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HOUSE OF REPRESENTATIVES

Presented and read a first time

Migration Amendment (Protecting Migrant Workers) Bill 2021

No. , 2021

(Home Affairs)

**A Bill for an Act to amend the *Migration Act 1958*,
and for related purposes**

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1 **A Bill for an Act to amend the *Migration Act 1958*,**
2 **and for related purposes**

³ The Parliament of Australia enacts:

4 1 Short title

5 This Act is the *Migration Amendment (Protecting Migrant*
6 *Workers) Act 2021.*

7 2 Commencement

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1	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.	

Note: This table relates only to the provisions of this Act as originally enacted.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

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

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

1 **Schedule 1—Amendments**

2 **Part 1—New employer sanctions**

3 ***Migration Act 1958***

4 **1 Subsection 5(1)**

5 Insert:

6 *work-related visa requirement* has the meaning given by
7 section 245AAB.

8 **2 Before paragraph 245AA(1)(a)**

9 Insert:

10 (aa) where a person coerces, or exerts undue influence or undue
11 pressure on, a non-citizen to accept or agree to a work
12 arrangement:
13 (i) involving a breach of a work-related condition applying
14 to the non-citizen; or
15 (ii) to satisfy a work-related visa requirement; or
16 (iii) to avoid an adverse effect on the non-citizen's
17 immigration status;

18 **3 After paragraph 245AA(2)(a)**

19 Insert:

20 (ab) section 245AAB (defines *work-related visa requirement*);

21 **4 After section 245AA**

22 Insert:

23 **245AAA Coercing etc. a non-citizen to breach work-related
24 conditions**

25 (1) A person (the *first person*) contravenes this subsection if:
26 (a) the first person coerces, or exerts undue influence or undue
27 pressure on, a non-citizen to accept or agree to an
28 arrangement in relation to work; and

- (b) that work is carried out, or is to be carried out, by the non-citizen in Australia, whether for the first person or someone else; and
- (c) either:
 - (i) as a result of the arrangement, the non-citizen breaches a work-related condition; or
 - (ii) there are reasonable grounds to believe that, if the non-citizen were to accept or agree to the arrangement, the non-citizen would breach a work-related condition.

Offence

(2) A person commits an offence if the person contravenes subsection (1). The physical elements of the offence are set out in that subsection.

(3) For the purposes of subsection (2), the fault element for paragraphs (1)(b) and (c) is knowledge or recklessness by the first person.

Civil penalty provision

(4) A person is liable to a civil penalty if the person contravenes subsection (1).

21 Note: It is not necessary to prove a person's state of mind in proceedings for
22 a civil penalty order (see section 486ZF).

23 Civil penalty: 240 penalty units.

245AAB Coercing etc. a non-citizen by using migration rules

(1) A person (the *first person*) contravenes this subsection if:

- (a) the first person coerces, or exerts undue influence or undue pressure on, a non-citizen to accept or agree to an arrangement in relation to work; and
- (b) that work is carried out, or is to be carried out, by the non-citizen in Australia, whether for the first person or someone else; and

(c) the non-citizen believes, or there are reasonable grounds to believe, that the non-citizen must accept or agree to the arrangement:

- (i) to satisfy a work-related visa requirement; or
- (ii) to avoid an adverse effect on the non-citizen's immigration status under Division 1.

Offence

(2) A person commits an offence if the person contravenes subsection (1). The physical elements of the offence are set out in that subsection.

Penalty: Imprisonment for 2 years or 360 penalty units, or both.

(3) For the purposes of subsection (2), the fault element for paragraphs (1)(b) and (c) is knowledge or recklessness by the first person.

Civil penalty provision

(4) A person is liable to a civil penalty if the person contravenes subsection (1).

Note: It is not necessary to prove a person's state of mind in proceedings for a civil penalty order (see section 486ZF).

Civil penalty: 240 penalty units.

Meaning of work-related visa requirement

(5) A ***work-related visa requirement***, in relation to a non-citizen, means a requirement under this Act or the regulations for the non-citizen to provide, in connection with a visa held by the non-citizen or an application by the non-citizen for a visa, information or evidence about work the non-citizen has undertaken in Australia.

5 Subsection 245AN(3)

Omit “or 245AC” (wherever occurring), substitute “, 245AC, 245AAA or 245AAB”.

Schedule 1 Amendments

Part 1 New employer sanctions

1 **6 Subsection 245AN(4)**

2 Omit “or 245AEA” (wherever occurring), substitute “, 245AEA,
3 245AAA or 245AAB”.

Part 2—Prohibition on certain employers allowing additional non-citizens to begin work

Division 1—Amendments

Migration Act 1958

7 Subsection 5(1)

Insert:

ABN has the same meaning as in the *A New Tax System (Australian Business Number) Act 1999*.

migrant worker sanction: see section 245AYD.

prohibited employer: see section 245AYB.

remuneration-related contravention, in relation to a civil remedy provision of the *Fair Work Act 2009*: see section 245AYF.

work-related offence means:

- (a) an offence against Subdivision C of Division 12 of Part 2; or
- (b) an offence against section 6 of the *Crimes Act 1914* that relates to an offence against that Subdivision; or
- (c) an ancillary offence (within the meaning of the *Criminal Code*) that is, or relates to, an offence against that Subdivision.

work-related provision means a civil penalty provision in Subdivision C or E of Division 12 of Part 2.

8 Paragraph 140X(aa)

Omit “or D”, substitute “, D or E”.

9 At the end of Division 12 of Part 2

Add:

1 **Subdivision E—Prohibited employers**

2 **245AYA Overview**

3 (1) This Subdivision sets out the circumstances in which certain
4 persons (called prohibited employers) may be prohibited from
5 allowing additional non-citizens to begin work.

6 (2) The following persons may be declared to be prohibited
7 employers:

8 (a) a person who is or was an approved work sponsor subject to
9 a bar imposed by the Minister under paragraph 140M(1)(c)
10 or (d);

11 (b) a person who has been convicted of a work-related offence;

12 (c) a person who is or was the subject of a civil penalty order in
13 relation to contravention of a work-related provision;

14 (d) a person who is or was the subject of an order for certain
15 contraventions of civil remedy provisions under the *Fair
16 Work Act 2009* in relation to the employment of a
17 non-citizen.

18 (3) The period during which a prohibited employer is subject to a
19 prohibition under this Subdivision is specified in the declaration.

20 (4) A prohibited employer must not allow additional non-citizens to
21 begin work after the day the declaration comes into effect.

22 (5) A person who stops being a prohibited employer may allow
23 additional non-citizens to begin work but is subject to additional
24 reporting obligations for 12 months.

25 **245AYB Meaning of *prohibited employer***

26 A person is a ***prohibited employer*** if the person is declared by the
27 Minister to be a prohibited employer under subsection 245AYG(1).

28 **245AYC Meaning of *work* and *allows to work***

29 (1) In this Subdivision:

30 ***work*** means any work, whether for reward or otherwise.

(2) In this Subdivision, a person *allows* a non-citizen to work if, and only if:

- (a) the person employs the non-citizen under a contract of service; or
- (b) the person engages the non-citizen, other than in a domestic context, under a contract for services; or
- (c) the person participates in an arrangement, or any arrangement included in a series of arrangements, for the performance of work by the non-citizen for:
 - (i) the person; or
 - (ii) another participant in the arrangement or any such arrangement; or
- (d) the person bails or licenses a chattel to the non-citizen or another person with the intention that the non-citizen will use the chattel to perform a transportation service; or
- (e) the person leases or licenses premises, or a space within premises, to the non-citizen or another person with the intention that the non-citizen will use the premises or space to perform sexual services within the meaning of the *Criminal Code* (see the Dictionary to the *Criminal Code*); or
- (f) the prescribed circumstances exist.

(3) In paragraph (2)(e):

premises means:

- (a) an area of land or any other place, whether or not it is enclosed or built on; or
- (b) a building or other structure; or
- (c) a vehicle or vessel.

245AYD Meaning of *migrant worker sanction*

A person is subject to a *migrant worker sanction* if:

- (a) the person is an approved work sponsor who is subject to a bar for a specified period imposed by the Minister under paragraph 140M(1)(c) or (d); or
- (b) the person is convicted of a work-related offence; or
- (c) the person is the subject of a civil penalty order in relation to the contravention of a work-related provision; or

Schedule 1 Amendments

Part 2 Prohibition on certain employers allowing additional non-citizens to begin work

1 (d) both:

2 (i) the person is the subject of an order made under the

3 *Fair Work Act 2009* for contravention of a civil remedy

4 provision (within the meaning of that Act) covered by

5 section 245AYE; and

6 (ii) the contravention is in relation to an employee who is a

7 non-citizen.

8 245AYE Migrant worker sanctions—*Fair Work Act 2009*

9 For the purposes of subparagraph 245AYD(d)(i) (meaning of
10 **migrant worker sanction**), a civil remedy provision of the *Fair*
11 *Work Act 2009* mentioned in columns 1 and 2 of an item in the
12 following table is covered by this section if the contravention of
13 the provision is of a kind mentioned in column 3 of that item.

Migrant worker sanctions—civil remedy provisions of the <i>Fair Work Act 2009</i>			
Item	Column 1 Subject	Column 2 Provision	Column 3 Kind of contravention
1	Contravening the National Employment Standards	Subsection 44(1)	A remuneration-related contravention
2	Contravening a modern award	Section 45	A remuneration-related contravention
3	Contravening an enterprise agreement	Section 50	A remuneration-related contravention
4	Contravening a workplace determination	Section 280	A remuneration-related contravention
5	Contravening a national minimum wage order	Section 293	Any contravention
6	Contravening an equal remuneration order	Section 305	Any contravention
7	Method and frequency of payment	Subsection 323(1)	Any contravention
8	Method and frequency of payment—particular method	Subsection 323(3)	Any contravention

Migrant worker sanctions—civil remedy provisions of the *Fair Work Act 2009*

Item	Column 1 Subject	Column 2 Provision	Column 3 Kind of contravention
9	Unreasonable requirements to spend or pay amount	Subsection 325(1)	Any contravention
10	Unreasonable requirements to spend or pay amount—prospective employment	Subsection 325(1A)	Any contravention
11	Employer must comply with guarantee of annual earnings	Subsection 328(1)	Any contravention
12	Employer must comply with guarantee of annual earnings for period before termination	Subsection 328(2)	Any contravention
13	Employer must give notice of consequences of guarantee of annual earnings	Subsection 328(3)	Any contravention
14	Misrepresenting employment as independent contracting arrangement	Subsection 357(1)	Any contravention
15	Dismissing to engage as independent contractor	Section 358	Any contravention
16	Misrepresentation to engage as independent contractor	Section 359	Any contravention
17	Employer obligations in relation to employee records	Subsection 535(1), (2) or (4)	A remuneration-related contravention
18	Employer obligations in relation to pay slips	Subsection 536(1), (2) or (3)	A remuneration-related contravention

1

2 **245AYF Meaning of remuneration-related contravention**

3 A **remuneration-related contravention**, in relation to a civil
4 remedy provision of the *Fair Work Act 2009*, is a contravention
5 that relates to one or more of the following:

6 (a) the underpayment of wages, or other monetary entitlements
7 of employees;
8 (b) the unreasonable deduction of amounts from amounts owed
9 to employees;
10 (c) the placing of unreasonable requirements on employees to
11 spend or pay amounts paid, or payable, to employees;
12 (d) the method or frequency of amounts payable to employees in
13 relation to the performance of work.

14 **245AYG Declaration of person as prohibited employer**

15 *Minister may declare person to be prohibited employer*

16 (1) The Minister may, in writing, declare a person who has become
17 subject to a migrant worker sanction to be a prohibited employer.

18 (2) A declaration must not be made under subsection (1) after the end
19 of the 5 year period starting on the day the person first became
20 subject to the migrant worker sanction.

21 Note: If a person is subject to multiple migrant worker sanctions, there is a
22 separate 5 year period for each sanction.

23 (3) A declaration made under subsection (1) is not a legislative
24 instrument.

25 Note: A declaration made under subsection (1) can be varied or revoked
26 under subsection 33(3) of the *Acts Interpretation Act 1901*.

27 *Process before making declaration*

28 (4) Before the Minister declares a person to be a prohibited employer,
29 the Minister must give the person a written notice:

30 (a) stating that the Minister proposes to make such a declaration
31 and the reasons for it; and

Notification and duration of declaration

19 (7) If the Minister declares a person to be a prohibited employer, the
20 Minister must, as soon as reasonably practicable, give the person a
21 copy of the declaration.

22 (8) The declaration comes into effect at the start of whichever of the
23 following days is later:
24 (a) the day after the day the declaration is given to the prohibited
25 employer;
26 (b) the day stated in the declaration as the day the declaration
27 comes into effect.

28 (9) The declaration has effect during the period specified in the
29 declaration (unless sooner revoked).

Review by the Administrative Appeals Tribunal

31 (10) Applications may be made to the Tribunal for review of a decision
32 under subsection (1) to declare a person to be a prohibited
33 employer.

1 Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires
2 that people whose interests are affected by the Minister's decision be
3 given notice of their rights to seek review of the decision.

245AYH Prohibition on allowing additional non-citizens to begin work

- (1) A person contravenes this subsection if:
 - (a) the person is a prohibited employer; and
 - (b) either:
 - (i) the person allows a non-citizen to begin work; or
 - (ii) the person has a material role in a decision made by a body corporate to allow a non-citizen to begin work; and
 - (c) either:
 - (i) the non-citizen does not hold a visa; or
 - (ii) the non-citizen holds a visa other than a permanent visa.
- (2) Subsection (1) does not apply in relation to work that the non-citizen is allowed to do if the work is merely incidental to a business of the person or the body corporate.
- (3) A person who contravenes subsection (1) is liable to a civil penalty.

Note: It is not necessary to prove a person's state of mind in proceedings for a civil penalty order (see section 486ZF).

Civil penalty: 240 penalty units.

245A YI Publishing information about prohibited employers

Minister must publish details on website

- (1) If a person is a prohibited employer, the Minister must publish the information required by subsection (3) on the Department's website.
- (2) Subsection (1) does not apply in the circumstances prescribed by any regulations made for the purposes of this subsection.

Prohibited employers—required information

(3) The required information is:

- (a) the name of the prohibited employer; and
- (b) if the prohibited employer has an ABN—the ABN; and
- (c) any other information that the Minister considers is reasonably necessary to identify the prohibited employer; and
- (d) a brief summary of the migrant worker sanction that is the basis of the person’s declaration as a prohibited employer; and
- (e) the period during which the person is a prohibited employer.

Publication—miscellaneous matters

- (4) Subsection (1) authorises the publication of personal information.
- (5) No civil liability arises from action taken by the Minister in good faith in publishing information under subsection (1).
- (6) To avoid doubt, the Minister is not required to arrange for the removal, from the Department's website, of information about a person published under subsection (1) when the person stops being a prohibited employer.

245AYJ Prohibited employers—additional reporting obligations

(1) A person contravenes this subsection if:

- (a) the person was (but is no longer) a prohibited employer; and
- (b) within the period of 12 months starting on the day after the person ceases to be a prohibited employer, the person allows a non-citizen to begin work (other than a non-citizen who holds a permanent visa); and
- (c) the person does not give to the Department, in writing, the information required by subsection (3), in relation to the non-citizen, before the end of the period of 28 days starting on the day after the person allows the non-citizen to begin work.

Note: It is not necessary to prove a person's state of mind in proceedings for a civil penalty order (see section 486ZF).

Civil penalty: 48 penalty units.

(2) Subsection (1) does not apply in relation to work that the non-citizen is allowed to do if the work is merely incidental to a business of the person.

Information about the non-citizen

(3) The following information is required by this subsection:

- (a) the name of the non-citizen;
- (b) a description of the work the non-citizen is allowed to do;
- (c) if the non-citizen holds a visa that is subject to a work-related condition—details of the condition;
- (d) any other information prescribed by regulations made for the purposes of this paragraph.

(4) For the purposes of paragraph (3)(d), personal information may be prescribed only to the extent that it is reasonably necessary for monitoring compliance with this Division.

245AYK Exhaustive statement of natural justice hearing rule

- (1) This Subdivision is taken to be an exhaustive statement of the requirements of the natural justice hearing rule in relation to the matters it deals with.
- (2) Sections 494A to 494D, in so far as they relate to this Subdivision, are taken to be an exhaustive statement of the requirements of the natural justice hearing rule in relation to the matters they deal with.

10 Section 487A (definitions of *work-related offence* and *work-related provision*)

Repeal the definitions.

1 **Division 2—Application**

2 **11 Application of amendments**

3 The amendments of the *Migration Act 1958* made by this Part apply in
4 relation to migrant worker sanctions to which a person becomes subject
5 on or after the commencement of this Schedule (whether the conduct
6 leading to the sanction occurs before, on or after the commencement of
7 this Schedule).

1 **Part 3—Use of computer system to verify**
2 **immigration status**

3 **Division 1—Amendments**

4 ***Migration Act 1958***

5 **12 Subsection 5(1)**

6 Insert:

7 *logging into*: for the meaning of *logging into* the prescribed
8 computer system, for the purposes of Subdivision C of Division 12
9 of Part 2, see section 245APE.

10 *prescribed computer system*, for the purposes of Subdivision C of
11 Division 12 of Part 2: see section 245APE.

12 *required permission*: for the meaning of *required permission* for a
13 non-citizen to do particular work for the purposes of Subdivision C
14 of Division 12 of Part 2, see section 245APE.

15 *required system user*, in relation to the use of the prescribed
16 computer system for the purposes of Subdivision C of Division 12
17 of Part 2: see section 245APB.

18 **13 At the end of subsection 245AA(1)**

19 Add:

20 ; (c) where a person allows a non-citizen to work, or refers a
21 non-citizen for work, without determining whether the
22 non-citizen has the required permission to work by using
23 information sourced from the prescribed computer system or
24 another prescribed source.

25 **14 At the end of subsection 245AA(2)**

26 Add:

27 ; (d) section 245APB (defines *required system user*);
28 (e) section 245APE (defines *logging into*, *prescribed computer*
29 *system* and *required permission*).

1 **15 Subsection 245AB(2)**

2 Repeal the subsection, substitute:

3 (2) Subsection (1) does not apply if the first person is, and continues to
4 be, reasonably satisfied that the worker is not an unlawful
5 non-citizen on the basis of information obtained:
6 (a) by logging into and using the prescribed computer system to
7 source the information; or
8 (b) unless the first person is a required system user—under an
9 arrangement by which another person logs into and uses the
10 prescribed computer system to source the information; or
11 (c) by doing any one or more things prescribed by the
12 regulations.

13 Example 1: For paragraph (b), an arrangement by contract under which the
14 contractor logs into and uses the prescribed computer system to source
15 information that is supplied to the first person.

16 Example 2: For paragraph (b), an arrangement between the first person and the
17 worker under which the worker logs into and uses the prescribed
18 computer system to source information that is emailed directly via the
19 system to the first person.

20 **16 Subsection 245AC(2)**

21 Repeal the subsection, substitute:

22 (2) Subsection (1) does not apply if the first person is, and continues to
23 be, reasonably satisfied that the worker is not in breach of the
24 work-related condition solely because of doing the work referred to
25 in paragraph (1)(a), on the basis of information obtained:
26 (a) by logging into and using the prescribed computer system to
27 source the information; or
28 (b) unless the first person is a required system user—under an
29 arrangement by which another person logs into and uses the
30 prescribed computer system to source the information; or
31 (c) by doing any one or more things prescribed by the
32 regulations.

33 Example 1: For paragraph (b), an arrangement by contract under which the
34 contractor logs into and uses the prescribed computer system to source
35 information that is supplied to the first person.

36 Example 2: For paragraph (b), an arrangement between the first person and the
37 worker under which the worker logs into and uses the prescribed

1 computer system to source information that is emailed directly via the
2 system to the first person.

17 Subsection 245AE(2)

4 Repeal the subsection, substitute:

5 (2) Subsection (1) does not apply if the first person, at the time of
6 referral, is reasonably satisfied that the prospective worker is not
7 an unlawful non-citizen, on the basis of information obtained:
8 (a) by logging into and using the prescribed computer system to
9 source the information; or
10 (b) unless the first person is a required system user—under an
11 arrangement by which another person logs into and uses the
12 prescribed computer system to source the information; or
13 (c) by doing any one or more things prescribed by the
14 regulations.

15 Example 1: For paragraph (b), an arrangement by contract under which the
16 contractor logs into and uses the prescribed computer system to source
17 information that is supplied to the first person.

18 Example 2: For paragraph (b), an arrangement between the first person and the
19 prospective worker under which the prospective worker logs into and
20 uses the prescribed computer system to source information that is
21 emailed directly via the system to the first person.

18 Subsection 245AEA(2)

23 Repeal the subsection, substitute:

24 (2) Subsection (1) does not apply if the first person, at the time of
25 referral, is reasonably satisfied that the prospective worker would
26 not be in breach of the work-related condition solely because of
27 doing the work mentioned in paragraph (1)(b), on the basis of
28 information obtained:
29 (a) by logging into and using the prescribed computer system to
30 source the information; or
31 (b) unless the first person is a required system user—under an
32 arrangement by which another person logs into and uses the
33 prescribed computer system to source the information; or
34 (c) by doing any one or more things prescribed by the
35 regulations.

1 Example 1: For paragraph (b), an arrangement by contract under which the
2 contractor logs into and uses the prescribed computer system to source
3 information that is supplied to the first person.

4 Example 2: For paragraph (b), an arrangement between the first person and the
5 prospective worker under which the prospective worker logs into and
6 uses the prescribed computer system to source information that is
7 emailed directly via the system to the first person.

19 After section 245AEB

9 Insert:

245AEC Verifying permission to work—allowing non-citizens to begin work

12 A person must not allow a non-citizen (the *worker*) to begin work
13 unless the person has determined whether the worker would have
14 the required permission to do that work on the basis of information
15 obtained:

16 (a) by logging into and using the prescribed computer system to
17 source the information; or
18 (b) unless the person is a required system user—under an
19 arrangement by which another person logs into and uses the
20 prescribed computer system to source the information.

24 Example 2: For paragraph (b), an arrangement between the person and the worker
25 under which the worker logs into and uses the prescribed computer
26 system to source information that is emailed directly via the system to
27 the person.

28 Note: It is not necessary to prove a person's state of mind in proceedings for
29 a civil penalty order (see section 486ZF).

30 Civil penalty: 48 penalty units.

31 **245AED Verifying permission to work—referring non-citizens for 32 work**

33 (1) This section applies to a person (the *first person*) who operates a
34 service, whether for reward or otherwise, referring other persons to
35 third persons for work.

(2) The first person must not refer a non-citizen (the *prospective worker*) for work unless the first person has determined whether the prospective worker would have the required permission to do that work on the basis of information obtained:

- (a) by logging into and using the prescribed computer system to source the information; or
- (b) unless the first person is a required system user—under an arrangement by which another person logs into and uses the prescribed computer system to source the information.

Example 1: For paragraph (b), an arrangement by contract under which the contractor logs into and uses the prescribed computer system to source information that is supplied to the first person.

Example 2: For paragraph (b), an arrangement between the first person and the prospective worker under which the prospective worker logs into and uses the prescribed computer system to source information that is emailed directly via the system to the first person.

17 Note: It is not necessary to prove a person's state of mind in proceedings for
18 a civil penalty order (see section 486ZF).

Civil penalty: 48 penalty units.

20 At the end of Subdivision C of Division 12 of Part 2

21 Add:

245APA Prescribed computer system—information unobtainable by accessing the system

- (1) This section applies if, on a particular occasion, information cannot be sourced for the purposes of this Subdivision by logging into and using the prescribed computer system, due to circumstances beyond the reasonable control of the person seeking to log into and use the system.
- (2) Information may be obtained by such a person on that occasion, for those purposes, by doing one or more things prescribed by regulations made for the purposes of this subsection.

Note: See sections 245AB, 245AC, 245AE, 245AEA, 245AEC and 245AED.

1 **245APB Prescribed computer system—meaning of *required system***
2 ***user***

3 A person is a ***required system user*** at any time if:
4 (a) the person has been a prohibited employer within the
5 previous 12 months; or
6 (b) the person is included in a class that is determined by an
7 instrument under section 245APC; or
8 (c) the person is declared under section 245APD to be a required
9 system user.

10 Note: If this Subdivision allows or requires a person who is a required
11 system user to obtain information by the use of the prescribed
12 computer system, the person may not obtain the information by
13 arranging for another person to log into and use the system (see
14 sections 245AB, 245AC, 245AE, 245AEA, 245AEC and 245AED).

15 **245APC Prescribed computer system—determination of required**
16 **system users by class**

17 (1) The Minister may, by legislative instrument, determine a class of
18 persons for the purposes of paragraph 245APB(b).

19 (2) The Minister may determine a class of persons under
20 subsection (1) only if the Minister is satisfied that making the
21 determination is reasonably necessary to enhance the use of the
22 prescribed computer system to confirm that non-citizens allowed to
23 work, or referred for work, by those persons have the required
24 permission to do that work.

25 (3) Despite regulations made for the purposes of paragraph 44(2)(b) of
26 the *Legislation Act 2003*, section 42 (disallowance) of that Act
27 applies to an instrument made under subsection (1).

28 **245APD Prescribed computer system—declaration of specific**
29 **required system users**

30 *Declaration by the Minister*

31 (1) The Minister may, by written notice to a person, declare the person
32 to be a required system user for the purposes of
33 paragraph 245APB(c).

Review by the Administrative Appeals Tribunal

(5) Applications may be made to the Tribunal for review of either of the following:

- (a) a decision under subsection (1) to declare a person to be a required system user;
- (b) a decision under paragraph (3)(c) to renew or to further renew a declaration of a person as a required system user.

Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires that people whose interests are affected by the Minister's decision be given notice of their rights to seek review of the decision.

1 **245APE Work by non-citizens—further definitions**

2 In this Subdivision:

3 ***logging into***: a person *logs into* the prescribed computer system by
4 accessing the system under an account maintained by or for the
5 person.

6 ***prescribed computer system*** means the computer system
7 prescribed by the regulations for the purposes of this definition.

8 ***required permission***: a person has, or would have, the *required*
9 *permission* to do particular work if:

10 (a) the person is a lawful non-citizen; and
11 (b) the person is not, or would not be, in breach of any
12 work-related condition to which the visa held by the person is
13 subject solely because of doing that work.

1 **Division 2—Application**

2 **21 Application of amendments**

3 The amendments of the *Migration Act 1958* made by this Part apply in
4 relation to:

5 (a) a person who is allowed to begin work on or after the
6 commencement of this Schedule; and
7 (b) a person referred for work on or after the commencement of
8 this Schedule.

1 **Part 4—Aligning and increasing penalties for**
2 **work-related breaches**

3 *Migration Act 1958*

4 **22 Subsections 140Q(1) and (2) (penalty)**

5 Repeal the penalty, substitute:

6 Civil penalty:

7 (a) if the person is an approved work sponsor—240 penalty
8 units; or
9 (b) in any other case—60 penalty units.

10 **23 Subsection 245AB(3)**

11 Repeal the subsection, substitute:

12 *Offence*

13 (3) A person commits an offence if the person contravenes
14 subsection (1). The physical elements of the offence are set out in
15 that subsection.

16 Note: A defendant bears an evidential burden in relation to the matter in
17 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

18 Penalty: Imprisonment for 2 years or 360 penalty units, or both.

19 **24 Subsection 245AB(5)**

20 Repeal the subsection, substitute:

21 *Civil penalty provision*

22 (5) A person is liable to a civil penalty if the person contravenes
23 subsection (1).

24 Note: It is not necessary to prove a person's state of mind in proceedings for
25 a civil penalty order (see section 486ZF).

26 Civil penalty: 240 penalty units.

1 **25 Subsection 245AC(3)**

2 Repeal the subsection, substitute:

3 *Offence*

4 (3) A person commits an offence if the person contravenes
5 subsection (1). The physical elements of the offence are set out in
6 that subsection.

7 Note: A defendant bears an evidential burden in relation to the matter in
8 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

9 Penalty: Imprisonment for 2 years or 360 penalty units, or both.

10 **26 Subsection 245AC(5)**

11 Repeal the subsection, substitute:

12 *Civil penalty provision*

13 (5) A person is liable to a civil penalty if the person contravenes
14 subsection (1).

15 Note: It is not necessary to prove a person's state of mind in proceedings for
16 a civil penalty order (see section 486ZF).

17 Civil penalty: 240 penalty units.

18 **27 Subsections 245AD(1) and (2) (penalty)**

19 Repeal the penalty, substitute:

20 Note: See section 245AH for when a person is being *exploited*.

21 Penalty: Imprisonment for 5 years or 360 penalty units, or both.

22 **28 Subsections 245AD(1) and (2) (note)**

23 Repeal the note.

24 **29 Subsection 245AE(3)**

25 Repeal the subsection, substitute:

Offence

(3) A person commits an offence if the person contravenes subsection (1). The physical elements of the offence are set out in that subsection.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

Penalty: Imprisonment for 2 years or 360 penalty units, or both.

30 Subsection 245AE(5)

Repeal the subsection, substitute:

Civil penalty provision

(5) A person is liable to a civil penalty if the person contravenes subsection (1).

Note: It is not necessary to prove a person's state of mind in proceedings for a civil penalty order (see section 486ZF).

Civil penalty: 240 penalty units.

31 Subsection 245AEA(3)

Repeal the subsection, substitute:

Offence

(3) A person commits an offence if the person contravenes subsection (1). The physical elements of the offence are set out in that subsection.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

Penalty: Imprisonment for 2 years or 360 penalty units, or both.

32 Subsection 245AEA(5)

Repeal the subsection, substitute:

Civil penalty provision

(5) A person is liable to a civil penalty if the person contravenes subsection (1).

1 Note: It is not necessary to prove a person's state of mind in proceedings for
2 a civil penalty order (see section 486ZF).

3 Civil penalty: 240 penalty units.

33 Subsections 245AEB(1) and (2) (penalty)

5 Repeal the penalty, substitute:

6 Note: See section 245AH for when a person will be *exploited*.

7 Penalty: Imprisonment for 5 years or 360 penalty units, or both.

34 Subsections 245AEB(1) and (2) (note)

35 Subsection 245AK(2)

11 Repeal the subsection, substitute:

Civil penalty provision

13 (2) An executive officer of a body corporate is liable to a civil penalty
14 if the officer contravenes subsection (1).

15 Note: Section 486ZF (which provides that a person's state of mind does not
16 need to be proven in proceedings for a civil penalty order) does not
17 apply in relation to this subsection.

18 Civil penalty: 90 penalty units.

1 **Part 5—Enforceable undertakings for work-related**
2 **breaches**

3 **Division 1—Amendments**

4 ***Migration Act 1958***

5 **36 After section 245AL**

6 Insert:

7 **245ALA Enforceable undertakings**

8 ***Enforceable provisions***

9 (1) The following provisions are enforceable under Part 6 of the
10 Regulatory Powers Act:
11 (a) a work-related offence;
12 (b) a work-related provision.

13 Note: Part 6 of the Regulatory Powers Act creates a framework for
14 accepting and enforcing undertakings relating to compliance with
15 provisions.

16 ***Authorised person***

17 (2) For the purposes of Part 6 of the Regulatory Powers Act, the
18 Minister is an authorised person in relation to the provisions
19 mentioned in subsection (1).

20 (3) The Minister may, in writing, delegate the Minister's powers and
21 functions under Part 6 of the Regulatory Powers Act to an
22 authorised officer in relation to the provisions mentioned in
23 subsection (1).

24 (4) The Minister may delegate a power or function under
25 subsection (3) only if the Minister is satisfied that the authorised
26 officer has appropriate qualifications, training or experience to
27 exercise the power or perform the function.

(5) An authorised officer exercising powers or performing functions under a delegation under subsection (3) must comply with any directions of the Minister.

Relevant court

(6) For the purposes of Part 6 of the Regulatory Powers Act, an eligible court is a relevant court in relation to the provisions mentioned in subsection (1).

Enforceable undertaking may be published on the internet

(7) An authorised person in relation to a provision mentioned in subsection (1) may publish an undertaking given in relation to the provision on the Department's website.

Extension to external Territories

(8) Part 6 of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection (1), extends to a Territory to which this Act extends.

Note: See section 7 of this Act.

Relationship with civil penalty orders

(9) The Minister must not apply for an order under subsection 486R(1) (civil penalty orders) in relation to a contravention of a work-related provision by a person if an undertaking given by the person under Part 6 of the Regulatory Powers Act in relation to the contravention has not been withdrawn.

1 **Division 2—Application**

2 **37 Application of amendments**

3 Part 6 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that
4 Part applies under section 245ALA of the *Migration Act 1958*, applies
5 in relation to undertakings given on or after the commencement of this
6 Schedule.

Part 6—Compliance notices for work-related breaches

Division 1—Amendments

Migration Act 1958

38 Before section 245AM

Insert:

245ALB Compliance notices

Scope

(1) This section applies if an authorised officer reasonably believes that a person is engaging in, or has engaged in, conduct (including an omission) that constitutes or would constitute:

- (a) a work-related offence; or
- (b) a contravention of a work-related provision.

Giving a compliance notice

(2) The authorised officer may give the person a notice (a *compliance notice*) specifying action that the person must take, or must refrain from taking, to address the conduct.

18 Note: A compliance notice given under subsection (2) can be varied or
19 withdrawn under subsection 33(3) of the *Acts Interpretation Act 1901*.

(3) The compliance notice may require the person to produce reasonable evidence of compliance with the notice.

(4) The compliance notice must also:

- (a) set out the name of the person to whom the notice is given;
and
- (b) set out the name of the authorised officer giving the notice;
and
- (c) set out a summary of the conduct on which it is based; and

- 1 (d) explain that a failure to comply with the notice may
2 contravene a civil penalty provision; and
- 3 (e) explain that the person may apply to the Federal Circuit and
4 Family Court of Australia (Division 2) for a review of the
5 notice on one or more of the following grounds:
 - 6 (i) the person is not engaging, or has not engaged in, the
7 conduct specified in the notice;
 - 8 (ii) the conduct specified in the notice does not constitute a
9 work-related offence, or a contravention of a
10 work-related provision;
 - 11 (iii) the notice does not comply with subsection (2) or (3) of
12 this subsection; and
- 13 (f) set out any other matters prescribed by regulations made for
14 the purposes of this paragraph.

Person must comply with compliance notice

(5) A person who is given a compliance notice must comply with the notice.

Note: It is not necessary to prove a person's state of mind in proceedings for a civil penalty order (see section 486ZF).

Civil penalty: 48 penalty units.

Effect of compliance with compliance notice

(6) A person who complies with a compliance notice is not taken by that compliance to have admitted to engaging in the conduct constituting the offence or contravention in relation to which the notice is given.

Relationship with civil penalty provisions

(7) The Minister must not apply for an order under subsection 486R(1) (civil penalty orders) in relation to a contravention of a work-related provision by a person if:

- (a) an authorised officer has given the person a compliance notice in relation to the contravention; and
- (b) either of the following subparagraphs applies:
 - (i) the notice has not been withdrawn, and the person has complied with the notice;

- (ii) the person has made an application under subsection (8) in relation to the notice that has not been completely dealt with.

Review of compliance notice

- (8) A person who has been given a compliance notice may apply to the Federal Circuit and Family Court of Australia (Division 2) for a review of the notice on one or more of the following grounds:
 - (a) the person is not engaging, or has not engaged in, the conduct specified in the notice;
 - (b) the conduct specified in the notice does not constitute a work-related offence, or a contravention of a work-related provision;
 - (c) the notice does not comply with subsection (2), (3) or (4) of this section.
- (9) At any time after the application has been made, the court may stay the operation of the compliance notice on the terms and conditions that the court considers appropriate.
- (10) The court may confirm, cancel or vary the compliance notice after reviewing it.

39 Subsection 474(4) (after table item 6)

Insert:

6A section 245ALB Compliance notices

1 **Division 2—Application**

2 **40 Application of amendments**

3 The amendments of the *Migration Act 1958* made by this Part apply in
4 relation to conduct (including an omission) occurring before, on or after
5 the commencement of this Schedule.

1 **Part 7—Other amendments**

2 ***Migration Act 1958***

3 **41 After subsection 140RA(2)**

4 Insert:

5 (2A) The Minister may, in writing, delegate the Minister's powers and
6 functions under Part 6 of the Regulatory Powers Act to an
7 authorised officer in relation to the provision mentioned in
8 subsection (1).

9 (2B) The Minister may delegate a power or function under
10 subsection (2A) only if the Minister is satisfied that the authorised
11 officer has appropriate qualifications, training or experience to
12 exercise the power or perform the function.

13 (2C) An authorised officer exercising powers or performing functions
14 under a delegation under subsection (2A) must comply with any
15 directions of the Minister.

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