

EXPOSURE DRAFT

2019-2020-2021

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

EXPOSURE DRAFT

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**

EXPOSURE DRAFT

EXPOSURE DRAFT

Contents

1	Short title.....	1
2	Commencement.....	1
3	Schedules.....	2
Schedule 1—Amendments		3
Part 1—New employer sanctions		3
<i>Migration Act 1958</i>		3
Part 2—Prohibition on certain employers employing additional non-citizens		7
Division 1—Amendments		7
<i>Migration Act 1958</i>		7
Division 2—Application		14
Part 3—Use of computer system to verify immigration status		16
Division 1—Amendments		16
<i>Migration Act 1958</i>		16
Division 2—Application		23
Part 4—Aligning and increasing penalties for work-related breaches		24
<i>Migration Act 1958</i>		24
Part 5—Enforceable undertakings for work-related breaches		28
Division 1—Amendments		28
<i>Migration Act 1958</i>		28
Division 2—Application		29
Part 6—Compliance notices for work-related breaches		30
Division 1—Amendments		30
<i>Migration Act 1958</i>		30
Division 2—Application		32
Part 7—Other amendments		33
<i>Migration Act 1958</i>		33

EXPOSURE DRAFT

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

EXPOSURE DRAFT

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 12 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	

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

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

7 **3 Schedules**

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9 repealed as set out in the applicable items in the Schedule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

EXPOSURE DRAFT

Amendments **Schedule 1**
New employer sanctions **Part 1**

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) resulting in the non-citizen being unable 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

EXPOSURE DRAFT

Schedule 1 Amendments

Part 1 New employer sanctions

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

9 *Offence*

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

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

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

17 *Civil penalty provision*

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

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

22 Civil penalty: 240 penalty units.

23 **245AAB Coercing etc. a non-citizen by using migration rules**

- 24 (1) A person (the *first person*) contravenes this subsection if:
25 (a) the first person coerces, or exerts undue influence or undue
26 pressure on, a non-citizen to accept or agree to an
27 arrangement in relation to work; and
28 (b) that work is carried out, or is to be carried out, by the
29 non-citizen in Australia, whether for the first person or
30 someone else; and

EXPOSURE DRAFT

- 1 (c) the non-citizen believes that, or there are reasonable grounds
2 to believe that, the non-citizen must accept or agree to the
3 arrangement:
4 (i) to satisfy a work-related visa requirement; or
5 (ii) to avoid an adverse effect on the non-citizen's
6 immigration status under Division 1.

7 *Offence*

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

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

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

15 *Civil penalty provision*

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

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: 240 penalty units.

21 *Meaning of work-related visa requirement*

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

28 **5 Subsection 245AN(3)**

29 Omit "or 245AC" (wherever occurring), substitute " , 245AC, 245AAA
30 or 245AAB".

EXPOSURE DRAFT

Schedule 1 Amendments

Part 1 New employer sanctions

- 1 **6 Subsection 245AN(4)**
2 Omit “or 245AEA” (wherever occurring), substitute “, 245AEA,
3 245AAA or 245AAB”.

EXPOSURE DRAFT

Amendments **Schedule 1**
Prohibition on certain employers employing additional non-citizens **Part 2**

1 **Part 2—Prohibition on certain employers employing**
2 **additional non-citizens**

3 **Division 1—Amendments**

4 ***Migration Act 1958***

5 **7 Subsection 5(1)**

6 Insert:

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

9 *employs*: for when a person *employs* a non-citizen for the purposes
10 of Subdivision E of Division 12 of Part 2, see section 245AYB.

11 *prohibited employer*: see section 245AYC.

12 *work-related offence* means:

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

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

21 **8 Paragraph 140X(aa)**

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

23 **9 At the end of Division 12 of Part 2**

24 Add:

EXPOSURE DRAFT

Schedule 1 Amendments

Part 2 Prohibition on certain employers employing additional non-citizens

1 **Subdivision E—Prohibition on certain employers employing**
2 **additional non-citizens**

3 **245AYA Overview**

- 4 (1) This Subdivision sets out the circumstances in which certain
5 persons (called “prohibited employers”) may be prohibited from
6 employing additional non-citizens.
- 7 (2) The following persons may be declared to be prohibited
8 employers:
- 9 (a) a person who is an approved work sponsor subject to a bar
10 imposed by the Minister under paragraph 140M(1)(c) or (d);
11 (b) a person who is convicted of a work-related offence;
12 (c) a person who is the subject of a civil penalty order in relation
13 to contravention of a work-related provision;
14 (d) a person who is the subject of an order for contravention of
15 certain civil remedy provisions under the *Fair Work Act 2009*
16 in relation to the employment of a non-citizen.
- 17 (3) The period during which a prohibited employer is subject to a
18 prohibition under this Subdivision is specified in the declaration.
- 19 (4) A prohibited employer must not start to employ additional
20 non-citizens after the day the declaration comes into effect.
- 21 (5) A person who stops being a prohibited employer may start to
22 employ additional non-citizens but is subject to additional
23 reporting obligations for 12 months.

24 **245AYB Meaning of *employs***

25 For the purposes of this Subdivision, a person *employs* a
26 non-citizen if, and only if:

- 27 (a) the person employs the non-citizen under a contract of
28 service; or
29 (b) the person engages the non-citizen, other than in a domestic
30 context, under a contract for services.

EXPOSURE DRAFT

1 **245AYC Meaning of *prohibited employer***

2 A person is a *prohibited employer* if the person is declared by the
3 Minister to be a prohibited employer under subsection 245AYD(1).

4 **245AYD Declaration of person as prohibited employer**

5 *Minister may declare person to be prohibited employer*

- 6 (1) The Minister may, in writing, declare a person covered by
7 subsection (4) to be a prohibited employer.
- 8 (2) In making a decision about whether to declare a person to be a
9 prohibited employer, the Minister must consider:
- 10 (a) any written submission made by the person under
11 subsection (5) that is received by the Minister within the
12 period covered by subsection (6); and
- 13 (b) any criteria prescribed by the regulations for the purposes of
14 this paragraph.
- 15 (3) A declaration made under subsection (1) is not a legislative
16 instrument.

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

19 *Prohibited employers—persons who may be declared*

- 20 (4) A person is covered by this subsection if:
- 21 (a) the person is an approved work sponsor who is subject to a
22 bar for a specified period imposed by the Minister under
23 paragraph 140M(1)(c) or (d); or
- 24 (b) the person is convicted of a work-related offence; or
- 25 (c) the person is the subject of a civil penalty order in relation to
26 the contravention of a work-related provision; or
- 27 (d) both:
- 28 (i) the person is the subject of an order made under the
29 *Fair Work Act 2009* for contravention of a civil remedy
30 provision (within the meaning of that Act) covered by
31 subsection (10) of this section; and

EXPOSURE DRAFT

Schedule 1 Amendments

Part 2 Prohibition on certain employers employing additional non-citizens

- 1 (ii) the contravention is in relation to an employee who is a
2 non-citizen.

3 *Process before making declaration*

- 4 (5) Before the Minister declares a person to be a prohibited employer,
5 the Minister must give the person a written notice:
6 (a) stating that the Minister proposes to make such a declaration
7 and the reasons for it; and
8 (b) inviting the person to make a written submission to the
9 Minister, within the period covered by subsection (6), setting
10 out reasons why the Minister should not make the
11 declaration.
- 12 (6) The period covered by this subsection is whichever of the
13 following periods ends later:
14 (a) the period ending 28 days after the day the person is given
15 notice by the Minister under subsection (5);
16 (b) if a period is stated in that notice for the making of a written
17 submission—the period stated.

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 the later of the
23 following days:
24 (a) the day after the day the declaration is given to the prohibited
25 employer;
26 (b) if a day is stated in the declaration as the day the declaration
27 comes into effect—that day.
- 28 (9) The declaration has effect during the period specified in the
29 declaration (unless sooner revoked).

EXPOSURE DRAFT

Provisions of Fair Work Act 2009

- (10) For the purposes of subparagraph (4)(d)(i), the civil remedy provisions of the *Fair Work Act 2009* set out in the table below are covered by this subsection.

Civil remedy provisions of the *Fair Work Act 2009*

Item	Subject	Provision
1	Contravening the National Employment Standards	Subsection 44(1)
2	Contravening a modern award	Section 45
3	Contravening an enterprise agreement	Section 50
4	Contravening a workplace determination	Section 280
5	Contravening a national minimum wage order	Section 293
6	Contravening an equal remuneration order	Section 305
7	Method and frequency of payment	Subsection 323(1)
8	Method and frequency of payment—particular method	Subsection 323(3)
9	Unreasonable requirements to spend or pay amount	Subsection 325(1)
10	Unreasonable requirements to spend or pay amount—prospective employment	Subsection 325(1A)
11	Employer must comply with guarantee of annual earnings	Subsection 328(1)
12	Employer must comply with guarantee of annual earnings for period before termination	Subsection 328(2)
13	Employer must give notice of consequences of guarantee of annual earnings	Subsection 328(3)

Review by the Administrative Appeals Tribunal

- (11) 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.

EXPOSURE DRAFT

Schedule 1 Amendments

Part 2 Prohibition on certain employers employing additional non-citizens

245AYE Prohibition on employing additional non-citizens

- (1) A person contravenes this subsection if:
- (a) the person is a prohibited employer; and
 - (b) the person starts to employ, or has a material role in a decision made by a body corporate to start to employ, a non-citizen who:
 - (i) does not hold a visa; or
 - (ii) holds a visa other than a permanent visa.

- (2) 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.

245AYF Publishing information about prohibited employers

Minister must publish details on website

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

Prohibited employers—required information

- (3) The required information is:
- (a) the name of the prohibited employer; and
 - (b) if the prohibited employer has an ABN—the ABN; and
 - (c) any other information that the Minister considers is reasonably necessary to identify the prohibited employer; and
 - (d) if the prohibited employer is:
 - (i) an approved work sponsor who is subject to a bar for a specified period imposed by the Minister under paragraph 140M(1)(c) or (d)—a brief summary of the

EXPOSURE DRAFT

- 1 failure to satisfy a sponsorship obligation, or other
2 circumstances, leading to the imposition of the bar; or
3 (ii) any other person—the offence or provision mentioned
4 in paragraph 245AYD(4)(b), (c) or (d) on which the
5 prohibition is based, and a brief summary of the court’s
6 findings; and
7 (e) the period during which the person is a prohibited employer.

8 *Publication—miscellaneous matters*

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

16 **245AYG Prohibited employers—additional reporting obligations**

- 17 (1) A person contravenes this subsection if:
18 (a) the person was (but is no longer) a prohibited employer; and
19 (b) within the period of 12 months starting on the day after the
20 person stopped being a prohibited employer, the person starts
21 to employ a non-citizen (other than a non-citizen who holds a
22 permanent visa); and
23 (c) the person does not give to the Department, in writing, the
24 information required by subsection (2), in relation to the
25 non-citizen, before the end of the period of 14 days starting
26 on the day after the person starts to employ the non-citizen.

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

29 Civil penalty: 48 penalty units.

30 *Information about the non-citizen*

- 31 (2) The following information is required by this subsection:
32 (a) the name of the non-citizen who starts to be employed;

EXPOSURE DRAFT

Schedule 1 Amendments

Part 2 Prohibition on certain employers employing additional non-citizens

- 1 (b) a description of the work for which the non-citizen is
2 employed;
3 (c) if the non-citizen holds a visa that is subject to a work-related
4 condition—details of the condition;
5 (d) any other information prescribed by regulations made for the
6 purposes of this paragraph.

7 **245AYH Exhaustive statement of natural justice hearing rule**

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

14 **10 Section 487A (definitions of *work-related offence* and 15 *work-related provision*)**

16 Repeal the definitions.

17 **Division 2—Application**

18 **11 Application of amendments**

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

- 21 (a) an approved work sponsor who becomes subject to a bar, for
22 a specified period, imposed by the Minister under
23 paragraph 140M(1)(c) or (d) on or after the commencement
24 of this Schedule; and
25 (b) a person who is convicted of a work-related offence on or
26 after the commencement of this Schedule (whether the
27 conduct constituting the offence occurs before, on or after the
28 commencement of this Schedule); and
29 (c) a person who is made subject to a civil penalty order, on or
30 after the commencement of this Schedule, for contravention
31 of a work-related provision (whether the conduct constituting
32 the contravention occurs before, on or after the
33 commencement of this Schedule); and

EXPOSURE DRAFT

Amendments **Schedule 1**

Prohibition on certain employers employing additional non-citizens **Part 2**

- 1 (d) a person who is made subject to an order, on or after the
2 commencement of this Schedule, for contravention of a civil
3 remedy provision (within the meaning of the *Fair Work Act*
4 *2009*) covered by subsection 245AYD(10) (whether the
5 conduct constituting the contravention occurs before, on or
6 after the commencement of this Schedule); and
7 (e) an arrangement to employ a non-citizen that is made on or
8 after the commencement of this Schedule.

EXPOSURE DRAFT

Schedule 1 Amendments

Part 3 Use of computer system to verify immigration status

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.

24 **14 At the end of subsection 245AA(2)**

25 Add:

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

EXPOSURE DRAFT

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.

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.

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.

EXPOSURE DRAFT

Schedule 1 Amendments

Part 3 Use of computer system to verify immigration status

17 Subsection 245AE(2)

Repeal the subsection, substitute:

- (2) Subsection (1) does not apply if the first person, at the time of referral, is reasonably satisfied that the prospective 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.

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.

18 Subsection 245AEA(2)

Repeal the subsection, substitute:

- (2) Subsection (1) does not apply if the first person, at the time of referral, is reasonably satisfied that the prospective worker would not be in breach of the work-related condition solely because of doing the work mentioned in paragraph (1)(b), on the basis of information obtained:
- (a) by logging into and using the prescribed computer system to source the information; or
 - (b) unless the first person is a required system user—under an arrangement by which another person logs into and uses the prescribed computer system to source the information.

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

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

EXPOSURE DRAFT

1 **19 After section 245AEB**

2 Insert:

3 **245AEC Verifying permission to work—starting to allow**
4 **non-citizens to work**

5 A person (the *first person*) must not start to allow another person
6 (the *worker*) to work unless the first person has determined
7 whether the worker would have the required permission to do that
8 work on the basis of information obtained:

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

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

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

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

23 Civil penalty: 48 penalty units.

24 **245AED Verifying permission to work—referring non-citizens for**
25 **work**

- 26 (1) This section applies to a person (the *first person*) who operates a
27 service, whether for reward or otherwise, referring other persons to
28 third persons for work.
- 29 (2) The first person must not refer another person (the *prospective*
30 *worker*) for work unless the first person has determined whether
31 the prospective worker would have the required permission to do
32 that work on the basis of information obtained:
- 33 (a) by logging into and using the prescribed computer system to
34 source the information; or

EXPOSURE DRAFT

Schedule 1 Amendments

Part 3 Use of computer system to verify immigration status

1 (b) unless the first person is a required system user—under an
2 arrangement by which another person logs into and uses the
3 prescribed computer system to source the information.

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

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

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

13 Civil penalty: 48 penalty units.

14 **20 At the end of Subdivision C of Division 12 of Part 2**

15 Add:

16 **245APA Prescribed computer system—information unobtainable by** 17 **accessing the system**

18 (1) This section applies if, on a particular occasion, information cannot
19 be sourced for the purposes of this Subdivision by logging into and
20 using the prescribed computer system, due to circumstances
21 beyond the reasonable control of the person seeking to log into and
22 use the system.

23 (2) Information may be obtained by such a person on that occasion, for
24 those purposes, by doing one or more things prescribed by
25 regulations made for the purposes of this subsection.

26 Note: See sections 245AB, 245AC, 245AE, 245AEA, 245AEC and
27 245AED.

28 **245APB Prescribed computer system—meaning of *required system*** 29 ***user***

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

31 (a) the person has been a prohibited employer within the
32 previous 12 months; or

33 (b) the person is included in a class that is determined by an
34 instrument under section 245APC; or

EXPOSURE DRAFT

1 (c) the person is declared under section 245APD to be a required
2 system user.

3 Note: If this Subdivision allows or requires a person who is a required
4 system user to obtain information by the use of the prescribed
5 computer system, the person may obtain the information only by
6 logging into and using the system (see sections 245AB, 245AC,
7 245AE, 245AEA, 245AEC and 245AED).

8 **245APC Prescribed computer system—determination of required** 9 **system users by class**

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

21 **245APD Prescribed computer system—declaration of specific** 22 **required system users**

23 *Declaration by the Minister*

- 24 (1) The Minister may, by written notice to a person, declare the person
25 to be a required system user for the purposes of paragraph
26 245APB(c).
- 27 (2) The Minister may declare a person to be a required system user
28 only if the Minister is satisfied that making the declaration is
29 reasonably necessary to help ensure that the person only uses
30 information sourced from the prescribed computer system to
31 confirm that non-citizens allowed to work, or referred for work, by
32 that person have the required permission to do that work.
- 33 (3) A declaration given to a person under subsection (1):

EXPOSURE DRAFT

Schedule 1 Amendments

Part 3 Use of computer system to verify immigration status

- 1 (a) has effect from a day specified in the declaration that is no
2 sooner than 10 days after the day the declaration is given;
3 and
4 (b) stays in effect, unless sooner revoked, for a period after that
5 day, specified in the declaration, of no longer than 12
6 months; and
7 (c) may be renewed, or further renewed, by the Minister for a
8 period of no longer than 12 months (unless sooner revoked),
9 by written notice to the person.
- 10 (4) If the Minister renews (or further renews) a declaration by notice to
11 a person under paragraph (3)(c):
12 (a) the notice of renewal (or further renewal) must be given to
13 the person no sooner than 10 days before the declaration
14 would otherwise stop having effect; and
15 (b) the Minister may renew (or further renew) the declaration
16 only if satisfied that subsection (2) continues to apply in
17 relation to the person.

Review by the Administrative Appeals Tribunal

- 18
- 19 (5) Applications may be made to the Tribunal for review of either of
20 the following:
21 (a) a decision under subsection (1) to declare a person to be a
22 required system user;
23 (b) a decision under paragraph (3)(c) to renew or to further
24 renew a declaration of a person as a required system user.
- 25 Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires
26 that people whose interests are affected by the Minister's decision be
27 given notice of their rights to seek review of the decision.

245APE Work by non-citizens—further definitions

28 In this Subdivision:

29
30 ***logging into***: a person ***logs into*** the prescribed computer system by
31 accessing the system under an account maintained by or for the
32 person.

33 ***prescribed computer system*** means the computer system
34 prescribed by the regulations for the purposes of this definition.

EXPOSURE DRAFT

Amendments **Schedule 1**
Use of computer system to verify immigration status **Part 3**

- 1 ***required permission***: a person has, or would have, the ***required***
2 ***permission*** to do particular work if:
3 (a) the person is a lawful non-citizen; and
4 (b) the person is not, or would not be, in breach of any
5 work-related condition to which the visa held by the person is
6 subject solely because of doing that work.

7 **Division 2—Application**

8 **21 Application of amendments**

- 9 The amendments of the *Migration Act 1958* made by this Part apply in
10 relation to:
11 (a) a person who starts to be allowed to work on or after the
12 commencement of this Schedule; and
13 (b) a person referred for work on or after the commencement of
14 this Schedule.

EXPOSURE DRAFT

Schedule 1 Amendments

Part 4 Aligning and increasing penalties for work-related breaches

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

3 ***Migration Act 1958***

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

5 Repeal the penalty, substitute:

6 Civil penalty:

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

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

11 Repeal the subsection (not including the heading), substitute:

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

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

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

18 **24 Subsection 245AB(5)**

19 Repeal the subsection (not including the heading), substitute:

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

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

24 Civil penalty: 240 penalty units.

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

26 Repeal the subsection (not including the heading), substitute:

EXPOSURE DRAFT

Amendments **Schedule 1**
Aligning and increasing penalties for work-related breaches **Part 4**

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

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

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

7 **26 Subsection 245AC(5)**

8 Repeal the subsection (not including the heading), substitute:

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

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

13 Civil penalty: 240 penalty units.

14 **27 Subsections 245AD(1) and (2) (penalty)**

15 Repeal the penalty, substitute:

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

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

18 **28 Subsections 245AD(1) and (2) (note)**

19 Repeal the note.

20 **29 Subsection 245AE(3)**

21 Repeal the subsection (not including the heading), substitute:

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

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

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

28 **30 Subsection 245AE(5)**

29 Repeal the subsection (not including the heading), substitute:

EXPOSURE DRAFT

Schedule 1 Amendments

Part 4 Aligning and increasing penalties for work-related breaches

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

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

5 Civil penalty: 240 penalty units.

6 **31 Subsection 245AEA(3)**

7 Repeal the subsection (not including the heading), substitute:

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

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

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

14 **32 Subsection 245AEA(5)**

15 Repeal the subsection (not including the heading), substitute:

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

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: 240 penalty units.

21 **33 Subsections 245AEB(1) and (2) (penalty)**

22 Repeal the penalty, substitute:

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

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

25 **34 Subsections 245AEB(1) and (2) (note)**

26 Repeal the note.

27 **35 Subsection 245AK(2)**

28 Repeal the subsection (not including the heading), substitute:

EXPOSURE DRAFT

Amendments **Schedule 1**

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

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

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

5 Civil penalty: 90 penalty units.

EXPOSURE DRAFT

Schedule 1 Amendments

Part 5 Enforceable undertakings for work-related breaches

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

3 **Division 1—Amendments**

4 *Migration Act 1958*

5 **36 After section 245AL**

6 Insert:

7 **245ALA Enforceable undertakings**

8 *Enforceable provisions*

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

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

16 *Authorised person*

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

EXPOSURE DRAFT

Amendments **Schedule 1**
Enforceable undertakings for work-related breaches **Part 5**

1 *Relevant court*

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

5 *Enforceable undertaking may be published on the internet*

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

9 *Extension to external Territories*

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

13 Note: See section 7 of this Act.

14 *Relationship with civil penalty orders*

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

20 **Division 2—Application**

21 **37 Application of amendments**

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

EXPOSURE DRAFT

Schedule 1 Amendments

Part 6 Compliance notices for work-related breaches

1 **Part 6—Compliance notices for work-related**
2 **breaches**

3 **Division 1—Amendments**

4 *Migration Act 1958*

5 **38 Before section 245AM**

6 Insert:

7 **245ALB Compliance notices**

8 *Scope*

- 9 (1) This section applies if an authorised officer reasonably believes
10 that a person is engaging in, or has engaged in, conduct (including
11 an omission) that constitutes or would constitute:
12 (a) a work-related offence; or
13 (b) a contravention of a work-related provision.

14 *Giving a compliance notice*

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

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

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

- 22 (4) The compliance notice must also:
23 (a) set out the name of the person to whom the notice is given;
24 and
25 (b) set out the name of the authorised officer giving the notice;
26 and
27 (c) set out a summary of the conduct on which it is based; and

EXPOSURE DRAFT

- 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:

EXPOSURE DRAFT

Schedule 1 Amendments

Part 6 Compliance notices for work-related breaches

- 1 (i) the notice has not been withdrawn, and the person has
2 complied with the notice;
3 (ii) the person has made an application under subsection (8)
4 in relation to the notice that has not been completely
5 dealt with.

6 *Review of compliance notice*

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

22 **39 Subsection 474(4) (after table item 6)**

23 Insert:

6A	section 245ALB	Compliance notices
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24 **Division 2—Application**

25 **40 Application of amendments**

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

EXPOSURE DRAFT

Amendments **Schedule 1**
Other amendments **Part 7**

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.