



Migration Amendment (Strengthening Employer Compliance) Act 2024

No. 1, 2024

**An Act to amend the *Migration Act 1958*, and for
related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
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Migration Amendment (Strengthening Employer Compliance) Act 2024

No. 1, 2024

An Act to amend the *Migration Act 1958*, and for related purposes

[Assented to 20 February 2024]

The Parliament of Australia enacts:

1 Short title

This Act is the *Migration Amendment (Strengthening Employer Compliance) Act 2024*.

No. 1, 2024 *Migration Amendment (Strengthening Employer Compliance) Act 2024* 1

2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	1 July 2024.	1 July 2024

Note: This table relates only to the provisions of this Act as originally enacted.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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Part 1—New employer sanctions

Migration Act 1958

1 Before paragraph 245AA(1)(a)

Insert:

- (aa) where a person coerces, or exerts undue influence or undue pressure on, a lawful non-citizen to accept or agree to an arrangement in relation to work:
 - (i) involving a breach of a work-related condition applying to a visa held by the lawful non-citizen; or
 - (ii) to avoid an adverse effect on the lawful non-citizen's status as a lawful non-citizen; or
 - (iii) to satisfy certain requirements to provide information or documents about work the lawful non-citizen has done in Australia;
- (ab) where a person coerces, or exerts undue influence or undue pressure on, an unlawful non-citizen to accept or agree to an arrangement in relation to work to avoid an adverse effect on the unlawful non-citizen's continued presence in Australia;

1A After paragraph 245AA(2)(b)

Insert:

- (ba) section 245AGA (defines *arrangement in relation to work*);

2 After section 245AA

Insert:

245AAA Coercing etc. a lawful non-citizen to work in breach of 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, another person (the *worker*) to accept or agree to an arrangement in relation to work; and

- (b) the worker is a lawful non-citizen; and
- (c) the work is done, or is to be done, by the worker in Australia, whether for the first person or someone else; and
- (d) the worker holds a visa that is subject to a work-related condition; and
- (e) either:
 - (i) the worker is in breach of the work-related condition solely because of doing the work in accordance with the arrangement; or
 - (ii) the worker would be in breach of the work-related condition if the worker were to do the work in accordance with the arrangement.

Note: For the meaning of *arrangement in relation to work*, see section 245AGA.

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), (c), (d) and (e) 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. an unlawful non-citizen to work—adverse effect on presence in Australia

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

- (a) the first person coerces, or exerts undue influence or undue pressure on, another person (the *worker*) to accept or agree to an arrangement in relation to work; and
- (b) the worker is an unlawful non-citizen; and
- (c) the work is done, or is to be done, by the worker in Australia, whether for the first person or someone else; and
- (d) the first person's conduct mentioned in paragraph (a) results in the worker believing that, if the worker does not accept or agree to the arrangement, there will be an adverse effect on the worker's continued presence in Australia.

Note: For the meaning of *arrangement in relation to work*, see section 245AGA.

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), (c) and (d) 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.

245AAC Coercing etc. a lawful non-citizen to work—adverse effect on status etc.

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

Schedule 1 Amendments

Part 1 New employer sanctions

- (b) the worker is a lawful non-citizen (other than a holder of a permanent visa); and
- (c) the work is done, or is to be done, by the worker in Australia, whether for the first person or someone else; and
- (d) the first person's conduct mentioned in paragraph (a) results in the worker believing that, if the worker does not accept or agree to the arrangement:
 - (i) there will be an adverse effect on the worker's status as a lawful non-citizen; or
 - (ii) the worker will be unable to provide information or documents about work the worker has done in Australia that the worker is required, under this Act or the regulations, to provide in connection with a visa held by the worker or an application for a visa by the worker.

Note: For the meaning of *arrangement in relation to work*, see section 245AGA.

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), (c) and (d) 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.

2A After section 245AG

Insert:

245AGA Meaning of *arrangement in relation to work*

- (1) For the purposes of this Subdivision, ***arrangement in relation to work*** means an arrangement, in connection with a person (the ***first person***) allowing another person to work, for the other person to:
- (a) accept certain conditions; or
 - (b) perform, or refrain from performing, an activity, whether for the first person or someone else; or
 - (c) participate in, or refrain from participating in, an activity, whether for the first person or someone else.
- (2) To avoid doubt, a reference in subsection (1) to an activity includes a reference to a work-related activity or a non-work-related activity.

Examples: An arrangement in relation to work includes, but is not limited to, an arrangement for a person to:

- (a) accept unsafe housing provided or arranged by the first person or another person; or
- (b) surrender the person's passport to the first person or another person; or
- (c) perform sexual favours for the first person or another person.

Part 2—Prohibited employers

Division 1—Amendments

Migration Act 1958

3 Subsection 5(1)

Insert:

relevant workplace law has the meaning given by subsection 245APA(2).

work-related offence means:

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

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

4 Paragraph 140X(aa)

Omit “or D”, substitute “, D, E or F”.

5 In the appropriate position in Division 12 of Part 2

Insert:

Subdivision E—Prohibited employers

245AYAA Objects of this Subdivision

- (1) The objects of this Subdivision are as follows:
 - (a) to protect, to the extent possible, non-citizens (other than holders of permanent visas) from being exploited, or further exploited, by employers;

- (b) to ensure that such non-citizens are not exposed to employers or workplaces that have engaged in serious, deliberate or repeated non-compliance with certain laws;
 - (c) to ensure that non-compliance is dealt with in a way that considers the impact of any sanctions on such non-citizens, the employer and the community as a whole.
- (2) This Subdivision aims to achieve its objects by:
- (a) empowering the Minister to declare persons to be prohibited employers; and
 - (b) requiring the Minister to ensure that imposing such a prohibition, including the duration of such a prohibition, is proportionate to the person's misconduct; and
 - (c) requiring the Minister to consider the impact on non-citizens (other than holders of permanent visas) of making such a declaration; and
 - (d) encouraging employers to demonstrate their ability to:
 - (i) remediate their non-compliance; and
 - (ii) comply with the law relating to migrant worker sanctions in the future.

245AYA Overview

- (1) This Subdivision provides for the Minister to declare a person to be a prohibited employer for a specified period if:
 - (a) the person is subject to a migrant worker sanction; and
 - (b) no more than 5 years have passed since the person became subject to that sanction.
- (2) Sections 245AYE to 245AYJ set out when a person is subject to a migrant worker sanction.
- (3) While a declaration is in effect, a prohibited employer must not:
 - (a) allow certain additional non-citizens to begin work; or
 - (b) have a material role in a decision made by a body corporate or other body to allow certain additional non-citizens to begin work.
- (4) After a person stops being a prohibited employer, the person must give the Department specified information about certain lawful

non-citizens who the person allows to begin to work in the 12 month period after so ceasing.

245AYB Definitions

In this Subdivision:

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

allows a non-citizen to begin work has the meaning given by section 245AYC.

Fair Work Ombudsman means the Fair Work Ombudsman provided for by section 681 of the *Fair Work Act 2009*.

FW order means an order under Division 2 of Part 4-1 of the *Fair Work Act 2009*.

inspector has the same meaning as in the *Fair Work Act 2009*.

migrant worker sanction has the meaning given by sections 245AYE to 245AYJ.

prohibited employer has the meaning given by section 245AYD.

work means any work, whether for reward or otherwise.

245AYC Meaning of *allows a non-citizen to begin work*

- (1) A person **allows a non-citizen to begin work** at a particular time if, and only if:
 - (a) the person employs the non-citizen by entering into a contract of service at that time; or
 - (b) the person engages the non-citizen by entering into a contract for services at that time; or
 - (c) the person begins at that time to participate 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 enters into a contract at that time to bail or license 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 enters into a contract at that time to lease or license 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*); or
- (f) the prescribed circumstances exist at that time.

Note: Other parts of speech and grammatical forms of “allows a non-citizen to begin work” (for example, “the non-citizen is allowed to begin work”) have a corresponding meaning (see section 18A of the *Acts Interpretation Act 1901*).

(2) In paragraph (1)(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 *prohibited employer*

A person is a ***prohibited employer*** at a particular time if:

- (a) a declaration in relation to the person has been made under subsection 245AYK(1); and
- (b) the declaration is in effect at that time.

245AYE When a person is subject to a migrant worker sanction—bar placed on approved work sponsor etc.

Bar placed on approved work sponsor

- (1) A person is subject to a ***migrant worker sanction*** if:
 - (a) the person is an approved work sponsor; and

- (b) a bar is placed on the person under paragraph 140M(1)(c) or (d); and
- (c) either:
 - (i) the person has not requested the Minister to waive the bar in accordance with any regulations made for the purposes of section 140P; or
 - (ii) if the person has made such a request—the Minister has not waived the bar under subsection 140O(2).

Failure to comply with compliance notice

- (2) A person is subject to a **migrant worker sanction** if:
 - (a) the person is or was an approved work sponsor; and
 - (b) a civil penalty order is made against the person in relation to a contravention of subsection 140RB(5).

245AYF When a person is subject to a migrant worker sanction—conviction of work-related offence etc.

Conviction of work-related offence

- (1) A person is subject to a **migrant worker sanction** if the person is convicted of a work-related offence.

Conviction of certain offences against humanity

- (2) A person is subject to a **migrant worker sanction** if the Minister is satisfied that:
 - (a) the person has been convicted of an offence against the following provisions of the *Criminal Code*:
 - (i) Division 270 (other than section 270.7B or section 270.8 to the extent an offence against that section relates to an offence against section 270.7B);
 - (ii) Division 271 (other than Subdivision BA); and
 - (b) the person engaged in the relevant conduct in Australia; and
 - (c) the offence related, wholly or partly, to another person who, at the time the relevant conduct was engaged in, was a non-citizen (other than the holder of a permanent visa).

Conviction of certain offences against the Fair Work Act 2009 etc.

- (3) A person is subject to a **migrant worker sanction** if the Minister is satisfied that:
- (a) the person has been convicted of an offence against the *Fair Work Act 2009*, or a relevant workplace law, that is an offence of a kind prescribed by the regulations; and
 - (b) the offence related, wholly or partly, to a prescribed person who, at the time the relevant conduct was engaged in, was a non-citizen (other than the holder of a permanent visa); and
 - (c) any circumstances prescribed by the regulations apply in relation to the offence.

**245AYG When a person is subject to a migrant worker sanction—
contravention of certain civil penalty provisions etc.**

Contravention of certain civil penalty provisions of this Act

- (1) A person is subject to a **migrant worker sanction** if:
- (a) a civil penalty order has been made against the person in relation to the contravention of a work-related provision; or
 - (b) both of the following apply:
 - (i) a civil penalty order has been made against the person in relation to a contravention of another civil penalty provision prescribed by the regulations;
 - (ii) the contravention related, wholly or partly, to another person who, at the time of the contravention, was a non-citizen (other than the holder of a permanent visa).

Contravention of certain provisions of relevant workplace law

- (2) A person is subject to a **migrant worker sanction** if the Minister is satisfied that:
- (a) a court has made an order under a relevant workplace law that the person pay a pecuniary penalty for a contravention of a provision of that law; and
 - (b) the provision is prescribed by the regulations; and
 - (c) the order was not made in criminal proceedings; and

- (d) the contravention related, wholly or partly, to a prescribed person who, at the time of the contravention, was a non-citizen (other than the holder of a permanent visa); and
- (e) any circumstances prescribed by the regulations apply in relation to the contravention of the provision.

**245AYH When a person is subject to a migrant worker sanction—
contravention of certain civil remedy provisions of the
*Fair Work Act 2009***

Contravention of civil remedy provisions (within the meaning of the Fair Work Act 2009)

- (1) A person is subject to a **migrant worker sanction** if the Minister is satisfied that:
 - (a) a FW order has been made against the person in relation to a contravention of a civil remedy provision (within the meaning of the *Fair Work Act 2009*); and
 - (b) the contravention related, wholly or partly, to another person who, at the time of the contravention, was a non-citizen (other than the holder of a permanent visa).

Contravention relating to the advertisement of rates of pay

- (2) A person is subject to a **migrant worker sanction** if the Minister is satisfied that:
 - (a) a FW order has been made against the person in relation to a contravention of subsection 536AA(1) or (2) of the *Fair Work Act 2009* (employer obligations in relation to advertising rates of pay); or
 - (b) both of the following apply:
 - (i) a FW order has been made against the person in relation to a contravention of subsection 716(5) of that Act (failure to comply with compliance notice);
 - (ii) the relevant compliance notice given under section 716 of that Act related to a contravention of subsection 536AA(1) or (2) of that Act (employer obligations in relation to advertising rates of pay).

Contravention relating to compliance notices

- (3) A person is subject to a **migrant worker sanction** if the Minister is satisfied that:
- (a) a FW order has been made against the person in relation to a contravention of subsection 716(5) of the *Fair Work Act 2009* (failure to comply with compliance notice); and
 - (b) the relevant compliance notice given under section 716 of that Act related to a contravention (the **original contravention**) of:
 - (i) a provision of the National Employment Standards (within the meaning of that Act); or
 - (ii) a term of a modern award (within the meaning of that Act); or
 - (iii) a term of an enterprise agreement (within the meaning of that Act); or
 - (iv) a term of a workplace determination (within the meaning of that Act); or
 - (v) a term of a national minimum wage order (within the meaning of that Act); or
 - (vi) a term of an equal remuneration order (within the meaning of that Act); and
 - (c) the original contravention related, wholly or partly, to another person who, at the time of the original contravention, was a non-citizen (other than the holder of a permanent visa).

**245AYI When a person is subject to a migrant worker sanction—
contravention of term of enforceable undertaking etc.**

*Undertaking in relation to contravention of civil remedy provision
(within the meaning of the Fair Work Act 2009)*

- (1) A person (the **first person**) is subject to a **migrant worker sanction** if the Minister is satisfied that:
- (a) the Fair Work Ombudsman has accepted an undertaking given by the first person under section 715 of the *Fair Work Act 2009* in relation to a contravention of a civil remedy provision (within the meaning of that Act); and

- (b) a court has made one or more orders under subsection 715(7) of that Act in relation to the undertaking; and
 - (c) the contravention related, wholly or partly, to another person who, at the time of the contravention, was a non-citizen (other than the holder of a permanent visa).
- (2) A person (the **first person**) is subject to a **migrant worker sanction** if the Minister is satisfied that:
- (a) the Fair Work Ombudsman has accepted an undertaking given by the first person under section 715 of the *Fair Work Act 2009* in relation to a contravention of a civil remedy provision (within the meaning of that Act); and
 - (b) all of the following apply:
 - (i) the undertaking has not been withdrawn;
 - (ii) an application for an order under subsection 715(7) of that Act in relation to the undertaking has not been made;
 - (iii) a court has not made one or more orders under that subsection in relation to the undertaking; and
 - (c) the contravention related, wholly or partly, to another person who, at the time of the contravention, was a non-citizen (other than the holder of a permanent visa); and
 - (d) the first person has contravened a term of the undertaking.

Undertaking in relation to contravention relating to advertisement of rates of pay

- (3) A person is subject to a **migrant worker sanction** if the Minister is satisfied that:
- (a) the Fair Work Ombudsman has accepted an undertaking given by the person under section 715 of the *Fair Work Act 2009* in relation to a contravention of subsection 536AA(1) or (2) of that Act (employer obligations in relation to advertising rates of pay); and
 - (b) a court has made one or more orders under subsection 715(7) of that Act in relation to the undertaking.
- (4) A person is subject to a **migrant worker sanction** if the Minister is satisfied that:
-

- (a) the Fair Work Ombudsman has accepted an undertaking given by the person under section 715 of the *Fair Work Act 2009* in relation to a contravention of subsection 536AA(1) or (2) of that Act (employer obligations in relation to advertising rates of pay); and
- (b) all of the following apply:
 - (i) the undertaking has not been withdrawn;
 - (ii) an application for an order under subsection 715(7) of that Act in relation to the undertaking has not been made;
 - (iii) a court has not made one or more orders under that subsection in relation to the undertaking; and
- (c) the person has contravened a term of the undertaking.

**245AYJ When a person is subject to a migrant worker sanction—
failure to comply with certain compliance notices**

Compliance notice in relation to contravention of relevant fair work provision

- (1) A person (the **first person**) is subject to a **migrant worker sanction** if the Minister is satisfied that:
 - (a) an inspector has given the first person a compliance notice under subsection 716(2) of the *Fair Work Act 2009* in relation to a contravention of:
 - (i) a provision of the National Employment Standards (within the meaning of that Act); or
 - (ii) a term of a modern award (within the meaning of that Act); or
 - (iii) a term of an enterprise agreement (within the meaning of that Act); or
 - (iv) a term of a workplace determination (within the meaning of that Act); or
 - (v) a term of a national minimum wage order (within the meaning of that Act); or
 - (vi) a term of an equal remuneration order (within the meaning of that Act); and
 - (b) a court has confirmed the compliance notice after reviewing it under subsection 717(1) of that Act; and

- (c) the contravention related, wholly or partly, to another person who, at the time of the contravention, was a non-citizen (other than the holder of a permanent visa); and
 - (d) the first person has failed to comply with the compliance notice and the first person does not have a reasonable excuse for so failing.
- (2) A person (the **first person**) is subject to a **migrant worker sanction** if the Minister is satisfied that:
- (a) an inspector has given the first person a compliance notice under subsection 716(2) of the *Fair Work Act 2009* in relation to a contravention of:
 - (i) a provision of the National Employment Standards (within the meaning of that Act); or
 - (ii) a term of a modern award (within the meaning of that Act); or
 - (iii) a term of an enterprise agreement (within the meaning of that Act); or
 - (iv) a term of a workplace determination (within the meaning of that Act); or
 - (v) a term of a national minimum wage order (within the meaning of that Act); or
 - (vi) a term of an equal remuneration order (within the meaning of that Act); and
 - (b) all of the following apply:
 - (i) the compliance notice has not been withdrawn;
 - (ii) the first person has not made an application under subsection 717(1) of that Act in relation to the compliance notice;
 - (iii) a court has not cancelled the compliance notice after reviewing it under that subsection; and
 - (c) the contravention related, wholly or partly, to another person who, at the time of the contravention, was a non-citizen (other than the holder of a permanent visa); and
 - (d) the first person has failed to comply with the compliance notice and the first person does not have a reasonable excuse for so failing.
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Compliance notice in relation to contravention relating to advertisement of rates of pay

- (3) A person is subject to a **migrant worker sanction** if the Minister is satisfied that:
- (a) an inspector has given the person a compliance notice under subsection 716(2) of the *Fair Work Act 2009* in relation to a contravention of subsection 536AA(1) or (2) of that Act (employer obligations in relation to advertising rates of pay); and
 - (b) a court has confirmed the compliance notice after reviewing it under subsection 717(1) of that Act; and
 - (c) the person has failed to comply with the compliance notice and the person does not have a reasonable excuse for so failing.
- (4) A person is subject to a **migrant worker sanction** if the Minister is satisfied that:
- (a) an inspector has given the person a compliance notice under subsection 716(2) of the *Fair Work Act 2009* in relation to a contravention of subsection 536AA(1) or (2) of that Act (employer obligations in relation to advertising rates of pay); and
 - (b) all of the following apply:
 - (i) the compliance notice has not been withdrawn;
 - (ii) the person has not made an application under subsection 717(1) of that Act in relation to the compliance notice;
 - (iii) a court has not cancelled the compliance notice after reviewing it under that subsection; and
 - (c) the person has failed to comply with the compliance notice and the person does not have a reasonable excuse for so failing.

245AYK Declaration of person as prohibited employer

- (1) The Minister may, in writing, declare a person to be a prohibited employer for a period if:
- (a) the person is subject to a migrant worker sanction under a particular provision of this Subdivision; and

- (b) the period of 5 years starting on the day the person became subject to a migrant worker sanction under that provision has not ended.

Note: A person may be subject to a migrant worker sanction under more than one provision of this Subdivision or subject to a migrant worker sanction multiple times under a single such provision. There is a separate 5 year period each time the person becomes subject to a migrant worker sanction.

- (2) A declaration made under subsection (1) is not a legislative instrument.

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

Process before making declaration

- (3) Before the Minister declares a person to be a prohibited employer for a period, the Minister must give the person a written notice:
- (a) stating that the Minister proposes to make such a declaration and the reasons for it; and
 - (b) inviting the person to make a written submission to the Minister, within the period covered by subsection (4), setting out reasons why the Minister should not make the declaration.
- (4) The period covered by this subsection is whichever of the following periods ends later:
- (a) the period ending 28 days after the day the person is given notice by the Minister under subsection (3);
 - (b) if a period is stated in that notice for the making of a written submission—the period stated.
- (5) In making a decision about whether to declare a person (the **first person**) to be a prohibited employer for a period, the Minister must consider:
- (a) any written submission made by the first person under subsection (3) that is received by the Minister within the period covered by subsection (4); and
 - (b) the nature and severity of the non-compliance (the **relevant non-compliance**) to which the migrant worker sanction relates; and

- (c) the impact the relevant non-compliance has had on:
 - (i) the non-citizen to whom the migrant worker sanction relates; and
 - (ii) any other individuals affected by the non-compliance; and
 - (iii) the relevant industry, including impact on the reputation of the industry, economic repercussions and any other relevant issues that may have an impact on the operations of the industry; and
- (d) whether the relevant non-compliance was intentional, reckless or inadvertent; and
- (e) the likely impact making the declaration would have on:
 - (i) other persons employed by the first person; and
 - (ii) services in the community provided by the first person; and
- (f) the first person's history of compliance or non-compliance with the laws to which migrant worker sanctions relate; and
- (g) the first person's response to the relevant non-compliance; and
- (h) how much time has passed since the relevant non-compliance occurred and any sanctions that have already been imposed on the first person in relation to the relevant non-compliance; and
- (i) any action the first person has taken to report the relevant non-compliance or to ensure future compliance with the laws to which migrant worker sanctions relate.

Notification and duration of declaration

- (6) If the Minister declares a person to be a prohibited employer, the Minister must, as soon as reasonably practicable, give the person a copy of the declaration.
- (7) The declaration comes into effect at the start of whichever of the following days is later:
 - (a) the day after the day the declaration is given to the person;
 - (b) the day stated in the declaration as the day the declaration comes into effect.

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(8) The declaration has effect during the period specified in the declaration (unless sooner revoked).

(8A) For the purposes of subsection (8), the maximum period that can be specified in the declaration is set out in the following table.

Item	If the non-compliance in relation to which the person is subject to a migrant worker sanction is ...	the maximum period for the declaration is ...
1	an offence against one or more of the following provisions of the <i>Criminal Code</i> : (a) Division 270 (other than section 270.7B or section 270.8 to the extent an offence against that section relates to an offence against section 270.7B); (b) Division 271 (other than Subdivision BA)	No maximum period
2	another offence (other than an offence mentioned in item 2)	10 years
3	any other non-compliance not mentioned in item 1 or 2	5 years

Review by the Administrative Appeals Tribunal

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

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.

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

- (1) A person (the *first person*) contravenes this subsection if:
- (a) the first person is a prohibited employer at a particular time; and
 - (b) either:

- (i) the first person allows a non-citizen to begin work at that time; or
- (ii) the first person has a material role in a decision made by a body corporate or other body to allow a non-citizen to begin work at that time; and
- (c) at that time, the non-citizen is either:
 - (i) an unlawful non-citizen; or
 - (ii) a lawful non-citizen (other than a holder of a permanent visa).

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 subparagraph (1)(b)(ii) is intention by the first person.

Civil penalty provision

- (4) 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.

245AYM Publishing information about prohibited employers

- (1) If the Minister makes a declaration under subsection 245AYK(1) in relation to a person, the Minister must cause to be published on the Department's website the following information:
 - (a) the name of the person;
 - (b) the person's ABN (if any);
 - (c) any other information that the Minister considers is reasonably necessary to identify the person;
 - (d) the reasons for making the declaration;
 - (e) the period for which the declaration has effect.

- (2) Subsection (1) does not apply in the prescribed circumstances.
- (3) Information published under subsection (1) must not include personal information about any individual other than the prohibited employer.
- (4) No civil liability arises from action taken by a person in good faith in publishing information under subsection (1).
- (5) To avoid doubt, the Minister is not required to arrange for the removal, from the Department's website, of information published under subsection (1) when the person stops being a prohibited employer.

245AYN Former prohibited employers to give certain information

- (1) This section applies if:
 - (a) a person was a prohibited employer for a particular period (the *prohibition period*); and
 - (b) the person allows a non-citizen to begin work on a particular day (the *start day*) during the 12-month period starting on the day after the prohibition period ends; and
 - (c) the non-citizen is a lawful non-citizen (other than the holder of a permanent visa).
- (2) The person must, before the end of the 28-day period starting on the start day, give the Department a written notice that:
 - (a) sets out the name of the non-citizen; and
 - (b) specifies the kind of visa held by the non-citizen; and
 - (c) specifies the work to be done by the non-citizen; and
 - (d) if the non-citizen holds a visa that is subject to one or more work-related conditions:
 - (i) sets out each of those conditions; and
 - (ii) states that the non-citizen will not be in breach of those conditions solely because of doing that work; and
 - (e) sets out any other prescribed information.
- (3) A person is liable to a civil penalty if the person contravenes subsection (2).

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.

- (4) Before the Governor-General makes a regulation for the purposes of paragraph (2)(e) prescribing information that is personal information about an individual, the Minister must be satisfied that the information is reasonably necessary for monitoring compliance with Subdivisions C, E or F of this Division.

245AYO Contravening civil penalty provisions

- (1) This section applies if a civil penalty provision in this Subdivision provides that a person contravening another provision of this Subdivision (the *conduct rule provision*) is liable to a civil penalty.
- (2) For the purposes of this Act, the person is taken to contravene the civil penalty provision if the person contravenes the conduct rule provision.

6 Section 487A

Repeal the following definitions:

- (a) definition of *work-related offence*;
- (b) definition of *work-related provision*.

Division 2—Application provisions

7 Application—bar placed on approved work sponsor etc.

- (1) Subsection 245AYE(1) of the *Migration Act 1958*, as inserted by this Part, applies in relation to a bar placed on a person under paragraph 140M(1)(c) or (d) of that Act on or after the commencement of this item (whether the relevant conduct or omission was engaged in before, on or after that commencement).
- (2) Subsection 245AYE(2) of the *Migration Act 1958*, as inserted by this Part, applies in relation to a civil penalty order made on or after the commencement of this item (whether the relevant conduct or omission was engaged in before, on or after that commencement).

8 Application—conviction of work-related offence etc.

Section 245AYF of the *Migration Act 1958*, as inserted by this Part, applies in relation to a conviction that occurs on or after the commencement of this item (whether the relevant conduct or omission was engaged in before, on or after that commencement).

9 Application—contravention of certain civil penalty provisions etc.

- (1) Subsection 245AYG(1) of the *Migration Act 1958*, as inserted by this Part, applies in relation to a civil penalty order made on or after the commencement of this item (whether the relevant conduct or omission was engaged in before, on or after that commencement).
- (2) Subsection 245AYG(2) of the *Migration Act 1958*, as inserted by this Part, applies in relation to an order made under a relevant workplace law on or after the commencement of this item (whether the relevant conduct or omission was engaged in before, on or after that commencement).

10 Application—contravention of certain civil remedy provisions of the *Fair Work Act 2009*

Section 245AYH of the *Migration Act 1958*, as inserted by this Part, applies in relation to a FW order made on or after the commencement of this item (whether the relevant conduct or omission was engaged in before, on or after that commencement).

11 Application—contravention of term of enforceable undertaking etc.

Section 245AYI of the *Migration Act 1958*, as inserted by this Part, applies in relation to an undertaking accepted under section 715 of the *Fair Work Act 2009* on or after the commencement of this item (whether the relevant conduct or omission was engaged in before, on or after that commencement).

12 Application—failure to comply with certain compliance notices

Section 245AYJ of the *Migration Act 1958*, as inserted by this Part, applies in relation to a compliance notice given under subsection 716(2) of the *Fair Work Act 2009* on or after the commencement of this item (whether the relevant conduct or omission was engaged in before, on or after that commencement).

Part 3—Aligning and increasing penalties for work-related breaches

Migration Act 1958

13 Subsection 140Q(1) (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.

14 Subsection 140Q(2) (penalty)

Repeal the penalty, substitute:

Civil penalty: 240 penalty units.

15 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.

16 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.

17 Subsection 245AC(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.

18 Subsection 245AC(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.

19 Subsections 245AD(1) and (2) (penalty and note)

Repeal the penalty and the note, substitute:

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

Penalty: Imprisonment for 5 years or 900 penalty units, or both.

20 Subsection 245AE(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.

21 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.

22 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.

23 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).

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.

24 Subsections 245AEB(1) and (2) (penalty and note)

Repeal the penalty and the note, substitute:

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

Penalty: Imprisonment for 5 years or 900 penalty units, or both.

25 Subsection 245AK(2)

Repeal the subsection, substitute:

Civil penalty provision

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

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

Civil penalty: 240 penalty units.

Part 4—Enforceable undertakings for work-related breaches

Migration Act 1958

26 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.
- (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.

27 Application provision

An undertaking under Part 6 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under section 245ALA of the *Migration Act 1958*, may be given in relation to conduct (including an omission) engaged in before, on or after the commencement of this item.

Part 5—Compliance notices for work-related breaches etc.

Division 1—Amendments

Migration Act 1958

28 At the end of subsection 140K(1)

Add:

; (d) an authorised officer may give the person a compliance notice under section 140RB.

29 At the end of subsection 140K(2)

Add:

; (d) an authorised officer may give the person a compliance notice under section 140RB.

30 After subsection 140RA(3)

Insert:

Relationship with compliance notices

(3A) The authorised person in relation to the provision mentioned in subsection (1) must not accept an undertaking from a person in relation to a sponsorship obligation if that person has been given a notice under section 140RB in relation to a contravention relating to the sponsorship obligation.

31 At the end of Subdivision D of Division 3A of Part 2

Add:

140RB Compliance notices

Scope

(1) This section applies if an authorised officer reasonably believes that a person who is or was an approved work sponsor has

contravened subsection 140Q(1) or (2) (failing to satisfy sponsorship obligations).

Giving a compliance notice

- (2) The authorised officer may give the person a notice (a **compliance notice**) specifying action that the person must, within such reasonable time as is specified in the notice, take or refrain from taking to address the contravention.

Note: The compliance notice may be varied or revoked 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; and
 - (b) set out the name of the authorised officer; and
 - (c) set out a summary of the contravention; and
 - (d) explain that a failure to comply with the notice may contravene a civil penalty provision; and
 - (e) set out any other prescribed matters.

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 the contravention in relation to which the notice is given.

Relationship with enforceable undertakings

- (7) An authorised officer must not give a person a compliance notice in relation to a contravention relating to a sponsorship obligation if:

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Part 5 Compliance notices for work-related breaches etc.

- (a) the person has given an undertaking under section 140RA in relation to that sponsorship obligation; and
- (b) the undertaking has not been withdrawn.

Relationship with civil penalty provisions

- (8) The Minister must not apply for an order under subsection 486R(1) (civil penalty orders) in relation to a contravention of subsection 140Q(1) or (2) 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 to a court for judicial review of the decision to give the notice and the application has not been completely dealt with.

32 After paragraph 140X(a)

Insert:

- (aaa) for the purpose of investigating whether a person who is or was an approved work sponsor has contravened subsection 140RB(5); or

33 In the appropriate position in Division 12 of Part 2

Insert:

Subdivision F—Compliance notices for work-related breaches

245AYP Compliance notices

Scope

- (1) This section applies if an authorised officer reasonably believes that a person has contravened a conduct rule provision (within the meaning of subsection 245AL(1) or 245AYO(1)).

Giving a compliance notice

- (2) The authorised officer may give the person a notice (a **compliance notice**) specifying action that the person must, within such reasonable time as is specified in the notice, take or refrain from taking to address the contravention.

Note: The compliance notice may be varied or revoked 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; and
 - (b) set out the name of the authorised officer; and
 - (c) set out a summary of the contravention; and
 - (d) explain that a failure to comply with the notice may contravene a civil penalty provision; and
 - (e) set out any other prescribed matters.

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 the contravention in relation to which the notice is given.

Relationship with enforceable undertakings

- (7) An authorised officer must not give a person a compliance notice in relation to a contravention if:
- (a) the person has given an undertaking under section 245ALA in relation to the contravention; and
 - (b) the undertaking has not been withdrawn.

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Relationship with civil penalty provisions

- (8) The Minister must not apply for an order under subsection 486R(1) (civil penalty orders) in relation to a contravention of a provision mentioned in subsection (1) of this section 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 to a court for judicial review of the decision to give the notice and the application has not been completely dealt with.

34 Subsection 474(4) (before table item 1)

Insert:

1A	section 140RB	Compliance notices for failing to satisfy sponsorship obligations
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35 Subsection 474(4) (after table item 6)

Insert:

6A	section 245AYP	Compliance notices for work-related breaches
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Division 2—Application provision

36 Application of amendments

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

Part 6—Other amendments

Migration Act 1958

37 Subsection 116(1A)

Repeal the subsection, substitute:

- (1A) The regulations may do any one or more of the following:
- (a) prescribe matters to which the Minister must, or must not, have regard in determining whether the Minister is satisfied as mentioned in:
 - (i) a paragraph of subsection (1) or (1AC); or
 - (ii) subsection (1AA) or (1AB); or
 - (b) prescribe matters to which the Minister may have regard in determining whether the Minister is satisfied as mentioned in:
 - (i) a paragraph of subsection (1) or (1AC); or
 - (ii) subsection (1AA) or (1AB); or
 - (c) specify the weight to be given to a matter prescribed under paragraph (a) or (b) of this subsection.
- (1B) Subsection (1A) does not limit the matters to which the Minister may have regard in determining whether the Minister is satisfied as mentioned in:
- (a) a paragraph of subsection (1) or (1AC); or
 - (b) subsection (1AA) or (1AB).

38 After subsection 140RA(2)

Insert:

- (2A) 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 provision mentioned in subsection (1).
- (2B) The Minister may delegate a power or function under subsection (2A) only if the Minister is satisfied that the authorised

officer has appropriate qualifications, training or experience to exercise the power or perform the function.

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

39 Section 235

Repeal the section.

40 Subsection 245AA(4)

Repeal the subsection.

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

Add:

245APA Effect of this Subdivision on the validity of certain contracts is to be disregarded

- (1) For the purposes of a relevant workplace law, any effect of this Subdivision on the validity of a contract of service, or the validity of a contract for services, is to be disregarded.

- (2) In this section:

relevant workplace law means:

- (a) another law of the Commonwealth (other than the *Fair Work Act 2009*) that regulates the relationships between the parties to a contract of service, or a contract for services, in relation to the performance of work; or
- (b) a law of a State or Territory that regulates the relationships between the parties to a contract of service, or a contract for services, in relation to the performance of work;

and includes a law dealing with occupational health and safety matters and a law dealing with workers' compensation.

Note: Section 40B of the *Fair Work Act 2009* also provides that for the purposes of that Act, any effect of this Act, or an instrument made under this Act, on the validity of a contract of employment, or a contract for services, is to be disregarded.

*[Minister's second reading speech made in—
House of Representatives on 22 June 2023
Senate on 12 September 2023]*

(89/23)

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