



## **Migration Amendment (Skilling Australians Fund) Regulations 2018**

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I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 02 August 2018

Peter Cosgrove  
Governor-General

By His Excellency's Command

Alan Tudge  
Minister for Citizenship and Multicultural Affairs

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## 1 Name

This instrument is the *Migration Amendment (Skilling Australians Fund) Regulations 2018*.

## 2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 4 and anything in this instrument not elsewhere covered by this table	The day after this instrument is registered.	7 August 2018
2. Schedule 1	Immediately after the commencement of Part 3 of Schedule 2 to the <i>Migration Amendment (Skilling Australians Fund) Act 2018</i> .	12 August 2018
3. Schedule 2	17 November 2018.	17 November 2018

Note: This table relates only to the provisions of this instrument as originally made.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

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

## 3 Authority

This instrument is made under the *Migration Act 1958*.

## 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

## Schedule 1—Skilling Australians Fund

### *Migration Regulations 1994*

#### **1 Subparagraph 2.12F(3B)(c)(vii)**

Omit “5.19(6); and”, substitute “5.19(6);”.

#### **2 At the end of paragraph 2.12F(3B)(c)**

Add:

- (viii) if the nomination application was made on or after 12 August 2018—the nomination application is withdrawn in the circumstances specified in subregulation 5.37A(3), (4) or (5); and

#### **3 Paragraphs 2.60S(2)(ba) and (bb)**

After “2.73A(3)”, insert “or nomination training contribution charge”.

#### **4 Subparagraphs 2.60S(3)(a)(ia) and (b)(ia)**

After “2.73A(3)”, insert “or nomination training contribution charge”.

#### **5 Paragraphs 2.68J(2)(ba) and (bb)**

After “2.73A(3)”, insert “or nomination training contribution charge”.

#### **6 Subparagraphs 2.68J(3)(a)(ia) and (b)(ia)**

After “2.73A(3)”, insert “or nomination training contribution charge”.

#### **7 Regulation 2.70**

Repeal the regulation, substitute:

##### **2.70 Application**

This Division applies in relation to the following:

- (a) a person who is, or who has applied to be:
  - (i) a standard business sponsor; or
  - (ii) a temporary work sponsor (other than a special program sponsor or a superyacht crew sponsor); or
  - (iii) a temporary activities sponsor;
- (b) a person who is:
  - (i) a party to a work agreement (other than a Minister); or
  - (ii) a party to negotiations for a work agreement (other than a Minister).

#### **8 Paragraph 2.72(1)(a)**

Repeal the paragraph, substitute:

- (a) is any of the following:
    - (i) a standard business sponsor;
    - (ii) a person who has applied to be a standard business sponsor;
    - (iii) a party to a work agreement (other than a Minister);
    - (iv) a party to negotiations for a work agreement (other than a Minister);
- and

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**9 At the end of subregulation 2.72(2)**

Add:

Note: In addition, subsection 140GB(2) of the Act requires the person to be an approved sponsor and to have paid any nomination training contribution charge in relation to the nomination.

**10 After subregulation 2.72(5)**

Insert:

(5A) The Minister is satisfied that any debt due by the person as mentioned in section 140ZO of the Act (recovery of nomination training contribution charge and late payment penalty) has been paid in full.

**11 After subregulation 2.72(10)**

Insert:

(10A) However, the Minister may disregard the criterion in paragraph (10)(b) if the Minister is satisfied that it is reasonable in the circumstances to do so.

**12 After paragraph 2.72(16)(a)**

Insert:

- (aa) the Minister may disregard the criterion in paragraph (15)(e) if:
  - (i) under subregulation (10A), the Minister disregards the criterion in paragraph (10)(b) in relation to the position associated with the occupation; and
  - (ii) the Minister is satisfied that it is reasonable in the circumstances to do so; and

**13 Paragraph 2.72A(1)(a)**

Repeal the paragraph, substitute:

- (a) who is, or has applied to be, a temporary activities sponsor; and

**14 Subregulation 2.72A(3)**

Repeal the subregulation, substitute:

- (3) The Minister is satisfied that the sponsor is a temporary activities sponsor.

**15 Subregulation 2.72B(1)**

After “a nomination by”, insert “a person who is, or who has applied to be,”.

**16 After subregulation 2.73(5)**

Insert:

(5A) The nomination must be accompanied by any nomination training contribution charge the person is liable to pay in relation to the nomination.

**17 Subparagraph 2.73(9)(b)(i)**

After “work agreement”, insert “or negotiations for a work agreement”.

**18 At the end of paragraph 2.73(9)(b)**

Add “or proposed work agreement”.

**19 After paragraph 2.73(9)(d)**

Insert:

- (da) the annual turnover (within the meaning of the *Migration (Skilling Australians Fund) Charges Regulations 2018*) for the nomination;

**20 Paragraph 2.73(11)(a)**

After “work agreement”, insert “or negotiations for a work agreement”.

**21 At the end of subregulation 2.73(11)**

Add “or proposed work agreement”.

**22 Subparagraph 2.73(14)(c)(i)**

After “overseas business sponsor”, insert “or would be an overseas business sponsor if the person were approved as a standard business sponsor”.

**23 Paragraph 2.73(15)(a)**

After “party to a work agreement”, insert “or negotiations for a work agreement”.

**24 Subparagraph 2.73(15)(c)(ii)**

After “work agreement”, insert “or proposed work agreement”.

**25 At the end of paragraph 2.73(15)(d)**

Add “or proposed work agreement”.

**26 Regulation 2.73AA (heading)**

Repeal the heading, substitute:

**2.73AA Refund of nomination fee and nomination training contribution charge—Subclass 457 (Temporary Work (Skilled)) visa and Subclass 482 (Temporary Skill Shortage) visa**

**27 Subregulation 2.73AA(1)**

After “or (7)”, insert “, or any nomination training contribution charge mentioned in subregulation 2.73(5A),”.

**28 Paragraph 2.73AA(1)(a)**

Repeal the paragraph, substitute:

- (a) any of subregulations (2) to (3E) apply; and

**29 After subregulation 2.73AA(3)**

Insert:

(3A) This subregulation applies if:

- (a) the person withdraws the nomination before a decision is made under section 140GB of the Act; and
- (b) the reason for withdrawing the nomination is that the information in the nomination used to work out the amount of nomination training contribution charge in relation to the nomination was incorrect.

(3B) This subregulation applies if:



- (a) the nomination is of an occupation for a Subclass 482 (Temporary Skill Shortage) visa in the Short-term stream or Medium-term stream; and
- (b) at the time the person made the nomination, the person had applied to be approved as a standard business sponsor; and
- (c) the person withdraws the nomination before a decision is made under section 140GB of the Act because:
  - (i) the person has withdrawn the application to be approved as a standard business sponsor; or
  - (ii) the Minister has refused to approve the person as a standard business sponsor.

(3C) This subregulation applies if:

- (a) the nomination is of an occupation for a Subclass 482 (Temporary Skill Shortage) visa in the Labour Agreement stream; and
- (b) the person withdraws the nomination before a work agreement is entered.

(3D) This subregulation applies if:

- (a) an application for a Subclass 482 (Temporary Skill Shortage) visa made on the basis of the nomination is finally determined; and
- (b) the grant of the visa is refused:
  - (i) under section 501, 501A or 501B of the Act; or
  - (ii) because the visa applicant did not satisfy public interest criterion 4001, 4002, 4003, 4007 or 4020.

(3E) This subregulation applies if:

- (a) a Subclass 482 (Temporary Skill Shortage) visa is granted on the basis of the nomination; and
- (b) the visa holder fails to commence employment in the position associated with the nominated occupation.

### **30 Paragraph 2.75(2)(b)**

Repeal the paragraph, substitute:

- (b) 12 months after the day on which the nomination is approved unless, at that time, there is a visa application made by the nominee on the basis of the nomination that has not been finally determined; and
- (ba) if a visa application made by the nominee on the basis of the nomination is finally determined or withdrawn after 12 months after the day on which the nomination is approved—the day on which the visa application is finally determined or withdrawn; and

### **31 Paragraph 2.82(3)(g)**

Repeal the paragraph, substitute:

- (g) if the person was approved as a standard business sponsor before 12 August 2018 and was lawfully operating a business in Australia at the time of:
  - (i) the person's approval as a standard business sponsor; or
  - (ii) the approval of a variation to the person's approval as a standard business sponsor;

all records showing that the person has complied with requirements relating to training specified by the Minister in an instrument in force

before 12 August 2018 under subregulation 2.87B(2) (as in force before 12 August 2018); and

- (h) records to substantiate the annual turnover (within the meaning of the *Migration (Skilling Australians Fund) Charges Regulations 2018*) for nominations in relation to which the person is liable for nomination training contribution charge.

**32 Subparagraphs 2.87(1A)(a)(iia) and (b)(iia) and (1B)(a)(iia) and (b)(iia)**

After “2.73A(3)”, insert “or nomination training contribution charge”.

**33 Regulation 2.87B**

Repeal the regulation.

**34 Paragraph 4.02(5)(c)**

Omit “approved sponsor”, substitute “person”.

**35 After paragraph 5.19(2)(f)**

Insert:

- (fa) be accompanied by any nomination training contribution charge the nominator is liable to pay in relation to the nomination; and
- (fb) identify the annual turnover (within the meaning of the *Migration (Skilling Australians Fund) Charges Regulations 2018*) for the nomination; and

**36 After paragraph 5.19(4)(d)**

Insert:

- (da) any debt due by the nominator as mentioned in section 140ZO of the Act (recovery of nomination training contribution charge and late payment penalty) has been paid in full;

**37 Paragraph 5.19(5)(i)**

Repeal the paragraph.

**38 Paragraph 5.19(10)(b)**

Omit “instrument;”, substitute “instrument.”.

**39 Paragraph 5.19(10)(c)**

Repeal the paragraph.

**40 Subregulation 5.36(4) (after paragraph (b) of the definition of fee)**

Insert:

- (ba) an amount of nomination training contribution charge; or

**41 After regulation 5.37**

Insert:

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**5.37A Refund of employer nomination fee and nomination training contribution charge**

- (1) The Minister may refund any fee mentioned in regulation 5.37, or any nomination training contribution charge mentioned in paragraph 5.19(2)(fa), paid in relation to a nomination if:
  - (a) any of subregulations (2) to (9) apply; and
  - (b) the Minister:
    - (i) receives a written request for a refund from the person who paid the amount; or
    - (ii) considers it is reasonable in the circumstances to refund the amount to the person who paid the amount without receiving a written request for a refund.
- (2) This subregulation applies if the application for approval of the nomination is made because of a mistake by Immigration.
- (3) This subregulation applies if:
  - (a) the nomination relates to a visa in a Labour Agreement stream; and
  - (b) the person is a party to a labour agreement; and
  - (c) the person withdraws the application for approval of the nomination before a decision is made under regulation 5.19 because:
    - (i) the person has identified an occupation in the application that is not specified in the labour agreement as an occupation in relation to which a position may be nominated; or
    - (ii) the number of nominations approved by the Minister under regulation 5.19 on application by the person is equal to or greater than the number of approved nominations permitted under the labour agreement for the year.
- (4) This subregulation applies if:
  - (a) the person withdraws the application for approval of the nomination before a decision is made under regulation 5.19; and
  - (b) the reason for withdrawing the application is that the information in the application used to work out the amount of nomination training contribution charge in relation to the nomination was incorrect.
- (5) This subregulation applies if:
  - (a) the nomination relates to a visa in a Labour Agreement stream; and
  - (b) the person withdraws the application for approval of the nomination before a labour agreement is entered.
- (6) This subregulation applies if:
  - (a) the nomination relates to a visa in a Temporary Residence Transition stream; and
  - (b) the person withdraws the application for approval of the nomination before a decision is made under regulation 5.19; and
  - (c) the reason for withdrawing the application is that the application, by mistake, identified the wrong occupation in relation to the position nominated.
- (7) This subregulation applies if:

- (a) the person withdraws the application for approval of the nomination before a decision is made under regulation 5.19; and
  - (b) the reason for withdrawing the application is that the application, by mistake, identified the wrong stream.
- (8) This subregulation applies if:
- (a) an application for a Subclass 186 (Employer Nomination Scheme) visa or a Subclass 187 (Regional Sponsored Migration Scheme) visa made on the basis of the nomination is finally determined; and
  - (b) the grant of the visa is refused:
    - (i) under section 501, 501A or 501B of the Act; or
    - (ii) because the visa applicant did not satisfy public interest criterion 4001, 4002, 4003, 4005, 4007 or 4020; or
    - (iii) because a member of the family unit of the visa applicant did not satisfy public interest criterion 4001, 4002, 4003, 4005, 4007 or 4020.
- (9) This subregulation applies if:
- (a) a Subclass 186 (Employer Nomination Scheme) visa or a Subclass 187 (Regional Sponsored Migration Scheme) visa is granted on the basis of the nomination; and
  - (b) the visa holder fails to commence employment in the position nominated.
- (10) A refund under subregulation (1) must be paid to the person who paid the amount.
- (11) A refund under subregulation (1) may be paid:
- (a) in Australian currency; or
  - (b) if the amount in respect of which the refund is being paid was paid in another currency, in that other currency.

## **42 After Division 5.7 of Part 5**

Insert:

### **Division 5.7A—Nomination training contribution charge**

#### **5.42 Nominations that attract nomination training contribution charge**

- (1) For the purposes of subsection 140ZM(1) of the Act, a nomination of a proposed occupation under paragraph 140GB(1)(b) of the Act in relation to any of the following is prescribed:
- (a) a holder of a Subclass 457 (Temporary Work (Skilled)) visa;
  - (b) a holder of a Subclass 482 (Temporary Skill Shortage) visa;
  - (c) an applicant or a proposed applicant for a Subclass 482 (Temporary Skill Shortage) visa.
- (2) For the purposes of paragraph 140ZM(2)(a) of the Act, the following kinds of visas are prescribed:
- (a) Subclass 186 (Employer Nomination Scheme) visas;
  - (b) Subclass 187 (Regional Sponsored Migration Scheme) visas.
- (3) For the purposes of paragraph 140ZM(2)(b) of the Act, nominations under regulation 5.19 are prescribed.

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**43 In the appropriate position in Schedule 13**

Insert:

**Part 76—Amendments made by the Migration Amendment  
(Skilling Australians Fund) Regulations 2018**

**7601 Definitions**

In this Part:

*amending regulations* means the *Migration Amendment (Skilling Australians Fund) Regulations 2018*.

*commencement day* means 12 August 2018.

**7602 Operation of amendments**

- (1) Subregulation 2.72(10A), as inserted by the amending regulations, applies in relation to a nomination made on or after 18 March 2018 that is not finally determined before the commencement day.
- (2) The amendments of subregulation 2.72(16) made by the amending regulations apply in relation to a nomination made on or after 18 March 2018 that is not finally determined before the commencement day.
- (3) The amendments of regulation 2.73AA made by the amending regulations apply in relation to a nomination made on or after the commencement day.
- (4) The amendments of regulation 2.75 made by the amending regulations apply in relation to a nomination made on or after 18 March 2018.
- (5) A person is not required to comply with subregulation 2.87B(2) or (3) in relation to a period of 12 months ending on or after the commencement day.
- (6) Despite the repeal of paragraphs 5.19(5)(i) and 5.19(10)(c) by the amending regulations, those paragraphs, as in force immediately before the commencement day, continue to apply in relation to an application for approval of a nomination made before the commencement day.
- (7) Regulation 5.37A, as inserted by the amending regulations, applies in relation to a nomination the application for approval of which is made on or after the commencement day.

## Schedule 2—Additional refund provision

### *Migration Regulations 1994*

#### **1 After subregulation 2.73AA(3E)**

Insert:

(3F) If:

- (a) a nomination made in relation to a person (the *nominee*) is approved; and
- (b) the period of stay proposed in the nomination is more than 1 year; and
- (c) the nominee ceases to be employed by the person who made the nomination or an associated entity of the person within 1 year after commencing employment with the person or an associated entity of the person; and
- (d) the Minister:
  - (i) receives a written request for a refund from the person; or
  - (ii) considers it is reasonable in the circumstances to give a refund without receiving a written request for a refund;

the Minister may refund any nomination training contribution charge mentioned in subregulation 2.73(5A) paid in relation to the nomination, less the amount of nomination training contribution charge that would have been payable in relation to the nomination if the period of stay proposed in the nomination were 1 year.

#### **2 Subregulations 2.73AA(4) and (5)**

After “subregulation (1)”, insert “or (3F)”.