

Mobility: Immigration alert

August 2023



Australia

Employers under the compliance spotlight

Executive summary

Employer compliance with immigration, tax and workplace law is a key priority of the Australian government.

Measures underway include:

- amendments to the *Fair Work Act* to further protect migrant worker entitlements which are now in effect
- increased penalties and new offences under the *Migration Amendment (Strengthening Employer Compliance) Bill 2023*
- improving post-arrival monitoring and enforcement of wages and conditions including the use of Tax File Numbers by migrant workers
- increasing labour market mobility for temporary sponsored visa holders by allowing up to 180 days to change employers while remaining in Australia
- ongoing data matching arrangements between the Department of Home Affairs and the Australian Taxation Office (ATO)

These initiatives are supported by significant extra funding to the Australian Border Force (ABF) for additional enforcement and compliance activities. During a blitz in July 2023, the ABF inspected around 300 businesses in every state and territory.

In addition, over 140 sponsors were sanctioned in the last 12 months for failure to comply with sponsorship obligations. Sanctions, which are [published](#) on the Department of Home Affairs website, include civil penalty fines, cancellation of sponsorship approval and bar on sponsoring further migrant workers for a specified period.

Protecting Migrant Workers

Fair Work Act

The *Fair Work Act* now clarifies that:

- migrant workers' rights and entitlements continue regardless of migration status including where a worker has breached a visa condition, does not have work rights or does not have the right to be in Australia
- the validity of an employment contract or a contract for services is not affected by a breach of immigration law

Migration Amendment (Strengthening Employer Compliance) Bill 2023

Businesses EY has consulted expressed support for the reforms proposed in the *Bill*:

- new criminal offence to coerce or exert undue pressure someone into breaching their visa condition
- prohibition notices to stop employers hiring any additional temporary visa holders where they have exploited migrants
- remove the criminal offence for working in breach of a visa condition which discourages visa holders from reporting exploitative behaviour
- increase maximum penalties for breach of sponsorship obligations and illegal workers provisions

While unscrupulous employers and intentional breaches will be targeted, all employers should be aware of the increase in maximum civil penalties and that civil and criminal liability extends to executive officers including Directors.

Maximum Penalty AUD		
Breach or offence	Current	Proposed
Breach a sponsorship obligation – infringement notice	18,780	75,120
Employ or refer to work an unlawful non-citizen or a visa holder in breach of a visa condition – infringement notice	28,170	
Coerce a visa holder to work in breach of a visa condition	NA	112,680 and/or 2 years imprisonment

Increased mobility for temporary visa holders

Businesses EY consulted expressed qualified support for the proposal to allow all visa holders to remain longer in Australia after ceasing employment with their sponsor with the general view that 180 days is too long. It is EY's view that unintended consequences are likely to include misuse of the temporary skilled visa program.

We have recommended that alternative measures will more effectively prevent exploitation and support exploited visa holders:

- extending the period a sponsored visa holder may remain in Australia to find another sponsor from 60 to 90 days
- more flexible qualifying requirements for permanent residence
- creating a new visa with work rights for exploited visa holders to sustain themselves in Australia while they enforce their workplace rights

Data matching

The passenger movements data matching program has been extended to 2025–26. Data on approximately 115,000 individuals will be collected each financial year to identify 'tax residency' status and individuals and businesses who may not be complying with tax and superannuation obligations. Individuals who may be identified include Australian citizens and permanent residents working in Australia as well as Tourists and Business visitors.

Next steps

EY will continue to monitor the progress of the *Migration Amendment (Strengthening Employer Compliance) Bill 2023* and keep you informed.

Employers should:

- ensure travel tracking systems are accurately tracking international travel and calculating cumulative periods of time spent in Australia to determine tax and immigration compliance risks
- establish a governance framework to ensure mobility and recruitment policies and procedures minimise the risks of employing an 'illegal worker' and non-compliance with sponsorship obligations
- consider a mobility compliance risk review and a compliance focused training session for key stakeholders in the business

If you wish to discuss a compliance review or other issues raised in this alert, contact your EY advisor.

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