



**Australian Government**  
**Department of Home Affairs**

**Submission**

For decision  
PDMS Ref. Number: MS24-001254  
Date of Clearance: 4/09/2024

**To** **Minister for Home Affairs, Minister for Immigration and Multicultural Affairs, Minister for Cyber Security**

**Subject** **Modernising and Strengthening the Accredited Sponsor Pathways and Aligning Sponsorship Obligations**

**Timing** *For consideration as soon as possible, as agreed with Senior Adviser <sup>s. 22(1)(a)(ii)</sup> and Adviser <sup>s. 22(1)(a)(ii)</sup>, to enable the Office of Parliamentary Counsel to draft regulation changes required to implement the Skills in Demand visa in 2024.*

**Recommendations**

That you:

- 1. agree to expand the accredited sponsor policy framework to include a new sixth category: Australian start-up in a Science, Technology, Engineering or Mathematics based field, which has received venture capital funding from a registered Early Stage Venture Capital Limited Partnership fund as outlined in **(Attachment B)**; agreed / not agreed
- 2. agree to strengthen policy and messaging in relation to revoking accredited status in circumstances where the sponsor no longer meets the criteria for accreditation or the sponsor fails to satisfy their obligations **(Attachment C)**; agreed / not agreed
- 3. agree to amend the *Migration Regulations 1994* (the Migration Regulations) to align with the changes introduced on 1 July 2024 to visa conditions 8107, 8607 and 8608 as outlined in **(Attachment D)**; agreed / not agreed
- 4. agree to amend the Migration Regulations to ensure sponsorship obligations which are applicable to standard business sponsors, also apply to sponsors of those primary persons holding a Skills in Demand (subclass 482) visa **(Attachment D)**; and agreed / not agreed

s. 47C(1)  
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**Minister for Home Affairs, Minister for Immigration and Multicultural Affairs, Minister for Cyber Security**

Signature.....

Date:...../...../ 2024

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Minister's Comments

**Key Issues**

1. For Employer Sponsored visas, the accredited sponsor framework provides for expedited nomination and visa processing and the option of providing character references for applicants who would normally need to provide police certificates. The most recent changes were made to the framework in 2019, when the major investment in Australia category was added to the framework (Category 5). The accredited sponsor framework currently sits within policy.
2. The Tech Council of Australia, the peak body representing Australia's tech sector, made several proposals in their submission into the *Review of the Migration System 2023*. One of these proposals included expanding eligibility for accredited sponsorship to Australian start-ups that have received venture capital funding from a registered venture capital fund (Attachment A).
3. Start-ups are currently assessed on a case-by-case basis where there are special circumstances under Category 3 of the framework, however, the Tech Council argued these 'special circumstances' are not set out clearly and this has led to uncertainty and lower take-up of accreditation than if there were objective criteria.
4. s. 34(3) [REDACTED]
5. Your approval is sought to expand the accredited sponsor framework by including a new category for Australian start-ups as detailed at Attachment B.
6. In conjunction with this, your approval is sought to strengthen policy and messaging in regards to revoking accreditation in circumstances where the sponsor no longer meets the criteria for accreditation or the sponsor fails to satisfy their obligations, as detailed at Attachment C.
7. Your approval is sought to amend the sponsorship obligation specified in *Regulation 2.86: Obligation to ensure primary sponsored person works or participates in nominated occupation, program or activity* to align with the changes introduced on 1 July 2024 to visa conditions 8107, 8607 and 8608 as detailed at Attachment D.
8. Further to this, your approval is also sought to amend the *Migration Regulations 1994* (the Migration Regulations) to ensure sponsorship obligations which are applicable to standard business sponsors, also apply to sponsors of those primary persons holding a Skills in Demand (subclass 482) visa, as detailed at Attachment D.

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## Background

9. A person can apply to become an 'Accredited Sponsor' as part of their application to become an approved Standard Business Sponsor (SBS), or when renewing their sponsorship. As an SBS, or accredited sponsor, they are able to sponsor a foreign worker on a Temporary Skill Shortage visa (subclass 482) or Skilled Employer Sponsored Regional (Provisional) visa (subclass 494).
10. If a sponsor is awarded accredited status, they will receive priority processing of all nomination and visa applications. This is enacted by a ministerial direction (Ministerial Direction No. 105) under section 499 of the *Migration Act 1958* (the Migration Act). Accredited sponsors, afforded accredited status on or after 1 July 2016, also receive streamlined processing of certain low-risk nominations.
11. The current accredited sponsor categories are:
  - Category 1: Commonwealth, state and territory Government agencies;
  - Category 2: Australian Trusted Traders;
  - Category 3: Low volume usage and high percentage of Australian workers (at least 85%);
  - Category 4: High volume usage and medium percentage of Australian workers (at least 75%);
  - Category 5: Major investment in Australia.
12. As at 30 April 2024, there were a total number of 24,645 active standard business sponsors. As at 12 June 2024 there were 3,497 accredited sponsors with 'in effect' SBS agreements in place, with the vast majority of sponsors being awarded accredited status under Category 3 (2,474 approximate figure only).

## Start-ups

13. To qualify for accreditation, a sponsor must meet the requirements in one of the five categories. Currently, accredited sponsorship can be considered for start-ups under 'Category 3: Low volume usage and high percentage of Australian workers (at least 85%)'. These are assessed on a case-by-case basis.
14. They can also be considered under 'Category 5: Major Investment in Australia,' however, criteria under this category usually requires the business to have made a major investment in Australia of at least AUD\$50M. Start-ups which do not meet this criteria can apply for accreditation if special circumstances apply.
15. Currently data for start-ups who have applied for or been granted accreditation under Category 3 is not available due to limitations in reporting, however, anecdotal evidence from program delivery areas suggest take-up is limited or nil due to difficulty in meeting the criteria.
16. Definitions of a start - up vary, however, is commonly considered a young business, usually within the first several years of operation, which has potential for mass scale/rapid growth and is funded by external investors. The business is founded in innovation, that is, they develop a unique product or service by remedying deficiencies of existing products or create entirely new categories of goods and services. Overseas businesses looking to open a branch in Australia, or with existing businesses registering under a new ABN would not meet this definition.
17. Limiting eligibility to start-ups operating in a Science, Technology, Engineering or Mathematics (STEM) based field supports the Government's objectives of driving innovation and productivity in emerging industries. It will also ensure consistency with the requirements for start-ups in the Global Talent Employer Sponsored stream and proposed new National Innovation Visa.

**Early Stage Venture Capital Limited Partnership funding**

- 18. Start-ups will need to be a recipient of funding from a registered Early Stage Venture Capital Limited Partnership funding (ESVCLP) to qualify for accredited status. The ESVCLP program is jointly administered by the Australian Taxation Office and Department of Industry, Science and Resources (DISR) and is aimed at stimulating the early stage venture capital sector in Australia.
- 19. Investors who wish to register as an ESVCLP must apply through Innovation and Science Australia's Innovation Investment Committee (IIC) who will register a partnership as an ESVCLP if it meets certain eligibility criteria. Once registered, an ESVCLP can make early stage venture capital investments in companies and are awarded benefits such as tax exemptions, however, they must continue to meet ongoing registration and reporting requirements.
- 20. Start-ups which have received funding from a registered ESVCLP may be in a better position to meet their financial obligations to workers. Funding may also provide more certainty of the future success of the business as the ESVCLP program provides fund managers and investors with financial guidance and support.

s. 47C(1)



- 22. Data provided by DISR indicates approximately 1,100 start-ups have received ESVCLP funding during the past 5 years, providing a broad indicator as to the target cohort. It is expected that the number of start-ups looking to access accredited status via the sixth category will be a small sub-set of this number.

<b>Financial year</b>	<b>Estimate of businesses invested in (initial investments only)</b>
2019/20	246
2020/21	264
2021/22	271
2022/23	244
2023/24*	131

\* includes up to 3<sup>rd</sup> quarter (March 2024)

- 23. The Department has consulted with The Tech Council and DISR on any additional requirements around this new sixth category that could be included to safeguard visa holders given potential sponsors in this category do not have a long-standing history of immigration compliance. This included looking at implementing a minimum threshold amount of venture capital funding.
- 24. Given the small number of businesses expected to access the scheme under this category, a threshold funding amount is not recommended. Introducing a threshold may significantly impact the number of business that could meet eligibility and draw criticism for being too restrictive.
- 25. The amount of VC funding a start-up receives is also not necessarily indicative of the financial viability of the business, given that start-ups often seek funding from a variety of sources. Financial viability is also not a criterion for any of the other accreditation categories and is something that would be assessed at the standard business sponsorship application stage.

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**Revocation**

- 26. If a sponsor fails to maintain the characteristics for accreditation, or they declare that they no longer meet these characteristics as part of a sponsorship renewal application, their accredited status can be revoked by a departmental officer in the delivery processing area. The ability to revoke accreditation currently sits within policy.
- 27. When a sponsor's accredited status is revoked they lose their right to priority processing and streamlined processing of low-risk nominations, however, their sponsorship agreement remains in place until its expiry (unless the reason for the Accredited Status revocation also results in cancellation of the sponsorship or barring of the sponsor under section 140M of the Migration Act).

28. **S. 47E(d)**

s. 47C(1)

s. 47C(1)

**Options for implementation**

31. **S. 42(1)**

32. **S. 42(1)**

- 33. Retaining the accreditation scheme in policy will mean the proposed changes can be implemented quickly with minimal legal or financial implications, noting that IT system changes are already under way for an expected implementation date of 23 November 2024. It will also ensure the Government delivers on its commitment to modernise and strengthen accreditation pathways by late 2024, as noted in the *Migration Strategy*.

34. **S. 42(1)**

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35. Providing for the accreditation scheme to be established and maintained via the Migration Regulations will require changes to the Migration Act. However, this approach will require complex amendments to avoid inconsistencies with future regulations, other delegated legislation or the work sponsorship framework in the Migration Act, as well as consideration of how these legislative changes would interact with the existing framework for merits review and judicial review.

s. 47C(1)

**Proposed amendments to the Migration Regulations to align with enhanced mobility provisions and ensure sponsorship obligations apply to the new Skills in Demand (subclass 482) visa**

37. From 1 July 2024, the Migration Regulations were amended to increase the time that certain visa holders may cease to work in accordance with the normal requirements of visa conditions 8107, 8607 and 8608 that would otherwise restrict their ability to work outside of their sponsorship arrangement (MS24-000809).

38. These amendments enhanced the labour market mobility for temporary migrants under the Subclass 457 (Temporary Work (Skilled)), Subclass 482 (Temporary Skill Shortage) and Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa programs.

39. Visa holders who cease work with their sponsoring employer will now have up to 180 days at a time and a maximum of 365 days in total across the entire visa grant period to find a new sponsor, apply for a different visa, or depart Australia.

40. While sponsor obligations have not changed, we are seeking your urgent approval to proceed with further proposed changes to the Regulations to align with the enhanced mobility provisions that commenced on 1 July 2024. These proposed amendments would provide that a sponsor’s obligation to ensure the primary sponsored person works or participates in the nominated occupation, program or activity ends when the primary sponsored person ceases employment with the sponsor. See further details at **Attachment D**.

s. 47C(1)

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**Consultation – Internal/external**

44. Consultation was undertaken with s. 47F(1) from the Tech Council of Australia in relation to the policy intent in their submission to the Migration Review. DISR was also consulted in relation to the eligibility requirements and processes of the ESVCLP program.

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- 45. The Migration Reform Taskforce has been consulted on the changes outlined in this submission, and has confirmed that the changes are in alignment with commitments under the Government’s *Migration Strategy*.
- 46. The Chief Financial Officer was not consulted in the development of this submission.
- 47. The Department’s Migration, Citizenship and International Law Branch, Legislation Branch and the AGS have been consulted on the required policy and legal changes.

**Consultation – Secretary / Associate Secretary Immigration / ABF Commissioner**

- 48. The Secretary, Associate Secretary and ABF Commissioner were not consulted on the approach in the submission.

**Client service implications**

s. 47C(1) [Redacted]

s. 47C(1) [Redacted]

**Risks and Sensitivities**

s. 47C(1) [Redacted]

**Financial/systems/legal/deregulation/media implications**

52. s. 34(3) [Redacted]

s. 47C(1) [Redacted]

54. Systems related changes also require the full scope to be determined as soon as possible to allow for implementation by the target date of 23 November 2024.

55. The legal implications related to this policy change are outlined within the body of the submission. Subject to your approval, we would seek your approval in a separate submission.

56. The information contained in this submission is classified and should not be publicly released without the authority of the department. In accordance with our long-standing practices, should you wish for unclassified media lines to be prepared in relation to this issue please contact the Home Affairs Media Operations team – [media@homeaffairs.gov.au](mailto:media@homeaffairs.gov.au).

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**Attachments**

**Attachment A** Tech Council submission to the Migration Review 2023

**Attachment B** Modernising the accredited sponsor pathways – Proposed criteria for a sixth accreditation category

**Attachment C** Strengthened policy and messaging in relation to revocation of accredited status – Proposed changes

**Attachment D** Aligning sponsorship obligations – Proposed changes

**Attachment E** Talking Points – Changes to Schedule 8 visa conditions

<p><b>Authorising Officer</b></p> <p>Cleared by:</p> <p>Karin Maier A/g First Assistant Secretary Immigration Programs Division</p> <p>Date: 27/08/2024 Mob: s. 22(1)(a)(ii)</p>
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**Contact Officer:** Patrick Bryson, A/g Assistant Secretary, Skilled Visas Branch, Ph: s. 22(1)(a)(ii) / Mob: s. 22(1)(a)(ii)

**Through** Group Manager Immigration Policy

**CC**

- Assistant Minister for Immigration
- Secretary
- Associate Secretary Immigration
- Group Manager Immigration Operations
- Group Manager Legal
- Chief Finance Officer
- FAS Executive Coordination
- Assistant Secretary Legislation

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## Attachment B: Modernising the accredited sponsor pathways - Proposed criteria for a sixth accreditation category

A proposed sixth category to be added to the existing accreditation framework:

*Category 6: Australian start-up in a STEM-based field, which has received venture capital funding from a registered Early Stage Venture Capital Limited Partnership (ESVCLP) fund.*

Proposed eligibility criteria:

- your Australian start-up is in a STEM-based field
- you have received venture capital funding from a fund registered as an Early Stage Venture Capital Limited Partnership (ESVCLP)
- be a standard business sponsor
- you have complied with all of your sponsor obligations
- you have no adverse monitoring outcomes
- you have paid all Australian employees in accordance with an Enterprise Agreement or an internal salary table that reflects the current market salary rate
- you have a written contract of employment for all employer sponsored visa holders that meets the National Employment Standards where they apply

### Risks/Sensitivities

- s. 47C(1)

[Redacted content]

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- s. 47C(1)

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- s. 47C(1) [Redacted]

s. 47C(1) [Redacted]

s. 47C(1) [Redacted]

s. 47C(1) [Redacted]

s. 47C(1) [Redacted]

s. 47C(1) [Redacted]

- If accreditation remains in a policy framework, the option to remove this category altogether is available if it does not achieve the intended outcomes.
- It should also be noted that skilled migrants employed by start-ups are likely to have skills that are in high demand, and if a start-up fails, these migrants may be likely to be quickly re-employed. Transition to a new employer will also be made easier with the introduction of increased worker mobility provisions in the Employer Sponsored program.

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### **Attachment C: Strengthened policy and messaging in relation to revocation of accredited status - Proposed changes**

The following changes are proposed to ensure increased and effective messaging around accredited status and the requirement for sponsors to comply with their obligations:

- I. The following eligibility criteria for existing accreditation categories (which currently only apply in full to categories 3 and 4 and partly to categories 2 and 5) will be applied across all categories to ensure consistency:
  - you have complied with all of your sponsor obligations
  - have no adverse monitoring outcomes
  - you have paid all employees in accordance with an Enterprise Agreement or an internal salary table that reflects the current market salary rate
  - you have a written contract of employment for all employer sponsored visa holders that meets the National Employment Standards where they apply
  
- II. Amend existing policy to specify that in circumstances where a sponsor is sanctioned (by action taken under Section 140K of the Migration Act) for failure to maintain their sponsorship obligations (as provided for in Division 2.19 of Part 2A of the Regulations), a decision maker can revoke their accredited status.
  
- III. Increase messaging to sponsors to advise that failure to satisfy sponsor obligations may lead to revocation of accredited status and may impact future applications for accreditation via:
  - updates to existing sponsor approval ECS templates
  - website updates and news item
  - updates to existing fact sheets

#### **s. 47C(1)**

- s. 47C(1)

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- s. 47C(1)

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s. 47C(1) [Redacted]

- s. 47C(1) [Redacted]

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## **Attachment D: Aligning Sponsorship Obligations with enhanced mobility provisions - Proposed changes**

- From 1 July 2024, changes were made to the following Schedule 8 visa conditions which allow for temporary employer sponsored visa holders who cease working for their sponsoring employer to have more time to find a new sponsor, apply for a different visa or arrange to depart Australia:
  - Condition **8107**: Not cease or change work;
  - Condition **8607**: Approved work only (Temporary Skills Shortage visa – subclass 482);
  - Condition **8608**: Approved work only (Skilled Employer Sponsored Regional (Provisional) visa program.
- Visa holders who cease work with their sponsoring employer will now have up to 180 days at a time and a maximum of 365 days in total across the entire visa grant period to find a new sponsor, apply for a different visa, or depart Australia.
- Related to this, sub-regulation 2.86(3)(b) of the *Migration Regulations 1994* ('the Regulations') will need to be amended to specify that the sponsor obligation to ensure the primary sponsored person works or participates in the nominated occupation, program or activity ends when the primary sponsored person ceases employment with the sponsor.

Subregulation 2.86(3) of the Regulations currently states the following:

**(3)** *The obligations mentioned in subregulations (2) to (2C):*

*(a) start to apply:*

*(i) on the day on which the Minister approves a nomination by the person that identifies the primary sponsored person; or*

*(ii) if the primary sponsored person does not hold a visa mentioned in subregulation (1) on the day the Minister approves the nomination — on the day on which the primary sponsored person is granted the visa on the basis of being identified in an approved nomination by the person; and*

*(b) end on the earliest of:*

*(i) the day on which the Minister approves a nomination under section 140GB of the Act by another approved work sponsor in which the primary sponsored person is identified; and*

*(ii) the day on which the primary sponsored person is granted a further substantive visa that is in effect and is:*

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(A) if the last substantive visa held by the primary sponsored person was a Subclass 457 (Temporary Work (Skilled)) visa—a visa that is not a Subclass 457 (Temporary Work (Skilled)) visa or a [Subclass 482 \(Temporary Skill Shortage\) visa](#); or

(B) in any other case—a visa of a different subclass to the last substantive visa held by the primary sponsored person; and

(iii) the first day on which each of the following has occurred:

(A) the [primary sponsored person](#) has [left Australia](#);

(B) the visa granted to the [primary sponsored person](#) on the basis of being identified in an approved nomination by the person has ceased to be in effect;

(C) if:

(I) the [primary sponsored person](#) held a [Subclass 020 \(Bridging B\) visa](#) when the [primary sponsored person](#) left Australia; and

(II) the last [substantive visa](#) held by the [primary sponsored person](#) was the visa granted to the [primary sponsored person](#) on the basis of being identified in an approved nomination by the person;

the [bridging visa](#) has ceased to be in effect.

## Ensuring sponsorship obligations continue under the Skills in Demand (subclass 482) visa - Proposed changes

- Currently, sponsor obligations apply to specified visa subclasses, including the Temporary Work (Skilled) (subclass 457) and Temporary Skill Shortage (TSS) (subclass 482) visa. With the introduction of the Skills in Demand (SID) visa in late 2024, changes will need to be made to the Regulations to ensure sponsorship obligations will also apply to sponsors of those persons holding a SID visa.

### Proposed changes

- Amendments to the Regulations, including the sponsorship obligation specified at regulation 2.86 (and any other provisions that may apply) to specify that the obligation to ensure the primary sponsored person works or participates in the nominated occupation, program or activity ends when the primary sponsored person ceases employment with the sponsor.
- To ensure continuity, amend the Regulations to ensure sponsor obligations which are applicable to standard business sponsors (including 457 and TSS sponsors) also apply to those sponsors of persons holding a Skills in Demand (subclass 482) visa.
- Updated messaging to sponsors via website updates and news item.

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**Risks/Sensitivities**

- s. 47C(1)



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## TALKING POINTS

<b>Subject</b>	Schedule 8 visa changes to visa conditions 8107, 8607 and 8608	
<b>Date</b>	11 July 2024	
<b>Type</b>	Agency	
<b>Media Officer:</b>		<b>Media Ph:</b>

### ISSUE

On 1 July 2024, changes commenced to enable temporary employer sponsored visa holders who stop working with their sponsoring employer to have more time to find a new sponsor, apply for a different visa or arrange to depart Australia.

### TALKING POINTS OFFICIAL

- The *Migration Strategy*, released by the Australian Government in December 2023, outlined a commitment to provide worker mobility and build a migration system that is responsive to labour market needs.
- From 1 July 2024, temporary employer sponsored visa holders who stop working with their sponsoring employer will have more time to find a new sponsor, apply for a different visa or arrange to depart Australia.
- The changes will enhance the labour market mobility of temporary migrants under the Subclass 457 (Temporary Work (Skilled)), Subclass 482 (Temporary Skill Shortage) and Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa programs.
- Visa holders who cease work with their sponsoring employer have up to 180 days at a time and a maximum of 365 days in total across the entire visa grant period to find a new sponsor, apply for a different visa, or depart Australia.
- Visa holders will have work rights during this time, ensuring they can support themselves while they look for a new sponsor. They do not have to work in the same occupation nominated by their previous sponsor.
- As outlined in the *Migration Strategy*, these changes will also become a feature of the Skills in Demand visa when it is introduced as a replacement to the Temporary Skills Shortage visa.

#### ***If asked***

##### *How will this impact sponsors?*

- Sponsorship obligations have not changed. Sponsors must continue to comply with their sponsorship obligations. This includes ensuring the Department is notified when a visa holder ceases work with them.



- Unless an exemption applies, visa holders must continue to work in their nominated occupation when working for their sponsor. The mobility changes apply only when the employment relationship with their sponsor ceases.
- The Department can impose penalties on sponsors found not to be complying with their obligations.

*As a sponsor, I am required to ensure the visa holders I employ work only in their nominated occupation. What will happen if they cease work with me and work in a different occupation?*

- Sponsors must ensure that they notify the Department when a visa holder ceases work with them.
- Under current sponsorship obligations, sponsors must ensure visa holders work only in their nominated occupation. This applies until the visa holder obtains a new approved nomination, is granted a different substantive visa, or departs Australia and their substantive visa or bridging visa ceases to be in effect.
- The Department is currently reviewing sponsor obligations to ensure they remain consistent with the revised visa conditions.
- A flexible approach to enforcing this obligation will be applied and any changes to the sponsor obligations will be announced in due course.

*Will the visa holder be able to work in any occupation they want?*

- Visa holders can support themselves through paid work in another occupation while they seek a new sponsor, pursue another visa pathway or make arrangements to depart Australia. They can only work outside of their nominated occupation for up to 180 days at a time, or 365 days in total across their visa grant period.

*Can visa holders work for an employer that is not an approved sponsor?*

- Visa holders can work for an employer that is not an approved sponsor during the periods outlined in the revised conditions.
- Employers who are not approved sponsors may use the time period outlined in the visa condition to apply to become a sponsor and lodge a nomination for the visa holder, if they wish to do so.

*What measures will ensure that visa holders comply with their conditions and work in their nominated occupation?*

- Sponsorship obligations have not changed. Sponsors still need to ensure that the Department is notified when a visa holder ceases employment.
- Visa holders working without an approved nomination for more than 180 days at a time or 365 days in total during their visa grant period will be in breach of their visa conditions and may face visa cancellation. Any breaches of visa conditions can also impact further temporary and permanent visa applications.

*How will the changes impact visa holders with licencing and registration requirements?*

- Visa holders with a nominated occupation where licencing and registration is required must not engage in work that is inconsistent with their licence or registration.
- This will ensure that visa holders cannot work in breach of any conditions or requirements their licence or registration is subject to.
- During the time periods outlined in the revised conditions, visa holders with licencing and registration requirements are able to work in other occupations where these are not required.

*How will these changes prevent worker exploitation?*

- The changes will allow visa holders to support themselves while searching for a new sponsor.
- The additional time will also give visa holders greater confidence to leave an exploitative workplace without fear of breaching their visa conditions if it takes time to find a new sponsor.