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Migration Amendment Regulations 2003 (No. 5)¹

Statutory Rules 2003 No. ²

154

I, GUY STEPHEN MONTAGUE GREEN, Administrator of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Migration Act 1958*.

Dated 25 JUN 2003 2003

G S M Green
Administrator

By His Excellency's Command

PHILIP RUDDOCK
Minister for Immigration and Multicultural and Indigenous
Affairs

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1 Name of Regulations

These Regulations are the *Migration Amendment Regulations 2003 (No. 1)*.

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2 Commencement

These Regulations commence as follows:

- (a) on gazettal — regulations 1, 2, 3 and 4;
- (b) on 1 July 2003 — Schedules 1, 2, 3, 4, 5 and 6.

3 Amendment of *Migration Regulations 1994*

Schedules 1, 2, 3, 4, 5 and 6 amend the *Migration Regulations 1994*, as amended by:

- (a) *Migration Amendment Regulations 2003 (No. 2)*; and
- (b) *Migration Amendment Regulations 2003 (No. 3)*; and
- (c) *Migration Amendment Regulations 2003 (No. 4)*.

4 Transitional

- (1) The amendments made by items [1], [2], [14], [21], [22], [23] and [24] of Schedule 1 apply in relation to an application for a approval as an approved professional development sponsor made on or after 1 July 2003.
- (2) 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.
- (3) The amendments made by items [15] and [16] of Schedule 1 apply in relation to an assessment made for subsection 93 (1) of the *Migration Act 1958* on or after 1 July 2003.
- (4) 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

(regulation 3)

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

insert

approved professional development sponsor means an organisation that has been approved as a professional development sponsor under regulation 1.200.

[2] Paragraph 1.20 (2) (b)

omit

or Extended Eligibility (Temporary) (Class TK) visa) —

insert

, Extended Eligibility (Temporary) (Class TK) visa) or Sponsored Training (Temporary) (Class UV) visa —

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

substitute

pre-qualified business sponsor means a person:

- (a) whose application for approval as a pre-qualified business sponsor was approved in accordance with regulation 1.20D before 1 July 2003; or
- (b) whose application for approval as a pre-qualified business sponsor is:
 - (i) mentioned in subregulation 1.20CA (1); and
 - (ii) approved in accordance with regulation 1.20D as in force immediately before 1 July 2003;

and includes a person whose approval as a pre-qualified sponsor has been renewed under regulation 1.20E as in force immediately before 1 July 2003.

Note From 1 July 2003, an application for approval as a pre-qualified business sponsor, made before 1 July 2003, will be dealt with under regulation 1.20D as in force immediately before 1 July 2003: see subregulation 1.20CA (1).

standard business sponsor means a person:

- (a) whose application for approval as a standard business sponsor was approved in accordance with regulation 1.20D before 1 July 2003; or
- (b) whose application for approval as a standard business sponsor is:
 - (i) mentioned in subregulation 1.20CA (1); and
 - (ii) approved in accordance with regulation 1.20D as in force before 1 July 2003; or
- (c) whose application for approval as a standard business sponsor is:
 - (i) made on or after 1 July 2003; and
 - (ii) approved in accordance with regulation 1.20D or 1.20DA.

Note From 1 July 2003, an application for approval as a standard business sponsor, made before 1 July 2003, is to be dealt with under regulation 1.20D as in force before 1 July 2003: see subregulation 1.20CA (1).

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

substitute

1.20C Application for approval as standard business sponsor

- (1) A person may apply to the Minister for approval as a standard business sponsor in accordance with this regulation.

Note 1 From 1 July 2003, 2 kinds of business sponsorship are provided for by these Regulations: standard business sponsorship approved under regulation 1.20D and standard business sponsorship approved under regulation 1.20DA (which relates to overseas businesses). The option of pre-qualified business sponsorship that was previously set out in this regulation has been removed.

However, an application for approval as a standard business sponsor, or a pre-qualified business sponsor, made before 1 July 2003 but not approved or rejected before 1 July 2003, will continue to be dealt with under regulation 1.20D as in force before 1 July 2003.

Note 2 In relation to the effect of approval as a standard business sponsor under regulation 1.20D, see subregulation 1.20D (6) and subclause 457.223 (4) of Schedule 2. In relation to the effect of approval as a standard business sponsor under regulation 1.20DA, see subregulation 1.20DA (5) and subclause 457.223 (5) of Schedule 2.

- (2) The application must be made in accordance with approved form 1067, 1196 or 1196 (internet).
- (3) The application must be accompanied by a fee of \$250.

1.20CA Business sponsors — transitional arrangements for 1 July 2003

- (1) An application for approval as a standard business sponsor or as a pre-qualified business sponsor:
 - (a) made under regulation 1.20C before 1 July 2003; and
 - (b) that had not been approved or rejected before 1 July 2003; is to be dealt with (including for the purpose of review under Part 5 of the Act), on and after 1 July 2003, in accordance with regulation 1.20D as in force immediately before 1 July 2003.
- (2) If:
 - (a) a person gave the Minister approved form 1067 before 1 July 2003, for a purpose other than making an application; and
 - (b) the form had not been dealt with before 1 July 2003; the form is to be dealt with, on and after 1 July 2003, in accordance with regulation 1.20G as in force immediately before 1 July 2003.
- (3) If a pre-qualified business sponsor sought a renewal of the approval as a pre-qualified business sponsor under regulation 1.20E as in force immediately before 1 July 2003, the renewal is to be dealt with, on and after 1 July 2003, in accordance with regulation 1.20E as in force immediately before 1 July 2003.

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- (4) If:
- (a) an application for approval as a standard business sponsor or as a pre-qualified business sponsor was made under regulation 1.20C before 1 July 2003; and
 - (b) a decision that was made in respect of the application was subject to a form of review under Part 5 of the Act immediately before 1 July 2003;
- the application is to be dealt with, on and after 1 July 2003, in accordance with regulation 1.20D as in force immediately before 1 July 2003.

1.20D Approval as standard business sponsor

- (1) The Minister may, in accordance with this regulation, approve or reject an application for approval as a standard business sponsor made under regulation 1.20C.

Note An application for approval as a standard business sponsor or a pre-qualified business sponsor made under regulation 1.20C as in force before 1 July 2003 is to be dealt with under regulation 1.20D as in force before 1 July 2003: see subregulation 1.20CA (1).

- (2) The Minister must approve the application if:
- (a) the Minister is satisfied that the applicant for approval is actively and lawfully operating in Australia a business in which the employment of the holder of a Subclass 457 (Business (Long Stay)) visa would contribute to:
 - (i) the creation or maintenance of employment for Australian citizens or Australian permanent residents; or
 - (ii) expansion of Australian trade in goods or services; or
 - (iii) the improvement of Australian business links with international markets; or
 - (iv) competitiveness within sectors of the Australian economy; and

- (b) in respect of each visa applicant who seeks to satisfy the primary criteria for a Subclass 457 visa to be granted on the basis that:
- (i) the applicant for approval is the employer referred to in subclause 457.223 (4) of Schedule 2 in relation to the visa application; and
 - (ii) the visa applicant satisfies the requirements of that subclause;
- the Minister is satisfied that:
- (iii) the applicant for approval proposes to be the direct employer in Australia of the visa applicant as the holder of the visa (*the visa holder*); or
 - (iv) if the applicant for approval is a body corporate — the applicant for approval is, under section 50 of the *Corporations Act 2001*, related to the body corporate that proposes to be the direct employer in Australia of the visa holder; and
- (c) the Minister is satisfied that the applicant for approval:
- (i) will introduce to, or utilise or create in, Australia new or improved technology or business skills; or
 - (ii) has a satisfactory record of, or a demonstrated commitment towards, training Australian citizens and Australian permanent residents in the business operations of the applicant in Australia; and
- (d) the Minister is satisfied that nothing adverse is known to Immigration about the business background of:
- (i) the applicant for approval; or
 - (ii) any officer of any of the entities that constitute the applicant for approval; or
 - (iii) any individual who is a member of a partnership that is 1 of the entities that constitute the applicant for approval; and
- (e) the Minister is satisfied that where relevant, the applicant for approval has a satisfactory record of compliance with the immigration laws of Australia; and

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- (f) the Minister is satisfied that while there is in effect a Subclass 457 visa granted on the basis that:
- (i) the applicant for approval is the employer referred to in subclause 457.223 (4) of Schedule 2 in relation to a visa application; and
 - (ii) the visa holder satisfies the requirements of that subclause;
- the applicant for approval is able, in relation to each visa holder, to comply with the undertakings given by the applicant in accordance with approved form 1067, 1196 or 1196 (internet).

- (3) In subparagraph (2) (d) (ii):
- officer**, for a corporation, means an officer of the corporation within the meaning of the *Corporations Act 2001*.
- (4) An approval of a person as a standard business sponsor must specify the maximum number of nominations of business activities, being a number not exceeding the number proposed in the application for approval, that may be approved under regulation 1.20H in relation to the standard business sponsor while the approval is in effect.
- (5) As soon as practicable after deciding the application:
- (a) the Minister must provide the applicant with:
 - (i) a copy of the written approval or rejection of the application; and
 - (ii) if the application is rejected, a statement of the reasons why the application was not approved; and
 - (b) if the application was made using approved form 1196 (internet), the Minister may provide the applicant with those documents in electronic form.
- (6) An approval of a person as a standard business sponsor ceases to have effect on the earliest of:
- (a) when the number of Subclass 457 visas granted, since the giving of the approval, on the basis that:
 - (i) the applicant satisfies the primary criteria; and

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- (ii) the standard business sponsor is the employer (within the meaning of subclause 457.223 (4) of Schedule 2);
is equal to the number of nominations of business activities determined under subregulation (4) in relation to that approval of that standard business sponsor; and
 - (b) the end of the period of 24 months commencing on the day on which the approval is given; and
 - (c) cancellation of the approval under section 137B of the Act.

1.20DA Approval as standard business sponsor — overseas business

- (1) The Minister may, in accordance with this regulation, approve or reject an application for approval as a standard business sponsor made under regulation 1.20C.
- (2) The Minister must approve the application if:
 - (a) the Minister is satisfied that 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:
 - (i) the creation or maintenance of employment for Australian citizens or Australian permanent residents; or
 - (ii) expansion of Australian trade in goods or services; or
 - (iii) the improvement of Australian business links with international markets; or
 - (iv) competitiveness within sectors of the Australian economy; and
 - (b) in respect of each visa applicant who seeks to satisfy the primary criteria for a Subclass 457 visa to be granted on the basis that:
 - (i) the applicant for approval is the employer referred to in subclause 457.223 (5) of Schedule 2 in relation to the visa application; and

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- (ii) the visa applicant satisfies the requirements of that subclause;
- the Minister is satisfied that:
- (iii) the applicant for approval proposes to be the direct employer in Australia of the visa applicant as the holder of the visa (in this subregulation called *the visa holder*); or
- (iv) if the applicant for approval is a body corporate — the applicant for approval is, under section 50 of the *Corporations Act 2001*, related to the body corporate that proposes to be the direct employer in Australia of the visa holder; and
- (c) the Minister is satisfied that nothing adverse is known to Immigration about the business background of:
- (i) the applicant for approval; or
- (ii) any officer or other senior or responsible person in relation to the applicant; or
- (iii) any individual who is a member of a partnership that is 1 of the entities that constitute the applicant for approval; and
- (d) the Minister is satisfied that where relevant, the applicant for approval has a satisfactory record of compliance with the immigration laws of Australia; and
- (e) the Minister is satisfied that while there is in effect a Subclass 457 visa granted on the basis that:
- (i) the applicant for approval is the employer referred to in subclause 457.223 (5) of Schedule 2 in relation to a visa application; and
- (ii) the visa holder satisfies the requirements of that subclause;
- the applicant for approval is able, in relation to each visa holder, to comply with the undertakings given by the applicant in accordance with approved form 1067 or 1196.

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- (3) An approval of a person as a standard business sponsor must specify the maximum number of nominations of business activities, being a number not exceeding the number proposed in the application for approval, that may be approved under regulation 1.20H in relation to the standard business sponsor while the approval is in effect.
- (4) As soon as practicable after deciding the application, the Minister must provide the applicant with:
- (a) a copy of the written approval or rejection of the application; and
 - (b) if the application is rejected, a statement of the reasons why the application was not approved.
- (5) An approval of a person as a standard business sponsor ceases to have effect on the earliest of:
- (a) when the number of Subclass 457 visas granted, since the giving of the approval, on the basis that:
 - (i) the applicant satisfies the primary criteria; and
 - (ii) the standard business sponsor is the employer (within the meaning of subclause 457.223 (5) of Schedule 2);is equal to the number of nominations of business activities determined under subregulation (3) in relation to that approval of that standard business sponsor; and
 - (b) the end of the period of 24 months commencing on the day on which the approval is given; and
 - (c) cancellation of the approval under section 137B of the Act.

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

For subsection 137B (1) of the Act, the following grounds are prescribed:

- (a) the person gave incorrect information to Immigration in relation to:
 - (i) an application under regulation 1.20C, as in force before 1 July 2003, for approval as a standard

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- business sponsor or a pre-qualified business sponsor;
or
- (ii) an application under regulation 1.20C, as in force on or after 1 July 2003, for approval as a standard business sponsor;
- (b) the person gave incorrect information to Immigration in relation to any other matter relating to the person;
 - (c) the person has not complied, or is not complying, with the undertakings given by the person in accordance with approved form 1067, 1196 or 1196 (internet);
 - (d) the person does not continue to satisfy the requirements that the person satisfied for approval as:
 - (i) a pre-qualified business sponsor; or
 - (ii) a standard business sponsor.

Note If the Minister decides to cancel an approval of a person as a business sponsor, the Minister is to give the person a written notice of the decision: see section 137D of the Act.

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

substitute

- (d) before 1 July 2003:
 - (i) did not operate a business in Australia; and
 - (ii) gave the Minister undertakings in accordance with approved form 1067; and
 - (iii) was a person whom the Minister was satisfied (apart from not operating a business in Australia) would, on application, have been likely to have been approved as a standard business sponsor;

[6] Subregulation 1.20G (3)

omit

1068.

insert

1068, 1196 or 1196 (internet).

[7] Subregulation 1.20G (5)

substitute

- (5) Subject to subregulation (6), the nomination must be accompanied by a fee, as follows:
- (a) if the person became a party to a labour agreement on or after 1 July 2003, the fee is \$50;
 - (b) if the person's application for approval as a standard business sponsor was made before 1 July 2003, the fee is \$240;
 - (c) if, before 1 July 2003, the person:
 - (i) did not operate a business in Australia; and
 - (ii) gave the Minister undertakings in accordance with approved form 1067; and
 - (iii) was a person whom the Minister was satisfied (apart from not operating a business in Australia) would, on application, have been likely to have been approved as a standard business sponsor;the fee is \$240;
 - (d) if the person's application for approval as a standard business sponsor was made on or after 1 July 2003, the fee is \$50.
- (6) No fee is payable if:
- (a) the person:
 - (i) became a party to a labour agreement before 1 July 2003; and
 - (ii) is a party to the agreement when the person nominates the activity; or
 - (b) the person is a pre-qualified business sponsor.

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

substitute

- (b) a standard business sponsor approved under regulation 1.20D:
- (i) as in force before 1 July 2003; or
 - (ii) as in force on or after 1 July 2003;

[9] Subregulation 1.20GA (3)

omit

1068.

insert

1068, 1196 or 1196 (internet).

[10] Subregulation 1.20GA (4)

substitute

- (4) If the person is a standard business sponsor to which subparagraph (2) (b) (i) applies, the nomination must be accompanied by a fee of \$240.
- (5) If the person is a standard business sponsor to which subparagraph (2) (b) (ii) applies, the nomination must be accompanied by a fee of \$50.
- (6) If the person is a pre-qualified business sponsor, no fee is payable.

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

substitute

- (4) As soon as practicable after deciding the nomination:
 - (a) the Minister must provide the person who made the nomination with:
 - (i) a copy of the written approval or refusal of the nomination; and
 - (ii) if the nomination is refused, a statement of the reasons why the nomination was refused; and
 - (b) if the nomination was made using approved form 1196 (internet), the Minister may provide the person who made the nomination with those documents in electronic form.

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

substitute

- (d) in the case of a business activity nominated by:
 - (i) a pre-qualified business sponsor; or
 - (ii) a standard business sponsor;when the approval ceases to have effect;
- (e) in the case of a business activity nominated by a person to whom paragraph 1.20G (1) (d) refers — upon the Minister becoming satisfied that the person is not able to comply with the undertakings given by the person in accordance with approved form 1067 before 1 July 2003;

[13] Subregulation 1.20H (6)

renumber as subregulation 1.20H (5)

[14] After Division 1.4B

insert

**Division 1.4C Professional development:
sponsorship****1.20M Interpretation**

In this Division:

employed, in relation to an overseas employer, includes being nominated in the circumstances described in sub-subparagraph (a) (ii) (B) of the definition of ***overseas employer***.

organisation:

- (a) for an applicant for approval as an approved professional development sponsor:
 - (i) means a body that is lawfully established and actively operating in Australia (including an unincorporated body of persons); and
 - (ii) does not include an individual or a sole trader; and

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- (b) in any other case:
- (i) means a body (including an unincorporated body of persons); and
 - (ii) does not include an individual or a sole trader.

overseas agreement means an agreement:

- (a) entered into between:
 - (i) an organisation that proposes to be an approved professional development sponsor; and
 - (ii) the overseas employer of a person who would be an overseas participant; and
- (b) that specifies the financial arrangements between the parties, including, as a minimum obligation, a provision that the overseas employer will meet all costs relating to:
 - (i) the overseas participant's travel and entry to Australia; and
 - (ii) tuition for the professional development program; and
 - (iii) the overseas participant's accommodation in Australia; and
 - (iv) the overseas participant's living expenses in Australia; and
 - (v) the overseas participant's health insurance in Australia; and
 - (vi) the overseas participant's return travel from Australia; and
- (c) that includes:
 - (i) a description of the professional development program and what is intended to be provided by the approved professional development sponsor; and
 - (ii) a description of the roles of each of the parties under the agreement; and
 - (iii) the duration of the agreement; and
 - (iv) arrangements for mediation of disputes and other conflict resolution arrangements; and

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- (v) any arrangements made by the approved professional development sponsor to subcontract any part of the provision of the professional development program; and
 - (vi) a description of the arrangements for insurance relating to the approved professional development sponsor; and
 - (vii) 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; and
 - (viii) 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; and
- (d) that is signed by representatives of each party who are authorised to sign the agreement.

overseas employer, in relation to a person who applies, or proposes to apply, for a Sponsored Training (Class UV) visa, means:

- (a) an organisation:
 - (i) the activities of which are conducted under the auspices of the government of:
 - (A) a foreign country; or
 - (B) a province, territory or state of a foreign country; and
 - (ii) that:
 - (A) employs the person; or
 - (B) has nominated the person to be a member of an established training program the costs of which are met wholly by the organisation; or
- (b) a registered business that:
 - (i) is conducted outside Australia by an organisation; and
 - (ii) has been actively operating outside Australia for a total period of at least 1 year; and

(iii) employs the person.

overseas participant, in relation to an approved professional development sponsor, means a person who:

- (a) participates in a professional development program conducted by or for the sponsor; and
- (b) is employed by an overseas employer.

1.20N Applications for approval as approved professional development sponsor

- (1) An organisation may apply to the Minister for approval as an approved professional development sponsor.
- (2) An application must be made in accordance with approved form 1226.
- (3) The application must include an undertaking that, if the applicant is approved as an approved professional development sponsor, the applicant will comply with the obligations set out in regulation 1.20P.
- (4) The applicant must also satisfy the Minister that:
 - (a) the applicant is offering to conduct a professional development program that complies with the following requirements:
 - (i) the program is relevant to, and consistent with, the development of the skills of managers, professionals, or both;
 - (ii) the program provides skills and experience relevant to, and consistent with, the business and business background of an overseas participant's overseas employer;
 - (iii) the duration of the program does not exceed:
 - (A) 12 months; or
 - (B) if the Secretary is satisfied that exceptional circumstances exist — a longer period approved by the Secretary;
 - (iv) the primary form of the program is the provision of face to face teaching in a classroom or similar environment;

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- (v) the primary content of the program is not a practical component;
 - (vi) any practical component of the program:
 - (A) does not exceed 7 hours in any day and 35 hours in any week; and
 - (B) does not adversely affect the Australian labour market; and
 - (C) requires or involves the payment of remuneration to an overseas participant only by the overseas participant's overseas employer; and
 - (b) the applicant has demonstrated overall the capacity to provide successfully professional development programs involving overseas participants; and
 - (c) the applicant has entered into an overseas agreement with the overseas employer; and
 - (d) the applicant:
 - (i) is not a proscribed person or entity within the meaning of section 14 of the *Charter of the United Nations Act 1945*; and
 - (ii) is not a terrorist organisation, or a member of a terrorist organisation, within the meaning of Division 102 of the *Criminal Code*; and
 - (iii) does not intentionally provide support to:
 - (A) a proscribed person or entity within the meaning of section 14 of the *Charter of the United Nations Act 1945*; or
 - (B) an organisation which the person knows to be a terrorist organisation, or a member of a terrorist organisation, within the meaning of Division 102 of the *Criminal Code*; and
 - (e) if the applicant has previously been required to comply with the immigration laws of Australia — the applicant has a satisfactory record of compliance; and
 - (f) if a person associated with the applicant has previously been required to comply with the immigration laws of Australia — the person has a satisfactory record of compliance; and

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- (g) if an overseas employer with which the applicant has a current overseas agreement has previously been required to comply with the immigration laws of Australia — the employer has a satisfactory record of compliance; and
 - (h) each overseas participant who has participated in a professional development program conducted by or for the applicant has:
 - (i) a satisfactory record of compliance with the participant's visa conditions; and
 - (ii) a satisfactory record of compliance with immigration laws in relation to any previous application by the person for a visa; and
 - (i) each overseas employer with which the applicant has a current agreement mentioned in paragraph (c):
 - (i) is not a proscribed person or entity within the meaning of section 14 of the *Charter of the United Nations Act 1945*; and
 - (ii) is not a terrorist organisation, or a member of a terrorist organisation, within the meaning of Division 102 of the *Criminal Code*; and
 - (iii) does not intentionally provide support to:
 - (A) a proscribed person or entity within the meaning of section 14 of the *Charter of the United Nations Act 1945*; or
 - (B) an organisation which the person knows to be a terrorist organisation, or a member of a terrorist organisation, within the meaning of Division 102 of the *Criminal Code*; and
 - (j) the applicant is capable of complying with the obligations set out in regulation 1.20P; and
 - (k) the applicant is not the subject of a current notice under regulation 1.20Q.
- (5) An application must be accompanied by a fee of \$1 000.
- (6) An application must be made by:
- (a) posting the application (with the correct pre-paid postage) to the post office box address specified in a Gazette Notice for this paragraph; or

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- (b) having the application delivered by a courier service to the address specified in a Gazette Notice for this paragraph; or
 - (c) having the application sent by facsimile to the address specified in a Gazette Notice for this paragraph.

1.20O Approval as approved professional development sponsor

- (1) Subject to subregulation (2), the Minister may, in writing, approve or refuse an application by an organisation for approval as an approved professional development sponsor.
- (2) The Minister must approve an application for approval as an approved professional development sponsor if the Minister:
 - (a) is satisfied that the application has been made in accordance with regulation 1.20N; and
 - (b) is satisfied as to each of the matters mentioned in subregulation 1.20N (4); and
 - (c) is satisfied that if an authorised officer requires security for compliance with:
 - (i) the provisions of the Act and these Regulations in relation to the applicant's obligations as an approved professional development sponsor; or
 - (ii) a condition imposed in pursuance of, or for the purposes of, the Act or these Regulations in relation to the applicant's obligations as an approved professional development sponsor;the applicant has given the security.
- (3) An approval under subregulation (2) has effect only in relation to:
 - (a) the professional development program specified in the application for approval; and
 - (b) the overseas agreement specified in the application for approval; and
 - (c) the organisation specified in the application for approval.

Note If an organisation wishes:

- (a) to prepare a new professional development program; or

- (b) to make a new agreement with an existing overseas employer for the provision of a professional development program; or
- (c) to offer an existing professional development program to a new overseas employer;

the organisation must apply under regulation 1.20N for a new approval as an approved professional development sponsor in relation to the new arrangement.

- (4) As soon as practicable after deciding an application for approval as an approved professional development sponsor, the Minister must provide the applicant with:
 - (a) a copy of the written approval or refusal of the application; and
 - (b) if the application is refused, a statement of the reasons why the application was not approved.
- (5) Approval of an organisation as an approved professional development sponsor ceases to have effect on the earliest of:
 - (a) the end of the period of 3 years commencing on the day on which the approval is given; and
 - (b) if the overseas agreement between the applicant and the overseas employer ends earlier than that period of 3 years — when the agreement ends; and
 - (c) cancellation of the approval under regulation 1.20R.

1.20P Obligations on approved professional development sponsor

If the Minister approves an application for approval as an approved professional development sponsor, the approved professional development sponsor must comply with each of the following obligations:

- (a) the approved professional development sponsor is responsible for all financial obligations to the Commonwealth that would be incurred in relation to an overseas participant during the overseas participant's stay in Australia at any time after the visa is granted, including obligations in relation to:
 - (i) the detention of the overseas participant; and
 - (ii) the removal of the overseas participant;

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- (b) the approved professional development sponsor is responsible for all costs that would be incurred in relation to an overseas participant for medical or hospital expenses during the overseas participant's stay in Australia at any time after the overseas participant's visa is granted (other than costs that are met in accordance with health insurance arrangements);
 - (c) the approved professional development sponsor is responsible for making adequate arrangements to ensure that the cost of return travel by an overseas participant from Australia, at any time after the overseas participant's visa is granted, will be met;
 - (d) the approved professional development sponsor is responsible for compliance by an overseas participant with the conditions to which the overseas participant's visa would be subject;
 - (e) the approved professional development sponsor is responsible for compliance by an overseas participant with the immigration laws of Australia, during the overseas participant's stay in Australia, at all times after the overseas participant's visa is granted;
 - (f) the approved professional development sponsor must comply with its responsibilities under the immigration laws of Australia at all times after the sponsor is approved as an approved professional development sponsor;
 - (g) the approved professional development sponsor is responsible for assisting an overseas participant, to the extent necessary, financially and in respect of accommodation, during the overseas participant's stay in Australia at any time after the visa is granted, so that the overseas participant's standard of living (including the overseas participant's accommodation) would be consistent with a reasonable standard of living in Australia;
 - (h) the approved professional development sponsor must give the Secretary accurate information, as soon as practicable, about:
 - (i) any material change in the approved professional development sponsor's circumstances; or

-
- (ii) any matter that may affect the approved professional development sponsor's ability to carry out its obligations; or
 - (iii) any material change in an overseas participant's circumstances; or
 - (iv) any matter that may affect an overseas participant's ability to comply with the conditions to which the overseas participant's visa would be subject;
 - (i) the approved professional development sponsor must not make a material change to the professional development program that would be provided to an overseas participant unless the Secretary has approved the change in writing;
 - (j) the approved professional development sponsor must give officers reasonable access, at reasonable times, to premises at which the approved professional development sponsor provides, or will provide, a professional development program, for the purpose of assessing:
 - (i) the approved professional development sponsor's compliance with the Act and these Regulations in relation to the approved professional development sponsor's sponsorship, the program and any overseas participant; and
 - (ii) an overseas participant's compliance with the conditions to which the overseas participant's visa would be subject;
 - (k) the approved professional development sponsor must not employ a non-citizen who does not hold a visa permitting the non-citizen to work (whether for reward or otherwise);
 - (l) the approved professional development sponsor must not employ a non-citizen in breach of a visa condition restricting the work that the non-citizen may perform in Australia.

Note A number of the obligations in this regulation relate to an overseas participant while the person is an overseas participant and after the person ceases to be an overseas participant.

1.20Q Notice to approved professional development sponsor

- (1) This regulation applies if:
- (a) the Minister is satisfied that an approved professional development sponsor:
 - (i) has incurred a debt due and payable to the Commonwealth in relation to the sponsor's activities as an approved professional development sponsor; and
 - (ii) has not discharged the debt; or
 - (b) the Minister is no longer satisfied as to a matter mentioned in subregulation 1.20N (4); or
 - (c) the Minister is no longer satisfied that the approved professional development sponsor is able to comply with an obligation mentioned in regulation 1.20P; or
 - (d) the Minister is satisfied that an approved professional development sponsor has failed to comply with any of its obligations under regulation 1.20P.
- (2) The Minister may give a notice to the approved professional development sponsor:
- (a) specifying the matter of which the Minister is satisfied under subregulation (1); and
 - (b) inviting the approved professional development sponsor:
 - (i) to deal with the matter; or
 - (ii) to satisfy the Minister that the matter does not exist, or no longer exists; or
 - (iii) to satisfy the Minister that the matter is not reasonably within the approved professional development sponsor's control.
- Note* The Minister is unable to grant a Subclass 470 (Professional Development) visa to an applicant while the applicant's approved professional development sponsor is subject to a notice under subregulation (2).
- (3) The Minister must revoke a notice if the Minister is satisfied that the matter specified in the notice:
- (a) has been dealt with; or
 - (b) does not exist; or

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- (c) no longer exists; or
 - (d) is not reasonably within the approved professional development sponsor's control.
- (4) For subregulation (3), the Minister may revoke a notice:
- (a) as soon as practicable after the Minister is satisfied; or
 - (b) if the Minister believes that it is not appropriate to revoke the notice until a later date — during or at the end of a period specified by the Minister for this paragraph.

1.20R Cancellation of approved professional development sponsorship

- (1) The Minister may, in writing, cancel an approval of an organisation as an approved professional development sponsor if:
- (a) the Minister:
 - (i) is no longer satisfied as to a matter mentioned in subregulation 1.20N (4); or
 - (ii) is no longer satisfied that the approved professional development sponsor is able to comply with an obligation mentioned in regulation 1.20P; or
 - (iii) is satisfied that an approved professional development sponsor has failed to comply with any of its obligations under regulation 1.20P; and
 - (b) 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 matters including:
 - (i) the seriousness of the inability or failure to comply; and
 - (ii) the past conduct of the approved professional development sponsor.
- (2) The Minister must give the organisation written notice of the decision.
- (3) The notice must state the ground for the cancellation.

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- (4) The Minister must give the notice to the organisation at any of the following addresses at which the Minister is satisfied that the organisation is able to receive the notice:
- (a) an address specified in an application by the organisation for approval as an approved professional development sponsor;
 - (b) the last address given to the Minister by the organisation for the purposes of the organisation's activities as an approved professional development sponsor;
 - (c) another address.
- (5) Failure to give notice of the decision under subregulation (4) does not affect the validity of the decision.

Note It is possible that the Minister may not be able to contact an organisation at any address known to the Minister.

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

omit

or 8

insert

, 8 or 10

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

omit

or 9

insert

, 9 or 10

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

omit

passenger card.

insert

passenger card; and

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

insert

- (h) if the non-citizen holds a Subclass 470 (Professional Development) visa, and is a person to whom clause 470.711 of Schedule 2 applies:
 - (i) show a clearance officer evidence of the person's identity, as specified in Part 1 of Schedule 9; and
 - (ii) give the clearance officer a completed passenger card.

[19] Subregulation 4.02 (1)

substitute

- (1) In this regulation:

business sponsor means:

- (a) a standard business sponsor (other than a standard business sponsor approved under regulation 1.20DA); or
- (b) a pre-qualified business sponsor.

Note From 1 July 2003, 2 kinds of business sponsorship are provided for by these Regulations: standard business sponsorship approved under regulation 1.20D and standard business sponsorship approved under regulation 1.20DA (which relates to overseas businesses).

However, an application for approval as a standard business sponsor, or a pre-qualified business sponsor, made before 1 July 2003 but not approved or rejected before 1 July 2003, will continue to be dealt with under regulation 1.20D as in force before 1 July 2003.

[20] Paragraph 4.02 (4) (a)

substitute

- (a) a decision under regulation 1.20D, as in force before, on or after 1 July 2003, to reject a person's application;

[21] Subparagraph 4.02 (4) (f) (ii)*omit*

lodged.

insert

lodged;

[22] After paragraph 4.02 (4) (f)*insert*

- (g) a decision under subregulation 1.20O (1) to refuse an application for approval as an approved professional development sponsor;
- (h) a decision under subregulation 1.20Q (2) to give a notice to an approved professional development sponsor;
- (i) a decision under subregulation 1.20R (1) to cancel an approval of an organisation as an approved professional development sponsor.

[23] Paragraph 4.02 (5) (e)*omit*

made.

insert

made;

[24] After paragraph 4.02 (5) (e)*insert*

- (f) in the case of a decision to which paragraph (4) (g) applies — the applicant for approval as an approved professional development sponsor;
- (g) in the case of a decision to which paragraph (4) (h) or (i) applies — the approved professional development sponsor.

Schedule 2 Amendments of Schedule 1

(regulation 3)

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

omit

\$1 610

insert

\$1 650

[2] After item 1220A

insert

1220B. Sponsored Training (Temporary) (Class UV)

- (1) Form: 1227.
- (2) Visa application charge:
 - (a) First instalment (payable at the time application is made): \$165
 - (b) Second instalment (payable before grant of visa): Nil.
- (3) Other:
 - (a) Application by a person seeking to satisfy the criteria for the grant of a Subclass 470 (Professional Development) visa:
 - (i) must include evidence of sponsorship by an approved professional development sponsor; and
 - (ii) must be lodged by the approved professional development sponsor.

- (b) Application by a person seeking to satisfy the criteria for the grant of a Subclass 470 (Professional Development) visa must be made by:
 - (i) posting the application (with the correct pre-paid postage) to the post office box address specified in a Gazette Notice for this subparagraph; or
 - (ii) having the application delivered by a courier service to the address specified in a Gazette Notice for this subparagraph; or
 - (iii) having the application sent by facsimile to the address specified in a Gazette Notice for this subparagraph.
- (c) Applicant seeking to satisfy the criteria for the grant of a Subclass 470 (Professional Development) visa must be outside Australia.

(4) Subclasses:

470 (Professional Development)

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

substitute

- (b) If the applicant:
 - (i) seeks a visa that will permit the applicant to remain in Australia (whether or not also a visa to travel to and enter Australia) for a period, or periods, of more than 3 months; and
 - (ii) is outside Australia at the time of application; and
 - (iii) is making the application for the visa:
 - (A) in connection with a standard business sponsor who was not approved under regulation 1.20DA, or a pre-qualified business sponsor; or
 - (B) as part of a labour agreement; or
 - (C) as part of a regional headquarters agreement mentioned in regulation 1.16A: 1066 or 1066 (internet).

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- (ba) If the applicant:
- (i) seeks a visa that will permit the applicant to remain in Australia (whether or not also a visa to travel to and enter Australia) for a period, or periods, of more than 3 months; and
 - (ii) is in Australia at the time of application; and
 - (iii) is making the application for the visa:
 - (A) in connection with a standard business sponsor who was not approved under regulation 1.20DA, or a pre-qualified business sponsor; or
 - (B) as part of a labour agreement; or
 - (C) as part of a regional headquarters agreement mentioned in regulation 1.16A; and
 - (iv) holds a substantive visa at the time of application for the Temporary Business Entry Class UC visa: 1066 or 1066 (internet).
- (bb) If the applicant:
- (i) seeks a visa that will permit the applicant to remain in Australia (whether or not also a visa to travel to and enter Australia) for a period, or periods, of more than 3 months; and
 - (ii) seeks to satisfy the secondary criteria for the grant of a Subclass 457 visa; and
 - (iii) is not making a combined application with the applicant seeking to satisfy the primary criteria for the grant of that visa: 1066 or 1066S (internet).
- (bc) If:
- (i) the applicant seeks a visa that will permit the applicant to remain in Australia (whether or not also a visa to travel to and enter Australia) for a period, or periods, of more than 3 months; and
 - (ii) paragraphs (b), (ba) and (bb) do not apply: 1066.

[4] Subclause 1301 (1)

after

1066

insert

, 1066 (internet), 1066S (internet)

Schedule 3 Amendments of Schedule 2

(regulation 3)

[1] Clause 457.111, note

after

AUD,

insert

Internet application,

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

substitute

Sponsorship — Australian business

- (4) The applicant meets the requirements of this subclause if:
- (a) the activity in which the applicant proposes to be employed in Australia by a person (the ***employer***) is the subject of an approved business nomination by the employer; and
 - (b) the employer is:
 - (i) either:
 - (A) a pre-qualified business sponsor; or
 - (B) a standard business sponsor approved under regulation 1.20D as in force before, on or after 1 July 2003; and
 - (ii) the employer mentioned in subparagraph 1223A (3) (d) (i); and
 - (c) the applicant is nominated, in accordance with approved form 1068, 1196 or 1196 (internet), in relation to the activity by the employer; and

- (d) the applicant has personal attributes and an employment background that are relevant to, and consistent with, the nature of the activity to be performed; and
- (e) the applicant demonstrates, if so required by the Minister, that he or she has the skills necessary to perform the activity; and
- (f) for an applicant in respect of whom there is a nomination of an activity under regulation 1.20G — the Minister is satisfied that:
 - (i) the applicant will be paid at the level specified in the nomination; and
 - (ii) that level will be at least the minimum salary level that applied at the time the nomination was made; and
- (g) for an applicant in respect of whom there is a nomination of an activity under regulation 1.20GA — the Minister is satisfied that:
 - (i) the applicant will be paid at the level specified in the nomination; and
 - (ii) that level will be not less than the level of remuneration provided for under relevant Australian legislation and awards; and
 - (iii) the applicant's working conditions will be no less favourable than working conditions provided for under relevant Australian legislation and awards; and
- (h) for a standard business sponsor — the Minister is satisfied that the position to be filled by the applicant has not been created only for the purposes of securing the entry of the applicant to Australia.

Sponsorship — overseas business

- (5) The applicant meets the requirements of this subclause if:
 - (a) the applicant proposes to be employed in Australia by a person (the **employer**) who does not operate a business activity in Australia; and

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- (b) that activity is the subject of an approved business nomination by the employer made under regulation 1.20G; and
 - (c) either:
 - (i) the employer is a standard business sponsor approved under regulation 1.20DA; or
 - (ii) before 1 July 2003, the employer:
 - (A) did not operate a business in Australia; and
 - (B) gave the Minister undertakings in accordance with approved form 1067; and
 - (C) was a person whom the Minister was satisfied (apart from not operating a business in Australia) would, on application, have been likely to have been approved as a standard business sponsor; and
 - (d) the applicant is nominated, in accordance with approved form 1068 or 1196, in relation to the activity by the employer; and
 - (e) the applicant demonstrates, if so required by the Minister, that he or she has the skills necessary to perform the activity; and
 - (f) the applicant has personal attributes and an employment background that are relevant to, and consistent with, the nature of the activity to be performed; and
 - (g) the Minister is satisfied that the position to be filled by the applicant has not been created only for the purposes of securing the entry of the applicant to Australia; and
 - (h) the Minister is satisfied that:
 - (i) the applicant will be paid at the level specified in the nomination; and
 - (ii) that level will be at least the minimum salary level that applied at the time the nomination was made; and
 - (i) the Minister is satisfied that the applicant has a genuine and realistic commitment to:
 - (i) establish, or assist in establishing, on behalf of the employer, a business activity in Australia with overseas connections; or

- (ii) fulfil, or assist in fulfilling, contractual obligations of the employer;
that will be of benefit to Australia.

[3] Clause 457.324

after

1068

insert

, 1196 or 1196 (internet)

[4] After Part 462

insert

Subclass 470 Professional Development

470.1 Interpretation

470.111 In this Part:

employed, organisation, overseas agreement and *overseas employer* have the same meaning as in regulation 1.20M.

Note Approved professional development sponsor is defined in regulation 1.03.

470.2 Primary criteria

Note All applicants must satisfy the primary criteria.

470.21 [No criteria to be satisfied at time of application]

470.22 Criteria to be satisfied at time of decision

470.221 Either:

- (a) the applicant has turned 18; or
- (b) the applicant has not turned 18, and the Minister is satisfied that exceptional circumstances exist to justify considering the application.

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- 470.222 The applicant:
- (a) nominated an approved professional development sponsor as the applicant's sponsor in the application for the visa; and
 - (b) is sponsored by that approved professional development sponsor.
- 470.223 The sponsor is satisfied that the applicant:
- (a) will undertake the professional development program mentioned in the visa application; and
 - (b) has managerial or other professional skills and work experience that are relevant to that program.
- 470.224 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 470.225 The applicant's approved professional development sponsor is not the subject of a current notice issued under subregulation 1.20Q (2).
- 470.226 The applicant is employed, within the meaning given by regulation 1.20M:
- (a) by an overseas employer; and
 - (b) in a managerial or other professional position.
- 470.227 The applicant's approved professional development sponsor has an overseas agreement with the applicant's overseas employer mentioned in the visa application, under which the overseas employer will meet all costs relating to:
- (a) the applicant's travel and entry to Australia; and
 - (b) the cost of tuition for the professional development program; and
 - (c) the applicant's accommodation in Australia; and
 - (d) the applicant's living expenses in Australia; and
 - (e) the applicant's health insurance costs in Australia; and
 - (f) the applicant's return from Australia.
- 470.228 The applicant's approved professional development sponsor has given an undertaking to fulfil the obligations imposed on the sponsor under regulation 1.20P in relation to the Subclass 470 (Professional Development) visa.

- 470.229 The Minister is satisfied that the applicant is a genuine applicant for entry to Australia to undertake the professional development program conducted by or for the approved professional development sponsor, having regard to:
- (a) the applicant's previous compliance with the immigration laws of Australia; and
 - (b) the stated intention of the applicant to comply with any conditions subject to which the visa is granted; and
 - (c) any other relevant matter.
- 470.230 The applicant gives to the Minister evidence of adequate arrangements in Australia for health insurance during the period of the applicant's intended stay in Australia.
- 470.231 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4013 and 4014.
- 470.232 The applicant gives to the Minister evidence that the approved professional development sponsor is satisfied in relation to the applicant's English language proficiency for the purposes of undertaking the professional development program mentioned in the visa application.

470.3 Secondary criteria: Nil.

Note All applicants must satisfy the primary criteria.

470.4 Circumstances applicable to grant

- 470.411 The applicant must be outside Australia at the time of grant.

470.5 When visa is in effect

- 470.511 Temporary visa permitting the holder:
- (a) to travel to, and enter, Australia on 1 or more occasions until a date specified by the Minister for the purpose; and
 - (b) to remain in Australia until a date specified by the Minister for the purpose.

470.6 Conditions

470.611 Conditions 8102, 8205, 8501, 8503, 8514, 8516, 8531 and 8536.

470.7 Way of giving evidence

470.711 No evidence need be given.

470.712 If evidence is given, to be given by way of visa label affixed to a valid passport.

Schedule 4 Amendment of Schedule 6A
(regulation 3)

[1] Part 10, before item 6A1001

insert

Column 1	Column 2	Column 3
Item	Qualification	Number of points

Schedule 5 Amendment of Schedule 8

(regulation 3)

[1] After item 8535

insert

8536 The holder must not discontinue, or deviate from, the professional development program in relation to which the visa was granted.

Schedule 6 Amendment of Schedule 9

(regulation 3)

[1] Part 1, after item 25

before the note, insert

26	Persons holding a Subclass 470 (Professional Development) visa, and to whom clause 470.711 of Schedule 2 applies	Passport	Yes
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Notes

- These Regulations amend Statutory Rules 1994 No. 268, as amended by 1994 Nos. 280, 322, 376 and 452; 1995 Nos. 3, 38, 117, 134, 268, 302 and 411; 1996 Nos. 12, 75 (regulations 7 and 8 were disallowed by the Senate on 11 September 1996), 76, 108, 121, 135, 198, 211 (regulations 4, 10, 11, 13.3, 14-37, 47-49, 51, 53-55, 74, 77.16, 77.19, 78, 85, 119 and 114 were disallowed by the Senate on 7 November 1996) and 276; 1997 Nos. 17, 64, 91, 92, 109, 137, 184, 185, 216, 263, 279, 288, 301 and 354; 1998 Nos. 36, 37, 104 (regulation 15 was disallowed by the Senate on 2 July 1998), 139, 210, 214, 284, 285 (disallowed by the Senate on 31 March 1999), 304, 305, 306 and 322; 1999 Nos. 8, 58, 64, 68 (as amended by 1999 Nos. 81 and 132), 76 (as amended by 1999 Nos. 81 and 132), 81 (as amended by 1999 No. 132), 82, 132, 155, 198, 220 (as amended by 1999 Nos. 259 and 321), 243, 259 (as amended by 2000 No. 259 and 2002 No. 213), 260 (as amended by 1999 No. 321), 321 and 325; 2000 Nos. 52, 62, 108, 192, 259 (as amended by 2000 No. 284) (item [4108] of Schedule 4 was disallowed by the Senate on 1 November 2000), 284 and 335; 2001 Nos. 27, 47, 86, 142, 162, 206, 239, 246, 283, 284, 285 and 291; Act No. 128, 2001; Statutory Rules 2001 No. 344; 2002 Nos. 10, 86, 121, 129 (disallowed by the Senate on 19 June 2002), 213, 230, 299, 323, 347, 348 and 354; Act No. 5, 2003; Statutory Rules 2003 Nos. 57, 94, 106 and 122.

- Notified in the *Commonwealth of Australia Gazette* on *L* 2003.

26 June