



Migration Amendment (Employer Sanctions) Act 2007

No. 7, 2007

An Act to impose sanctions on persons who are connected with work by unlawful non-citizens or work in breach of visa conditions, and for related purposes

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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[Assented to 19 February 2007]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Migration Amendment (Employer Sanctions) Act 2007*.

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 |
| Provision(s) | Commencement | Date/Details |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day on which this Act receives the Royal Assent. | 19 February 2007. |
| 2. Schedules 1 and 2 | A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period. | 19 August 2007 |

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

Migration Act 1958

1 At the end of Division 12 of Part 2

Add:

Subdivision C—Offences in relation to persons who allow non-citizens to work, or refer non-citizens for work, in certain circumstances

245AA Overview

- (1) This Subdivision creates offences to deal with the following situations:
 - (a) where a person allows an unlawful non-citizen to work, or refers an unlawful non-citizen for work;
 - (b) where a person allows a non-citizen to work, or refers a non-citizen for work, in breach of the non-citizen's visa conditions.
- (2) The offences make use of a number of terms that are defined in the following sections:
 - (a) section 14 (defines *unlawful non-citizen*);
 - (b) section 245AG (defines *work* and *allows to work*);
 - (c) section 245AH (defines *exploited*);
 - (d) section 245AI (defines other terms).
- (3) To avoid doubt, section 245AF sets out some circumstances in which this Subdivision does not apply.
- (4) Section 235 also contains offences relating to work by an unlawful non-citizen and a non-citizen in breach of a visa condition.

245AB Allowing an unlawful non-citizen to work

- (1) A person commits an offence if:
 - (a) the person allows, or continues to allow, a person (the *worker*) to work; and

- (b) the worker is an unlawful non-citizen; and
 - (c) the person knows that, or is reckless as to whether, the worker is an unlawful non-citizen.
- (2) An offence against subsection (1) is an *aggravated offence* if the worker is being exploited and the person knows of, or is reckless as to, that circumstance.
- (3) An offence against this section is punishable on conviction by whichever of the following applies:
- (a) in the case of an aggravated offence—imprisonment for 5 years;
 - (b) in any other case—imprisonment for 2 years.

245AC Allowing a non-citizen to work in breach of a visa condition

- (1) A person commits an offence if:
- (a) the person allows, or continues to allow, a person (the *worker*) to work; and
 - (b) the worker is a non-citizen and the person knows of, or is reckless as to, that circumstance; and
 - (c) the worker holds a visa that is subject to a condition restricting the work that the worker may do in Australia, and the person knows of, or is reckless as to, that circumstance; and
 - (d) the worker is in breach of the condition and the person knows of, or is reckless as to, that circumstance.
- (2) An offence against subsection (1) is an *aggravated offence* if the worker is being exploited and the person knows of, or is reckless as to, that circumstance.
- (3) An offence against this section is punishable on conviction by whichever of the following applies:
- (a) in the case of an aggravated offence—imprisonment for 5 years;
 - (b) in any other case—imprisonment for 2 years.

245AD Referring an unlawful non-citizen for work

- (1) A person commits an offence if:
-

- (a) the person operates a service, whether for reward or otherwise, referring one person to another for work; and
 - (b) the person refers a person (the *prospective worker*) to another for work; and
 - (c) at the time of the referral, the prospective worker is an unlawful non-citizen and the person knows of, or is reckless as to, that circumstance.
- (2) An offence against subsection (1) is an *aggravated offence* if:
- (a) the prospective worker will be exploited in doing the work in relation to which he or she is referred, or in doing any other work for the person to whom he or she is referred; and
 - (b) the person operating the referral service knows of, or is reckless as to, that circumstance.
- (3) An offence against this section is punishable on conviction by whichever of the following applies:
- (a) in the case of an aggravated offence—imprisonment for 5 years;
 - (b) in any other case—imprisonment for 2 years.

245AE Referring a non-citizen for work in breach of a visa condition

- (1) A person commits an offence if:
- (a) the person operates a service, whether for reward or otherwise, referring one person to another for work; and
 - (b) the person refers a person (the *prospective worker*) to another for work; and
 - (c) at the time of the referral;
 - (i) the prospective worker is a non-citizen and the person knows of, or is reckless as to, that circumstance; and
 - (ii) the prospective worker holds a visa that is subject to a condition restricting the work that the prospective worker may do in Australia, and the person knows of, or is reckless as to, that circumstance; and
 - (iii) the prospective worker will, in doing the work in relation to which he or she was referred, be in breach of the condition and the person knows of, or is reckless as to, that circumstance.

- (2) An offence against subsection (1) is an *aggravated offence* if:
 - (a) the prospective worker will be exploited in doing the work in relation to which he or she is referred, or in doing any other work for the person to whom he or she is referred; and
 - (b) the person operating the referral service knows of, or is reckless as to, that circumstance.
- (3) An offence against this section is punishable on conviction by whichever of the following applies:
 - (a) in the case of an aggravated offence—imprisonment for 5 years;
 - (b) in any other case—imprisonment for 2 years.

245AF Circumstances in which this Subdivision does not apply

To avoid doubt, this Subdivision does not apply where:

- (a) a detainee in immigration detention voluntarily engages in an activity of a kind approved in writing by the Secretary for the purposes of this paragraph; or
- (b) a prisoner in a prison or remand centre of the Commonwealth, a State or a Territory engages in an activity as a prisoner; or
- (c) a person engages in an activity in compliance with:
 - (i) a sentence passed, or an order made, under subsection 20AB(1) of the *Crimes Act 1914* (community service orders etc.); or
 - (ii) a community service order, a work order, a sentence of periodic detention, an attendance centre order, a sentence of weekend detention, an attendance order, or a similar sentence or order, passed or made under the law of a State or Territory.

245AG Meaning of *work* and *allows to work*

- (1) In this Subdivision:

work means any work, whether for reward or otherwise.
- (2) In this Subdivision, a person *allows* a person to work if, and only if:

- (a) the first person employs the second person under a contract of service; or
 - (b) the first person engages the second person, other than in a domestic context, under a contract for services; or
 - (c) the first person bails or licenses a chattel to the second person or another person with the intention that the second person will use the chattel to perform a transportation service; or
 - (d) the first person leases or licenses premises, or a space within premises, to the second person or another person with the intention that the second person will use the premises or space to perform sexual services.
- (3) In paragraph (2)(d):

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.

245AH Meaning of *exploited*

For the purposes of this Subdivision, a person is being ***exploited*** if the person is in a condition of forced labour, sexual servitude or slavery in Australia.

245AI Meaning of other terms

In this Subdivision:

forced labour has the same meaning as in section 73.2 of the *Criminal Code*.

sexual service means the commercial use or display of the body of the person providing the service for the sexual gratification of others.

sexual servitude has the meaning given by section 270.4 of the *Criminal Code*.

slavery has the meaning given by section 270.1 of the *Criminal Code*.

245AJ Geographical jurisdiction

Section 15.2 of the *Criminal Code* (extended geographical jurisdiction—category B) applies to an offence against sections 245AB, 245AC, 245AD and 245AE.

245AK On a trial for an aggravated offence

- (1) If, on a trial for an offence against section 245AB or 245AC, the prosecution intends to prove an aggravated offence, the charge must allege that the worker has been exploited.
- (2) If, on a trial for an offence against section 245AD or 245AE, the prosecution intends to prove an aggravated offence, the charge must allege either that:
 - (a) the prospective worker has been or will be exploited in doing the work in relation to which he or she was referred; or
 - (b) the prospective worker has been or will be exploited in doing other work for the person to whom he or she was referred.
- (3) If, on a trial for an aggravated offence against section 245AB, 245AC, 245AD or 245AE, the trier of fact is not satisfied that the defendant is guilty of an aggravated offence, but is otherwise satisfied that he or she is guilty of an offence against that section, it may find the defendant not guilty of the aggravated offence but guilty of an offence against that section.

2 Application

The amendment made by item 1 of this Schedule applies if:

- (a) in a case where a person is referred for work in circumstances where an offence would be created by the amendment—the referral is made on or after the commencement of this Schedule; or
- (b) in any other case—a person begins, on or after the commencement of this Schedule, to be allowed to do work in circumstances where an offence would be created by the amendment.

Schedule 2—Related amendments

Crimes Act 1914

1 After paragraph 15Y(ca)

Insert:

- (cb) an aggravated offence against Subdivision C of Division 12 of Part 2 of the *Migration Act 1958*.

Migration Act 1958

2 At the end of subsection 235(1)

Add:

- Note: Subdivision C of this Division also contains offences relating to work by a non-citizen in breach of a visa condition.

3 At the end of subsection 235(3)

Add:

- Note: Subdivision C of this Division also contains offences relating to work by an unlawful non-citizen.

4 At the end of section 235

Add:

- (7) To avoid doubt, for the purposes of this section, a reference in a visa, and the reference in subsection (3), to the performance of any work in Australia by a person, does not refer to engaging in:
 - (a) an activity in which a person who is a detainee in immigration detention voluntarily engages where the activity is of a kind approved in writing by the Secretary for the purposes of this paragraph; or
 - (b) an activity in which a person who is a prisoner in a prison or remand centre of the Commonwealth, a State or a Territory engages as a prisoner; or
 - (c) an activity in which a person engages in compliance with:
 - (i) a sentence passed, or an order made, under subsection 20AB(1) of the *Crimes Act 1914* (community service orders etc.); or

- (ii) a community service order, a work order, a sentence of periodic detention, an attendance centre order, a sentence of weekend detention, an attendance order, or a similar sentence or order, passed or made under the law of a State or Territory.

5 Application

The amendment made by item 4 of this Schedule applies to activities engaged in on or after the commencement of this Schedule.

*[Minister's second reading speech made in—
Senate on 29 March 2006
House of Representatives on 29 November 2006]*

(36/06)