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**THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA**

**HOUSE OF REPRESENTATIVES**

**MIGRATION AMENDMENT (FAMILY VIOLENCE AND OTHER MEASURES)  
BILL 2016**

**EXPLANATORY MEMORANDUM**

(Circulated by authority of the Minister for Immigration and Border Protection,  
the Hon. Peter Dutton MP)

## **Migration Amendment (Family Violence and Other Measures) Bill 2016**

### **OUTLINE**

The Migration Amendment (Family Violence and Other Measures) Bill 2016 (the Bill) amends the *Migration Act 1958* (the Migration Act) to introduce a sponsorship framework for the sponsored family visa program.

Currently, Division 3A of Part 2 of the Migration Act provides a sponsorship framework that applies to the temporary sponsored work visa program. Amongst other things, this framework requires the assessment and approval of sponsors; imposes statutory obligations on sponsors; provides for civil penalties and administrative sanctions for breach of sponsorship obligations; and facilitates the sharing of information between relevant parties. The framework consists of two elements:

1. provisions in the Migration Act which provide the necessary heads of power to implement aspects of the sponsorship framework; and
2. part 2A of the *Migration Regulations 1994* (the Regulations) which prescribes details for and in relation to the operation of the sponsorship framework.

To address the integrity issues currently experienced in the sponsored family visa program (the program), the Bill will extend relevant aspects of this sponsorship framework to apply to family sponsored visas with a view to:

- separate sponsorship assessment from the visa application process for family sponsored visas;
- require the approval of persons as family sponsors before any relevant visa applications are made;
- impose statutory obligations on persons who are or were approved as family sponsors;
- provide for sanctions if such obligations are not satisfied;
- facilitate the sharing of personal information between a range of parties associated with the program; and
- improve the management of family violence in the delivery of the program by allowing the refusal of a sponsorship application; and cancellation and / or barring of a family sponsor where inappropriate use of the program or serious offences are detected – especially those involving family violence.

To give effect to this extended framework, regulation amendments will be required to:

- prescribe details for and in relation to the operation of the sponsorship framework for the sponsored family visa program; and
- make consequential amendments to the existing framework relating to the temporary sponsored work visa program to reflect the new terminology referred to in the Bill.

### **FINANCIAL IMPACT STATEMENT**

The financial impact of the Bill is low. Any costs associated with the implementation of the proposed amendments will be met from within existing resources of the Department of Immigration and Border Protection.

## **STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

A Statement of Compatibility with Human Rights has been completed in relation to the amendments in this Bill and assesses that the amendments are compatible with Australia's human rights obligations. A copy of the Statement of Compatibility with Human Rights is at Attachment A.

**MIGRATION AMENDMENT (FAMILY VIOLENCE AND OTHER MEASURES)  
BILL 2016**

**NOTES ON INDIVIDUAL CLAUSES**

**Clause 1      Short title**

1. Clause 1 provides that the short title by which this Act may be cited is the *Migration Amendment (Family Violence and Other Measures) Act 2016*.

**Clause 2      Commencement**

2. Subclause 2(1) provides that 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.
3. Table item 1 provides that sections 1 to 3 and anything in this Act not elsewhere covered by the table will commence on the day this Act receives the Royal Assent.
4. Table item 2 provides that Schedule 1 of the Act commences on a single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 12 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.
5. The delayed commencement of Schedule 1 is to allow adequate time for regulation and administrative changes to be made which are necessary to give effect to the legislative changes made by this Act. It is anticipated that Schedule 1 will commence by Proclamation in late 2016 or early 2017, however due to an impending election, this timeframe may be delayed.
6. A note explains that 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.
7. Subclause 2(2) provides that 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.

**Clause 3      Schedules**

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

## SCHEDULE 1 – SPONSORED FAMILY VISAS

### Part 1 - Amendments

#### *Migration Act 1958*

#### **Item 1            Subsection 5(1)**

1. This item amends subsection 5(1) of the Migration Act to define two new terms referred to in this Act, namely ***approved family sponsor*** and ***approved work sponsor***.
2. The item provides that an ***approved family sponsor*** means a person:
  - (a) who has been approved under section 140E as a family sponsor in relation to a class prescribed by the regulations for the purpose of subsection 140E(2); and
  - (b) whose approval has not been cancelled under section 140M, or otherwise ceased to have effect under section 140G, in relation to that class.
3. The item provides that an ***approved work sponsor*** means:
  - (a) a person:
    - (i) who has been approved under section 140E as a work sponsor in relation to a class prescribed by the regulations for the purpose of subsection 140E(2); and
    - (ii) whose approval has not been cancelled under section 140M, or otherwise ceased to have effect under section 140G, in relation to that class; or
  - (b) a person (other than a Minister) who is a party to a work agreement.
4. This item also inserts a note under the definition of ***approved work sponsor*** to clarify that a partnership or unincorporated association (referred to in subsections 140ZB(1) and 140ZE respectively) may be an approved work sponsor.
5. These new terms are referred to in Division 3A of Part 2 of the Migration Act, as amended by this Act. Currently, Division 3A of Part 2 of the Migration Act provides a sponsorship framework which only applies to the temporary sponsored work visa program. As the amendments in this Act extend relevant parts of the sponsorship framework to apply to the sponsored family visa program, it is necessary to distinguish between an approved family sponsor and an approved work sponsor.

#### **Item 2            Subsection 5(1) (definition of *approved sponsor*)**

6. This item repeals the current definition of ***approved sponsor*** in subsection 5(1) of the Migration Act and substitutes it with a new definition so that the term now means:
  - (a) an approved family sponsor; or
  - (b) an approved work sponsor.
7. This amendment acknowledges the extension of the sponsorship framework in Division 3A of Part 2 of the Migration Act to the sponsored family visa program and recognises that amended Division 3A now covers both approved family sponsors and approved work sponsors.

**Item 3           Section 140AA (heading)**

8.     This item repeals the existing heading of section 140AA “Division 3A – Purposes” and replaces it with a new heading “Purposes of this Division”.

**Items 4 to 8   Section 140AA, paragraph 140AA(a), subparagraph 140AA(b)(ii), paragraph 140AA(d)**

9.     Currently, section 140AA sets out the purposes of Division 3A of Part 2 of the Migration Act for the temporary sponsored work visa program.
10.    As relevant parts of the sponsorship framework in Division 3A of the Migration Act will now extend to the sponsored family visa program, it is necessary to distinguish the “purposes” of Division 3A to the extent that it applies to the temporary sponsored work visa program and the purposes of Division 3A to the extent that it applies to the sponsored family visa program.
11.    To give effect to this, these items make a series of minor technical amendments to existing section 140AA to:
  - (a) place the existing purpose (which relates to the temporary sponsored work visa program) into its own subsection, new subsection (1);
  - (b) clarify that subsection (1) sets out the purposes of Division 3A to the extent it applies in relation to the temporary sponsored work visa program; and
  - (c) reflect the terminology changes inserted by this Act.

**Item 9           At the end of section 140AA**

12.    This item inserts new subsections (2) and (3) into section 140AA to set out the purposes of Division 3A, to the extent it applies in relation to the sponsored family visa program and to identify how these purposes are to be achieved.
13.    New subsection (2) provides that the purposes are:
  - (a) to strengthen the integrity of the program; and
  - (b) to place greater emphasis on the assessment of persons as family sponsors; and
  - (c) to improve the management of family violence in the delivery of the program.
14.    New subsection (3) provides that the purposes referred to in subsection (2) are to be achieved by establishing a framework that:
  - (a) requires the approval of persons as family sponsors before any relevant visa applications are made; and
  - (b) imposes obligations on persons who are or were approved family sponsors; and
  - (c) provides for sanctions if such obligations are not satisfied; and
  - (d) facilitates the sharing of personal information in accordance with this Division.
15.    While this amendment sets out the broad purposes for which relevant aspects of Division 3A will apply to the sponsored family visa program, it is not intended to limit the way Division 3A is interpreted or administered, or restrict any interpretation of the provisions in the Division.

**Item 10 Subdivision B of Division 3A of Part 2 (heading)**

16. Subdivision B of Division 3A of Part 2 of the Migration Act currently provides for the approval of sponsors and the approval of nominations for the temporary sponsored work visa program.
17. Under Division 3A, as amended by this Act, sponsorship approval will be required for both the temporary sponsored work visa program and the sponsored family visa program, whereas the approval of nominations will only remain relevant to the temporary sponsored work visa program.
18. As a result, this item separates the approval of sponsors and the approval of nominations by repealing the existing heading of Subdivision B of Division 3A of Part 2 of the Migration Act “Approving sponsors and nominations” and replacing it with a new heading “Approval of sponsors”. Provisions relating to the approval of nominations will now be contained in their own subdivision (inserted by item 23 below).

**Item 11 Section 140E (heading)**

19. This item repeals the existing heading of section 140E “Minister to approve sponsor” and replaces it with a new heading “Minister to approve work and family sponsors”.
20. This is a consequential amendment as a result of items 12 to 16 below, which extend the operation of section 140E to apply to both work sponsors and family sponsors.

**Item 12 Subsection 140E(1)**

21. Currently, subsection 140E(1) of the Migration Act requires the Minister to approve a person as a sponsor in relation to one or more classes prescribed for the purpose of subsection (2) if prescribed criteria are satisfied.
22. To reflect the terminology changes inserted by this Act (and in particular, the new definition of *approved work sponsor* inserted by item 1), this item amends subsection 140E(1) to clarify that the Minister must approve a person as a work sponsor in relation to one or more classes prescribed for the purpose of subsection (2) if prescribed criteria are satisfied (emphasis added).

**Item 13 Subsection 140E(1) (note)**

23. The note at the end of existing subsection 140E(1) provides that a person (other than a Minister) who is a party to a work agreement is an approved sponsor and does not need to be approved as a sponsor under this section: see paragraph (b) of the definition of *approved sponsor*.
24. Again, to reflect the terminology changes inserted by this Act (and in particular, the new definition of *approved work sponsor* inserted by item 1 and the new definition of *approved sponsor* inserted by item 2), this item repeals the note at the end of subsection 140E(1) and substitutes it with a new note to clarify that a person (other than a Minister) who is a party to a work agreement is an approved work sponsor and

does not need to be approved as a work sponsor under this section (see paragraph (b) of the definition *approved work sponsor*) (emphasis added).

**Item 14      Before subsection 140E(2)**

25. To extend the operation of section 140E to apply to family sponsors, this item inserts a new subsection (1A) to provide that the Minister must approve a person as a family sponsor in relation to one or more classes prescribed for the purpose of subsection (2) if prescribed criteria are satisfied (emphasis added).
26. A definition of *approved family sponsor* is inserted by item 1.

**Item 15      Subsection 140E(2)**

27. Currently, subsection 140E(2) of the Migration Act requires the regulations to prescribe classes in relation to which a person may be approved as a sponsor.
28. As section 140E will now apply to both work sponsors and family sponsors, this item amends subsection (2) to require the regulations to prescribe classes for which a person may be approved as a work sponsor or family sponsor.
29. These classes of approved sponsor are required to be prescribed in the regulations so that a person can be approved as a work sponsor under subsection 140E(1) or as a family sponsor under new subsection 140(1A).
30. As the regulations are a legislative instrument, any classes of approved sponsor prescribed for the purposes of this provision will be subject to parliamentary scrutiny and disallowance.

**Item 16      Paragraphs 140E(3)(b) and (c)**

31. Currently, subsection 140E(3) of the Migration Act allows different criteria to be prescribed for:
  - (a) different kinds of visa (however described); and
  - (b) different classes in relation to which a person may be approved as a sponsor; and
  - (c) different classes of person within a class in relation to which a person may be approved as a sponsor.
32. As section 140E will now apply to both work sponsors and family sponsors, this item makes consequential amendments to change references from “sponsor” in paragraphs (3)(b) and (c) to “work sponsor or family sponsor”.
33. This reflects the terminology changes inserted by this Act and will now allow the regulations to prescribe different criteria for:
  - different kinds of visa (however described);
  - different classes in relation to which a person may be approved as a work sponsor or family sponsor; and
  - different classes of person within a class in relation to which a person may be approved as a work sponsor or family sponsor.

34. As the regulations are a legislative instrument, any criteria prescribed for the purposes of this provision will be subject to parliamentary scrutiny and disallowance.

**Item 17 Section 140F (heading)**

35. This item repeals the existing heading of section 140F “Process for approving sponsors” and replaces it with a new heading “Approval process”.
36. This is a consequential amendment as a result of item 18 below, which extends the operation of section 140F to apply to both approved work sponsors and approved family sponsors.

**Item 18 Subsections 140F(1) and (2)**

37. Currently, subsections 140F(1) and (2) of the Migration Act allow the regulations to establish a process for the Minister to approve a person as a sponsor and allow different processes to be prescribed for:
- (a) different kinds of visa (however described); and
  - (b) different classes in relation to which a person may be approved as a sponsor.
38. To reflect the terminology changes inserted by this Act and extend section 140F to apply to both approved work sponsors and approved family sponsors, this item makes consequential amendments to change references from “sponsor” in subsections (1) and (2) to “work sponsor or family sponsor”.
39. This will now allow the regulations to:
- establish a process for the Minister to approve a person as a work sponsor or family sponsor; and
  - prescribe different processes for:
    - different kinds of visa (however described); and
    - different classes in relation to which a person may be approved as a work sponsor or family sponsor.
40. As the regulations are a legislative instrument, any processes prescribed for the purposes of this provision will be subject to parliamentary scrutiny and disallowance.

**Item 19 Section 140G (heading)**

41. This item repeals the existing heading of section 140G “Terms of approval as a sponsor” and replaces it with a new heading “Terms of approval”.
42. This is a consequential amendment as a result of item 20 below, which extends the operation of section 140G to apply to both approved work and approved family sponsors.

**Item 20 Subsections 140G(1) and (4)**

43. Section 140G of the Migration Act relates to the terms upon which a person is approved as a sponsor and currently provides that:

- an approval as a sponsor may be on terms specified in the approval (subsection 140G(1));
  - the terms must be of a kind prescribed by the regulations (subsection 140G(2));
  - actual terms (rather than a kind of term) may be prescribed by the regulations (subsection 140G(3)); and
  - different kinds of terms may be prescribed for:
    - different kinds of visa (however described); and
    - different classes in relation to which a person may be approved as a sponsor (subsection 140G(4)).
44. To reflect the terminology changes inserted by this Act and extend section 140G to apply to both approved work sponsors and approved family sponsors, this item makes consequential amendments to change references from “sponsor” in subsections (1) and (4) to “work sponsor or family sponsor”.
45. In effect, this will:
- allow an approval as a work sponsor or family sponsor to be on terms specified in the approval; and
  - allow the regulations to prescribe (amongst other things) different kinds of terms for:
    - different kinds of visa (however described); and
    - different classes in relation to which a person may be approved as a work sponsor or family sponsor.
46. As the regulations are a legislative instrument, anything prescribed for the purposes of this provision will be subject to parliamentary scrutiny and disallowance.

**Item 21      Section 140GA (heading)**

47. This item repeals the existing heading of section 140GA “Variation of terms of approval as a sponsor” and replaces it with a new heading “Variation of terms of approval”.
48. This is a consequential amendment as a result of item 22 below, which extends the operation of section 140GA to apply to both approved work and approved family sponsors.

**Item 22      Subsections 140GA(1) and (3)**

49. Subsection 140GA of the Migration Act relates to the variation of terms of approval as a sponsor and currently provides that:
- the regulations may establish a process for the Minister to vary a term of a person’s approval as a sponsor (subsection 140GA(1));
  - the Minister must vary a term specified in an approval if:
    - the term is of a kind prescribed by the regulations for the purposes of paragraph 140GA(2)(a); and
    - prescribed criteria are satisfied (subsection 140GA(2)); and
  - different processes and different criteria may be prescribed for:
    - different kinds of visa (however described); and
    - different kinds of terms; and

- different classes in relation to which a person may be approved as a sponsor (subsection 140GA(3)).
50. To reflect the terminology changes inserted by this Act and extend section 140GA to apply to both approved work sponsors and approved family sponsors, this item makes consequential amendments to change references from “sponsor” in subsections (1) and (3) to “work sponsor or family sponsor”.
51. In effect, this will allow the regulations to:
- establish a process for the Minister for vary a term of a person’s approval as a work sponsor or family sponsor; and
  - prescribe (amongst other things) different processes and different criteria for different classes in relation to which a person may be approved as a work sponsor or family sponsor.
52. As the regulations are a legislative instrument, anything prescribed for the purposes of this provision will be subject to parliamentary scrutiny and disallowance.

**Item 23      After section 140GA**

53. This item inserts a new subdivision BA “Approval of nominations made by approved work sponsors”.
54. Currently, provisions relating to the approval of nominations are contained in Subdivision B of Division 3A. However, because they only apply to the temporary sponsored work visa program, they will now be contained in this new subdivision BA.

**Items 24 to 31      Subsections 140GB(1), (2) and (3), paragraph 140GB(4)(b), subsections 140GBA(1), (3), (5), (6) and (6A), subsection 140GBA(7) (definition of *eligible temporary visa holder*), subsection 140GBB(1), subsection 140GBB(2), subsections 140GBB(4) and 140GBC(1), (2) and (3), section 140GC (note)**

55. Sections 140GB, 140GBA, 140GBB, 140GBC and 140GC of the Migration Act relate to the nomination process for the temporary sponsored work visa program. Under this process, an approved work sponsor may nominate (and the Minister may approve) an applicant, or proposed applicant for a prescribed temporary sponsored work visa, to carry out work in the sponsor’s business subject to the labour market testing conditions identified in these provisions.
56. To reflect the terminology changes inserted by this Act and clarify that these provisions only apply to approved work sponsors, items 24 to 31 make a series of consequential amendments to sections 140GB, 140GBA, 140GBB, 140GBC and 140GC to change references from “sponsor” and “approved sponsor” to “approved work sponsor”.

**Item 32      Paragraph 140H(6)(b)**

57. Section 140H of the Migration Act relates to sponsorship obligations that may be imposed on a person who is or was an approved sponsor.

58. Currently, subsection 140H(6) of the Migration Act allows different kinds of sponsorship obligations to be prescribed for:
- (a) different kinds of visa (however described); and
  - (b) different classes in relation to which a person may be, or may have been, approved as a sponsor.
59. To extend this provision to apply to both work sponsors and family sponsors this item makes consequential amendments to change references from “sponsor” in paragraph (6)(b) to “work sponsor or family sponsor”.
60. This reflects the terminology changes inserted by this Act and will now allow the regulations to prescribe (amongst other things) different criteria for:
- different kinds of visa (however described);
  - different classes in relation to which a person may be, or may have been, approved as a work sponsor or family sponsor.
61. As the regulations are a legislative instrument, anything prescribed for the purposes of this provision will be subject to parliamentary scrutiny and disallowance.

**Items 33 to 39 Subsection 140HA(1), paragraph 140HA(1)(e), paragraph 140HA(1)(g), paragraphs 140HA(1)(h) and (i), paragraphs 140HA(2)(a) and (b), after subsection 140HA(2), subsection 140HA(3)**

62. Subsection 140HA(1) provides that, subject to subsection (2), the Minister must take all reasonable steps to ensure that regulations made under section 504 for the purposes of subsection 140H(1) of the Migration Act include obligations in relation to the matters listed in subsection 140HA(1) (all of which currently relate to the temporary sponsored work visa program).
63. Subsection 140HA(2) provides that for any particular matter mentioned in subsection (1), the Minister must take all reasonable steps to ensure that the obligations in the relevant regulations apply in relation to:
- (a) all approved sponsors or former approved sponsors; or
  - (b) a specified class (or classes) of approved sponsors or former approved sponsors, and not to all approved sponsors or former approved sponsors.
64. The amendments in items 33 to 37 make a number of minor technical amendments to subsections 140HA(1) and (2) to reflect the terminology changes inserted by this Act and clarify that these provisions only apply to a person who is or was an approved work sponsor.
65. As the sponsorship framework in Division 3A of Part 2 of the Migration Act will now extend (where relevant) to the sponsored family visa program, item 38 inserts new subsections (2A) and (2B) into section 140HA to set out:
- the kinds of sponsorship obligations that relate to the sponsored family visa program that the Minister must take all reasonable steps to ensure are prescribed in the regulations; and
  - to whom the relevant regulations will apply.

66. In particular, new subsection 140HA(2A) provides that subject to subsection (2B), the Minister must take all reasonable steps to ensure that regulations made under section 504 for the purposes of subsection 140H(1) include obligations in relation to the following matters to the extent they relate to a person who is or was an approved family sponsor:
- (a) complying with prescribed requirements to keep information and provide information to the Minister; and
  - (b) notifying the Minister of prescribed changes in the circumstances of the person, a visa holder or former visa holder.
67. New subsection 140HA(2B) provides that for any particular matter mentioned in subsection (2A), the Minister must take all reasonable steps to ensure that the obligations in the relevant regulations apply in relation to:
- (a) all approved family sponsors or former approved family sponsors; or
  - (b) a specified class (or classes) of approved family sponsors or former approved family sponsors.
68. As section 140HA will now apply to approved work sponsors, approved family sponsors, former approved work sponsors and former approved family sponsors, item 39 makes a consequential amendment to subsection 140HA(3) to provide that subsections (1) and (2A) do not limit the sponsorship obligations that may be prescribed for the purposes of subsection 140H(1).
69. As the regulations are a legislative instrument, anything prescribed for the purposes of this provision will be subject to parliamentary scrutiny and disallowance.

**Item 40 Subsections 140J(1) and (3)**

70. Section 140J of the Migration Act relates to amounts payable in relation to sponsorship obligations. As this provision is only relevant to the temporary sponsored work visa program, this item makes consequential amendments to subsections 140J(1) and (3) to change references from “approved sponsor” to “approved work sponsor”, consistent with the terminology changes inserted by this Act.

**Items 41 to 48 Subparagraph 140K(1)(a)(ii), subparagraph 140K(1)(a)(iv), subparagraph 140K(1)(a)(v), subparagraph 140K(2)(a)(i), subparagraph 140K(2)(a)(iii), subparagraph 140K(2)(a)(iv), subparagraph 140K(3)(a)(i), subparagraph 140K(3)(a)(ii)**

71. Section 140K of the Migration Act sets out the sanctions that may apply to approved sponsors or former approver sponsors if they fail to satisfy an applicable sponsorship obligation.
72. Currently, subsection 140K(1) sets out actions that the Minister may take if an approved sponsor fails to satisfy an applicable sponsorship obligation, which include one or more of the following:
- if regulations are prescribed under section 140L, bar the sponsor under subsection 140M(1) from doing certain things;
  - if regulations are prescribed under section 140L, cancel the person’s approval as a sponsor under subsection 140M(1);

- apply for a civil penalty order;
  - accept an undertaking under the Regulatory Powers Act for the purposes of the subdivision from the person;
  - if the Minister considers that the person has breached such an undertaking – apply for an order under the Regulatory Powers Act, for the purposes of the subdivision;
  - the person may be issued with an infringement notice under the regulations made for the purposes of section 506A as an alternative to proceedings for a civil penalty order; or
  - an authorised officer may require and take security under section 269 or enforce a security already taken under that section.
73. Currently, subsection 140K(2) sets out action that the Minister may take if a former approved sponsor fails to satisfy an applicable sponsorship obligation, which include one or more of the following:
- if regulations are prescribed under section 140L, bar the person under subsection 140M(2) from making future applications for approval;
  - apply for a civil penalty order;
  - accept an undertaking under the Regulatory Powers Act for the purposes of the subdivision from the person;
  - if the Minister considers that the person has breached such an undertaking – apply for an order under the Regulatory Powers Act, for the purposes of the subdivision;
  - the person may be issued with an infringement notice under the regulations made for the purposes of section 506A as an alternative to proceedings for a civil penalty order; or
  - an authorised officer may require and take security under section 269 or enforce a security already taken under that section.
74. To avoid doubt, subsection 140K(3) provides that subsections (1) and (2) do not limit the circumstances in which:
- (a) the Minister may:
- (i) bar a sponsor under section 140M from doing certain things; or
  - (ii) cancel a person’s approval as a sponsor under section 140M; or
- (b) an authorised officer may require and take security under section 269 or enforce a security already taken under that section.
75. To reflect the terminology changes inserted by this Act and to extend these provisions to apply to approved work sponsors, approved family sponsors, former approved work sponsors and former approved family sponsors, items 41, 44, 47 and 48 make consequential amendments to:
- change references from “sponsor” in subparagraphs 140K(1)(a)(ii) and 140K(3)(a)(ii) to “work sponsor or family sponsor”;
  - clarify that the Minister may bar a person under subsection 140M(2) from making future applications for approval as a work sponsor or family sponsor; and
  - change references from “sponsor” in subparagraph 140K(3)(a)(i) to “approved sponsor”.

76. Finally, items 42, 43, 45 and 46 make technical amendments to fix incorrect cross-references to undertakings and orders under the Regulatory Powers Act that may be accepted or applied for under subparagraphs 140K(1)(a)(iv) and (v) and subparagraphs 140K(2)(a)(iii) and (iv). These provisions incorrectly referred to sections 119 and 120 of the Regulatory Powers Act instead of sections 114 and 115 respectively.

**Item 49 Paragraph 140L(3)(b)**

77. Currently, subsections 140L(1) and (2) of the Migration Act allow the regulations to prescribe circumstances in which the Minister may or must take one or more of the barring or cancellation actions set out in section 140M. Under subsection 140L(1) (which relates to circumstances in which the Minister may take action) the regulations may also prescribe criteria to be taken into account by the Minister in determining what action to take under section 140M.
78. Under subsection 140L(3) of the Migration Act, different circumstances and different criteria may be prescribed for:
- (a) different kinds of visa (however described); and
  - (b) different classes in relation to which a person may be, or may have been, approved as a sponsor.
79. To extend this provision to apply to approved work sponsors, approved family sponsors, former approved work sponsors and former approved family sponsors this item makes consequential amendments to change references from “sponsor” in paragraph (3)(b) to “work sponsor or family sponsor”.
80. This reflects the terminology changes inserted by this Act and will now allow the regulations to prescribe (amongst other things) different criteria for:
- different kinds of visa (however described);
  - different classes in relation to which a person may be, or may have been, approved as a work sponsor or family sponsor.
81. As the regulations are a legislative instrument, anything prescribed for the purposes of this provision will be subject to parliamentary scrutiny and disallowance.

**Items 50 to 53 Paragraphs 140M(1)(a) and (b), paragraph 140M(1)(c), paragraph 140M(1)(d), subsection 140M(2)**

82. Currently, section 140M of the Migration Act provides the barring and cancellation actions that the Minister may or must take against an approved sponsor or former approved sponsor if regulations are prescribed under section 140L.
83. To reflect the terminology changes inserted by this Act and extend section 140M to apply to approved work sponsors, approved family sponsors, former approved work sponsors and former approved family sponsors, items 50 to 53 make consequential amendments to clarify:
- if regulations are prescribed under section 140L, the Minister may (or must):
    - cancel the approval of a person as a work sponsor or family sponsor in relation to a class or all classes to which the sponsor belongs;

- bar the sponsor, for a specified period, from sponsoring more people under the terms of one or more existing specified approvals as a work sponsor or family sponsor for different kinds of visa (however described); and / or
- bar the sponsor, for a specified period, from making future applications for approval as a work sponsor or family sponsor in relation to one of more classes prescribed by the regulations for the purpose of subsection 140E(2); and
- if regulations are prescribed under section 140L and a person was an approved sponsor, the Minister may (or must) bar the person, for a specified period, from making future applications for approval as a work sponsor or family sponsor in relation to one or more classes prescribed by the regulations for the purpose of subsection 140E(2).

**Item 54      Section 140N (heading)**

84. This item repeals the existing heading of section 140N “Process for cancelling or barring approval as a sponsor” and replaces it with a new heading “Process for cancelling approval or barring approved sponsor”.
85. This is a consequential amendment as a result of item 55 below, which extends the operation of section 140N to apply to approved work sponsors, approved family sponsors, former approved work sponsors and former approved family sponsors.

**Item 55      Subsections 140N(1) and (3)**

86. Currently, section 140N of the Migration Act allows the regulations to:
- establish a process for the Minister to cancel the approval of a person as a sponsor under section 140M (subsection 140N(1));
  - establish a process for the Minister to place a bar on a person under section 140M (subsection 140N(2)); and
  - allow different processes to be prescribed for:
    - different kinds of visa (however described); and
    - different classes in relation to which a person may be, or may have been, approved as a sponsor (subsection 140N(3)).
87. To reflect the terminology changes inserted by this Act and extend section 140N to apply to approved work sponsors, approved family sponsors, former approved work sponsors and former approved family sponsors, this item makes consequential amendments to change references from “sponsor” in subsections (1) and (3) to “work sponsor or family sponsor”.
88. In effect, this will allow the regulations to:
- establish a process for the Minister to cancel the approval of a person as a work sponsor or family sponsor under section 140M; and
  - prescribe (amongst other things) different processes for:
    - different kinds of visa (however described); and
    - different classes in relation to which a person may be, or may have been, approved as a work sponsor or family sponsor.

89. As the regulations are a legislative instrument, anything prescribed for the purposes of this provision will be subject to parliamentary scrutiny and disallowance.

**Item 56 Paragraphs 140O(4)(b) and 140P(2)(b)**

90. Currently, section 140O of the Migration Act allows the Minister, in prescribed circumstances, to waive a bar placed on a person under section 140M.
91. Pursuant to subsections 140O(3) and (4), the regulations may:
- prescribe criteria to be taken into account by the Minister in determining whether to waive the bar; and
  - prescribe different circumstances and different criteria for:
    - different kinds of visa (however described); and
    - different classes in relation to which a person may be, or may have been, approved as a sponsor.
92. To reflect the terminology changes inserted by this Act and extend section 140O to apply to approved work sponsors, approved family sponsors, former approved work sponsors and former approved family sponsors, this item makes consequential amendments to change references from “sponsor” in paragraph 140O(4)(b) to “work sponsor or family sponsor”.
93. In effect, this will allow the regulations to prescribe different circumstances and different criteria for:
- different kinds of visa (however described); and
  - different classes in relation to which a person may be, or may have been, approved as a work sponsor or family sponsor.
94. Currently, section 140P of the Migration Act allows the regulations to establish a process for the Minister to waive a bar placed on a person under section 140M.
95. Pursuant to subsection 140P(2), different processes may be prescribed for:
- different kinds of visa (however described); and
  - different classes in relation to which a person may be, or may have been, approved as a sponsor.
96. To reflect the terminology changes inserted by this Act and extend section 140P to apply to approved work sponsors, approved family sponsors, former approved work sponsors and former approved family sponsors, this item makes consequential amendments to change references from “sponsor” in paragraph 140P(2)(b) to “work sponsor or family sponsor”.
97. In effect, this will allow the regulations to prescribe different circumstances and different criteria for:
- different kinds of visa (however described); and
  - different classes in relation to which a person may be, or may have been, approved as a work sponsor or family sponsor.
98. As the regulations are a legislative instrument, anything prescribed for the purposes of these provisions will be subject to parliamentary scrutiny and disallowance.

**Items 57 to 59 Subsection 140S(1), paragraph 140X(a), paragraph 140X(aa)**

99. Section 140S of the Migration Act relates to the liability and recovery of amounts payable in relation to sponsorship obligations and section 140X relates to the powers of inspectors.
100. As these provisions are only relevant to the temporary sponsored work visa program, items 57 to 59 make consequential amendments sections 140S and 140X to reflect terminology changes inserted by this Act and clarify that these provisions only apply to approved work sponsors or former approved work sponsors.

**Items 60 to 63 Subsection 140ZH(1), at the end of subsections 140ZH(2) and (3), before subsection 140ZH(4), subsection 140ZH(4)**

101. Section 140ZH of the Migration Act relates to the disclosure of personal information by the Minister and currently:
- allows the Minister to disclose personal information of a prescribed about a person mentioned in column 2 of the table in relation to an item to the person or persons mentioned in column 3 of the table in relation to the item (subsection 140ZH(1)).
  - allows the regulations to prescribe circumstances in which the Minister may disclose the personal information (subsection 140ZH(2));
  - allows the regulations to prescribe circumstances in which the recipient may use or disclose the personal information disclosed (subsection 140ZH(3)); and
  - requires the Minister, if disclosing personal information under subsection (1) (other than to an agency of the Commonwealth or a State or Territory prescribed by the regulations) to give written notice to the person about whom the information is disclosed of:
    - the disclosure; and
    - the details of the personal information disclosed (subsection 140ZH(4)).
102. Currently, under subsection 140ZH(1), disclosures of personal information of a prescribed kind may be made in relation to a visa holder, a former visa holder, an approved sponsor of a visa holder or former visa holder or a former approved sponsor of a visa holder or former visa holder.
103. To extend section 140ZH to apply to both the temporary sponsored work visa program and the sponsored family visa program, a number of technical amendments are necessary to:
- reflect new terminology inserted by this Act; and
  - distinguish between disclosures that may be made in relation to the temporary sponsored work visa program and disclosures that may be made in relation to the sponsored family visa program.
104. To give effect to this, item 60 repeals and substitutes existing subsection 140ZH(1) to provide that the Minister may disclose personal information of a prescribed kind about a person mentioned in column 2 of an item of the table to a person or body mentioned in column 3 of the item.

105. The table in new subsection 140ZH(1) provides that:
- if the personal information of a prescribed kind is about a person who is a holder of, or former holder of, a visa of a prescribed kind, then the Minister may disclose that personal information to an approved work sponsor of the person, a former approved work sponsor of the person or an agency of the Commonwealth or of a State or Territory prescribed by the regulations; or
  - if the personal information of a prescribed kind is about an approved work sponsor of, or former approved work sponsor of a person mentioned in item 1 of the table, then the Minister may disclose that personal information to the person or an agency of the Commonwealth or of a State or Territory prescribed by the regulations.
106. Item 60 also inserts new subsection 140ZH(1A) with a heading “personal information about approved family sponsors etc.” to:
- clarify that this subsection applies to disclosures that may be made in relation to the temporary sponsored work visa program; and
  - reflect new terminology inserted by this Act.
107. Under new subsection 140ZH(1A), the Minister may disclose personal information of a prescribed kind about a person mentioned in column 2 of an item of the table to a person or body mentioned in column 3 of the item.
108. The table in new subsection 140ZH(1A) provides that:
- if the personal information of a prescribed kind is about a person who proposes to apply for a visa of a prescribed kind then, the Minister may disclose that personal information to an applicant for approval as a family sponsor in relation to the person; an approved family sponsor of the person; or an agency of the Commonwealth or of a State or Territory prescribed by the regulations;
  - if the personal information of a prescribed kind is about a person who is an applicant for, or a holder or former holder of, a visa of a prescribed kind then, the Minister may disclose that personal information to an approved family sponsor of the person; or an agency of the Commonwealth or of a State or Territory prescribed by the regulations;
  - if the personal information of a prescribed kind is about an applicant for approval as a family sponsor then, the Minister may disclose that personal information to a person who proposes to apply for a visa if the applicant is approved as a family sponsor; or an agency of the Commonwealth or of a State or Territory prescribed by the regulations;
  - if the personal information of a prescribed kind is about an approved family sponsor of a person mentioned in item 1 or 2 of the table then, the Minister may disclose that personal information to the person; or an agency of the Commonwealth or of a State or Territory prescribed by the regulations; and
  - if the personal information of a prescribed kind is about a former approved family sponsor of a person who is an applicant for, or a holder of, a visa of a prescribed kind then, the Minister may disclose that personal information to the person; or an agency of the Commonwealth or of a State or Territory prescribed by the regulations.
109. Importantly, the amendments in item 60 do not change the disclosures that are currently authorised under existing subsection 140ZH(1) for the temporary sponsored

work visa program. Rather, the repeal and substitution of subsection 140ZH(1) gives effect to a range of minor technical amendments to:

- reflect new terminology inserted by this Act;
- insert a new heading “personal information about approved work sponsors etc.” to clarify that subsection 140ZH(1) applies to disclosures that may be made in relation to the temporary sponsored work visa program;
- provide consistency with the drafting of new subsection 140ZH(1A);
- condense existing items 1 and 2 into a new item 1 in the table and condense existing items 3 and 4 into a new item 2 in the table to reduce repetition (noting that the disclosures can be made to the same people); and
- clarify that a disclosure under subsection 140ZH(1) may be made to a person or body mentioned in column 3 of the table. Again, this provides consistency with the drafting of new subsection 140ZH(1A).

110. The addition of new subsection 140ZH(1A) is intended to:

- distinguish the disclosures that may be made in relation to the temporary sponsored work visa program from the disclosures that may be made in relation to the sponsored family visa program; and
- allow disclosures of personal information about a broader range of people in the sponsored family visa program (including prospective visa applicants, visa applicants and applicants for approval as a family sponsor).

111. As a result of the new provisions inserted by item 60, both the temporary sponsored work visa program and the sponsored family visa program will need to prescribe the following information in the regulations (when the provisions commence):

- the kinds of personal information that may be disclosed by the Minister under their respective disclosure provisions in subsections 140ZH (1) and (1A); and
- the kinds of visas to which they need their respective disclosure provisions in subsections 140ZH (1) and (1A) to apply. This is a new requirement under section 140ZH which is necessary to distinguish between the different disclosure requirements (depending on the work / family context). Unfortunately the use of generic references to “visa holders” for example is not possible under amended section 140ZH because it would not be clear whether the reference (and context) is to a temporary sponsored work visa holder or a family sponsored visa holder.

112. The remaining items 61 to 63 make consequential amendments to existing subsections 140ZH(2), (3) and (4) to clarify that:

- the regulations may prescribe circumstances in which the Minister may disclose the personal information under subsection 140ZH(1) or (1A);
- the regulations may prescribe circumstances in which the recipient may use or disclose the personal information disclosed under subsection 140ZH(1) or (1A); and
- subsection (4) applies to disclosures of personal information under subsection 140ZH(1) or (1A).

113. As the regulations are a legislative instrument, anything prescribed for the purposes of these provisions will be subject to parliamentary scrutiny and disallowance.

**Item 64 Subsection 140ZJ(1)**

114. Section 140ZJ of the Migration Act relates to unclaimed money in relation to a sponsorship obligation.
115. As this provision is only relevant to the temporary sponsored work visa program, this item makes a consequential amendment to subsection 140ZJ(1) to change the reference from “approved sponsor” to “approved work sponsor”, consistent with the terminology changes inserted by this Act.

**Items 65 to 66 Section 245AQ (definition of *sponsor class*), section 245AQ (paragraphs (a) and (b) of the definition of *sponsorship-related event*)**

116. Section 245AQ defines terms for the purposes of Subdivision D of Division 12, Part 2 of the Migration Act, which relates to offences and civil penalties relevant to sponsored visas.
117. Under this provision, “sponsorship-related event” is defined to include, amongst other things, a person applying for approval as a sponsor under section 140E in relation to a sponsor class and a person applying for a variation of a term of an approval as a sponsor under section 140E in relation to a sponsor class. “Sponsor class” is also defined in this provision and means a prescribed class of sponsor.
118. As these definitions relate to sponsors in Division 3A of the Act, these items make minor amendments to change references from “sponsor” to “work sponsor or family sponsor”.
119. These amendments are consequential only (to pick up the terminology changes made by this Act), and will not extend the application of Subdivision D of Division 12, Part 2 of the Migration Act to the sponsored family visa program. It may, however, apply to the program in the future but only if regulations are made to prescribe the relevant class(es) of family sponsor and relevant kind(s) of sponsored family visas for the purposes of that Subdivision.

**Part 2 – Transitional and application provisions**

**Item 67 Definitions**

120. This item provides definitions for the purposes of this Part such that *commencement* means the commencement of this item and *Migration Act* means the *Migration Act 1958*.

**Item 68 Existing approvals of sponsors**

121. This item provides that it will apply if:
- (a) a person was approved as a sponsor under section 140E of the Migration Act before commencement of this item; and
  - (b) immediately before commencement of this item, the approval is in effect.
122. The purpose of this item is to clarify that:

- the person's approval continues to have effect (and may be dealt with) after commencement of this item, as if it were an approval of the person as a work sponsor under section 140E of the Migration, as amended by this Schedule; and
- despite the amendments of sections 140G and 140GA of the Migration Act made by this Schedule, a term of the person's approval continues to have effect after commencement of this item and may be varied after commencement in accordance with section 140GA of the Migration Act, as amended by this Schedule.

**Item 69      Continuation of bars placed on persons**

123. This item provides that it will apply if:
- (a) before commencement of this item, a person was barred, under section 140M of the Migration Act, from doing a thing for a particular period; and
  - (b) immediately before commencement of this item, that period has not ended.
124. The purpose of this item is to clarify that despite the amendments of sections 140K, 140L and 140M of the Migration Act made by this Schedule, the bar:
- (a) continues to have effect after commencement of this item; and
  - (b) may be waived after commencement of this item in accordance with sections 140O and 140P of that Act, as amended by this Schedule.

**Item 70      Application – subsections 140ZH(1) and (1A) of the Migration Act**

125. This item clarifies that subsections 140ZH(1) and (1A) of the Migration Act, as inserted by this Schedule, apply in relation to the disclosure of personal information after commencement of this item, whether the information was collected before or after commencement.

## Attachment A

### **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

#### **Migration Amendment (Family Violence and Other Measures) Bill 2015**

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Bill**

This Bill establishes a new assessable sponsorship framework for family sponsored visas through amendments to the *Migration Act 1958* (“the Act”).

This new framework will strengthen integrity, consistency and applicant protection available within the family visa program. The Bill will create a framework to apply to all family sponsored visas with a view to:

- separate sponsorship assessment from the visa application process;
- require the approval of persons as family sponsors before any relevant visa applications are made;
- impose statutory obligations on persons who are or were approved as family sponsors;
- provide for sanctions if such obligations are not satisfied; and
- facilitate the sharing of personal information between parties to the application; and
- improve the management of family violence where it occurs in the family visa program.

The amendments will initially apply to partner visas. The sponsorship framework will be extended to other visas in the family program following its implementation in partner visas. Once approved, the sponsorship will remain in effect until the person(s) proposed are granted a permanent visa, unless ceased earlier through a prescribed event.

Newly arrived migrants are among the more vulnerable people in our community. They are less likely to have an established support network, may not have an English speaking background, and are less likely to know how to seek assistance. The purpose of the changes as they relate to the partner visa program is to support the National Plan to Reduce Violence against Women and their Children by implementing the relevant part of Action Item 11 from the Second Action Plan:

*requiring additional information disclosure by the Australian husband or fiancé applying for an overseas spouse visa*

The Bill also replaces some of the existing undertakings with statutory obligations, and provides for sanctions if they are not complied with. The obligations for partner visa sponsors will be to: maintain evidence of any claims they make throughout the sponsorship period; provide such evidence when requested by the Department; and to notify the

Department of any changes material to the sponsorship, such as a breakdown of the relationship.

## **Human rights implications**

### Right to Family

Article 17 of International Covenant on Civil and Political Rights (ICCPR) states:

*No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.*

Article 23 of ICCPR states:

*The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.*

Article 10 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) states:

*The States Parties to the present Covenant recognize that:*

*The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.*

This Bill will extend relevant aspects of the existing sponsorship framework (contained in Division 3A of Part 2 of the Act) to family visas. It will not extend elements that were designed for employment related activities, specifically:

- The provisions relating to nominations, which are unique to the employer-employee relationship that exists within sponsored work arrangements.
- The Inspector powers, which are designed for employment related enforcement activities.

The new framework requires approval of sponsorship before a valid visa application can be made. This change avoids the situation where the visa applicant is refused a visa as a result of concerns relating to the sponsor.

For the Partner visa program, the existing requirement for a police check to be undertaken by some sponsors will be expanded so that all sponsors will be required to undertake these checks. Police checks are currently conducted for the protection of children. As such departmental consideration is in relation to paedophilia and other sexual offences relating to minors. The expanded requirement for sponsors will be aligned with the checking requirements that exist for partner visa applicants, and will allow consideration of the potential for violence against immediate family members by all parties to the application.

The underlying principle is that relevant information in these areas be shared between parties to the application. Where this is not occurring, the Department will be authorised to disclose relevant information between the parties and/or refuse the application.

Sponsorship applications will be subject to refusal in limited circumstances. These include where the sponsor has convictions for:

- paedophilia or other sexual offences against minors; or
- offences relating to violence.

Convictions for offences in these areas will not lead to a mandatory refusal. Any refusals will be discretionary and consider a range of factors including: the length of the relationship; the type of offence; how recently the offence occurred; relevance to the family relationship; and any mitigating circumstances. Natural justice will be provided prior to a final decision to refuse the application being taken by the Department. Refused applicants will have access to merits review by the Administrative Appeals Tribunal.

Any limitations on the right to family, through the ability to refuse sponsorship for a family visa, are reasonable and necessary for the safety and welfare of prospective migrants and minor children, who are among the most vulnerable in the community.

### Right to Privacy

Article 17 of the ICCPR states:

*No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.*

The information sharing provisions that currently exist in Division 3A of Part 2 of the Act will be extended, where relevant, to Family visas. In making their applications, sponsors and visa applicants will agree for the results from their Police checks, and for details of relevant migration-related activities, to be shared with other parties to the application. The purpose of these provisions is to encourage the sharing of relevant information so that both applicants and sponsors can make fully informed decisions before committing to the visa application processes.

Any limitations to privacy are required to ensure all parties to an application are fully aware of their prospective partner's history, especially with regards to instances of family violence or previous sponsorships. Personal information collected, used, stored and disclosed during this process will be treated in accordance with the *Privacy Act 1988*.

### Rights relating to children

Article 3 of the Convention on the Rights of the Child states:

*1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*

*2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.*

*3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.*

The introduction of an assessable sponsorship framework will advance the rights of the Child in accordance with Article 3 of the CRC, particularly 3 (2) that *Parties undertake to ensure the child such protection and care as is necessary for his or her well-being.*

In developing the policies reflected in this Bill, the best interests of the child have been a primary consideration.

The expansion of police checking to all sponsors and broadening the assessment to include convictions that may indicate an increased risk of family violence strengthens the existing requirements. As a result the level of risk of family violence that visa applicants and their children may be exposed to as a result of a partner migration process should be lessened.

The continuation of existing waiver and appeal provisions ensure that children will not be arbitrarily denied access to their parents.

#### Right not to be tried or punished twice

Article 14 (7) of the ICCPR states:

*No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.*

Under the proposed sponsorship framework, sponsor applicants will be subject to refusal as a result of certain past convictions. The refusal authority will be a discretionary power that will balance the relevant past history of the sponsor applicant with both their right of access to other family members and possible risk to other family members. Those sponsors refused will be afforded natural justice and can seek merits review of the decision.

#### **Conclusion**

The Bill is compatible with human rights because the objective of the Bill advances the protection of human rights, especially with regard to the rights of the family and child not to be subjected to family violence. Where there are limits to human rights, such as with respect to family and privacy, those limitations are reasonable, necessary, proportionate and rationally connected to achieve a legitimate objective which is to and inform potentially vulnerable people and protect them from harm.

**Hon Peter Dutton MP, Minister for Immigration and Border Protection**