



Migration Amendment (Skilling Australians Fund) Act 2018

No. 38, 2018

**An Act to make amendments relating to the
enactment of the *Migration (Skilling Australians
Fund) Charges Act 2018*, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

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**An Act to make amendments relating to the
enactment of the *Migration (Skilling Australians
Fund) Charges Act 2018*, and for related purposes**

[Assented to 22 May 2018]

The Parliament of Australia enacts:

1 Short title

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

2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	22 May 2018
2. Schedule 1	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	12 August 2018 (F2018N00125)
3. Schedule 2, Part 1	At the same time as the provisions covered by table item 2. However, if Schedule 1 to the <i>Migration Amendment (Family Violence and Other Measures) Act 2018</i> commences at or before that time, the provisions covered by this table item do not commence at all.	12 August 2018
4. Schedule 2, Part 2	At the same time as the provisions covered by table item 2. However, if Schedule 1 to the <i>Migration Amendment (Family Violence and Other Measures) Act 2018</i> does not commence on or before the commencement of the provisions covered by table item 2, the provisions covered by this table item do not commence at all.	Never commenced
5. Schedule 2, Part 3	At the same time as the provisions covered by table item 2.	12 August 2018

Note: This table relates only to the provisions of this Act as originally enacted.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

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

3 Schedules

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

4 Review of operation of amendments

- (1) The Minister must cause an independent review of the operation of the amendments made by this Act.
- (2) The review must:
 - (a) start as soon as practicable after 18 months after Royal Assent; and
 - (b) be completed within 6 months.
- (3) The Minister must cause a written report about the review to be prepared.
- (4) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the day on which the report is given to the Minister.
- (5) The report is not a legislative instrument.

Schedule 1—Nomination training contribution charges

Part 1—Main amendments

Migration Act 1958

1 Subsection 5(1)

Insert:

Finance Minister means the Minister who administers the *Public Governance, Performance and Accountability Act 2013*.

nomination training contribution charge means nomination training contribution charge imposed by section 7 of the *Migration (Skilling Australians Fund) Charges Act 2018*.

2 Paragraph 140GB(2)(a)

Omit “sponsor”, substitute “person”.

3 Subsection 140GB(2) (note)

Omit “Note”, substitute “Note 1”.

4 At the end of subsection 140GB(2)

Add:

Note 2: See section 140ZM for when a person is liable to pay nomination training contribution charge.

5 Paragraphs 140GBA(1)(b) and (c)

Omit “sponsor”, substitute “person”.

6 Subsection 140GBB(1)

Omit “the sponsor”, substitute “the person”.

7 Subsection 140GBB(2)

Omit “sponsor”, substitute “person”.

8 Subparagraphs 140GBB(4)(a)(i) and (ii)

Omit “sponsor”, substitute “person”.

9 Paragraph 140GBB(4)(b)

Omit “sponsor”, substitute “person”.

10 Paragraph 140GBB(4)(b)

Omit “sponsors”, substitute “persons”.

11 At the end of Division 3A of Part 2

Add:

140ZL Division binds the Crown

- (1) This Division binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory and of the Northern Territory.
- (2) However, this Division does not make the Crown liable to be prosecuted for an offence.
- (3) To avoid doubt, subsection (2) does not prevent the Crown being liable to pay a pecuniary penalty under this Division.

12 After Division 3A of Part 2

Insert:

Division 3B—Nominations

140ZM Nomination training contribution charge

- (1) A person is liable to pay nomination training contribution charge to the Commonwealth in relation to a nomination by the person under section 140GB if the nomination is a nomination of a kind prescribed by the regulations.
- (2) A person applying under the regulations, or in accordance with the terms of a work agreement, for approval of a nomination of a position in relation to the holder of, or an applicant or proposed applicant for, a visa, is liable to pay nomination training

contribution charge to the Commonwealth in relation to the nomination if:

- (a) the visa is of a kind (however described) prescribed by the regulations; and
- (b) the nomination is a nomination of a kind prescribed by the regulations.

140ZN Regulations about nomination training contribution charge

- (1) The regulations may make provision for, or in relation to, all or any of the following matters:
 - (a) when nomination training contribution charge is due and payable;
 - (b) the method of paying nomination training contribution charge (including the currency in which the charge must be paid);
 - (c) the remission or refund of nomination training contribution charge;
 - (d) the overpayment or underpayment of nomination training contribution charge;
 - (e) the payment of a penalty in relation to the underpayment of nomination training contribution charge;
 - (f) the giving of information and keeping of records relating to a person's liability to pay nomination training contribution charge.
- (2) For the purposes of paragraph (1)(e), the penalty payable must be a civil penalty not exceeding 60 penalty units.

140ZO Recovery of nomination training contribution charge and late payment penalty

If an amount of:

- (a) nomination training contribution charge; or
- (b) a penalty in relation to the underpayment of such a charge;

is due and payable to the Commonwealth, the amount is a debt due to the Commonwealth and may be recovered by action in a court of competent jurisdiction.

140ZP Notional application of nomination training contribution charge in relation to nominations by the Commonwealth

- (1) The Commonwealth is not liable to pay nomination training contribution charge that is payable under section 140ZM. However, it is the Parliament's intention that the Commonwealth should be notionally liable to pay such charge.
- (2) The Finance Minister may give such written directions as are necessary or convenient for carrying out or giving effect to subsection (1) and, in particular, may give directions in relation to the transfer of money within an account, or between accounts, operated by the Commonwealth.
- (3) Directions under subsection (2) have effect, and must be complied with, despite any other Commonwealth law.
- (4) A direction under subsection (2) is not a legislative instrument.
- (5) In subsections (1) and (2), *Commonwealth* includes a Commonwealth entity (within the meaning of the *Public Governance, Performance and Accountability Act 2013*) that cannot be made liable to taxation by a Commonwealth law.

140ZQ Division binds the Crown

- (1) This Division binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory and of the Northern Territory.
- (2) However, this Division does not make the Crown liable to be prosecuted for an offence.
- (3) To avoid doubt, subsection (2) does not prevent the Crown being liable to pay a pecuniary penalty under this Division.

Part 2—Other amendments

Migration Act 1958

13 After paragraph 140GBA(3)(a)

Insert:

- (aa) the labour market testing in relation to the nominated position was undertaken in the manner determined under subsection (5); and

14 Subparagraph 140GBA(3)(b)(i)

Omit “(see subsections (5) and (6))”, substitute “of a kind determined under subsection (6A)”.

14A At the end of subsection 140GBA(4)

Add “The period must not start earlier than 4 months before the nomination is received by the Minister.”.

15 Subsections 140GBA(5), (6) and (6A)

Repeal the subsections, substitute:

- (5) For the purposes of paragraph (3)(aa), the Minister may, by legislative instrument, determine the manner in which labour market testing in relation to a nominated position must be undertaken.
- (6) Without limiting subsection (5), the Minister may determine the following:
 - (a) the language to be used for any advertising (paid or unpaid) of the position, and any similar positions, commissioned or authorised by the approved sponsor;
 - (b) the method of any such advertising;
 - (c) the period during which any such advertising must occur;
 - (d) the duration of any such advertising.
- (6AA) The Minister must not make a determination under subsection (5) unless the Minister is reasonably satisfied that any advertising of the position undertaken in the determined manner:

- (a) will be targeted in such a way that a significant proportion of suitably qualified and experienced Australian citizens or Australian permanent residents would be likely to be informed about the position; and
 - (b) will set out any skills or experience requirements that are appropriate to the position.
- (6AB) A duration determined for the purposes of paragraph (6)(d) must be at least 4 weeks.
- (6A) For the purposes of subparagraph (3)(b)(i), the Minister may, by legislative instrument, determine kinds of evidence that must accompany a nomination.
- (6B) Without limiting subsection (6A), the Minister may determine that a copy of any advertising mentioned in subsection (6) must accompany a nomination.
- (6C) Without limiting subsection (5) or (6A), the Minister may prescribe different manners or evidence for different nominated positions or classes of nominated positions.

Part 3—Application and transitional provisions

16 Application provision

- (1) Subdivision B of Division 3A of Part 2 of the *Migration Act 1958*, as amended by Part 1 of this Schedule, applies in relation to:
 - (a) nominations made on or after the commencement of this item; and
 - (b) nominations made before the commencement of this item but not decided at the commencement of this item.
- (2) Subdivision B of Division 3A of Part 2 of the *Migration Act 1958*, as amended by Part 2 of this Schedule, applies in relation to nominations made on or after the commencement of this item.
- (3) Division 3B of Part 2 of the *Migration Act 1958*, as inserted by Part 1 of this Schedule, applies in relation to nominations made on or after the commencement of this item.

17 Transitional provision

An exemption made under subsection 140GBB(2) of the *Migration Act 1958* that was in force immediately before the commencement of this item continues in force (and may be dealt with) as if it had been made under that subsection as amended by this Act.

Schedule 2—Contingent amendments

Part 1—Amendments if the Migration Amendment (Family Violence and Other Measures) Act 2018 commences after this Act

Migration Act 1958

1 Subsection 140GB(1)

Omit “An approved sponsor”, substitute “A person who is, or who has applied to be, an approved sponsor, or a person who is a party to negotiations for a work agreement,”.

2 Subsection 140GB(2)

Omit “an approved sponsor’s”, substitute “a person’s”.

3 After paragraph 140GB(2)(a)

Insert:

- (aa) in a case in which the person is liable to pay nomination training contribution charge in relation to the nomination—the person has paid the charge; and
- (ab) in any case—the person is an approved sponsor; and

4 Subsection 140GB(3)

Omit “an approved sponsor’s”, substitute “a person’s”.

5 Subsection 140GBA(1)

Omit “an approved sponsor”, substitute “a person”.

6 Paragraph 140GBA(1)(a)

Omit “approved sponsor is in a class of sponsors”, substitute “person is, or has applied to be, in a class of approved sponsors”.

7 Paragraph 140GBA(3)(a)

Omit “approved sponsor”, substitute “person”.

Schedule 2 Contingent amendments

Part 1 Amendments if the Migration Amendment (Family Violence and Other Measures) Act 2018 commences after this Act

8 Subparagraph 140GBA(3)(b)(ii)

Omit “approved sponsor”, substitute “person”.

9 Paragraph 140GBA(5)(a)

Omit “approved sponsor’s”, substitute “person’s”.

10 Subparagraph 140GBA(6)(a)(i)

Omit “approved sponsor”, substitute “person”.

11 Subparagraph 140GBA(6)(b)(i)

Omit “approved sponsor’s”, substitute “person’s”.

12 Subsection 140GBA(6A)

Omit “approved sponsor” (first and second occurring), substitute “person”.

13 Subsection 140GBA(7) (definition of *eligible temporary visa holder*)

Omit “an approved sponsor”, substitute “another person”.

14 Subsection 140GBA(7) (paragraph (b) of the definition of *eligible temporary visa holder*)

Omit “approved sponsor” (first and second occurring), substitute “other person”.

15 Subsection 140GBB(1)

Omit “An approved sponsor”, substitute “A person”.

16 Subsection 140GBB(4)

Omit “an approved sponsor”, substitute “a person”.

17 Subsection 140GBC(1)

Omit “an approved sponsor, under section 140GB, if the sponsor”, substitute “a person, under section 140GB, if the person”.

18 Subsections 140GBC(2) and (3)

Omit “approved sponsor”, substitute “person”.

Part 2—Amendments if the Migration Amendment (Family Violence and Other Measures) Act 2018 commences before this Act

Migration Act 1958

19 Subsection 140GB(1)

After “An approved work sponsor”, insert “, a person who has applied to be an approved work sponsor, or a person who is a party to negotiations for a work agreement,”.

20 Subsection 140GB(2)

Omit “an approved work sponsor’s”, substitute “a person’s”.

21 After paragraph 140GB(2)(a)

Insert:

- (aa) in a case in which the person is liable to pay nomination training contribution charge in relation to the nomination—the person has paid the charge; and
- (ab) in any case—the person is an approved work sponsor; and

22 Subsection 140GB(3)

Omit “an approved work sponsor’s”, substitute “a person’s”.

23 Subsection 140GBA(1)

Omit “an approved work sponsor”, substitute “a person”.

24 Paragraph 140GBA(1)(a)

Omit “approved work sponsor is in a class of sponsors”, substitute “person is, or has applied to be, in a class of approved work sponsors”.

25 Paragraph 140GBA(3)(a)

Omit “approved work sponsor”, substitute “person”.

26 Subparagraph 140GBA(3)(b)(ii)

Omit “approved work sponsor”, substitute “person”.

Schedule 2 Contingent amendments

Part 2 Amendments if the Migration Amendment (Family Violence and Other Measures) Act 2018 commences before this Act

27 Paragraph 140GBA(5)(a)

Omit “approved work sponsor’s”, substitute “person’s”.

28 Subparagraph 140GBA(6)(a)(i)

Omit “approved work sponsor”, substitute “person”.

29 Subparagraph 140GBA(6)(b)(i)

Omit “approved work sponsor’s”, substitute “person’s”.

30 Subsection 140GBA(6A)

Omit “approved work sponsor” (first and second occurring), substitute “person”.

31 Subsection 140GBA(7) (definition of *eligible temporary visa holder*)

Omit “an approved work sponsor”, substitute “another person”.

32 Subsection 140GBA(7) (paragraph (b) of the definition of *eligible temporary visa holder*)

Omit “approved work sponsor” (first and second occurring), substitute “other person”.

33 Subsection 140GBB(1)

Omit “An approved work sponsor”, substitute “A person”.

34 Subsection 140GBB(4)

Omit “an approved work sponsor”, substitute “a person”.

35 Subsection 140GBC(1)

Omit “an approved work sponsor, under section 140GB, if the sponsor”, substitute “a person, under section 140GB, if the person”.

36 Subsections 140GBC(2) and (3)

Omit “approved work sponsor”, substitute “person”.

Part 3—Application and transitional provisions

37 Application provision

Subdivision B of Division 3A of Part 2 of the *Migration Act 1958*, as amended by this Schedule, applies in relation to:

- (a) nominations made on or after the commencement of this item; and
- (b) nominations made before the commencement of this item but not decided at the commencement of this item.

38 Transitional provision

- (1) Regulations made under subsection 140GB(3) of the *Migration Act 1958* that were in force immediately before the commencement of this item continue in force (and may be dealt with) as if the regulations had been made under that subsection as amended by this Act.
- (2) Regulations made under paragraph 140GBA(1)(a) of the *Migration Act 1958* that were in force immediately before the commencement of this item continue in force (and may be dealt with) as if the regulations had been made under that paragraph as amended by this Act.

[*Minister's second reading speech made in—
House of Representatives on 18 October 2017
Senate on 13 February 2018*]

(241/17)
