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The Parliament of the  
Commonwealth of Australia

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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## Contents

1	Short title .....	1
2	Commencement .....	1
3	Schedules .....	2
<b>Schedule 1—Amendments</b>		<b>3</b>
Part 1—New employer sanctions		3
<i>Migration Act 1958</i>		3
Part 2—Prohibition on certain employers allowing additional non-citizens to begin work		7
Division 1—Amendments		7
<i>Migration Act 1958</i>		7
Division 2—Application		17
Part 3—Use of computer system to verify immigration status		18
Division 1—Amendments		18
<i>Migration Act 1958</i>		18
Division 2—Application		26
Part 4—Aligning and increasing penalties for work-related breaches		27
<i>Migration Act 1958</i>		27
Part 5—Enforceable undertakings for work-related breaches		31
Division 1—Amendments		31
<i>Migration Act 1958</i>		31
Division 2—Application		33
Part 6—Compliance notices for work-related breaches		34
Division 1—Amendments		34
<i>Migration Act 1958</i>		34
Division 2—Application		37
Part 7—Other amendments		38
<i>Migration Act 1958</i>		38



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**

8                     (1) Each provision of this Act specified in column 1 of the table  
9                     commences, or is taken to have commenced, in accordance with  
10                    column 2 of the table. Any other statement in column 2 has effect  
11                    according to its terms.  
12



# Schedule 1—Amendments

## Part 1—New employer sanctions

### *Migration Act 1958*

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

Insert:

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

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

Insert:

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

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

Insert:

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

#### **4 After section 245AA**

Insert:

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

- (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) 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.

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.

**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".

- 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.

- 1           (2) In this Subdivision, a person ***allows*** a non-citizen to work if, and  
2           only if:
- 3           (a) the person employs the non-citizen under a contract of  
4           service; or
- 5           (b) the person engages the non-citizen, other than in a domestic  
6           context, under a contract for services; or
- 7           (c) the person participates in an arrangement, or any arrangement  
8           included in a series of arrangements, for the performance of  
9           work by the non-citizen for:
- 10           (i) the person; or
- 11           (ii) another participant in the arrangement or any such  
12           arrangement; or
- 13           (d) the person bails or licenses a chattel to the non-citizen or  
14           another person with the intention that the non-citizen will use  
15           the chattel to perform a transportation service; or
- 16           (e) the person leases or licenses premises, or a space within  
17           premises, to the non-citizen or another person with the  
18           intention that the non-citizen will use the premises or space  
19           to perform sexual services within the meaning of the  
20           *Criminal Code* (see the Dictionary to the *Criminal Code*); or
- 21           (f) the prescribed circumstances exist.

22           (3) In paragraph (2)(e):

23           ***premises*** means:

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

28           **245AYD Meaning of *migrant worker sanction***

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

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

**Schedule 1** Amendments

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

(d) both:

- (i) the person is the subject of an order made under the *Fair Work Act 2009* for contravention of a civil remedy provision (within the meaning of that Act) covered by section 245AYE; and
- (ii) the contravention is in relation to an employee who is a non-citizen.

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

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

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

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

<b>Migrant worker sanctions—civil remedy provisions of the <i>Fair Work Act 2009</i></b>			
<b>Item</b>	<b>Column 1 Subject</b>	<b>Column 2 Provision</b>	<b>Column 3 Kind of contravention</b>
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

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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



1 (b) inviting the person to make a written submission to the  
2 Minister, within the period covered by subsection (5), setting  
3 out reasons why the Minister should not make the  
4 declaration.

5 (5) The period covered by this subsection is whichever of the  
6 following periods ends later:

7 (a) the period ending 28 days after the day the person is given  
8 notice by the Minister under subsection (4);

9 (b) if a period is stated in that notice for the making of a written  
10 submission—the period stated.

11 (6) In making a decision about whether to declare a person to be a  
12 prohibited employer, the Minister must consider:

13 (a) any written submission made by the person under  
14 subsection (4) that is received by the Minister within the  
15 period covered by subsection (5); and

16 (b) any criteria prescribed by the regulations for the purposes of  
17 this paragraph.

18 *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).

30 *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.

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*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.

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

4 *Information about the non-citizen*

- 5 (3) The following information is required by this subsection:  
6 (a) the name of the non-citizen;  
7 (b) a description of the work the non-citizen is allowed to do;  
8 (c) if the non-citizen holds a visa that is subject to a work-related  
9 condition—details of the condition;  
10 (d) any other information prescribed by regulations made for the  
11 purposes of this paragraph.
- 12 (4) For the purposes of paragraph (3)(d), personal information may be  
13 prescribed only to the extent that it is reasonably necessary for  
14 monitoring compliance with this Division.

15 **245AYK Exhaustive statement of natural justice hearing rule**

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

22 **10 Section 487A (definitions of *work-related offence* and**  
23 ***work-related provision*)**

24 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*).

**15 Subsection 245AB(2)**

Repeal the subsection, substitute:

- (2) Subsection (1) does not apply if the first person is, and continues to be, reasonably satisfied that the worker is not an unlawful non-citizen 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; or
  - (c) by doing any one or more things prescribed by the regulations.

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 worker under which the worker logs into and uses the prescribed computer system to source information that is emailed directly via the system to the first person.

**16 Subsection 245AC(2)**

Repeal the subsection, substitute:

- (2) Subsection (1) does not apply if the first person is, and continues to be, reasonably satisfied that the worker is not in breach of the work-related condition solely because of doing the work referred to in paragraph (1)(a), 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; or
  - (c) by doing any one or more things prescribed by the regulations.

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 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.

3 **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.

22 **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.



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.

## **19 After section 245AEB**

Insert:

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

A person must not allow a non-citizen (the *worker*) to begin work unless the person has determined whether the 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 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 person.

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

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.

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

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

- 1 (2) The first person must not refer a non-citizen (the *prospective*  
2 *worker*) for work unless the first person has determined whether  
3 the prospective worker would have the required permission to do  
4 that work on the basis of information obtained:  
5 (a) by logging into and using the prescribed computer system to  
6 source the information; or  
7 (b) unless the first person is a required system user—under an  
8 arrangement by which another person logs into and uses the  
9 prescribed computer system to source the information.
- 10 Example 1: For paragraph (b), an arrangement by contract under which the  
11 contractor logs into and uses the prescribed computer system to source  
12 information that is supplied to the first person.
- 13 Example 2: For paragraph (b), an arrangement between the first person and the  
14 prospective worker under which the prospective worker logs into and  
15 uses the prescribed computer system to source information that is  
16 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).
- 19 Civil penalty: 48 penalty units.

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

21 Add:

### 22 **245APA Prescribed computer system—information unobtainable by** 23 **accessing the system**

- 24 (1) This section applies if, on a particular occasion, information cannot  
25 be sourced for the purposes of this Subdivision by logging into and  
26 using the prescribed computer system, due to circumstances  
27 beyond the reasonable control of the person seeking to log into and  
28 use the system.
- 29 (2) Information may be obtained by such a person on that occasion, for  
30 those purposes, by doing one or more things prescribed by  
31 regulations made for the purposes of this subsection.
- 32 Note: See sections 245AB, 245AC, 245AE, 245AEA, 245AEC and  
33 245AED.

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

A person is a ***required system user*** at any time if:

- (a) the person has been a prohibited employer within the previous 12 months; or
- (b) the person is included in a class that is determined by an instrument under section 245APC; or
- (c) the person is declared under section 245APD to be a required system user.

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

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

- (1) The Minister may, by legislative instrument, determine a class of persons for the purposes of paragraph 245APB(b).
- (2) The Minister may determine a class of persons under subsection (1) only if the Minister is satisfied that making the determination is reasonably necessary to enhance the use of the prescribed computer system to confirm that non-citizens allowed to work, or referred for work, by those persons have the required permission to do that work.
- (3) Despite regulations made for the purposes of paragraph 44(2)(b) of the *Legislation Act 2003*, section 42 (disallowance) of that Act applies to an instrument made under subsection (1).

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

*Declaration by the Minister*

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

1           (2) The Minister may declare a person to be a required system user  
2           only if the Minister is satisfied that making the declaration is  
3           reasonably necessary to help ensure that the person uses only  
4           information sourced from the prescribed computer system to  
5           confirm that non-citizens allowed to work, or referred for work, by  
6           that person have the required permission to do that work.

7           (3) A declaration given to a person under subsection (1):  
8           (a) has effect from a day specified in the declaration that is no  
9           sooner than 10 days after the day the declaration is given;  
10          and  
11          (b) stays in effect, unless sooner revoked, for a period after that  
12          day, specified in the declaration, of no longer than 12  
13          months; and  
14          (c) may be renewed, or further renewed, by the Minister for a  
15          period of no longer than 12 months (unless sooner revoked),  
16          by written notice to the person.

17          (4) If the Minister renews (or further renews) a declaration by notice to  
18          a person under paragraph (3)(c):  
19          (a) the notice of renewal (or further renewal) must be given to  
20          the person no sooner than 10 days before the declaration  
21          would otherwise stop having effect; and  
22          (b) the Minister may renew (or further renew) the declaration  
23          only if satisfied that subsection (2) continues to apply in  
24          relation to the person.

25                   *Review by the Administrative Appeals Tribunal*

26          (5) Applications may be made to the Tribunal for review of either of  
27          the following:  
28          (a) a decision under subsection (1) to declare a person to be a  
29          required system user;  
30          (b) a decision under paragraph (3)(c) to renew or to further  
31          renew a declaration of a person as a required system user.

32          Note:       Section 27A of the *Administrative Appeals Tribunal Act 1975* requires  
33                   that people whose interests are affected by the Minister's decision be  
34                   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.

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

***Migration Act 1958***

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

Repeal the penalty, substitute:

Civil penalty:

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

**23 Subsection 245AB(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.

**24 Subsection 245AB(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.

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).

#### Part 4 Aligning and increasing penalties for work-related breaches

3 Civil penalty: 240 penalty units.

5           Repeal the penalty, substitute:

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

9 Repeal the note.

11 Repeal the subsection, substitute:

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

18 Civil penalty: 90 penalty units.

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

**Division 1—Amendments**

***Migration Act 1958***

**36 After section 245AL**

Insert:

**245ALA Enforceable undertakings**

*Enforceable provisions*

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

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

*Authorised person*

- (2) For the purposes of Part 6 of the Regulatory Powers Act, the  
Minister is an authorised person in relation to the provisions  
mentioned in subsection (1).
- (3) The Minister may, in writing, delegate the Minister's powers and  
functions under Part 6 of the Regulatory Powers Act to an  
authorised officer in relation to the provisions mentioned in  
subsection (1).
- (4) The Minister may delegate a power or function under  
subsection (3) only if the Minister is satisfied that the authorised  
officer has appropriate qualifications, training or experience to  
exercise the power or perform the function.

**Schedule 1** Amendments

**Part 5** Enforceable undertakings for work-related breaches

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

4 *Relevant court*

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

8 *Enforceable undertaking may be published on the internet*

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

12 *Extension to external Territories*

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

16 Note: See section 7 of this Act.

17 *Relationship with civil penalty orders*

- 18 (9) The Minister must not apply for an order under subsection 486R(1)  
19 (civil penalty orders) in relation to a contravention of a  
20 work-related provision by a person if an undertaking given by the  
21 person under Part 6 of the Regulatory Powers Act in relation to the  
22 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.

Note: A compliance notice given under subsection (2) can be varied or 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.

15 *Person must comply with compliance notice*

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

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

20 Civil penalty: 48 penalty units.

21 *Effect of compliance with compliance notice*

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

26 *Relationship with civil penalty provisions*

- 27 (7) The Minister must not apply for an order under subsection 486R(1)  
28 (civil penalty orders) in relation to a contravention of a  
29 work-related provision by a person if:  
30 (a) an authorised officer has given the person a compliance  
31 notice in relation to the contravention; and  
32 (b) either of the following subparagraphs applies:  
33 (i) the notice has not been withdrawn, and the person has  
34 complied with the notice;

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

4 *Review of compliance notice*

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

20 **39 Subsection 474(4) (after table item 6)**

21 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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