a sponsor.

New subregulation 1.20O(2) provides that the Minister must approve an application for approval as a sponsor if:

- the application was validly made in accordance with regulation 1.20N; and

- the Minister is satisfied that the applicant meets the requirements set out in subregulation 1.20N(4), described above; and

- a security, if required, has been lodged.

The security is required for the purpose of ensuring that a sponsor complies with the obligations under regulation 1.20P and pays any debts to the Commonwealth that arise out of the sponsorship. Forfeiture of amounts from the bond in relation to breaches of visa conditions by visa holders, and failure to depart Australia following the expiry of their visa, will be used as part of a sanctions regime (together with the 1.20Q notices) to encourage sponsors to comply with their obligations and assess the genuineness of visa applicants' intentions before sponsoring them.

New subregulation 1.20O(3) provides that the approval only has effect in relation to the professional development program, the overseas agreement and the overseas employer that were specified in the sponsorship application. The intention is that if any of these three

components changes, then the sponsor must seek new approval to be a sponsor. This intention is set out in the note beneath the provision.

New subregulation 1.20O(4) sets out the way in which the Minister must provide the applicant sponsor with notice of approval or refusal of the application. New subregulation 1.20O(5) sets out when approval as a sponsor ceases to have effect.

Regulation 1.20P - Obligations on approved professional development sponsor

This item also inserts new regulation 1.20P into new Division 1.4C. New regulation 1.20P sets out the obligations that an organisation must comply with if it is approved as a sponsor.

The term "overseas participant" in paragraphs 1.20P(a) to (l) is used to refer to the sponsored person. It is intended to refer to the person while they hold a visa, after the visa ceases or is cancelled and after the sponsorship is cancelled if any of these occur. The note inserted at the end of new regulation 1.20P clarifies this intention.

New paragraph 1.20P(a) provides that the sponsor must accept responsibility for all financial obligations to the Commonwealth that would be incurred in relation to the overseas participant during the overseas participant's stay in Australia at any time after the visa is granted. Examples of relevant costs incurred while the overseas participant holds the visa are medicare and social security costs which would be collected from the sponsor by the responsible agencies.

The use of the words "at any time after the visa ceases or is cancelled" ensures that the obligations continue even after the visa ceases, is cancelled or the sponsor ceases to be a sponsor, until the non-citizen's departure from Australia. Therefore this obligation includes any detention or removal costs or any other costs that are incurred while the non-citizen is in Australia.

New paragraph 1.20P(b) provides that the sponsor is responsible for all costs that would be incurred in relation to the overseas participant for medical or hospital expenses during the applicants stay in Australia at any time after the visa is granted, in excess of costs already met by health insurance. This includes any costs incurred after the visa ceases or is cancelled or after the sponsor ceases to be a sponsor and before the non-citizen's departure from Australia.

New paragraph 1.20P(c) provides that the sponsor is responsible for ensuring that the cost of return travel by the overseas participant from Australia at any time after the visa is granted will be met.

New regulation 1.20N(4)(c) inserted by this item provides that an overseas agreement must be entered into between the sponsor and an overseas employer. The definition of overseas agreement in new regulation 1.20M inserted by this item provides that that agreement must specify that the overseas employer will meet all costs relating to the overseas participant's return travel. New paragraph 1.20P(c) is therefore intended to require the sponsor to cover the costs of the overseas participant's return travel only if the overseas employer fails to fulfil that part of the agreement. It clarifies that the sponsor is expected to arrange for the removal of the visa holder if lack of finances is the only thing preventing the visa holders' departure. This return travel is to be differentiated from removal costs, covered by new paragraph 1.20(a), for which the sponsor is wholly responsible.

New paragraph 1.20P(d) provides that the sponsor is responsible for compliance by the overseas participant with the conditions to which the overseas participant's visa would be subject.

New paragraph 1.20P(e) provides that the sponsor is responsible for compliance by the overseas participant with the immigration laws of Australia at all times after the visa is granted. This includes the overseas participant's behaviour after the visa ceases, is cancelled or after the sponsor ceases to be a sponsor.

These two obligations give effect to the intention that the sponsor should be checking the genuineness of the persons they propose to sponsor and only entering into agreements with responsible overseas employers. As a result, they should also take responsibility for the overseas participant's behaviour while in Australia.

New paragraph 1.20P(f) provides that the sponsor must comply with its responsibilities under the immigration laws of Australia at all times after approval as a sponsor.

New paragraph 1.20P(g) provides that the sponsor is responsible for assisting the overseas participant to the extent necessary, financially and in respect of accommodation, during the overseas participant's stay in Australia after the visa is granted, so that the overseas participant's standard of living (including accommodation) would be consistent with a reasonable standard of living in Australia.

New subregulation 1.20N(4)(c) inserted by this item provides that an agreement must exist between the sponsor and an overseas employer and that the agreement must provide that the overseas employer must cover the cost of the overseas participant's stay in Australia financially and in respect of the overseas participant's standard of living (including accommodation). New paragraph 1.20P(g) is therefore intended to require the sponsor to cover the costs of the overseas participant's stay in Australia only if the overseas employer fails to fulfil that part of the agreement or if the level of living costs funded by the overseas employer is not sufficient to enable the visa holder to maintain a reasonable Australian standard of living.

This is to ensure that the visa holder has adequate support and means to live while in Australia on this visa, in particular as there is no right to work in Australia on this visa.

New paragraph 1.20P(h) provides that the sponsor must give the Secretary accurate information as soon as practicable about:

- any material change in the sponsor's circumstances or any matter that may affect the sponsor's ability to carry out its obligations; or

- any material change in the overseas participant's circumstances or any matter that may affect the overseas participant's ability to comply with the conditions to which the visa would be subject.

The intention is to ensure that the sponsor responds and provides required reports in a timely manner and informs Immigration of their own accord as soon as practicable when circumstances change. Examples of situations where Immigration would expect to be informed include:

- where the sponsor's organisational structure changes;

- where the sponsor's relevant officers change (for example, directors of a company);

- where the overseas agreement between the sponsor and the overseas employer terminates or changes in any way;

- where the visa holder is no longer employed by the overseas employer;

- where the sponsor becomes aware of the visa holder's intention not to comply with the conditions of their visa (for example, by applying for another visa).

New paragraph 1.20P(i) provides that the sponsor must not make a material change to the professional development program that would be provided to the overseas participant unless the Secretary has approved the change in writing.

For example, a sponsor would need to seek prior approval before changing the duration or location of the program or, if a subcontractor is providing the training, that subcontractor changed.

New paragraph 1.20P(j) provides that the sponsor must give officers of Immigration reasonable access, at reasonable times, to the premises where the sponsor provides the professional development program. This is to allow Immigration to assess the sponsor's compliance with the Act and the Regulations in relation to the sponsorship, the program and an overseas participant, and to assess an overseas participant's compliance with visa conditions.

New paragraph 1.20P(k) provides that the sponsor must not employ a non-citizen who does not hold a visa permitting work or employ a non-citizen in breach of visa conditions restricting permitted work. This includes employment of a non-citizen in an area unrelated to the sponsorship. The intention is that a sponsor should behave responsibly in all immigration matters.

The consequences of failing to comply with one of these obligations are set out in new regulations 1.20Q and 1.20R also inserted by this item. In summary, a sponsor may be barred from sponsoring further visa applicants for a specified period or the approval as a sponsor may be cancelled.

Regulation 1.20Q - Notice to approved professional development sponsor

This item also inserts new regulation 1.20Q into new Division 1.4C.

New regulation 1.20Q sets up a mechanism whereby the sponsor may be given a notice by the Minister. The effect of being given a notice is to prevent the sponsor from sponsoring any further non-citizens for a Subclass 470 (Professional Development) visa. New clause 470.225 inserted by these regulations provides as a criterion for the grant of a Subclass 470 (Professional Development) visa that the visa applicant's sponsor must not be the subject of a notice issued under subregulation 1.20Q(2). This means that a visa cannot be granted to an applicant who proposes to be sponsored by a sponsor who has been given a notice by the Minister.

Circumstances in which the notice may be given by the Minister are if:

- the Minister is satisfied that a sponsor has incurred a debt due and payable to the Commonwealth in relation to the sponsor's activities as a sponsor and has not discharged that debt; or

- the Minister is no longer satisfied that the sponsor is able to comply with an obligation mentioned in regulation 1.20P; or

- the Minister is satisfied that the sponsor has failed to comply with any of its obligations under regulation 1.20P; or

- the Minister is no longer satisfied as to one of the requirements for approval as a sponsor, set out in subregulation 1.20N(4).

The notice should specify the particular reason above for giving the notice and invite the sponsor to:

- deal with the matter (this includes satisfying the Minister that the sponsor is able to comply with the obligations or satisfying the Minister in relation to the relevant matter in subregulation 1.20N(4)); or

- satisfy the Minister that the matter does not exist or no longer exists; or

- satisfy the Minister that the matter was not reasonably within the sponsor's control.

The Minister must revoke the notice if the Minister is satisfied that the matter specified in the notice has been addressed in one of the above ways. The Minister may revoke the notice as soon as practicable after being satisfied *or* at a specified later date. The intention is to allow the notice to remain in place until the Minister believes it is appropriate to revoke the notice. The Minister may believe it appropriate to keep the notice in force until a specified later date if there are other concerns about the relevant matter or the sponsor, or as a deterrent against breaching further obligations. This would generally occur where:

- the sponsor had over time, failed to comply with obligations and had received warnings and counselling from Immigration; or

- the sponsor committed a particularly serious breach of an obligation that did not, however, warrant cancellation.

Paragraph 1.20Q(4)(b) allows the Minister to revoke the notice sooner than the specified later date.

Regulation 1.20R - Cancellation of approved professional development sponsorship

This item also inserts new regulation 1.20R into new Division 1.4C.

New regulation 1.20R provides that the Minister may cancel an approval of an organisation as a sponsor. The effect of cancellation of approval is that the sponsorship ceases completely. The visa holders sponsored by that sponsor would then be in breach of visa conditions 8514 and 8516 imposed on their visa, and are likely to have the visa cancelled under paragraph 116(1)(a) of the Act.

Circumstances in which an approval may be cancelled by the Minister are where:

- the Minister is satisfied that a sponsor has incurred a debt due and payable to the Commonwealth in relation to the sponsor's activities as a sponsor and has not discharged that debt; or

- the Minister is no longer satisfied that the sponsor is able to comply with an obligation mentioned in regulation 1.20P; or

- the Minister is satisfied that the sponsor has failed to comply with any of its obligations under regulation 1.20P; or

- the Minister is no longer satisfied as to one of the requirements for approval as a sponsor, set out in subregulation 1.20N(4); and

the Minister is satisfied that the giving of a notice under regulation 1.20Q is an inadequate means of dealing with the matter, having regard to the seriousness of the inability or failure to comply with the obligations and the past conduct of the sponsor. For example, where the sponsor states an intention not to comply with obligation, or has been found to exploit the sponsored visa holders, or has been found to be in breach of section 232A of the Act.

The Minister must give written notice of the decision to cancel and that notice must state the ground for cancellation. New subregulation 1.20R(4) sets out the place at which notice must be given and new subregulation 1.20R(5) clarifies that a failure to give notice does not affect the validity of the decision. The note inserted beneath that provision gives an example of when new subregulation 1.20R(5) might apply.

Item [15] - Paragraph 2.26A(2)(a)

Item [16] - Paragraph 2.26A(2)(b)

These items insert a reference to new Part 10 into subregulation 2.26A(2) of Part 2 of the Migration Regulations. These amendments are consequential to amendments made by the Migration Amendment Regulations (No. 4), due to commence on 1 July, that introduced new Part 10 into Schedule 6A of the Migration Regulations.

Item [17] - Subparagraph 3.03(3)(g)(ii)

This item makes a technical amendment to subparagraph 3.03(3)(g)(ii) of Part 3 of the Migration Regulations as a consequence of the insertion of new paragraph 3.03(3)(h) by these regulations.

Item [18] - After paragraph 3.03(3)(g)

This item inserts new paragraph 3.03(3)(h) into subregulation 3.03(3) of Part 3 to the Migration Regulations.

Regulation 3.03 specifies information required to be given to a clearance officer by a person entering Australia under section 166 of the Act. Subsection 166(2) of the Act states that a person entering Australia is to provide information in the prescribed way.

New paragraph 3.03(3)(h) prescribes that a holder of a Subclass 470 (Professional Development) visa to whom clause 470.711 of Schedule 2 applies is required to show a clearance officer evidence of the person's identity as specified in Part 1 of Schedule 9 and to give the clearance officer a completed passenger card.

Item [19] - Subregulation 4.02(1)

This item replaces the definition of "business sponsor" in subregulation 4.02(1) with a new definition of "business sponsor" for regulation 4.02 in Part 4 of the Migration Regulations. The effect of this item is to *add* a reference to the new type of standard business sponsorship that is in effect from 1 July 2003, with the exception of sponsorship under regulation 1.20DA, which deals with approval as a standard business sponsor by an overseas business.

Regulation 4.02 prescribes MRT-reviewable decisions and who may apply for review under the Act.

Item [20] - Paragraph 4.02(4)(a)

This item substitutes paragraph 4.02(4)(a) with new paragraph 4.02(4)(a).

The effect of the amendment is to ensure that a decision under either the repealed regulation 1.20D or new regulation 1.20D to reject a person's application for approval as a business sponsor is an MRT-reviewable decision.

Item [21] - Subparagraph 4.02(4)(f)(ii)

This item makes a technical amendment to subparagraph 4.02(4)(f)(ii) of Part 4 of the Migration Regulations as a consequence of the insertion of new paragraphs 4.02(4)(g), (h) and (i) by these regulations.

Item [22] - After paragraph 4.02(4)(f)

This item inserts new paragraphs 4.02(4)(g), (h) and (i) after paragraph 4.02(4)(f) in Part 4 of the Migration Regulations.

New paragraph 4.02(4)(g) provides that a decision by the Minister to refuse an application for approval as an approved professional development sponsor under subregulation 1.20O(1) is a prescribed MRT-reviewable decision for the purposes of subsection 338(9) of the Migration Act.

New paragraph 4.02(4)(h) provides that a decision by the Minister to give a notice to an approved professional development sponsor under subregulation 1.20Q(2) is a prescribed MRT-reviewable decision for the purposes of subsection 338(9) of the Migration Act.

New paragraph 4.02(4)(i) provides that a decision by the Minister to cancel an approval as an approved professional development sponsor under subregulation 1.20R(1) is a prescribed MRT-reviewable decision for the purposes of subsection 338(9) of the Migration Act.

These amendments are consequential to the amendments made by these regulations to insert a new sponsored training visa class, professional development visa subclass and corresponding sponsorship requirements.

Item [23] - Paragraph 4.02(5)(e)

This item makes a technical amendment to paragraph 4.02(5)(e) of Part 4 of the Migration Regulations as a consequence of the insertion of new paragraphs 4.02(5)(f) and (g) by these regulations.

Item [24] - After paragraph 4.02(5)(e)

This item inserts new paragraphs 4.02(5)(f) and (g) after paragraph 4.02(5)(e) in Part 4 of the Migration Regulations.

These paragraphs set out who may seek review under new paragraphs 4.02(4)(g), (h) and (i).

New paragraph 4.02(5)(f) provides that where a decision is made to which paragraph 4.02(4)(g) applies, the applicant for approval as an approved professional development sponsor is able to make an application for review.

New paragraph 4.02(5)(g) provides that where a decision is made to which either paragraph 4.02(4)(h) or (i) applies, the approved professional development sponsor is able to make an application for review.

These amendments are consequential to the amendments made by these regulations to insert a new sponsored training visa class, professional development visa subclass and corresponding sponsorship requirements.

Schedule 2 - Amendments of Schedule 1

Item [1] - Subparagraph 1205(2)(a)(iva)

This item makes an amendment to subparagraph 1205(2)(a)(iva) to increase the visa application charge for members of an entertainment body comprising 11 or more members from $1610 to $1650. This increase is a result of the annual indexation of fees in line with general price movements. This increase was unintentionally omitted from the other of indexation amendments made in the Migration Amendment Regulations (No. 3) also due to commence on 1 July.

Item [2] - After item 1220A

This item inserts new item 1220B after item 1220A in Part 2 of Schedule 1 to the Migration Regulations.

New item 1220B sets out the requirements for making a valid application for a Sponsored Training (Temporary) (Class UV) visa. New Subclass 470 (Professional Development), inserted by these regulations, is the only subclass of visa available under new Class UV.

Certain organisations in Australia have been providing programs that fit the description of a professional program set out in new paragraph 1.20N(4)(a), inserted by these regulations. These programs are designed for senior employees of foreign government agencies and large overseas organisations. The programs are designed to meet the needs of the overseas employer and are fully funded by the overseas employer. Other people undertaking these programs are people nominated as part of an established program to train in certain professional fields. The other visa classes and subclasses in the regulations do not adequately meet the need for entry to undertake these programs. New Sponsored Training (Temporary)(Class UV) and new Subclass 470 (Professional Development) are therefore inserted by these regulations.

In order to make a valid application, an applicant must satisfy the following requirements:

- form 1227 must be lodged (this form provides an undertaking that the sponsor must sign that they will comply with the obligations set out in regulation 1.20P in relation to the individual visa applicant);

- the visa application charge of $165 must be paid in one instalment; and

- where the applicant seeks to satisfy the criteria for the grant of a Subclass 470 (Professional Development) visa:

- the application must include evidence of sponsorship by an approved professional development sponsor (sponsor). This will be provided by stating on the application form the unique identifying code that identifies the sponsor, the professional development program and the overseas agreement in relation to which the sponsor was approved and which will be provided to the sponsor;

- the application must be lodged by the sponsor;

- the application must be made by posting, delivering by courier service, or sending the application by facsimile, to the address specified in a Gazette Notice; and

- the applicant must be outside Australia at the time of application.

Item [3] - Paragraph 1223A(1)(b)

This item replaces paragraph 1223A(1)(b) with new paragraph 1223A(1)(b) in item 1223A in Schedule 1 to the Migration Regulations.

Item 1223A contains the Temporary Business Entry (Class UC) visa class. This amendment provides for the lodging of an electronic application for a Temporary Business Entry visa.

New paragraphs 1223A(1)(b) and (ba) allow an application on form 1066 (internet) if the application is in connection with a standard business sponsorship or pre-qualified business sponsorship in relation to an Australian business, or as part of a Labour Agreement or a regional headquarters agreement. The applicant may be either in Australia at the time of application, or outside Australia, but must not be in immigration clearance. If the applicant is in Australia, however, they will only be able to make an application on form 1066 (internet) if, at the time of making the application, they hold a substantive visa. This is intended to prevent an application on form 1066(internet) by an unlawful non-citizen.

New paragraph 1223A(1)(bb) also allows an application on form 1066 (internet) to be made by an applicant who is seeking to satisfy the secondary criteria for a Subclass 457 visa, and is applying separately to the primary applicant.

New paragraphs 1223A(1)(b), (ba), and (bb) allow an application to be made on form 1066 or 1066 (internet). It is intended, however, that if the application is in connection with a standard business sponsorship approved under regulation 1.20DA ("Approval as standard business sponsor - overseas business"), the application may only be made on form 1066. New paragraph 1223A(1)(bc), therefore, does not provide for an application to be made on form 1066(internet).

New paragraph 1223A(1)(bc) has the same effect as repealed paragraph 1223A(1)(b).

Item [4] - Subclause 1301(1)

This item inserts a reference to new form 1066 (internet) after form 1066 in paragraph 1301(1)(b) of item 1301 in Schedule 1 to the Migration Regulations.

Item 1301 contains the Bridging A (Class WA) visa class.

The effect of the amendment is to allow an application for a visa of the above class to be made on new form 1066 (internet).

Therefore, when an application for a Temporary Business Entry (Class UC) visa is made on form 1066 (internet), it is also an application for a Bridging A (Class WA) visa.

Schedule 3 - Amendments of Schedule 2

Item [1] - Clause 457.111, note

This item contains a minor technical amendment. A reference to the definition of *internet application* (see regulation 1.03 of the Migration Regulations) is inserted after the reference to the definition of *AUD* in the note at the end of clause 457.111.

The reference is inserted as a consequence of the use of the defined term *internet application* in Division 457.7 of Part 457 of Schedule 2 to the Migration Regulations. Part 457 contains Subclass 457 (Business (Long Stay)).

Item [2] - Subclauses 457.223(4) and (5)

This item replaces subclauses 457.223(4) and (5) with new subclauses 457.223(4) and (5) in Part 457 of Schedule 2 to the Migration Regulations.

These changes relate to the provisions dealing with:

- sponsorship by Australian businesses; and

- sponsorship by overseas businesses.

New subclause 457.223(4) contains the requirements that must be met where the sponsorship of the visa applicant is by an Australian business. The requirements are largely the same as those repealed, with the following differences:

- there is an addition to new subparagraph 457.223(4)(b)(i) so that it also refers to the new type of standard business sponsorship that is in effect from 1 July 2003;

- paragraph 457.223(4)(c) contains references to forms 1068, 1196 and 1196 (internet). The effect of this change is to add references to new forms 1196 and 1196 (internet); and

- a minor stylistic change is effected by replacing paragraphs (fa) and (g) with new paragraphs (g) and (h).

New subclause 457.223(5) contains the requirements that must be met where the sponsorship is by an overseas business. The requirements are largely the same as those repealed, with the following differences:

- a reference has been made to regulation 1.20G in new paragraph 457.223(5)(b). This is because the activity may only be the subject of an approved business nomination by the employer under regulation 1.20G, as overseas business cannot nominate business activities under regulation 1.20GA;

- either:

- the employer must be a standard business sponsor approved under regulation 1.20DA (which provides for overseas businesses to be able to be approved as standard business sponsors from 1 July 2003). This provision therefore accounts for overseas businesses on or after 1 July 2003; or

- prior to 1 July 2003, the employer must not have operated a business in Australia, must have given the Minister undertakings in accordance with form 1067, and must have been someone who the Minister was satisfied (but for operating an overseas business) would have been approved as a standard business sponsor under the pre-1 July 2003 Migration Regulations. This provision therefore accounts for overseas businesses prior to 1 July 2003; and

- there is an additional reference to form 1196 in paragraph 457.223(5)(d). Unlike the requirements in subclause 457.223(4), it is not possible for an employer mentioned in subclause 457.223(5) to nominate an applicant in accordance with the internet form (ie, approved form 1196 (internet)).

Item [3] - Clause 457.324

This item amends clause 457.324 in Division 457.3 of Part 457 by inserting references to forms 1196 and 1196 (internet) after the reference to form 1068.

The effect of this item is that an applicant seeking to satisfy the secondary criteria for a Subclass 457 (Business (Long Stay)) visa must have been included in any nomination that is required in respect of the primary applicant in accordance with approved form 1068, 1196 or 1196 (internet).

Item [4] - After Part 462

This item inserts new Part 470 into Schedule 2 to the Migration Regulations. The new part creates a new temporary visa, Subclass 470 (Professional Development), and specifies the criteria to be satisfied for the grant of this new subclass of visa.

Certain organisations in Australia have been providing programs that fit the description of a professional program set out in new paragraph 1.20N(4)(a), inserted by these regulations. These programs are designed for senior employees of foreign government agencies and large overseas organisations. The programs are designed to meet the needs of the overseas employer and are fully funded by the overseas employer. Other people undertaking these programs are people nominated as part of an established program to train in certain professional fields. The other visa classes and subclasses in the regulations do not adequately meet the need for entry to undertake these programs. New Sponsored Training (Temporary)(Class UV) and new Subclass 470 (Professional Development) are therefore inserted by these regulations.

Division 470.1 - Interpretation

New clause 470.711 provides that the terms *employed, organisation* and *overseas employer* used in this part have the same meaning as in regulation 1.20M, inserted by these regulations.

The note inserted beneath this provision informs the reader that the term *approved professional development sponsor*, used in this part, is defined in regulation 1.03.

Division 470.2 - Primary Criteria

New Division 470.2 specifies the primary criteria that must be satisfied by an applicant seeking the grant of a new Subclass 470 visa. All applicants must satisfy the primary criteria. There are no secondary criteria as a holder of this visa would be in Australia for the specific purpose of undertaking a professional development program of 12 months or less and should not have any accompanying family unit members holding this visa.

Subdivision 470.21 - Criteria to be satisfied at time of application

No criteria is required to be satisfied at the time of application by an applicant.

Subdivision 470.22 - Criteria to be satisfied at time of decision

New subdivision 470.22 specifies the primary criteria that must be satisfied at the time of decision by an applicant for a new Subclass 470 visa.

New clause 470.221 requires that the applicant has either turned 18 years of age or, where the applicant is less than 18 years of age, the Minister is satisfied that exceptional circumstances exist to justify considering the application.

New clause 470.222 requires, firstly, that the applicant has nominated an approved professional development sponsor (sponsor) as their sponsor in the application form, and secondly, that the applicant is still sponsored by that same nominated sponsor.

New clause 470.223 provides that the sponsor must be satisfied that the applicant:

- will undertake the professional development program mentioned in the visa application; and

- has managerial or other professional skills and work experience relevant to that professional development program. The Minister will be satisfied of these matters if the sponsor indicates, in the visa application, that they are satisfied of these matters.

New clause 470.224 specifies the special return criteria that the applicant must satisfy if he or she has previously been in Australia.

New clause 470.225 provides that the approved professional development sponsor must not the subject of a current notice issued under new subregulation 1.20Q(2). This has the effect of preventing a Subclass 470 (Professional Development) visa being granted to an applicant sponsored by a sponsor who has been issued with a notice. In summary, a notice is given to a sponsor for failure to comply with the sponsorship obligations, among other things. The notice must be revoked after a period specified by the Minister. See new regulation 1.20Q, inserted by these regulations.

New clause 470.226 specifies that an applicant must be employed by an overseas employer in a managerial or other professional position. The term *employed* is defined in new regulation 1.20M. Policy guidelines will describe the types of positions which satisfy this new clause.

New clause 470.227 provides that there must be in place an overseas agreement between an applicant's sponsor and the applicant's overseas employer to the effect that the overseas employer will cover all costs in relation to:

- travel and entry to Australia;

- the cost of tuition for the professional development program;

- accommodation and living expenses;

- health insurance; and

- the applicant's return travel from Australia.

New clause 470.228 requires that the sponsor has given an undertaking to fulfil the obligations specified in new regulation 1.20P. The sponsor gives this on the visa application form.

New clause 470.229 requires that the Minister is satisfied that an applicant is a genuine applicant. In determining whether the applicant is genuine, the Minister may have regard to the applicant's history of compliance with Australia's immigration laws, the applicant's stated intention to comply with any visa conditions, and any other relevant matter.

New clause 470.230 requires an applicant to provide evidence of adequate health insurance arrangements for the period of the applicant's proposed stay in Australia. This should be provided for by the applicant's overseas employer in accordance with overseas agreement.

An applicant is required to satisfy the public interest criteria listed in new clause 470.231.

New clause 470.232 requires an applicant to provide evidence of the sponsor's satisfaction that the applicant's English language proficiency is appropriate for the purposes of undertaking the proposed professional development program. This will be indicated on the visa application form.

Division 470.3 - Secondary Criteria

New Division 470.3 contains no secondary criteria. There are no secondary criteria as a holder of this visa would be in Australia for the specific purpose of undertaking a professional development program of 12 months or less and should not have any accompanying family unit members holding this visa.

Division 470.4 - Circumstances applicable to grant

New clause 470.411 specifies that the applicant must be outside Australia at the time of grant.

Division 470.5 - When visa is in effect

New clause 470.511 provides that the visa is a temporary visa which permits the holder to travel to and enter Australia on 1 or more occasions, and remain in Australia, until a date specified by the Minister. The intention is that the holder may travel in and out of Australia while holding the visa but must depart Australia for the final time on this visa on or before the date specified by Minister.

Division 470.6 - Conditions

A Subclass 470 (Professional Development) visa granted to an applicant is subject to the visa conditions listed in new clause 470.611.

Division 470.7 - Way of giving evidence

New clause 470.711 provides that no evidence of the grant of a Subclass 470 visa needs to be given. However, in the event that evidence is given, then new clause 470.712 specifies that that evidence is to be given by way of a visa label affixed to a valid passport.

Schedule 4 - Amendment of Schedule 6A

Item [1] - Before item 6A1001

This item inserts the column headings in new Part 10 of Schedule 6A to the Migration Regulations. This amendment is consequential to amendments made by the Migration Amendment Regulations (No. 4), due to commence on 1 July, that introduced new Part 10 into Schedule 6A of the Migration Regulations.

Schedule 5 - Amendment of Schedule 8

Item [1] - After item 8535

This item inserts new item 8536 into Schedule 8 to the Migration Regulations. New visa condition 8536 requires the visa holder not to discontinue or deviate from the professional development program in relation to which the visa was granted.

This amendment is consequential to the insertion of Subclass 470 (Professional Development) by these regulations.

Schedule 6 - Amendment of Schedule 9

Item [1] - Part 1, after item 25

This new item inserts new item 26 into Part 1 of Schedule 9 to the Migration Regulations which addresses special entry and clearance arrangements under section 166 of the Act. New item 26 provides that a holder of a Subclass 470 (Professional Development) visa to whom clause 470.711 applies is required to show their passport to a clearance officer as evidence of the visa holder's identity and is required to give a completed passenger card to the clearance officer.

ATTACHMENT C

REGULATION IMPACT STATEMENT

CHANGES TO THE MIGRATION REGULATIONS : PROPOSAL FOR A SPONSORED PROFESSIONAL DEVELOPMENT VISA

A: Introduction

There is an emerging market of tailored vocational/professional development programs purposely designed for senior staff of foreign government agencies and specific employee groups from large multinational or national organisations who have established links to Australia. The programs are designed by the Australian educational provider to meet the needs of the overseas employer. The training is fully funded by the overseas employer.

These programs are an important element of Australia's bilateral relationships with developing and emerging economies in the region. They underpin our commitment to supporting the broader reform agenda of countries in the transformation of their key economic and social institutions.

In particular, since China's membership to the WTO and ongoing privatisation of State Owned Enterprises, there has been a growing trend for local governments to send senior civil servants overseas for training in such areas as health, education, governance, the law and workplace reforms.

Education industry stakeholders have also indicated that there has been similar interest in other countries, but the lack of an appropriate visa product has meant that the demand has not been met. For example, the Vietnamese Ministry of Foreign Affairs has recently expressed an interest to the Australian Embassy to explore options for the overseas English-language training of up to 300 government officials.

Given the market reforms in these countries, there is an opportunity for Australia to play a significant role in the good governance of emerging private sector organisations, and establish firm links with future political and economic leaders. It is likely that markets in other high-risk countries would also respond positively to the availability of such courses.

B: Problems

Existing visa classes do not adequately meet the need for entry to undertake these programs. Currently, some professional/government official groups are being given student visas, others Occupational Trainee visas. Shorter courses are being accommodated by applicants being granted business visas. There are also potential clients who are not accommodated by any visa product, and undertake tailored courses in other countries when they find they are not eligible to come to Australia.

- None of the Student visa subclasses are designed to provide visas for courses that do not lead to a formal qualification, with the exception of subclass 575 (Non Award). There is also a requirement that all courses offered to overseas students are registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS).

- However, subclass 575 visa holders are not able to undertake work placements as part of their course - an integral element of the proposed programs.

- In addition, with the exception of self-accrediting universities, education providers have found it difficult to obtain timely accreditation for their proposed courses (in order to obtain CRICOS registration and be able to offer them to student visa applicants). This is because of the inherent flexibility of the programs on offer, with each tailored for a particular professional/government group.

- Because the programs need to be tailored to specific groups, often with short notice, most education providers do not have the capacity or resources to register each program, and many have been turning down the opportunity to further develop this niche market.

• The Occupational Trainee visa, under policy, requires a 70% workplace component, with a 30% classroom component of the training. While Occupational Trainee visas have, in the past, been granted to visa applicants for tailored professional development courses, this is not ideal as it dilutes the very important policy grounds for the 70/30 model. The majority of the tailored courses are intended to be primarily classroom based, with a smaller component of work placement.

• Business visas have provided a solution to short courses (ie 3 months or less), as there is no restriction on the type of study/training program a business visa holder may undertake during this time. However, this clearly limits the scope of programs on offer due to the time restriction. Many of the courses proposed are between three and 12 months.

Government needs to develop an appropriate visa product to cater for this important emerging market. If action is not taken, Australian education providers and other businesses wishing to offer tailored training products will not be able to enter into this market, which will detrimentally impact the future development of this industry in Australia. Negative affect may also be felt on Australia's bilateral relationships, as we are not able to appropriately accommodate demand for entry to train here.

C: Objectives

The objective of this proposal is to appropriately address the demand to accommodate the entry of professionals for tailored training, without compromising or risking the integrity of the Australian migration program.

D: Options

As Australia's visa regime is universal, there are only two options for resolution of the problem: maintain the status quo, or introduce an appropriate visa product.

Option 1 : Status quo

As outlined above, maintaining the status quo will enable a small proportion of potential visa holders to access the tailored programs by utilising a range of alternative visa options, including student, occupational trainee and short business visas.

Option 2 : New visa product

This option proposes a new Sponsored Professional Development visa to cater for these groups of visa applicants. The scheme is characterised by elements that ensure program quality and integrity, and at the same time enable the delivery of improved client service. The characteristics would include the following.

Overseas employer - limited eligibility

The eligibility to be granted the visa be limited to the employees of specifically defined employers. Such employers would be either government agencies, or large multinational and national companies.

The visa applicant would be required to demonstrate that:

- they are fully funded by their employer;
- their sponsor and employer have a good Australian migration compliance history; and
- their sponsor and employer meet the specified criteria.

Sponsorship by an Australian company/training provider

A visa applicant would be unable to apply for the visa without the nomination for a tailored professional development program. The application can only be lodged by a pre-approved sponsor. The professional development programs, for which sponsors can nominate visa applicants, will also be required to meet defined criteria.

In order to be pre-approved as a sponsor, the Australian organisation would be required to apply separately, and demonstrate that it meets specified integrity criteria. This is particularly important in order to ensure that only Australian organisations with an excellent immigration compliance history and only those capable of delivering their sponsorship undertakings are selected to nominate visa applicants under the scheme. In order to be granted sponsorship status, the sponsor will also have to agree to meet costs that may be incurred by the Commonwealth as a result of the visa holder's actions in Australia, and agree to assist the Minister for Immigration in monitoring of the visa holders. The sponsor will also acknowledge that a failure to comply with their undertakings, or a failure by the visa holder to comply with their visa conditions, may lead to the imposition of a sanction against the sponsor. The sanction may be in the nature of financial penalties, or a bar on further applications for a particular period of time.

The approach ensures both a high quality product, and sustained integrity of the scheme.

Stringent visa conditions

In order to enable a high level of integrity of the program, and ensure quality of visa applicants that sponsors nominate under the program, stringent conditions will apply to the visa holders. For example, visa holders will not have the right to work (with the exception of their pre-approved work placement which forms a part of their tailored professional development program); will not vary their approved program; and at the end of their visa will return to their home country to use their skills and knowledge gained through training in Australia.

Monitoring

A comprehensive monitoring scheme, which includes reporting by Australian sponsors, will be established to assess the success of the proposal and to provide ongoing confidence relating to the high levels of integrity and compliance with the visa conditions and the overall spirit of the regime. Visa holders' compliance with their visa conditions will be monitored and reported on. In addition, the monitoring unit would assist sponsors to meet their obligations and provide an ongoing point of contact.

Sponsor obligations

In order to ensure that the integrity of the regime is not compromised, and that visa holders are protected, it is essential that there are effective mechanisms to compel sponsors to comply with their obligations, and sanction those that are not willing to meet their obligations. It is therefore proposed to amend migration legislation to:

- make temporary residents' sponsors' obligations (including the obligations to repay Commonwealth costs) legally enforceable; and

- introduce a scheme of administrative sanctions against sponsors who do not meet their obligations, for example, a time-limited bar against future applications for sponsorship or future nominations of visa applicants, and/or standardised financial penalties in some circumstances.

E: Impact Analysis[1]

Currently there are financial implications for Australian businesses and the Government through loss of potential revenue. This subsequently directly affects any strategic relationships that may exist with both overseas businesses and/or governments.

Those affected by the problem include overseas clients who are currently unable to undertake training programs in Australia. Equally affected are those in the Australian education industry and business community who wish to take advantage of and cater for this emerging market.

The Department of Immigration and Multicultural and Indigenous Affairs (the Department) itself is also affected as it is forced to consider "work around methods" within the existing legislative framework. This occurs on a case by case basis whenever a group presents with a desire to undertake such a program in Australia. It has a detrimental effect on resource allocation within the Department (as policy areas need to be consulted each time for advice regarding appropriate visa classes) as well as on the integrity of the visa system.

This has been identified as an emerging market, and as such it is predicted that the number of people affected are likely to increase.

Option 1: Status Quo

Impact on the Community

It is envisaged there would be no additional impact on the community as a result of Option One.

Impact on Business

A substantial cost of Option One on business is the potential loss of revenue and of lost opportunity to use links/develop additional links with foreign businesses. There would be no additional administrative burden on business.

The sole benefit of Option One to business is its limited impact on resources.

Impact on Government

There would be little impact on government resources from adopting this option.

The costs of Option One however are substantial. For government these costs include loss of potential revenue and of essential direct links with foreign businesses and governments created through such programs.

In addition, the effect of adopting Option One will be the exacerbation of existing problems, with pressure increasing from the business community to accommodate for the demand in the developing market.

It is anticipated that costs of Option One will be ongoing and increase with time.

Again, a benefit of this option is limited impact on resources.

Option 1: Status quo - summary of impact

	Benefits	*Costs*
Consumers	• Nil.	• Limited access to training and development opportunities in Australia.
Business	• Nil impact on resources.	• Loss of revenue. • Negative effect on business relationships.
Government	• Low impact on resources.	• Ongoing difficulty in using existing visa regimes to cater for the emerging market. • Loss of potential revenue. • Continued pressure from industry and consumers to cater for the emerging market. • Negative effect on international relationships.
Community as a whole	• Nil.	• Nil.

Option 2 : New Visa Product

A Visa application charge of $160.00 will be payable by consumers. This cost will not impact on the Australian community, as it will be borne by the overseas visa applicants and/or their employers or sponsors.

A benefit of Option Two is the ability of overseas consumers wishing to undertake professional development and training in Australia that would otherwise not be possible under existing regulatory framework.

Impact on the Community

The Australian community will benefit from the spending of those undertaking training in Australia under this scheme. It is projected there will be an initial uptake of 10,000 applicants in the first year expanding to 15,000 in following years. Visa holders will be staying in Australia for periods of between three and twelve months.

It is important to consider whether Option Two may impact on Australian labour markets. The provision for work place experience may give the appearance of impacting on the labour market. This potential impact can be minimised by adopting various safeguards (refer Part H - Implementation and Review).

Impact on Business

Australian organisations looking to accommodate professional training and development in Australia will benefit financially. Prospective Australian sponsors will be able to cater for the identified emerging market under Option Two. This will not only have the effect of bringing financial gains but also increase direct links with foreign governments and businesses.

It is difficult to accurately estimate the possible financial gains for individual organisations, as they will vary significantly, depending on numbers of programs a sponsor may wish to have approved, number of agreements they may enter into with overseas organisations and numbers of visa applicants whom they may nominate. In addition, as the programs would not require registration (unlike courses for student visas), sponsors would have the option of setting program costs at any level that would be commercially supportable. The difficulty in estimating the potential gains, therefore, is exacerbated by both the wide range of programs that may be offered as well as the varying duration of these programs - both factors contribute to large variations in the potential course fees that may be charged by education providers/ sponsors of the visa applicants.

However, given the enthusiasm expressed by education industry representatives in relation to this product, it can be assumed that potential financial gains are not insignificant.

Australian sponsors will benefit by having a centralised point of contact in Australia, where they will lodge their applications for approval of professional development programs, and the visa applications. The Department will provide high levels of service, competitive processing times, and be responsive to sponsors demands. It is also anticipated that application lodgement services will in future be available on-line, further streamlining processes and minimising delays and negative impact on business.

These operating procedures will be welcomed by Australian businesses, and will more than outweigh any application or infrastructure costs expected by business.

Additional costs for Australian sponsors under Option Two will be predominantly at the outset. For example:

- The cost of acquiring sufficient knowledge to meet new regulatory requirements.

- The government will bear some costs in this regard. In particular, targeted information strategies will be developed to inform and train sponsors in their new requirements.

- Application costs of $1000.00 per program.

- This is a one-off cost per application for approval of a program. It is envisaged this additional cost will be accepted as it will provide for streamlined processing and efficiency gains for both organisations and the Government. While there is a cost for each new program, nomination under approved programs will mean minimal ongoing costs.

- There will also be a one-off cost for consumers in the form of the Visa Application Charge. The cost is reasonable at $160.00 per applicant, and will be used to offset processing and integrity checking costs. This cost is the same as for many other temporary residence classes, including the Occupational Trainee Visa; and is significantly lower than the Student Visa Application Charge.

- Additional resources to recruit bona fide trainees and monitor and report on them while in Australia.

- However, the Department will re-validate sponsorship status annually, at no additional cost to sponsors.

- Development of relationships (MOUs) with overseas clients - although for many businesses, this is an existing cost.

There will also be increased sponsorship requirements on behalf of sponsors. These will be potential financial sanctions and/or barring of sponsors who fail to meet their undertakings, or whose trainees do not comply with their visa conditions. Such sanctions can be minimised by first ensuring the sourcing of quality clients and secondly by reporting any non-compliance on behalf of their trainees to the Department. In such an event sponsors will attract a lesser sanction than if the Department locates a visa holder in breach of their sponsors undertakings. See *Regulation Impact Statement on Sponsorship*.

Impact on Government

The Department is to be substantially affected by Option Two. The creation of a new visa involves initial start up, training, implementation and ongoing management costs, including monitoring of visa holders and sponsors. The analysis of the costing of the proposal in terms of cost recovery is as follows.

Financial impact

After initial implementation and necessary set-up costs of $1.0m in 2002-03 , the project funding (coming from the purchasing agreement with the Department of Finance and Administration) for DIMIA will be:

- $1.8m in 2003-04
- $2.7m in 2004-05
- $2.7m in 2005-06

Revenue collected from Sponsorship charges and Visa Application Charges is expected to be:

- $1.7m in 2003-04
- $2.6m in 2004-05
- $2.6m in 2005-06

The Sponsorship charge is levied on education service providers who wish to be approved to participate in the program. The charge is levied under authority of section 504 of the *Migration Act 1958*. It will be set at $1000 in 2003-04. This is not determined on a cost-recovery basis, but it is consistent with the Government's user pays policy.

The Visa Application Charge is levied on individuals wishing to come to Australia to participate in the program. It is levied under the authority of the *Migration (Visa Application) Charge Act 1997*. The amount of the charge is proposed at $165 per application in 2003-04.

While these charges are loosely aligned to the cost of processing the application and the provision of other immigration services, the charges are not classified as cost recovery but are more correctly classified as a non-tax revenue using the taxing powers of the Commonwealth. (There is additional revenue derived from pecuniary penalties, estimated at $0.4m in 2003-04 and $0.6m in later years, which is imposed on education service providers for breach of service conditions. These are outside the definition in the cost recovery guidelines.)

Therefore, in aggregate over four years, the net Budget position is $0.5m positive (including pecuniary penalties and the recovery of set-up costs). These costings have been agreed to by the Department of Finance and Administration.

Other impact

If implemented, Option Two would solve the problem currently encountered by the Department. This will minimise the costs of the Department at a policy level to address those wishing to undertake professional training in Australia on a case by case basis.

Option Two would also address concerns of the Australian training industry and foreign governments currently being presented. This will subsequently result in increased opportunity for Australia to forge new, and develop existing relationships.

Option Two would have no significant effect on existing regulations. This is because it is designed to cater for a particular market that is currently not satisfactorily provided for by existing regulation. Given this there is no repeal or amendment to current regulations anticipated.

In summary, while this option would deliver the desired outcomes, there is some additional impact on stakeholder groups. Principally, the proposal may expose Australian sponsors to administrative liability for their behaviour and that of their sponsored visa holders. Sponsors will also be required to report to the Department of Immigration and Multicultural and Indigenous Affairs on their visa holders, which will create additional administrative tasks. Nevertheless, both of these impacts may be minimised by sponsors by:

- selecting visa holders and developing relationships with overseas employers who are genuine in their intentions to undertake professional development programs in Australia (many education providers are already skilled in recruiting compliant students for the student visa program);

- minimising financial costs to themselves by entering individual agreements with the overseas organisation for cost recovery; and

- developing structured reporting mechanisms. Again, many sponsors who are already involved with the student visa program are already subject to stringent reporting requirements.

Option 2: New visa product - summary of impact

	Benefits	*Costs*
Consumers	• Greater access to Australian training products.	• $160.00 (Visa Application Charge)
Business	• Ability to take advantage of emerging markets.	• Set up costs

	• Potentially significant revenue gains. • Ability to compete internationally.	• Open to possible financial and administrative sanctions.
Government	• Revenue gains. • Relationship building.	• Initial set up including, IT, infrastructure, training of staff, and information distribution to clients. • Ongoing management.
Community as a whole	• Cultural and social gains from further internationalising Australian commercial and political exchange. • Increased entry of people to Australia will have a positive effect to the economy through the spending of those while they are in Australia. Projected 10,000 people for the first year.	• Nil.

There may also be some initial set-up costs for the Government, required to establish appropriate resource infrastructure to enable the processing of the applications, in particular given the likelihood of requirements for fast service by sponsors; and to set up monitoring arrangements. This cost will be offset after the first year of operation by revenue obtained from visa and sponsorship application charges.

Despite these costs, it is essential that a monitoring and sanctions regime is established, to ensure the integrity of Australian migration program and promote quality measures in relation to the visa scheme. It is also essential that the new visa is not used by education providers to by-pass the safeguards put in place by the *Education Services for Overseas Students Act 2000* (ESOS Act). Strict eligibility criteria and sanctions regime will ensure that this will not occur.

F: Consultations

The requirement for a solution to the above mentioned problem has arisen through the Department's ongoing business. This has been highlighted by an increasing number of inquiries the Department is receiving from both domestic and overseas organisations including foreign governments and the Australian Department of Education, Science, and Training (DEST).

DEST and the Department agree that an appropriate visa product should be developed to effectively cater to the emerging training and development opportunities currently arising.

The Affiliation of International Education Peak Bodies (AIEPB) have raised the market concerns through their regular consultative meetings with the Department. AIEPB strongly supports the development of an appropriate visa product.

The Department has also consulted with the Department of Employment and Workplace Relations (DEWR), the Department of Foreign Affairs and Trade (DFAT), the Australian Security Intelligence Organisation (ASIO), the Department of Health and Ageing and the Attorney General's Department (AGD). A draft copy of this Regulation Impact Statement was provided to each of the agencies listed above.

Each of the agencies commented only on the preferred option, and some highlighted policy and/or operational issues in relation to that option. In particular, DEWR proposed a number of detailed operational measures to ensure that the possible impact on the Australian labour force is minimised. DFAT advised that it welcomes this proposal by DIMIA, which builds further on the positive outcomes from the DIMIA-chaired Working Group on International Education. DFAT also advised that the new visa could be used effectively as an avenue for strengthening bilateral relationships in education and training with countries where we have been unable to do so in the past. DFAT would hope that the eligibility criteria remains flexible enough to be able to make the most of this opportunity and in light of this recommend a review of the eligibility criteria and performance of the new visa be undertaken after one year of operation.

G: Conclusion & Recommended Option

Option One provides for a "*status quo*" approach to the problem, requiring no implementation costs and allowing existing regulation to respond to demand. This is currently occurring with limited success.

In summary, Option One will lack the unified approach to the problem of Option Two, and it will not address the entire range of the potential demand for access to professional development in Australia. The option will not respond to requests made by the education industry, nor support the further development of commercial and bilateral government relationships with key clients in our region.

On the other hand, maintaining the status quo will mean that no additional initial set-up costs would be necessary, thereby leading to a lower impact on government resources.

Option Two provides for the implementation of a new visa that will specifically cater for the identified developing market. This will require substantial effort from Government to set up and monitor. It also requires relevant organisations to understand new regulations and undertake to provide ongoing support, reporting and receive possible sanctions.

Overall Option One does not provide a desirable outcome for a resolution to the problem currently faced. The fact that there is a need to address the problem within the context of the universal visa system means that not regulating will, at best, maintain current difficulties.

Option Two provides long term benefits that are anticipated to outweigh costs by all affected parties. There is also the ability by business to substantially shift many costs onto overseas customers and their employer organisations.

The adoption of Option Two is recommended given the ongoing benefits which include revenue for Australia, the ability to forge integral business and government relationships and the satisfying of current market requests.

H: Implementation & Review

Given initial set up processes that include systems, regulation, training, and informing the market, it is envisaged the Option Two could be implemented from 1 July 2003. The Immigration Portfolio would be responsible for the implementation and ongoing regulation, with appropriate input from other major stakeholders.

Option Two will cater for the demands of all stakeholders. This will include flexibility within the context of maintaining integrity of the migration program. Option Two will be clear, consistent and comprehensible for all relevant parties.

Some proposed mechanisms to minimise the impact on the labour market include:

- Consultation with the Department of Employment and Workplace Relations (DEWR) at development stage for the new visa product, to take into account labour market considerations.

- Appropriate control retained over proposed Professional Development Programs, for example by ensuring that the period of any workplace training is kept as a small part of the overall training scheme.

- Undertaking appropriate evaluation of the impact of the visa product on the Australian labour market as part of the review process.

It is proposed that the effectiveness of Option Two will be reviewed on an ongoing basis in the first year of operation. Its effectiveness in delivering identified outcomes will be evaluated by the Department in the second year of operation.

REGULATION IMPACT STATEMENT

1. Problem

The sponsored entry arrangements under the Temporary Business (Long Stay) (Subclass 457) visa involve a 3-step process of sponsorship, nomination and visa application. Employers who satisfy the sponsorship criteria can be approved as either a pre-qualified business sponsor (PQBS) or a standard business sponsor (SBS). Special arrangements exist for overseas businesses (OBS) which are provisionally assessed against SBS requirements, although are not formally approved as sponsors. Labour Agreements (LA) and Regional Headquarters Agreements (RHQ) also allow for the nomination of and visa grant to subclass 457 applicants.

This structure has been in place since 1996, following the report by the Committee of Inquiry into the Temporary Entry of Business People and Highly Skilled Specialists, *Business Temporary Entry - Future Directions* (August 1995). Reviews of the changes introduced in 1996 were conducted by the Committee for Economic Development of Australia (CEDA) *Temporary Business Entry to Australia - Views of Companies and Migration Agents* (August 1999) and the Business Advisory Panel *Business Entry in a Global Economy - Maximising the Benefits* (August 1999). Both of these reports confirm that stakeholders were satisfied with the changes made and that the current system meets the needs of Australian businesses in most areas.

Nevertheless, the current structure is perceived as complex and confusing. A number of issues have arisen which undermine the effectiveness of the program for clients.

Client understanding of requirements

The existing sponsorship options provide flexibility for business, however the different features and complex structure of the various sponsorship options can result in confusion about sponsorship and nomination requirements. Some employers have reported that they find the requirements difficult to understand; this appears to be particularly the case for first time or one-off users.

The range of sponsorship vehicles also creates confusion and complexity for some sponsors, particularly first time users. Employers who are one-off users comment that they find the range and detail of sponsorship options complex. In 2001-02, 3,609 approved sponsors (70% of sponsors) lodged only one nomination under their sponsorship.

DIMIA business centres report that they expend considerable resources explaining sponsorship requirements to business. Much of the explanation relates to the merits of the various sponsorship options, including costs, benefits, period of validity and the number of nominations available, all of which differ between PQBS and SBS/OBS or Labour Agreements.

The introduction of the information and application booklet "Sponsoring a temporary overseas employee to Australia" was an attempt to provide clearer information for sponsors and applicants on the various sponsorship options and the three stage application process.

The major differences in sponsorship structures and entitlements include:

- PQBS allows unlimited nominations whereas SBS limits the number of nominations;

- PQBS is valid for 2 years and renewable for 1 year whereas SBS is valid for 1 year and not renewable;

- OBS is not formally approved as a business sponsor but administratively similar to SBS; and

- the filling of the maximum allowable number of nominations ceases an SBS or OBS at an earlier time than sponsorship expiry, whereas PQBS remains valid for 2 years regardless of the number of nominations made.

Different fee structure

The different fee structure for PQBS, SBS and OBS is complex, and some employers have reported that they find the basis for it difficult to understand. The differences are:

- PQBS applicants pay an up-front sponsorship fee ($3,395) but pay no fee per nomination, whereas SBS/OBS applicants pay no sponsorship fee but a set fee per nomination ($235);

- the PQBS renewal fee is $1,135 for one year, but there is no option to extend the SBS; and

- there are no costs for Labour Agreements or the nominations attached to them.

The complex fee structure can result in incorrect fees being paid and invalid applications being lodged, requiring application withdrawals and fee reimbursements. In some cases, businesses have applied for PQBS when their sponsorship requirements are minimal, or conversely, they apply for SBS when their sponsorship demands are substantial.

Processing applications from overseas businesses

Approximately 93% of sponsorship applications are from businesses operating in Australia. The ability for businesses operating outside Australia to access the sponsored 457 visa arrangements was a recommendation of the Report by the Committee of Inquiry into the Temporary Entry of Business People and Highly Skilled Specialists, and many overseas businesses have made use of the special OBS facility.

Providing these arrangements for the relatively small number of OBS applicants creates complexity in legislation, policy, procedures and systems. The issues include:

- overseas businesses cannot formally apply for sponsorship as the current wording of the sponsorship regulations require that businesses applying for approval as sponsors must be "lawfully operating in Australia", and overseas businesses cannot meet this requirement. Instead, a somewhat cumbersome work-around has been introduced which requires overseas businesses to be assessed and approved under nomination regulations, but are still expected to meet sponsorship requirements and commit to sponsorship undertakings;

- despite efforts to explain the administrative arrangements for OBS in the temporary residence booklet, forms and standard letters, business and agents report that they find the arrangements complex.

The current system is summarised in the following table.

	PQBS	**SBS**	**OBS**	**LA**
Sponsorship approval	2 years	12 months*	No formal application	3 years
Sponsorship fee	$3395	Nil	N/A	N/A
Renewal period	1 year	N/A	N/A	N/A
Renewal fee	$1135	N/A	N/A	N/A

No. of nominations	Unlimited	Specified	Specified	Annual ceiling
Nomination fee	Nil	$235 each	$235 each	Nil
Visa application charge*	$160	$160	$160	$160

An SBS expires earlier than 12 months if the specified number of nominations are filled.

Implementation of eLodgement for the 457 visa

The 457 visa has been identified for inclusion in the eLodgement environment - this was part of the Government's *Backing Australia's Ability* program, in the immigration initiatives outlined in *ICT in Focus*. A trial is planned to commence from 1 July 2003.

A system that reflects the current complex arrangements could be confusing and difficult for users, particular first time or one-off users. Consequently, the take-up rate of the eLodgement facility may be adversely affected. Key to the success of eLodgement will be the ability of clients and migration agents to lodge applications over the Internet in a simple and easy manner.

2. Objectives

To improve client service and enhance administrative efficiency by streamlining the options for Temporary Business (Long Stay) sponsorships and nominations.

To create a sponsorship, nomination and visa application environment which will be easily accessible in the electronic lodgement context.

3. Options

The current temporary business (long stay) sponsorship and nomination arrangements are contained in the *Migration Regulations*. Any attempt to alter them must therefore be undertaken through regulation; there is no policy option which would achieve the desired outcome without amendment to the regulations.

This leaves two possible options

1. Retaining the current system

One option would be to do nothing - that is, to retain the current system which has been in place since 1996 and has proved relatively robust.

2. Amendment to Regulations to enable simplification of the system

To deliver the objective of enhanced client service and administrative efficiency, the following changes could be made to the current system:

A single sponsorship product

It is possible to simplify the sponsorship options while retaining the features employers favour. PQBS, SBS and OBS could be merged into a single sponsorship product to be known as a Business Sponsorship (BS) with the following features:

- a validity period of 2 years;

- no renewal of sponsorships;

- the sponsorship would cease at either expiry (2 years), use of the maximum available number of nominations (ie grant of visas in relation to those nomination), or cancellation, whichever happens first;

- the OBS becomes a formal sponsorship application under the sponsorship regulations;

- there will be a set sponsorship fee for each Business Sponsorship lodged.

Single nomination arrangement

Together with the streamlining of sponsorship options, a single nomination arrangement and fee structure for PQBS, SBS, OBS and Labour Agreements would significantly simplify the procedures:

- a limit to the number of nominations lodged under a Business Sponsorship;

- a set nomination fee to apply to each nomination lodged under either a Business Sponsorship or Labour Agreement, where the sponsorship or agreement was received and approved on or after 1 July 2003.

Standardised fee structure

The proposed new fee structure is designed to minimise the costs for sponsors across the board, while having no impact on revenue collected by the Department (ie no significant increase or decrease). Based on the fees closest to budget neutrality, it is proposed that all sponsorship applications would attract a fee of $250, while nominations would attract a fee of $50.

The proposed structure is summarised as follows.

	Business Sponsorship	**Labour Agreement**
Sponsorship approval	2 years	3 years
Fee	$250	Nil
Renewal period	Nil	Nil
No. of nominations	Specified	Annual ceiling
Nomination fee	$50 each	$50 each
Visa application charge	$160 (no change)	$160 (no change)

4. Impact Analysis

Who is affected

Affected parties are

- Australian businesses which seek to employ skilled overseas staff to work in Australia on a temporary basis, whether under sponsorship or Labour Agreement arrangements

• In 2001-02, a total of 9,083 sponsorship applications were received. 97.5% of these were for SBS, 1.5% for PQBS, and 1% for PQBS renewal. In the same year, 5,104 approved business sponsors lodged nominations.

- Small businesses are included in this group, although it is difficult to estimate what proportion of sponsors fall into the small business category.

Overseas businesses seeking to send staff to work in Australia to establish a branch or other business activity, or to fulfil contractual obligations

- It is estimated that 7% of sponsorship activity is generated by overseas businesses, however as there are no formal sponsorship applications, it is difficult to be precise about the numbers involved.

Registered Migration Agents which assist businesses to lodge sponsorship and nomination applications

- Approximately 43% of sponsorship applications are lodged through migration agents, while approximately 34% of nominations are handled by migration agents.

- DIMIA staff at regional offices, inquiry centres and overseas posts, who interpret the legislation and policy in relation to temporary business sponsorships and nominations, and provide information to clients on the provisions.

Option 1

If we choose to do nothing (ie no regulatory change), then there are no benefits to be gained by business or government. The current system, which is certainly functional, will continue in place. However, the negative aspects of the current system, which have been brought to our attention by both business and Departmental representatives, will not be addressed. Thus there would be no benefits to be derived.

The costs would be:

- clients will continue to be confused by the system and lodge incorrect or inappropriate sponsorships;

- regional offices will continue to bear the burden of explaining complex structures and processing refund requests flowing from lodgement of incorrect/inappropriate sponsorships;

- overseas business sponsors will continue to be "administratively" processed as if they were SBS sponsors without the ability for the department to adequately monitor or act against breaches of sponsorship undertakings;

- the transition to eLodgement could be compromised, as the complexity of the system would not lend itself well to an eBusiness environment.

Option 2

There are both costs and benefits involved with the three aspects of Option 2.

1. Single sponsorship product

<u>Costs</u>

Australian businesses seeking to sponsor overseas staff will no longer have a choice of sponsorship options, as they do at present. Under the current provisions, a sponsor can opt

either to become a pre-qualified business sponsor, or a standard business sponsor. Under Option 2, there will be only one form of business sponsorship, covering both Australian and overseas businesses.

PQBS sponsors currently represent a small proportion of sponsors (2.5%). The changes proposed under Option 2 will impact on them as follows:

- As the validity of the new sponsorship will be 2 years, the change will be cost-neutral in this sense for current PQBS businesses.

- Sponsorships will no longer be able to be renewed. This is not expected to be such a detriment, even to current PQBS businesses. The sponsorship renewal process still required the completion of the sponsorship application form and payment of a (reduced) fee, and assessment against the same criteria as for the initial application (ie, almost the same level of processing, with some capacity for streamlining). However, because renewal was only for 12 months at a time, anecdotal evidence suggests that many PQBS sponsors chose to lodge new PQBS sponsorships every two years, rather than renewals every 12 months, to save on administrative costs. This is exactly what would be done under Option 2 arrangements.

There would be no costs from the Option 2 proposal to provide only one sponsorship type to current SBS sponsors, or overseas business sponsors.

Benefits

Standard Business Sponsorship (SBS) is the preferred or more suitable option for 97.5% of current sponsors. This allows for the nomination of a specified number of positions over a 12 month period. The changes under Option 2 would be cost-neutral or even beneficial to such businesses, as their period of sponsorship validity would be 2 years rather than the current 12 months.

The current confusion experienced by clients unsure of which sponsorship option to choose, and for DIMIA staff in attempting to explain the features of both types, will be removed. Simplification of the sponsorship options would reduce resources devoted to explaining requirements to business and assist business in lodging complete applications.

The new Business Sponsorship option, by including provision for overseas businesses to be approved as business sponsors, will provide clarity and certainty for overseas businesses seeking to send staff to work in Australia. There will also be a benefit to staff processing applications by the clear guidelines on processing such applications.

Following on from this, when overseas businesses become approved sponsors, they will be responsible under the legislation to meet their sponsorship undertakings. The Department will be able to cancel sponsorship approval for OBS if they are found to have breached their undertakings, as is currently the case for Australian business sponsors. This will be an advantage in targeting overseas companies which seek to employ staff in Australia without complying with Australian industrial relations requirements.

There will be a benefit to DIMIA processing in the sense that the sponsorship legislation will be considerably simpler, leading to clarity relating to validity of sponsorships and when they cease (ie 2 years from approval, or once the agreed number of nominations has been filled, or on cancellation, whichever comes first).

The transition to eLodgement will be made easier for end users if the sponsorship arrangements are simplified - ie only one sponsorship option, with a standard fee in all cases.

2. Single nomination arrangements

Costs

Sponsors will be required to specify the number of positions they will nominate in a two year period. If, in the course of that two years, they need to bring in more staff, over and above the number of nominations agreed to, a new sponsorship agreement would be required. This would be an administrative cost to businesses which bring out large numbers of overseas staff. It will require greater discipline on the part of sponsors to be realistic about their overseas recruitment needs, or to overestimate them, at the sponsorship stage, to ensure that their requirements are catered for.

There is no particular disadvantage to businesses from over-estimating their nomination requirements; fees for nominations are only required when the nomination application is actually lodged, and at the sponsorship stage all that is required is that the prospective sponsor advises the department of how many nominations they estimate they will require during the life of the sponsorship. If during the life of the sponsorship they actually require fewer nominations than the number originally estimated and approved under the sponsorship, there is no detriment involved.

Benefits

While there will no longer be provision for an unlimited number of nominations to be approved under the sponsorship during the period of validity, there is no upper limit on the number of nominations which could be agreed to under an approved sponsorship, so the change is likely to be cost-neutral, as long as businesses accurately forecast their overseas staff needs at the outset.

Once again, there is an administrative benefit for DIMIA in the fact that nomination requirements will be standardised - less complex arrangements will be easier to convey to clients and simpler to administer. This benefit will flow on to the development and implementation of the eLodgement system.

3. Standardised fee structure

Costs

The proposed fee structure under Option 2 may represent a cost to some businesses seeking to sponsor overseas staff.

- SBS and OBS businesses would be required to pay a sponsorship charge, which is not required under current arrangements (they only pay nomination charges)

- One-off sponsors, who only wish to nominate one applicant during the life of a sponsorship, will pay $65 more under Option 2 than they do at present.

- PQBS businesses would be required to pay a nomination charge for each nomination, which is not required under current arrangements (they only pay a sponsorship charge)

- High-volume sponsors will pay more once they nominate more than 63 positions during the life of a sponsorship

- Nominations lodged under Labour Agreements would be subject to the nomination charge (at present there are no charges for nominations under Labour Agreements)

A summary of how the fee structure would affect the outcomes for sponsorship of various numbers of nominees can be found in the following table.

	CURRENT				PROPOSED			
No. of noms	Sponsor-ship fee	Nom. Fee	Total	Unit Cost	Sponsor-ship fee	Nom. Fee	Total	Unit Cost
1	$0	$235	$235	$235	$250	$50	$300	$300
2	$0	$470	$470	$235	$250	$100	$350	$175
5	$0	$1,175	$1,175	$235	$250	$250	$500	$100
10	$0	$2,350	$2,350	$235	$250	$500	$750	$75
15	$3,395	$0	$3,395	$226	$250	$750	$1,000	$67
50	$3,395	$0	$3,395	$68	$250	$2,500	$2,750	$55
100	$3,395	$0	$3,395	$34	$250	$5,000	$5,250	$53

- for one nomination, an employer would pay $300 (currently $235 under the SBS arrangements);

- for five nominations, an employer would pay $500 (currently $1,175 under the SBS arrangements);

- for ten nominations, an employer would pay $750 (currently $2,350 under the SBS arrangements); and

- for 100 nominations, an employer would pay $5,250 (currently $3,395 under the PQBS arrangements).

NB: The visa application fee will remain at $160 and is not factored in to the above costs.

The implications of the proposal are that businesses which only require one nomination, would pay an increased cost. Businesses which require two or more nominees would pay less than they pay under current arrangements. Very large businesses would pay marginally more when requiring a large number of nominees (they would begin to pay more at 63 nominations and above), although the per unit costs would be less than those for other businesses. In 2001-02 only 34 companies lodged more than 63 nominations.

When considering the proposed new fee structure, it should be remembered that

- the increase in fees for one-off sponsorship applicants is minimal, particularly given the relatively small scale of DIMIA fees compared to the costs of bringing an employee to Australia. Consultation with business representatives suggested that the proposed increase was not significant and was not likely to cause concern or detriment to small to medium enterprises.

- the sponsorship would be for up two years, twice the validity of the current standard sponsorship arrangement - this will be an advantage, rather than a cost, to businesses which sponsor one person per year - they will now end up paying less (one sponsorship fee and two nomination fees per 2 year period); and

- the efforts being made to streamline the process and provide electronic lodgement facilities will reduce administrative costs for sponsoring businesses, which could help balance out the effect of any fee increase.

A further cost for businesses which nominate large numbers of overseas staff, including Labour Agreement participants, is the administrative cost involved with paying a fee for each nomination. This cost can be minimised by the practice, already followed by most PQBS businesses, of nominating blocks of positions at a time. That is, rather than submitting one nomination at a time, it is possible for businesses to submit a number of nomination applications together, and pay the charges as a total sum. Thus, if a company knows it will be recruiting 100 staff from overseas, then 100 nomination applications can be lodged together with one payment cheque, thus reducing the administrative inconvenience.

It is not expected that there would be any undue costs for DIMIA in implementing Option 2. The infrastructure to process sponsorships and nominations and accept application charges is already in place. Changes to forms and information publications will be conducted as part of the regular cycle of information updates - while there are some costs involved they are part of the normal budget for this process and not an additional cost imposition over and above what is usually expected.

Benefits

The proposed charges were determined with a view to budget neutrality - that is, there should be no significant increase or decrease in Departmental revenue from the change in fees.

The proposed charges were intended to reflect the fact that the primary focus of decision-making is on the sponsorship, rather than on the nomination - see the details under the cost recovery impact statement, below.

Simplification of the fee structure would achieve more administrative efficiency for DIMIA by reducing the incidence of incorrect fee payments requiring refunds, and would enhance service-delivery to clients.

Sponsorship and nomination charges can be paid separately or together, as it suits the client.

Electronic Lodgement

In addition to the benefits identified under each of the 3 aspects outlined above, the fact that Option 1 is designed to allow for an accessible, user-friendly electronic lodgement facility is a significant overriding benefit.

The practical benefits of eLodgement are:

- it is responsive to the wishes of clients and migration agents, who have advised that they would prefer to deal with the Department through electronic means;

- clients have a greater choice of lodgement options;

- clients lodging applications electronically only see the parts of the application "form" which are relevant to their circumstances, making completion and lodgement streamlined;

- clients will be able to attach supporting documentation electronically, and less documentation will be required;

- integrated help systems will give a greater degree of guidance and advice than is available on the manual forms;

- once an application is lodged, the eLodgement system will provide eMail updates to clients on the processing of the applications;

- faster decisions, as the resources freed up from data entry and responding to inquiries will be redirected to processing of electronically lodged applications.

In addition to these benefits for clients, DIMIA will benefit from:

- lodgement of complete applications, as the eLodgement system will require that applications are fully completed before they can be submitted;

- resource savings in relation to data entry;

- resource savings in the reduction of storage requirements.

The availability of this facility is expected to counterbalance a number of the disadvantages of the current arrangements faced by clients, and to provide greater accessibility for all clients.

Cost Recovery Impact Statement

The current proposal involves amendment to fees already being charged for business sponsorship and nomination services, and hence was not originally designed to fully implement cost recovery. The fees are set to achieve partial cost recovery, while maintaining budget neutrality.

Which of the agency's objectives are relevant to the activities or products being considered for cost recovery?

The mission statement of the Department of Immigration and Multicultural and Indigenous Affairs begins "*Australia, enriched through the entry and settlement of people* [.]". Of the three outcomes identified under this statement, Outcome 1 provides that the Department "*contributes to Australia's society and its economic advancement through the lawful and orderly entry and stay of people*." There are 7 outputs under this outcome. Output 1.1.6, Temporary Residents, is the output which covers the changes proposed in this RIS.

The objective of Output 1.1.6 is as follows: "*Temporary residence visas are designed to further Australia's economic, social, cultural and international relations in the context of a more mobile global workforce*." This proposal should be seen in this context.

In terms of cost recovery impact guidelines provided by the Department of Finance, the type of service covered by this proposal falls within the "registration and approvals" grouping. Businesses which wish to employ skilled staff from overseas are the users of the system.

Should cost recovery be introduced?

It is believed that partial cost recovery should be introduced at this time.

The existing requirements for business sponsorship and nomination were introduced in 1996, following a report by the Committee of Inquiry into the Temporary Entry of Business People and Highly Skilled Specialists, *Business Temporary Entry - Future Directions (August 1995)*. The

Committee's primary objective was to make temporary business entry policy more relevant to the needs of business, and to streamline procedures, in order to facilitate the entry of skilled temporary residents.

In this context, the Committee recommended that fees be charged for sponsorship and nomination applications, endorsing the principle that business should pay "appropriately" for the services that it would be receiving from the new, streamlined business entry arrangements which arose out of the review. The Committee did not specify the level of fees which should be charged, but commented (at paragraph 4.45) that they should be determined by the Department's operating costs of processing applications and sponsorships.

When the temporary business (long stay) sponsorship, nomination and visa provisions were included in the regulations in 1996, the following fees were set:

Application for pre-qualified business sponsorship: $3,000

Application for renewal of pre-qualified business sponsorship: $1,000

Application for standard business sponsorship: nil

Application for nomination of business activities: $205

(not payable where sponsor was a PQBS or nomination was linked to a Labour Agreement)

Those fees have not been reviewed since that time, but have increased annually in line with indexation, until their present level ($3,395 for PQBS, $1,135 for renewal of PQBS, and $235 for nominations). There is no indication that the fees which were set in 1996 were set on the basis of cost recovery, despite the comment made by the Committee of Inquiry. The structure placed a strong emphasis on the sponsorship application for pre-qualified business sponsor status, allowing these businesses to make nominations without charge, while standard business sponsors were not required to pay a fee for the sponsorship application (despite a very similar set of assessment criteria), but paid a fee for each nomination.

Since that time,

- it has become evident that the work involved for decision-makers in making a sponsorship assessment is equal, regardless of whether the application is for PQBS or SBS;

- changes to the nomination requirements have meant that nomination assessments are now considerably simpler than when first introduced in 1996, and hence do not necessarily justify a fee of the current level; and

- the number of nominations which are exempt from a fee (under PQBS or labour agreement) is disproportionate to the level of resources involved in decision-making on these applications, such that smaller businesses, with fewer nomination requirements, are effectively subsidising the businesses which make a greater use of the sponsorship and nomination requirements.

The current proposal seeks to spread the fee burden more appropriately, by recognising the greater emphasis on the sponsorship stage compared with the nomination stage, and by spreading nomination costs across a greater number of nominating businesses.

When the Department first commenced work on this proposal in 2001, the Government's cost recovery policy and guidelines had not been set out for the use of agencies. The standing policy which guided the Department's choice of fees for the purposes of this proposal was that new policy proposals which were not being considered in the context of the budget process were not to be used as a source of increasing the revenue of the Department - ie, that fee proposals should be as near as possible to budget neutrality. It was on this basis that the proposed fees were selected and consultation with stakeholders was conducted.

To seek to introduce full cost recovery at this stage would therefore not be possible without further consultation. The introduction of full cost recovery would result in both a significant additional impost on business sponsors, and lead to a considerable revenue increase from the proposal.

Under the DIMIA Activity Based Costing model, the costs for subclass 457 sponsorships and nominations are as follows:

Sub Output Component	Direct Cost	Overhead cost	Total cost	Volume	Unit cost (direct only)	Unit cost (total)
Nomination	1,775,933.64	1,879,945.62	3,655,879.27	32,207	55.14	113.51
Sponsorship	2,186,234.94	2,339,234.36	4,525,469.30	10,146	215.47	446.03

The following table sets out the impact on sponsors if full cost recovery were to be introduced at this point in time (cost figures rounded to the nearest $5 for simplicity):

	CURRENT				FULL COST RECOVERY			
No. of noms	Sponsor-ship fee	Nom. Fee	Total	Unit Cost	Sponsor-ship fee	Nom. Fee	Total	Unit Cost
1	$0	$235	$235	$235	$445	$115	$560	$560
2	$0	$470	$470	$235	$445	$230	$675	$337
5	$0	$1,175	$1,175	$235	$445	$575	$1020	$204
10	$0	$2,350	$2,350	$235	$445	$1150	$1595	$159
15	$3,395	$0	$3,395	$226	$445	$1725	$2170	$145
50	$3,395	$0	$3,395	$68	$445	$5750	$6195	$124
100	$3,395	$0	$3,395	$34	$445	$11,500	$11,945	$119

Thus, if we were to implement cost recovery, businesses requiring only one sponsorship and one nominee during the life of the sponsorship would face an increase in charges of $325 or 238%. This level of increase is considered to be too steep for immediate introduction without further extensive consultation.

It would be difficult for small to medium business to sustain and is likely to have an adverse impact on their ability to access the benefits of the temporary business program. Further analysis of the real impact on business would be required. Delaying introduction of the proposals outlined in this Statement until such analysis could be conducted would result in businesses being unable to access the benefits set out in the Impact Analysis above.

Instead, the proposed fees of $250 per sponsorship and $50 per nomination represent partial cost recovery. They would be close to recovery of direct costs as identified by the Department's Activity Based Costing model (slightly over for sponsorship, slightly under for nomination) and also meet the policy of budget neutrality which was the underpinning principle when the fees were first proposed.

What mechanisms, including consultation, should be used for ongoing monitoring of the efficiency and effectiveness of cost recovery arrangements?

In the past, the usual practice of the Department has been to monitor fees and charges internally. Departmental charges are revised annually in line with CPI increases. It would be possible in the context of that annual process, to monitor the fees against annually-updated data from the Department's Activity Based Costing model, to ensure that the fees continue to reflect cost recovery (of direct costs).

While we have not in the past had a mechanism for regular consultation with stakeholders on the level of fees for these services, significant increases beyond the level of indexation would not be introduced without consultation. This would usually take place through an External Reference Group established for that purpose and comprising representatives of peak industry bodies and the Migration Institute of Australia.

How long (not more than 5 years) before the cost recovery arrangements should be reviewed again?

DIMIA is scheduled to have all its fees and charges reviewed in 2006/07, and the appropriateness of full cost recovery to these fees will be reviewed in that context.

Who should pay cost recovery charges?

Charges are paid by the businesses which apply for approval as sponsors, and nominate positions to be filled by overseas staff. This is in accordance with the recommendations of the Committee of Inquiry into the Temporary Entry of Business People and Highly Skilled Specialists, which stated: *"The Committee does ... endorse the principle that business should pay appropriately for the improved service and reduced costs that it would obtain if the Committee's recommendations are accepted."*

The sponsored employee also pays a visa application charge for the related visa application, if the prospective employer's sponsorship and nomination applications are approved. The level of the visa application charge is not altered by this proposal.

Should cost recovery charges be imposed using fees or levies?

The Department imposes a fee or administrative charge for each service on the user pays principle. In this way, the individual or business which seeks to benefit from the service pays directly for that permission, rather than levying across an industry group, large parts of which may have no need or intention to seek such permission. It is most effective to collect a fee from an applicant at the time they apply for their permission (either sponsorship approval or nomination approval), and this was envisaged by the Committee of Inquiry in its report. This proposal is an adjustment to fees already being collected and no change is proposed to the nature of the collection.

What are the legal requirements for the imposition of charges?

The Department already charges fees for sponsorships and nominations. The current fees are set out in the *Migration Regulations 1994*, specifically in Division 1.4A, and will be updated as part of the implementation of this proposal.

The over-arching authority for the Department to collect fees or charges lies in the *Migration Act 1958,* subsection 504(1)(a)(i), which provides that the Governor General *"may make regulations*

making provision for and in relation to the charging and recovery of fees in respect of any matter under this Act or the regulations".

Which issues should any legislation address?

The legislation will specify a set fee to accompany the lodgement of a sponsorship application, and a set fee to accompany the lodgement of a nomination application. While not covered under the refund provisions of the migration legislation, the provisions of the *Financial Management and Responsibility Act 1997* will have effect, and policy guidelines will be provided to cover the circumstances under which the fee can be refunded.

Which costs should the charges include?

The cost of the Department providing sponsorship and nomination services to clients includes direct costs and overhead costs. Direct costs are the costs incurred by each cost centre in the performance of their business, that is, the costs incurred in actually processing applications. Direct costs are net of any revenue received. Overhead costs include corporate governance costs and any payments that are made external to the cost centre and incurred centrally on behalf of the whole organisation or work unit.

As discussed in "Should cost recovery be introduced" above, seeking to recover both direct and overhead costs in these fees would be a significant impost on applicants and is not proposed at this time. Instead, partial cost recovery is proposed, based on the direct costs identified by the Activity Based Costing model in the table above, increased slightly to achieve budget neutrality.

How should charges be structured?

There will be one set fee for lodgement of a sponsorship application on or after 1 July 2003. This fee will be $250.

There will be a set fee for each nomination lodged under a business sponsorship or labour agreement, on or after 1 July 2003. This fee will be $50.

As indicated earlier, the proposed new fee structure is designed to be simpler for clients to understand, more efficient for the department to administer, and minimise the costs for sponsors across the board, while having no impact on revenue collected by the Department (ie no significant increase or decrease).

The proposed fees are considered to be affordable for all levels of business - during consultation with an external reference group of business representatives, the group considered that the increase in fees for one-off sponsors was not significant and would not have a detrimental impact on small to medium enterprises (see Attachment C). The proposed fees are also more equitable in that all sponsors pay an equal cost for the sponsorship application, which is the greater cost to the department regardless of sponsorship type, while all sponsors will now pay for each nomination application lodged, spreading the costs across all applications, rather than exempting larger businesses from nomination fees.

How should costs be calculated and allocated?

The proposed fees are as close to direct cost recovery as possible within the framework of budget neutrality. Thus the fee of $50 per nomination is slightly under cost recovery ($55), but this is offset by the fact that the fee of $250 per sponsorship is slightly higher than cost recovery ($215).

The Activity Based Costing model reflects actual costs, rather than efficient costs; the Department is currently going through a process of benchmarking its activities but no firm costing data is yet available from this ongoing exercise.

5. Consultation

A discussion paper outlining Option 2 was distributed to a cross-section of affected parties. A list of all organisations consulted, together with an indication of whether or not they responded to the discussion paper with comments, is at **Attachment A**.

In general, the response to the discussion paper was positive, with most respondents agreeing that the proposed change would be of benefit to those businesses involved in sponsoring overseas staff. Some questions were asked about the implementation details which will be addressed during the drafting stage. A synthesis of responses to the Discussion Paper is at **Attachment B**.

Only one respondent expressed concern about the level of proposed fees, indicating that one-off sponsors would pay more under the new arrangements, and suggesting that a fee structure should be found which ensured that they would pay the same as they do at present. The requirement to ensure budget neutrality meant that this could not be achieved, as any configuration of fees to ensure that one-off sponsors would pay no more than at present would result in a significant budget deficit. The majority of respondents, and the weight of opinion of the External Reference Group (see below), indicated that the fees would not disadvantage small businesses, were relatively low in any case, and the benefits of the streamlined system and access to electronic lodgement facilities could counterbalance the slight fee increase for these clients.

In addition to the discussion paper, the proposal was also put before an External Reference Group (ERG) for consideration. The membership of the group was chosen to represent business across the board, and included representatives from the Australian Industry Group, Business Council Australia, Australian Chamber of Commerce and Industry, The Empower Group, and the Migration Institute of Australia.

The ERG met on 29 January 2003 to consider the proposal. A copy of its report is at **Attachment C**. On the whole, the ERG supported the move to simplify the sponsorship and nomination structure, and was in agreement with the recommended fees. The benefits of moving to an electronic lodgement environment were seen as substantial, and justified the proposed changes.

6. Conclusion and recommended option

The principal benefits of Option 2 are:

- easier use and access by business;

- consistency in approval periods of sponsorships;

- consistency in the levying of fees for sponsorships and nominations;

- consistency in the circumstances which cause a sponsorship to cease (use of available nominations, lapse under time or cancellation);

- all sponsorships can be cancelled (including overseas business sponsorships);

- simplification of legislation, processing, forms and booklets; and

- greatly simplified design and implementation of the eLodgement facility.

The benefits of Option 2 are felt to outweigh the costs, and to provide a more beneficial outcome than Option 1, which is to make no change.

It is therefore recommended that Option 2 be put into effect.

7. Implementation and review

Implementation of Option 2 is planned to take effect from 1 July 2003, following drafting of appropriate amendments to the Migration Regulations, accompanied by policy advice updates.

Detailed legislative drafting specifications are being drawn up, including transitional provisions to ensure that clients whose sponsorships are approved prior to the legislative change coming into effect will not be disadvantaged by the changes.

Administration of the change will impact solely on DIMIA, and will be dealt with in accordance with the established legislative change plan developed by the Department.

The impact on business should not be extensive, in the sense that those businesses which sponsor overseas employees must already go through a sponsorship and nomination process. The implementation of Option 2 will make that process more streamlined and simpler to understand.

Review of the success of the change will be part of existing Departmental processes. Feedback from Business Centres and registered migration agents should make us aware of any problems with the system, which can be addressed through policy or procedural updates where appropriate. If any serious systemic difficulty is identified, suggesting regulatory change, a structured process of consultation and consideration of how to address the issue would take place.

The take-up and success rate of the electronic lodgement facilities should also be a reasonable indicator of the proposed changes.

ATTACHMENT A

DISTRIBUTION OF DISCUSSION PAPERS

Sponsorship simplification

INTERNAL		date sent	response received
Business Centres			
Sydney	Jane Sansom, James Goodsell	04-Oct	05-Nov
Parramatta	Peter Mitchell	04-Oct	
Melbourne	Mike Swan, Vin Tully	04-Oct	01-Nov
Dandenong	Zafer Ilbahar	04-Oct	
Brisbane	Peter Holthouse, Margaret Carseldine	04-Oct	18-Oct
Cairns	Tony Battaglini	04-Oct	
Adelaide	Belinda Propsting	04-Oct	
Perth	Nigel Smith	04-Oct	21-Oct
Darwin	Denise Ryan	04-Oct	
Hobart	Bob George, Vicki Daniel	04-Oct	
ACTRO	Susie Burnard, Phuong Nguyen	04-Oct	01-Nov
Offshore regions			
Bangkok	RD Bangkok, PMO Tokyo	04-Oct	Tokyo 31/10
Beijing	RD Beijing	04-Oct	
Beirut	RD Beirut	04-Oct	
Brisbane/Pacific	RD Brisbane, PMO Auckland	04-Oct	
Jakarta	RD Jakarta, PMO Singapore	04-Oct	
London	RD London, PMO London, PMO Berlin	04-Oct	London 15/10 Berlin 4/11
New Delhi	RD + PMO New Delhi, PMO Mumbai	04-Oct	
Pretoria	RD + PMO Pretoria	04-Oct	
Vienna	RD Vienna	04-Oct	
Washington	RD + PMO Washington, PMO Ottawa	04-Oct	
CO Sections			
Onshore Compliance	Greg Phillipson, Sharon Watts	04-Oct	01-Nov
Air & Seaport Operations	Terry Walker (Peter Castrission)	04-Oct	08-Oct
Onshore Protection Branch	Bob Illingworth	04-Oct	
Legal Opinions	Miriam Moore	04-Oct	31-Oct
Migration Advisings Help Desk	Vicki Tumini	04-Oct	
Legislation	Catherine Swarbrick	04-Oct	10-Oct
Visa Architecture	Paul Smith	04-Oct	
Instructions & Legend	Pam Lohmeyer	04-Oct	01-Nov
Review Task Force	Ken McInnes	04-Oct	
Ombudsman, Privacy and FOI	Gabrielle Davidson (Ian Ireland)	04-Oct	10-Oct
Information Distribution	Vivien Gough (Clive Besant)	04-Oct	04-Oct
Detention Operations	Ross Norton	04-Oct	
Settlement Branch	Jennifer Bryant	04-Oct	
Budget Strategy	Steve Biddle	04-Oct	26-Nov
Outcomes Reporting	Jane Young	04-Oct	
Overseas Resources and Liaison	Sarah Forbes, Anh Nguyet	04-Oct	28-Oct
Overseas Resources Task Force	Margaret Matthews	04-Oct	

Client Services	Andrew Caird	04-Oct	04-Nov
Special Residence	Frank Johnston	04-Oct	
Students	Suzanne Ford, Hedvika Knopova	04-Oct	
Tourism & Working Holiday Makers	Phil Thurbon, Christine Pearce	04-Oct	
Business Relations	Malcolm Patterson, Fiona Martyn	04-Oct	
BASS	Peter Richards, Jane Lewis	04-Oct	
Systems Business Unit	Tom Egan	04-Oct	31-Oct
Overseas Systems	Bill Dudley	04-Oct	22-Oct

EXTERNAL

Office of Regulation Review	Stephen Rowley, Paul Bek	04-Oct	10-Oct
DEWR	Jane Press	04-Oct	25-Oct
DISR	Richard Niven, Grant Kellam	04-Oct	
Migration Institute of Australia	Deidre Sheekey (Secretariat), Laurette Chao, President	04-Oct	
Law Council of Australia	Gwen Fryer	10-Oct	
Law Society of NSW	Jane Probert	10-Oct	
Australian Business Lawyers	Katie Malyon	04-Oct	
AMIS Consultants Pty Ltd	Wayne Parcell	04-Oct	18-Oct
AIIA	Michel Hedley	04-Oct	19-Nov
Big 4 LA group:			
PriceWaterhouseCoopers	David Crawford	04-Oct	
Deloitte	Peter Summerbell	09-Oct	
Ernst & Young	Julie Duncan	09-Oct	
KPMG	Monique Ly	09-Oct	

ATTACHMENT B

Comments on Simplification Discussion Paper

A synthesis of comments made by the respondents.

Respondent	**Comment**
DEWR	Comments on this paper mainly focussed on arrangements for negotiating Labour Agreements, which are not affected by the proposed amendments.
AMIS	- No difficulty with the proposal to simplify the business sponsorship arrangements. - See advantages for the electronic lodgement processes with this simplification. - There should be a high enough limit set on the number of nominations permissible under a Business Sponsorship to accommodate those business sponsors that in the past would have been eligible for PQBS status - say 300 or 400. Policy guidelines could provide for this to be used in limited circumstances, that is, where an employer has a firm track record of compliance with sponsorship undertakings and has been a large user of nomination applications. - Transition to the new arrangements will happen more effectively if notice is given to migration agents and other interested parties ahead of the commencement of new provisions.
AIIA	- The proposal is supported as it will reduce confusion for users (particularly by one-time or irregular users), enhance client service, and streamline the process to facilitate use of electronic lodgement in the future. - It is understood that nominations will be required for each person nominated under an approved sponsorship, and there will be a set fee for each nomination. - It does make sense to have a single fee structure. However, the proposed fee structure will impact relatively harder on the majority of business sponsors (ie 70%) which only sponsor one nomination. It is considered that the total amount they will pay should be reduced to nearer the current unit cost, and the deficit be spread across the other fee rates and still meet the cost neutral objective. - The proposed fee structure favours those employers which make more than 10 nominations. - The proposal for electronic lodgement is supported as it will benefit all concerned.
London	London is very positive about the changes ... We presume that overseas business sponsorship approvals will remain offshore.
Paris	- The proposal to bring overseas business sponsorships into line legally with SBS and PQBS is a good one, given that the procedures for processing OBS cases is practically identical to SBS cases. - Most overseas businesses do not understand what they see as our cumbersome application procedure. For OBS cases especially, a one-page information sheet could be produced centrally to outline the procedure from

	beginning to end. - With regard to eLodgement: it should not be underestimated how demanding the 457 clientele is. Therefore, a good support network needs to be in place to handle application inquiries.
Tokyo	The proposed changes certainly get the tick from Tokyo, but require clarification in the legislation of the place of lodgement for overseas business sponsorships.
Brisbane	We feel that the proposed simplification of sponsorships is a logical step and would reduce confusion for the sponsoring business. Re the proposed charges, we have assumed the employer will pay the total fees up-front, regardless of how many nominations are actually filled. Presumably some employers would be able to calculate the unit costs for themselves and plan more carefully for the required number of nominated positions. But for others we imagine the difference in unit cost would be neither here nor there.
Perth	The paper is one which makes very clear the purpose of 'simplification', and the means of achieving it and the transitional arrangements are transparent and straight-forward. Obviously, those major clients who submit greater than 63 nominations will pay more but we do not anticipate an adverse reaction.
Melbourne	- The current structure is confusing; but confusion is still often caused by a lack of knowledge rather than the structure. - Many smaller companies see DIMIA requirements as an unnecessary intrusion into their ability to run a business and this leads to lodgement of incomplete applications, irrespective of the complexity or otherwise of the procedures. - Require clarification of how the number of nominations to be lodged will be decided. - A 2 year sponsorship with specific nomination numbers will be seen as a restriction on the current 'open' PQBS arrangement. Many larger companies prefer PQBS because it avoids the hassle of pay-as-you-go. - Should we be taking a higher fee from a small one-nomination company compared to a large multinational? It will introduce some complexity but could we consider retaining a standard sponsorship fee but a reduced nomination fee for up to 3 nominations and then rise to a higher fee for those who specify 6 or more. - The new fee structure will probably encourage small businesses to lodge one sponsorship and specify a larger number of nominations than they need, rather than lodge repeat sponsorships for 1 nomination as is often the case now. - We have not experienced a great concern over overseas business sponsorships ... the real thrust for change from clients relates to enabling OBS and visa applications to be lodged and processed in Australia. - The proposed simplification of our procedures will be welcomed by clients and staff and overall we accept the proposals in the paper as useful and workable.
Sydney	- The new fee structure may discourage 'speculative' applications. - Large companies often use PQBS because they dislike making small regular payments even through they may only sponsor four or five people. A possible solution may be that sponsors could be able to pre-pay for whatever number of

nominations they wish.

- Although we agree with the extension of the sponsorship arrangements to Overseas Businesses ... it is recommended that legislation requires OBS to be lodged offshore or clear policy support to indicate that offshore processing is required/preferred.

- We are concerned about the 2 year validity period as we have ongoing problems with determining if a sponsorship has ceased.

- Furthermore, a two-year sponsorship would be of concern considering we are assessing considerable numbers of 'new start' companies and/or companies who may be only marginally approvable.

Central office Responses from Central Office policy and operational areas were largely supportive and contained suggestions relating to the practical implementation of the legislative change process.

ATTACHMENT C

EXTERNAL REFERENCE GROUP

RECORD OF DISCUSSION

An External Reference Group (ERG), appointed by the Minister, met on Wednesday 29 January 2003 to discuss proposed changes to the Temporary Business (Long Stay) visa subclass.

Membership of the group comprised:

Mr Peter McLaughlin, Executive Vice President, the Empower Group

Ms Pauline Mathewson, Partner, Global Visa Solutions, PricewaterhouseCoopers

Mr Brent Davis, Director, Trade and International Affairs, on behalf of Mr Peter Hendy, Australian Chamber of Commerce and Industry

Ms Vivienne Filling, General Manager, Environment and Energy Services on behalf of Mr Bob Herbert, Australian Industry Group

Ms Vivienne Filling also represented Ms Katie Lahey, Business Council of Australia.

Electronic Lodgement

The reference group received a presentation on the proposed system and discussed the proposal to introduce an electronic lodgement facility for temporary business sponsorship, nomination and visa applications.

Discussion and questioning focused on the issue of flexibility. The ERG could see the obvious merit of the proposed electronic lodgement facilities but stressed the importance of ensuring that all sponsors would continue to be catered for. This included maintenance of a paper lodgement facility and for the electronic lodgement arrangements to allow sufficient flexibility for all clients (ie one-off users as well as small, medium and large-scale users).

The ERG noted that the system outlined appeared to cater well for all users.

Simplification of sponsorship and nomination structure

The group considered the proposal to simplify the temporary business sponsorship and nomination procedures, by combining the three sponsorship types into one, and introducing changed fee arrangements for sponsorships and nominations, that would both reflect current cost structures and facilitate e:lodgement in an overall cost-neutral way.

It was agreed that moving to a simpler structure would be beneficial in the context of the move to provide electronic lodgement facilities.

The proposed fee changes were considered to be appropriate in the context that:

- changes to nomination procedures in July 2001 have shifted the focus of the processing from the nomination to the sponsorship. A fee structure which more accurately reflects the balance of the workload is desirable;

- the increase in fees for one-off sponsorship applicants was not so significant and not likely to cause concern or detriment to small to medium enterprises, particularly given the relatively small scale of DIMIA fees compared to the costs of bringing an employee to Australia.

- the sponsorship would be for up two years, twice the validity of the current standard sponsorship arrangement; and

- the efforts being made to streamline the process and provide electronic lodgement facilities will reduce administrative costs for sponsoring businesses, which could help balance out the effect of any fee increase.

An associated proposal to combine the sponsorship and nomination application forms for those sponsors which do not chose to utilise the electronic lodgement facilities was also considered. The group saw advantages in the proposal to combine the forms, and made pertinent comments on the content and layout of the draft provided. The form is being adjusted to incorporate the suggestions into the form.

Ensuring sponsorship undertakings are clear

There was considerable discussion about the sponsorship undertakings both in their current form and possible wording under revised arrangements. The group agreed that there was a need to provide greater clarity for sponsors on the nature and extent of their obligations under the undertakings. The proposal to incorporate the undertakings in regulation was accepted as appropriate, as long as the sponsor's liabilities are clearly defined and there is a definite time when the sponsor's responsibility ceases.

The main points covered by the group were:

- A sponsor's **liability** under the undertakings should cease within a specified time after the visa holder has left their employment. The ERG concluded that it would be appropriate for the undertakings to cease 28 days after the sponsor notifies DIMIA that the visa holder is no longer employed in the nominated position. After that period, any costs incurred by the visa holder should not be the responsibility of the sponsor. The exception to this would be repatriation costs (see below).

- More **information** should be provided to sponsors about the nature of the undertakings, what they cover, when they cease, and the implications of failure to comply with the undertakings. It should be made clear on the sponsorship application form that the undertakings are legally binding, and that there are consequences from failure to comply. In addition, there would be merit in establishing a page on the DIMIA website that sets out the undertakings and what they cover in greater detail.

- The liabilities for **repatriation** costs and detention and removal costs should be more clearly defined; in particular, who and what is covered by this undertaking. The requirement to pay repatriation costs would remain current until the visa holder departs Australia, or obtains a further substantive visa in Australia, even if the 28-day period mentioned above has ceased.

- The undertaking relating to **medical** costs causes considerable concern to sponsoring companies or prospective sponsors, and must be more explicitly stated, so that sponsors are clear on exactly what they are liable for.

- The undertaking relating to payment of **salary** should be amended clarify the minimum amount the sponsor is required to pay the visa holder ie, no less than the gazetted minimum

salary amount, rather than the general remuneration level specified in the nomination. There was discussion about the inclusion of more specific reference to taxation obligations of sponsors, including payment of salary-related tax. The group agreed that they had no problems with an undertaking that required the sponsor to pay the visa holder at least equivalent to the gazetted minimum salary level, but did not support specifying the taxable income.

Ensuring undertakings are honoured

The group recognised the limitations of the current system of sponsorship undertakings and were briefed on the ambiguity of enforcement arrangements that limited the sanctions that can be imposed on sponsors who knowingly breach those undertakings, or do not act in good faith. The group agreed that sanctions were necessary to ensure the laws were enforced.

The proposal to introduce a system of sanctions was accepted in principle, but ERG members felt that:

- Penalty levels need to be proportionate to the level of the breach.

- Length of bans should be expressed as up to five years; and

- Fine levels need to be carefully thought through and comparability with overseas examples considered.

- DIMIA should not be imposing a monetary penalty in situations where another government agency has its own procedures for pursuing infractions.

- Ms Filling advised that the Australian Industry Group, as an association, does not support the imposition of monetary penalties. She believed that restitution should be sufficient.

The ERG noted that the level of abuse was relatively small, however acknowledged the need for arrangements to be in place to deal with any instances of abuse, and recommended further consultation.

FOOTNOTES:
[1] In this impact analysis, "Business" includes small business (such as private colleges and education providers), large/multinational businesses, and government organisations that compete with these businesses (eg TAFEs, universities etc).