PROPOSED MIGRATION CHANGES

AUSTRALIA LABOUR, EMPLOYMENT AND WORKPLACE SAFETY ALERT

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Australia Labour, Employment & Workplace Safety Alert

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An exposure draft for the Migration Amendment (Protecting Migrant Workers) Bill 2021 (the Exposure Draft) which seeks to amend the *Migration Act 1958* (Cth) (the Migration Act) was released on 26 June 2021. This Exposure Draft addresses the wage underpayment and employee exploitation issues throughout Australia. It aims to enhance the existing penalty, compliance and enforcement frameworks with the introduction of new offences and the ability for the Department of Home Affairs to prohibit non-compliant employers from employing additional visa holders.

Employers who currently engage, or may engage, visa holders need to be aware of these proposed changes as they are significant changes to the Migration Act, including the creation of new offences and an increase in penalties.

NEW REQUIREMENTS FOR EMPLOYING VISA HOLDERS

The Exposure Draft proposes new obligations on employers who seek to employ non-citizens or visa holders. If passed, employers would be required to verify a non-citizen's permission to work by using the Visa Entitlement Verification Online (VEVO) system before prospective workers commence work.

Relevantly, employers would also be permitted to rely on the VEVO check as a defence to any allegation that they have allowed an unlawful non-citizen to work.

NEW EMPLOYER SANCTIONS

The Exposure Draft creates two new offences.

Coercing a visa holder to breach work-related conditions

The first proposed offence is committed if:

- a person coerces or exerts *undue influence* or pressure on a visa holder to accept or agree to a work arrangement;
- that work is carried out, or is to be carried out, by the visa holder in Australia, whether for that person or someone else; and
- as a result of the work arrangement:

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- the visa holder breaches a *work-related condition*; or
- there are reasonable grounds to believe that, if the visa holder were to accept or agree to the arrangement, they would breach a *work-related condition*.

Coercing a visa holder by using migration rules

The second proposed offence is committed if:

- a person *coerces or exerts undue influence or pressure* on a visa holder to accept or agree to a work arrangement; and
- that work is carried out, or is to be carried out, by the visa holder in Australia, whether for that person or someone else; and
- the visa holder believes that, or there are reasonable grounds to believe that, they must accept or agree to the arrangement to:
  - satisfy a *work-related visa requirement*; or
  - avoid an adverse effect on their immigration status.

A "work-related visa requirement" is defined as a requirement under the Migration Act to provide certain information or evidence about work the visa holder has undertaken in Australia for the purposes of their current visa or a visa application.

Penalties for non-compliance

There would be significant penalties for contravening the new requirements. Individual persons that contravene the new requirements could be liable for fines of up to AU$53,280, while a corporation would be liable for up to AU$266,400. Further, an individual person knowingly or recklessly contravening these requirements could be liable for up to two years' imprisonment, a AU$79,920 fine, or both. A corporation could be fined up to AU$399,600.

PROHIBITION ON CERTAIN EMPLOYERS

The Exposure Draft would allow the Department of Home Affairs to declare that an employer is prohibited from employing additional visa holders if they are:

- subject to a bar imposed by the Minister;
- convicted of a work-related offence;
- the subject of a civil penalty order in relation to a contravention of certain civil remedy provisions;
- the subject of an order for contravention of certain civil remedy provisions under the *Fair Work Act 2009* (Cth).

As an example, a contravention of a modern award would constitute a civil remedy provision under the *Fair Work Act 2009* meaning the Department of Home Affairs could consider whether the employer should be declared as a prohibited employer.

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Any employers who are declared a prohibited employer would have their details published on the Department of Home Affairs' website.

NEXT STEPS

This Exposure Draft clearly shows that one priority of the Department of Home Affairs is increased compliance and enforcement measures. We expect to see increased compliance activity from the Department of Home Affairs.

If you would like assistance with any employment and migration compliance issues, please feel free to contact us.

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