

EXPLANATORY STATEMENT

Issued by the Minister for Immigration, Citizenship and Multicultural Affairs

Migration Act 1958

Migration Amendment (Infringement Notices) Regulations 2024

The *Migration Act 1958* (the Migration Act) is an Act relating to the entry into, and presence in, Australia of aliens, and the departure or deportation from Australia of aliens and certain other persons.

Subsection 504(1) of the Migration Act provides that the Governor-General may make regulations, not inconsistent with the Migration Act, prescribing matters required or permitted to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Migration Act.

Subsection 506A(1) of the Migration Act provides that the *Migration Regulations 1994* (the Migration Regulations) may provide for a person who is alleged to have contravened a civil penalty provision to pay a penalty to the Commonwealth as an alternative to proceedings for a civil penalty order against the person. Under subsection 506A(2) of the Migration Act, the penalty must not exceed one-fifth of the maximum penalty that a court could impose on the person for a contravention of the civil penalty provision.

The *Migration Amendment (Strengthening Employer Compliance) Act 2024* (Strengthening Employer Compliance Act) amends the Migration Act to strengthen the Government's response to the exploitation of temporary migrant workers in Australia. It includes increases to the maximum penalties set out in the Migration Act in relation to current work-related and employer-sponsored related breaches. It also includes new employer sanctions, including penalties. The Strengthening Employer Compliance Act passed the Parliament on 7 February 2024, received the Royal Assent on 20 February 2024, and commences on 1 July 2024.

Divisions 5.4-5.5 of the Migration Regulations provide regulations for subsection 506A(1) of the Migration Act. Regulation 5.20A of the Migration Regulations currently provides for a half-penalty amount under an infringement notice for an alleged contravention where a person has not previously been issued with an infringement notice or been ordered by a court to pay a pecuniary penalty in relation to the relevant civil penalty provision of the Migration Act.

The *Migration Amendment (Infringement Notices) Regulations 2024* (the amendment Regulations) amends the Migration Regulations to do the following:

- increase the amount payable under an infringement notice in relation to alleged contraventions of civil penalty provisions of the Migration Act, where the Strengthening Employer Compliance Act is increasing the civil penalties in relation to those provisions;
- provide for infringement notices in relation to alleged contraventions of new civil penalty provisions implemented in the Migration Act by the Strengthening Employer Compliance Act;

- remove the half-penalty amount under an infringement notice for an alleged contravention where a person has not previously been issued with an infringement notice or been ordered by a court to pay a pecuniary penalty in relation to the relevant civil penalty provision of the Migration Act.

The matters dealt with in the amendment Regulations are appropriate for implementation in regulations rather than by Parliamentary enactment. Section 506A of the Migration Act expressly provides for these matters to be prescribed in regulations.

A Statement of Compatibility with Human Rights has been completed in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The overall assessment is that the Regulations are compatible with human rights. A copy of the statement is at [Attachment A](#).

The Office of Impact Analysis (OIA) has been consulted in relation to the amendments. No Regulation Impact Statement is required. The OIA consultation reference number is OIA24-07058.

Section 17 of the *Legislation Act 2003* (Legislation Act) provides that the rule-maker must be satisfied that there has been undertaken any consultation that is appropriate and reasonably practicable before making a legislative instrument. The Attorney General's Department was consulted on the proposed amendments. The Fair Work Ombudsman and the Department of Employment and Workplace Relations were consulted extensively in the development of the Strengthening Employer Compliance legislation. The Department has also consulted internally with the Australian Border Force.

The amendment regulations commence on 1 July 2024.

Further details of the Regulations are set out in [Attachment B](#).

The amendment Regulations amend the Migration Regulations, which are exempt from sunseting under table item 38A of section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*. The Migration Regulations are exempt from sunseting on the basis that the repeal and remaking of the Migration Regulations:

- is unnecessary as the Migration Regulations are regularly amended numerous times each year to update policy settings for immigration programs;
- would require complex and difficult to administer transitional provisions to ensure, amongst other things, the position of the many people who hold Australian visas, and similarly, there would likely be a significant impact on undecided visa and sponsorship applications; and
- would demand complicated and costly systems, training and operational changes that would impose significant strain on Government resources and the Australian public for insignificant gain, while not advancing the aims of the Legislation Act.

The Migration Act specifies no conditions that need to be satisfied before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the Legislation Act.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Migration Amendment (Infringement Notices) Regulations 2024

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

With effect from 1 July 2024, the *Migration Amendment (Strengthening Employer Compliance) Act 2024* (Strengthening Employer Compliance Act) amends the *Migration Act 1958* (Migration Act) to strengthen the Government's response to the exploitation of migrant workers in Australia by targeting employers and third party providers who misuse visa programs to exploit temporary migrant workers.

The Strengthening Employer Compliance Act primarily strengthens the regulatory framework available under the Migration Act for general employers of temporary migrant workers, that is, where the migrant worker's visa has not been sponsored by an employer. This includes, for example, employers of international students, temporary graduate visa holders, working holiday makers, and some bridging visa holders and provisional visa holders. The Strengthening Employer Compliance Act also increases the penalties available under the Employer Sponsorship Framework in the Migration Act. This Framework regulates the specific obligations of those employers who sponsor the visa of non-citizens for the purpose of filling certain labour gaps.

Among other measures, the amendments made by the Strengthening Employer Compliance Act include:

- new criminal offences and associated civil penalty provisions for using a person's migration status to exploit them in the workplace,
- a measure enabling the Minister to prohibit an employer from allowing additional non-citizens to work for a period of time where the employer has engaged in serious, deliberate or repeated non-compliance, which includes penalties for breaching this prohibition order
- new compliance tools, such as compliance notices, which includes penalties for breaching a compliance notice, and
- increases in the maximum criminal and civil penalties for existing work-related breaches under the Migration Act, in relation to both the general employer and the Employer Sponsorship frameworks.

Further detail of these amendments and their human rights implications are set out in the Explanatory Memorandum and the Supplementary Explanatory Memorandum to the Migration Amendment (Strengthening Employer Compliance) Bill 2023.

Regulation 5.20A of the *Migration Regulations 1994* (the Migration Regulations), made under subsection 506A(1) of the Migration Act, provides for a person who is alleged to have contravened a sponsorship-related civil penalty provision or a work-related civil penalty provision of the Migration Act to pay a penalty (after issue of an infringement notice) to the Commonwealth as an alternative to proceedings for a civil penalty order against the person.

Following on from the amendments to the Migration Act made by the Strengthening Employer Compliance Act, this Disallowable Legislative Instrument, the *Migration Amendment (Infringement Notices) Regulations 2024* (the Amendment Regulations), amends the Migration Regulations to:

- align the infringement notice penalty amounts in the Migration Regulations for contraventions of existing civil penalty provisions with the increases in the civil penalty amounts for contraventions of those provisions made by the Strengthening Employer Compliance Act;
- provide for infringement notices in relation to alleged contraventions of new civil penalty provisions inserted in the Migration Act by the Strengthening Employer Compliance Act;
- remove the infringement notice half-penalty amount which existed in the Migration Regulations for ‘first contraventions’; and
- provide a set amount for the infringement notice penalty set at one fifth of the civil penalty provision for an individual or a body corporate.

Infringement notices provide an additional tool to address employer non-compliance where employers fail to meet their obligations under the Migration Act. They offer a timely and efficient response to issues of employer non-compliance by providing an alternative to pursuing a matter through the judicial system. The infringement notice will include an explanation that the person issued with the notice may elect not to pay the amount and instead face civil penalty proceedings, but that those proceedings can be averted and liability discharged by making the prescribed payment within 28 days or within any further period permitted by the authorised person. The notice will also include an explanation of the person’s right to seek withdrawal of the notice.

Infringement notices form one part of a broader compliance framework, that also includes criminal offences, civil penalty provisions, enforceable undertakings and compliance notices, that seeks to provide officials with a range of tools to respond to issues of non-compliance in accordance with the nature and seriousness of the situation. For example, where appropriate, compliance officers can issue a compliance notice to direct the employer / third party provider to do or cease doing identified non-compliance without penalty (noting that if the employer fails to comply with the compliance notice, an infringement notice can be issued). In other circumstances an infringement notice, civil penalty proceeding or prosecution may be warranted to deter or penalise the non-compliant behaviour.

This compliance framework targets non-compliant employers directly. The aim is to increase employer compliance with their obligations under the Migration Act. These obligations are designed to address the misuse of migration programs to exploit temporary migrant workers.

They recognise the harm caused by exploitation of migrant workers and their families, as well as the negative outcomes for Australian workers and compliant businesses.

For financial penalties to provide an effective deterrent, they must be set at a level that deters people from offending. The increases to the civil penalties, and the creation of new offences and civil penalty provisions, in the Migration Act implemented by the Strengthening Employer Compliance Act reflect the seriousness of the relevant contravention and the impact of that contravention on the migrant worker directly affected by it as well as the wider society. The increases also recognise the significant damage the actions of dishonest or careless employers or labour hire intermediaries can have on visa program integrity and Australia's reputation as a destination of choice for migrant workers. The aim of the amendments to the Migration Act is to send a strong message to employers and third party providers about the importance of compliance with migration laws.

The amendments made by the Amendment Regulations support these amendments to the Migration Act, and the employer compliance framework more broadly, through increases to infringement notice penalty amounts to align with those increases in civil penalties as well as providing for infringement notices for alleged contraventions of the new civil penalties introduced by the Strengthening Employer Compliance Act. The amendments are intended to ensure that the framework as a whole provides a stronger deterrence to non-compliance with employer obligations under the Migration Act and related laws, with the aim of protecting migrant workers and the integrity of our migration programs.

Human rights implications

These amendments engage the following rights:

- Right to just and favourable conditions of work – Article 7 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR)
- Fair hearing and criminal process rights – Article 14 of the *International Covenant on Civil and Political Rights* (ICCPR).

Rights relating to conditions of work

Article 7 of the ICESCR states:

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

...

(b) Safe and healthy working conditions;...

The amendments made by the Amendment Regulations support the work-related civil penalty provisions of the Migration Act, including as amended by the Strengthening Employer Compliance Act, which are aimed at promoting the right to safe and healthy working conditions of migrant workers by targeting employers who fail to comply with their obligations, with the objective of combatting the misuse of Australia's migration program to exploit temporary migrant workers. The introduction through these amendments of infringement notice provisions in relation to the new civil penalty provisions implemented by

the Strengthening Employer Compliance Act, as well as increasing infringement notice penalties in line with increases to existing civil penalty provisions made by that Act, aims to create a fairer and safer workplace for everyone, temporary visa holders and Australians alike. The infringement notice mechanism can provide an immediate response to address employer non-compliance, particularly less serious non-compliance, and assist in the protection of the rights of migrant workers, offering a timely and efficient alternative to proceedings through the judicial system.

Fair hearing and criminal process rights

Enforcing compliance with employer obligations is critical for protecting both migrant workers and Australian workers, as well as those businesses who do the right thing. As noted above, infringement notices provide an additional tool for seeking to remedy employer non-compliance. They offer a timely and efficient response to issues of non-compliance by providing an alternative to pursuing a matter through the judicial system, particularly for instances of less serious employer non-compliance.

The use of infringement notices is commonly used by the Fair Work Ombudsman and regulatory agencies, as well as under existing provisions of the migration legislation. The infringement notice provisions and penalties implemented by the Amendment Regulations align proportionately with the civil penalty provisions in the Migration Act, as amended by the Strengthening Employer Compliance Bill, and would be issued by the Australian Border Force in the course of their compliance activities.

The Amendment Regulations set the penalty amounts at up to 48 penalty units for a natural person and 240 penalty units for a body corporate in relation to certain contraventions of work-related provisions by employers. This is proportionately consistent with the corresponding civil penalty provisions in the Migration Act which are set at high levels to reflect the seriousness of the relevant non-compliance by employers and labour hire intermediaries and the need to protect migrant workers. The infringement notice penalty amounts are therefore set at an amount that is not too low to be an inadequate deterrent but equally not too high that they do not provide incentive for a guilty employer to avoid the matter going to court.

The penalty amounts under the infringement notice scheme should not be considered as amounting to a criminal penalty under international law. They are still considerably lower than the actual civil penalty and the criminal penalty for the offences, and are not aimed at the general public, but rather at non-compliant employers (and labour hire intermediaries) in a regulatory/disciplinary context.

Where an employer disagrees with an infringement notice, the legal framework around the notice builds in a range of procedural rights. As noted above, the infringement notice must include an explanation that the person issued with the notice may elect not to pay the amount and instead face civil penalty proceedings, but that those proceedings can be averted and liability discharged by making the prescribed payment within 28 days or within any further period permitted by an authorised officer. The notice must also include an explanation of the person's right to seek withdrawal of the notice. If the matter does proceed to court, the normal processes of a court considering civil penalty matters would accord with and support the right to a fair hearing in Article 14(1) of the ICCPR.

Conclusion

The Amendment Regulations are compatible with human rights because they promote the human rights of vulnerable migrant workers in Australia.

The Hon Andrew Giles MP

Minister for Immigration, Citizenship and Multicultural Affairs

Details of the Migration Amendment (Infringement Notices) Regulations 2024

Section 1 – Name

1. This section provides that the name of the instrument is the *Migration Amendment (Infringement Notices) Regulations 2024*.

Section 2 – Commencement

2. This section provides that the Regulations commence on 1 July 2024.

Section 3 – Authority

3. This section provides that the instrument is made under the *Migration Act 1958*.

Section 4 – Schedules

4. This section provides for how the amendments made by the Regulations operate. In summary, Schedule 1 to the Regulations amends the Migration Regulations as set out in the Schedule.

Schedule 1 – Amendments

Migration Regulations 1994

5. The *Migration Amendment (Infringement Notices) Regulations 2024* (the amendment Regulations) amends the *Migration Regulations 1994* (Migration Regulations) to do the following:
 - increase the penalty under an infringement notice in relation to alleged contraventions of existing work-related and sponsorship-related civil penalties provisions of the Migration Act, where the *Migration Amendment (Strengthening Employer Compliance) Act 2024* (Strengthening Employer Compliance Act) is amending the *Migration Act 1958* (Migration Act) to increase the civil penalties in relation to those provisions;
 - provide for infringement notices and penalty amounts in relation to alleged contraventions of new civil penalty provisions inserted in the Migration Act by the Strengthening Employer Compliance Act;
 - remove the half-penalty infringement notice amount for an alleged contravention where a person has not previously been issued with an infringement notice or been ordered by a court to pay a pecuniary penalty in relation to the relevant provision of the Migration Act.

6. Some of the amendments to the Migration Regulations made by the amendment Regulations are intended to reflect amendments to the Migration Act implemented by the Strengthening Employer Compliance Act. Further information about these amendments to the Migration Act can be obtained in the Explanatory Memorandum and the Supplementary Explanatory Memorandum to the Migration Amendment (Strengthening Employer Compliance) Bill 2024.
7. Division 3A of Part 2 of the Migration Act sets out the sponsorship provisions of the Act.
8. Division 12 of Part 2 of the Migration Act sets out offences etc in relation to entry into, and remaining in, Australia. Subdivision C in that Division sets out offences and civil penalties in relation to work by non-citizens. Subdivision D of that Division sets out offences and civil penalties in relation to sponsored visas.
9. Division 5.4 of the Migration Regulations provides for infringement notice penalty amounts under the Regulations.
10. Division 5.5 of the Migration Regulations sets out a regime for the issue of infringement notices under the Regulations.

Item [1] – Regulation 5.20A

11. Item 1 repeals current regulation 5.20A of the Migration Regulations and substitutes a new regulation 5.20A.
12. New subregulation 5.20A(1) of the Migration Regulations provides that the regulation is made for the purposes of subsection 506A(1) of the Migration Act. Subsection 506A(1) of the Migration Act provides that the regulations may provide for a person who is alleged to have contravened a civil penalty provision under the Act to pay a penalty to the Commonwealth as an alternative to proceedings for a civil penalty order against the person.
13. Paragraph 5.24(1)(e) of the Migration Regulations provides that an infringement notice must state that, if the person on whom it is served does not wish the matter to be dealt with by a court, he or she may pay the penalty in the notice within 28 days after the date of service of the notice unless the notice is withdrawn before the end of that period.
14. Subsection 506A(2) of the Migration Act provides that, for regulations made pursuant to subsection 506A(1) of the Act, the penalty must not exceed one-fifth of the maximum penalty that a court could impose on the person for a contravention of the civil penalty provision.
15. Subsection 5(1) of the Migration Act defines *civil penalty provision* as:
 - a subsection, or a section that is not divided into subsections, that has set out at its foot the words “civil penalty” and one or more amounts in penalty units.
16. Subsection 5(1) of the Migration Act provides that *civil penalty order* has the meaning given by subsection 486R(4) of the Act.

17. Section 486R of the Migration Act provides for court civil penalty orders under the Act. Paragraph 486R(5)(a) of the Migration Act provides that, for a body corporate, a pecuniary penalty imposed by a court must not be more than 5 times the amount of the pecuniary penalty specified for the civil penalty provision.
18. The infringement notice amounts in new subsection 5.20A of the Migration Regulations are set out in penalty units. Under section 4AA of the *Crimes Act 1914*, the current amount of a penalty unit is \$313 (see *Crimes (Amount of Penalty Unit) Instrument 2023* on the Federal Register of Legislation).
19. The amendments set out in the amendment Regulations are intended to apply only in relation to conduct engaged in after the commencement of the *Migration Amendment (Infringement Notices) Regulations 2024*.
20. The following table sets out the infringement notice penalty amounts in current Regulation 5.20A of the Migration Regulations:

Migration Act civil penalty provision	Natural person	Body corporate	Natural person	Body corporate
	The person has previously been issued an infringement notice or been ordered by a Court to pay a pecuniary penalty	The person has previously been issued an infringement notice or been ordered by a Court to pay a pecuniary penalty	The person has not previously been issued an infringement notice or been ordered by a Court to pay a pecuniary penalty	The person has not previously been issued an infringement notice or been ordered by a Court to pay a pecuniary penalty
140Q(1), 140Q(2), 140XE(3), 140XF(3)	12 penalty units	60 penalty units	6 penalty units	30 penalty units
245AR(1), 245AS(1)	48 penalty units	240 penalty units	24 penalty units	120 penalty units
245AB(5), 245AC(5), 245AE(5), 245AEA(5)	18 penalty units	90 penalty units	9 penalty units	45 penalty units

21. The new infringement notice penalty amounts under the amendment Regulations do not include a half-penalty infringement notice amount for an alleged contravention where a person has not previously been issued with an infringement notice or been ordered by a court to pay a pecuniary penalty in relation to the relevant provision of the Migration Act (a ‘first contravention’).

22. The Attorney-General's Department 2024 *Guide to Framing Commonwealth Offences, Infringement Notices And Enforcement Notices* (the AGD Guide) discusses infringement notices in Chapter 6. The material in Chapter 6 of the AGD Guide relating to infringement notices does not include a requirement for 'first contravention' infringement notices to be a lesser amount.
23. Consistent with subsection 506A(2) of the Migration Act, the new infringement notice penalty amounts provided for under the amendment Regulations are one-fifth of the maximum penalty that a court could impose on the person (including a body corporate) for a contravention of the relevant civil penalty provision of the Migration Act. The removal of half penalties recognises that fixing a half penalty for a first contravention fails to effectively account for the potential severity of the underlying behaviour (the grounds for issuing an infringement). The use of a half penalty for a first contravention could be considered as the cost of doing business, which is inconsistent with the intent of section 6.3 of the AGD Guide.

Subregulation 5.20A(2) – infringement notices pursuant to s140Q(1) for approved work sponsors

24. New subregulation 5.20A(2) of the Migration Regulations provides for infringement notices in relation to a person who is an approved work sponsor who is alleged to have contravened subsection 140Q(1) of the Migration Act.
25. Subsection 5(1) of the Migration Act defines *approved work sponsor* as:
- (a) a person:
 - (i) who has been approved under section 140E as a work sponsor in relation to a class prescribed by the regulations for the purpose of subsection 140E(2); and
 - (ii) whose approval has not been cancelled under section 140M, or otherwise ceased to have effect under section 140G, in relation to that class; or
 - (b) a person (other than a Minister) who is a party to a work agreement.
26. Subsection 140Q(1) of the Migration Act provides that a person contravenes the subsection if:
- (a) the regulations impose a sponsorship obligation on the person; and
 - (b) the person fails to satisfy the sponsorship obligation in the manner (if any) or within the period (if any) prescribed by the regulations.
27. Prior to the commencement of the Strengthening Employer Compliance Act, subsection 140Q(1) of the Migration Act provided a civil penalty of 60 penalty units for contravention of the provision in all cases. The Strengthening Employer Compliance Act amends the penalty as follows:
- (a) if the person is an approved work sponsor—240 penalty units; or
 - (b) in any other case—60 penalty units.
28. New subregulation 5.20A(2) of the Migration Regulations provides regulations pursuant to subsection 506A(1) of the Migration Act for alleged contravention of subsection 140Q(1) of the Act where the person is an approved work sponsor, as set out in paragraph (a) of the amended civil penalty provision in subsection 140Q(1).

29. New subregulation 5.20A(2) of the Migration Regulations provides that, for an approved work sponsor alleged to have contravened subsection 140Q(1) of the Act, the person may pay a penalty to the Commonwealth as an alternative to proceedings for a civil penalty order against the person.
30. New paragraph 5.20A(2)(c) of the Migration Regulations provides that the amount payable under an infringement notice for a natural person for alleged contravention of subsection 140Q(1) by an approved work sponsor is 48 penalty units (currently \$15,024) in all cases.
31. New paragraph 5.20A(2)(d) of the Migration Regulations provides that the amount payable under an infringement notice for a body corporate for alleged contravention of subsection 140Q(1) by an approved work sponsor is 240 penalty units (currently \$75,120) in all cases.

Subregulation 5.20A(3) – infringement notices pursuant to s140Q(1) for approved family sponsors

32. New subregulation 5.20A(3) of the Migration Regulations provides for infringement notices in relation to a person who is an approved family sponsor who is alleged to have contravened subsection 140Q(1) of the Migration Act.
33. Subsection 5(1) of the Migration Act defines *approved family sponsor* as a person:
 - (a) who has been approved under section 140E as a family sponsor in relation to a class prescribed by the regulations for the purpose of subsection 140E(2); and
 - (b) whose approval has not been cancelled under section 140M, or otherwise ceased to have effect under section 140G, in relation to that class.
34. Subsection 140Q(1) of the Migration Act provides that a person contravenes the subsection if:
 - (a) the regulations impose a sponsorship obligation on the person; and
 - (b) the person fails to satisfy the sponsorship obligation in the manner (if any) or within the period (if any) prescribed by the regulations.
35. Prior to the commencement of the Strengthening Employer Compliance Act, subsection 140Q(1) of the Migration Act provided a civil penalty of 60 penalty units for contravention of the provision in all cases. The Strengthening Employer Compliance Act amends the penalty as follows:
 - (a) if the person is an approved work sponsor—240 penalty units; or
 - (b) in any other case—60 penalty units.
36. New subregulation 5.20A(3) of the Migration Regulations provides regulations pursuant to subsection 506A(1) of the Migration Act for alleged contravention of subsection 140Q(1) of the Act ‘in any other case’, as set out in paragraph (b) of the amended civil penalty provision in subsection 140Q(1).
37. New subregulation 5.20A(3) of the Migration Regulations provides that, for an approved family sponsor alleged to have contravened subsection 140Q(1) of the Act, the person may pay a penalty to the Commonwealth as an alternative to proceedings for a civil penalty order against the person.

38. The reference to an ‘approved family sponsor’ reflects that, under the Migration Act as currently drafted, there are two types of sponsors relevant for these regulations: approved work sponsors and approved family sponsors.
39. New paragraph 5.20A(3)(c) of the Migration Regulations provides that the amount payable under an infringement notice for a natural person for alleged contravention of subsection 140Q(1) by an approved family sponsor is 12 penalty units (currently \$3756) in all cases.
40. New paragraph 5.20A(3)(d) of the Migration Regulations provides that the amount payable under an infringement notice for a body corporate for alleged contravention of subsection 140Q(1) by an approved family sponsor is 60 penalty units (currently \$18,780) in all cases.

Subregulation 5.20A(4) – infringement notices in relation to civil penalty provisions with a civil penalty of 240 penalty units

41. New subregulation 5.20A(4) of the Migration Regulations provides for infringement notices in relation to a person alleged to have contravened a civil penalty provision under the Migration Act where the civil penalty amount under the Act is 240 penalty units (other than where provided for under new subregulation 5.20A(2)).
42. New subregulation 5.20A(4) of the Migration Regulations provides for infringement notices in relation to the sponsorship-related civil penalty provisions and work-related civil penalty provisions of the Migration Act set out in the subregulation.
43. New subregulation 5.20A(4) of the Migration Regulations includes both provisions that are already set out in the Migration Act and current regulation 5.20A, and new provisions inserted in the Migration Act by the Strengthening Employer Compliance Act. These civil penalty provisions of the Migration Act are:
 - (a) subsection 140Q(2);
 - (b) subsection 245AAA(4);
 - (c) subsection 245AAB(4);
 - (d) subsection 245AAC(4);
 - (e) subsection 245AB(5);
 - (f) subsection 245AC(5);
 - (g) subsection 245AE(5);
 - (h) subsection 245AEA(5);
 - (i) subsection 245AR(5);
 - (j) subsection 245AS(1);
 - (k) subsection 245AYL(4).
44. Of the provisions in new subregulation 5.20A(4), the following are already set out in the Migration Act and current regulation 5.20A:
 - (a) subsection 140Q(2);
 - (e) subsection 245AB(5);
 - (f) subsection 245AC(5);
 - (g) subsection 245AE(5);
 - (h) subsection 245AEA(5);
 - (i) subsection 245AR(5);

(j) subsection 245AS(1).

45. Subsection 140Q(2) of the Migration Act provides that a person contravenes the subsection if:
- (a) the person (other than a Minister) is a party to a work agreement; and
 - (b) the terms of the work agreement:
 - (i) vary a sponsorship obligation that would otherwise be imposed on the person by the regulations; or
 - (ii) impose an obligation, identified in the agreement as a sponsorship obligation, on the person; and
 - (c) the person fails to satisfy the sponsorship obligation in the manner (if any) or within the period (if any) specified in the work agreement.
46. Subsection 245AB(1) of the Migration Act provides in effect that a person contravenes the subsection if the person allows an unlawful non-citizen to work.
47. Subsection 245AC(1) of the Migration Act provides in effect that a person contravenes the subsection if the person allows a lawful non-citizen to work in breach of a work-related condition.
48. Subsection 245AE(1) of the Migration Act provides in effect that a person contravenes the subsection if the person refers an unlawful non-citizen for work.
49. Subsection 245AEA(1) of the Migration Act provides in effect that a person contravenes the subsection if the person refers a lawful non-citizen for work in breach of a work-related condition.
50. The Strengthening Employer Compliance Act increases the civil penalty for each of the above civil penalty provisions from 60 penalty units to 240 penalty units.
51. Subsection 245AR(1) of the Migration Act provides in effect that a person contravenes the subsection if the person asks for or receives a benefit in return for the occurrence of a sponsorship related event.
52. Subsection 245AS(1) of the Migration Act provides in effect that a person contravenes the subsection if the person offers to provide a benefit in return for the occurrence of a sponsorship related event.
53. The Migration Act already provides for a civil penalty of 240 penalty units for contravention of subsection 245AR(1) or subsection 245AS(1) of the Act.
54. Of the provisions in new subregulation 5.20A(4), the following are new provisions inserted in the Migration Act by the Strengthening Employer Compliance Act:
- (b) subsection 245AAA(4);
 - (c) subsection 245AAB(4);
 - (d) subsection 245AAC(4);
 - (k) subsection 245AYL(4).
55. New subsection 245AAA(1) of the Migration Act in effect provides that a person contravenes the subsection if the person coerces etc a lawful non-citizen to work in breach of work related conditions.

56. New subsection 245AAB(1) of the Migration Act in effect provides that a person contravenes the subsection if the person coerces etc an unlawful non-citizen to work and the person's conduct 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.
57. New subsection 245AAC(1) of the Migration Act in effect provides that a person contravenes the subsection if the person coerces etc a lawful non-citizen to work and the person's conduct 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 status as a lawful non-citizen; or
 - the worker will be unable to provide information or documents about work the worker has done in Australia that the worker is required, under the Migration Act or the Migration Regulations, to provide in connection with a visa held by the worker or an application for a visa by the worker.
58. The Strengthening Employer Compliance Act inserts new Subdivision E of Division 12 of Part 2 into the Migration Act, which establishes a regime in relation to prohibited employers. New section 245AYK enables the Minister to declare a person to be a prohibited employer for a period if the person is subject to a migrant worker sanction.
59. New subsection 245AYL(1) of the Migration Act provides in effect that a person will contravene the subsection if the person has been declared to be a prohibited employer and allows a non-citizen to begin work (or has a material role in such a body corporate decision).
60. The Strengthening Employer Compliance Act amends the Migration Act to provide for a civil penalty of 240 penalty units for contravention of each of the above civil penalty provisions.
61. The infringement notice amounts in relation to alleged contravention of the provisions set out in new subregulation 5.20A(4) of the Migration Regulations are prescribed in subregulation 5.20A(5).

Subregulation 5.20A(5) – infringement notice amounts in relation to civil penalty provisions under subregulation 5.20A(4)

62. New subregulation 5.20A(5) of the Migration Regulations provides amounts for infringement notices issued in relation to alleged contraventions of civil penalty provisions set out in new subregulation 5.20A(4).
63. New paragraph 5.20A(5)(a) of the Migration Regulations provides that the amount payable under an infringement notice for a natural person for alleged contravention of a civil penalty provision set out in new subregulation 5.20A(4) is 48 penalty units (currently \$15,024) in all cases.
64. New paragraph 5.20A(5)(b) of the Migration Regulations provides that the amount payable under an infringement notice for a body corporate for alleged contravention of a civil penalty provision set out in new subregulation 5.20A(4) is 240 penalty units (currently \$75,120) in all cases.

65. The Attorney-General's Department 2024 *Guide to Framing Commonwealth Offences, Infringement Notices And Enforcement Notices* (the AGD Guide) discusses infringement notices in Chapter 6. The AGD Guide states that 'The amount payable under an infringement notice scheme should generally not exceed 12 penalty units for a natural person or 60 penalty units for a body corporate' (p. 59).
66. The penalty amounts set out in new subregulation 5.20A(5) are intended to reflect the penalties set out in the corresponding civil penalty provisions in the Migration Act. Although these amounts exceed the amounts set by the AGD Guide, they address the underlying intent of the guide by ensuring that infringements are set at an amount that is not too low to be an inadequate deterrent but equally not too high that they do not provide incentive for the guilty defendant to avoid the matter going to court. The infringement amounts are proportionately consistent with civil penalty provisions and maximum infringement amounts specified under the general migration law.
67. Consistent with subsection 506A(2) of the Migration Act, the new infringement notice penalty amounts provided for under the amendment Regulations (including new subregulation 5.20A(5)) are one-fifth of the maximum penalty that a court could impose on the person (including a body corporate) for a contravention of the relevant civil penalty provision of the Migration Act.

Subregulation 5.20A(6) – infringement notices and penalties in relation to alleged contravention of subsections 140XE(3) or 140XF(3)

68. New subregulation 5.20A(6) of the Migration Regulations provides for infringement notices in relation to a person alleged to have contravened subsection 140XE(3) or 140XF(3) of the Migration Act.
69. Subsections 140XE(1) and (2) of the Migration Act provide an inspector with certain powers to ask for a person's name and address in relation to the enforcement of the sponsorship provisions of the Act.
70. Subsection 140XE(3) of the Migration Act provides a civil penalty of 60 penalty units for contravention of subsections 140XE(1) or (2). The Strengthening Employer Compliance Act does not amend this penalty.
71. Subsection 140XF(1) of the Migration Act provides an inspector with the power to require a person to produce a record or document in relation to the enforcement of the sponsorship provisions of the Act.
72. Subsection 140XF(3) of the Migration Act provides a civil penalty of 60 penalty units for contravention of the provision. The Strengthening Employer Compliance Act does not amend this penalty.
73. New paragraph 5.20A(6)(a) of the Migration Regulations provides that the amount payable under an infringement notice for a natural person for alleged contravention of subsections 140XE(3) or 140XF(3) of the Migration Act is 12 penalty units (currently \$3756) in all cases.

74. New paragraph 5.20A(6)(b) of the Migration Regulations provides that the amount payable under an infringement notice for a body corporate for alleged contravention of subsections 140XE(3) or 140XF(3) of the Migration Act is 60 penalty units (currently \$18,780) in all cases.
75. The effect of new subregulation 5.20A(6) of the Migration Regulations is to remove the half-penalty infringement amount for ‘first contravention’ infringement notices issued in relation to alleged contravention of subsections 140XE(3) or 140XF(3) of the Migration Act.

Subregulation 5.20A(7) – infringement notices and penalties in relation to alleged contravention of subsection 140RB(5), 245AYN(3) or 245AYP(5)

76. New subregulation 5.20A(6) of the Migration Regulations provides for infringement notices in relation to a person alleged to have contravened subsection 140RB(5), 245AYN(3) or 245AYP(5) of the Migration Act. Each of these provisions are new provisions inserted in the Migration Act by the Strengthening Employer Compliance Act.
77. The Strengthening Employer Compliance Act inserts new section 140RB into the Migration Act, which implements a compliance notice regime to facilitate enforcement of the sponsorship provisions of the Migration Act. New subsection 140RB(5) of the Migration Act provides that a person who is given a compliance notice must comply with the notice. A civil penalty of 48 penalty units applies for non-compliance.
78. The Strengthening Employer Compliance Act inserts new Subdivision E of Division 12 of Part 2 of the Migration Act, which establishes a regime in relation to prohibited employers. New section 245AYK enables the Minister to declare a person to be a prohibited employer for a period if the person is subject to a migrant worker sanction.
79. The Strengthening Employer Compliance Act inserts new subsection 245AYN(1) into the Migration Act. This provides that new section 245AYN applies to former prohibited employers who begin to employ a non-citizen within the 12 months following from the end of their period of prohibition. New subsection 245AYN(2) imposes certain reporting requirements in these circumstances. New subsection 245AYN(3) provides that a person who contravenes the reporting requirements in subsection 245AYN(2) is liable to a civil penalty of 48 penalty units.
80. The Strengthening Employer Compliance Act inserts new section 245AYP into the Migration Act, which implements a compliance notice regime for work-related breaches. New subsection 245AYP(5) of the Migration Act provides that a person who is given a compliance notice must comply with the notice. A civil penalty of 48 penalty units applies for non-compliance.
81. New paragraph 5.20A(7)(a) of the Migration Regulations provides that the amount payable under an infringement notice for a natural person for alleged contravention of subsection 140RB(5), 245AYN(3) or 245AYP(5) of the Migration Act is 9 penalty units (currently \$2817) in all cases.

82. New paragraph 5.20A(7)(b) of the Migration Regulations provides that the amount payable under an infringement notice for a body corporate for alleged contravention of subsection 140RB(5), 245AYN(3) or 245AYP(5) of the Migration Act is 45 penalty units (currently \$14,085) in all cases.

Table setting out new infringement notice penalty amounts

The following table sets out the new infringement notice penalty amounts resulting from the amendments made by Strengthening Employer Compliance Act and the amendment Regulations:

Migration Act civil penalty provision	New Migration Regulation	Natural person	Body corporate
140Q(1) – approved work sponsor	5.20A(2)	48 penalty units	240 penalty units
140Q(1) – approved family sponsor	5.20A(3)	12 penalty units	60 penalty units
subsections 140Q(2), 245AAA(4), 245AAB(4), 245AAC(4), 245AB(5), 245AC(5), 245AE(5), 245AEA(5), 245AR(5), 245AS(1), 245AYL(4)	5.20A(4)-(5)	48 penalty units	240 penalty units
subsections 140XE(3), 140XF(3)	5.20A(6)	12 penalty units	60 penalty units
subsections 140RB(5), 245AYN(3), 245AYP(5)	5.20A(7)	9 penalty units	45 penalty units

Items [2],[3] and [5] – Regulation 5.21 (definition of *civil penalty provision*)

83. Regulation 5.21 of the Migration Regulations provides definitions that apply in Division 5.5 of the Migration Regulations.

84. Items 2, 3 and 5 insert references to the following new provisions of the Migration Act in the definition of *civil penalty provision* in regulation 5.21 of the Migration Regulations:

- subsection 140RB(5)
- subsection 245AAA(4)
- subsection 245AAB(4)
- subsection 245AAC(4)
- subsection 245AYL(4)

- subsection 245AYN(3)
- subsection 245AYP(5).

85. The provisions of the Migration Act referred to in items 2, 3 and 5 are inserted in the Migration Act by the Strengthening Employer Compliance Act.
86. The effect of items 2, 3 and 5 is that each provision of the Migration Act referred to in those items is a *civil penalty provision* for the purposes of Division 5.5 of the Migration Regulations.
87. The amendments in items 2, 3 and 5 have the effect that a relevant authorised officer under the Migration Regulations is empowered to cause to an infringement notice to be served under the Migration Regulations in relation to an alleged contravention of a civil penalty provision of the Migration Act referred to in items 2, 3 or 5.

Items [4] and [9]

88. Item 4 amends paragraph (i) of the definition of *civil penalty provision* in regulation 5.21 of the Migration Regulations. Item 4 substitutes the current reference to subsection 245AR(1) of the Migration Act with a reference to subsection 245AR(5) of the Migration Act.
89. Item 9 amends subregulations 5.23(3) and (4) of the Migration Regulations to substitute the current reference to subsection 245AR(1) of the Migration Act with a reference to subsection 245AR(5) of the Migration Act.
90. Subsection 245AR(1) of the Migration Act sets out the circumstances in which a person contravenes the subsection. Subsection 245AR(5) of the Migration Act is the civil penalty provision for section 245AR.
91. The purpose of items 4 and 9 is to correct a minor drafting error to ensure that the relevant provisions of the Migration Regulations refer to the correct subsection of section 245AR of the Migration Act, which is the civil penalty provision (subsection 245AR(5)).

Item [6] – Regulation 5.21 (after paragraph (b) of the definition of *sponsorship-related civil penalty provision*)

92. Item 6 inserts a reference to subsection 140RB(5) of the Migration Act in the definition of *sponsorship-related civil penalty provision* in regulation 5.21 of the Migration Regulations.
93. Subsection 140RB(5) of the Migration Act is inserted in the Migration Act by the Strengthening Employer Compliance Act.
94. The effect of item 6 is that subsection 140RB(5) of the Migration Act is a *sponsorship-related civil penalty provision* for the purposes of Division 5.5 of the Migration Regulations.
95. The amendment in item 6 is applicable to subregulation 5.23(2) of the Migration Regulations.

96. Subregulation 5.23(1) of the Migration Regulations sets out what an infringement notice must contain.
97. Subregulation 5.23(2) of the Migration Regulations provides that an infringement notice relating to contravention of a *sponsorship-related civil penalty provision* must also state that if the provision is contravened after the day on which, or the period over which, the contravention specified in the notice occurred:
- (a) the person will have contravened the provision again; and
 - (b) further action may be taken as mentioned in section 140K of the Act.
98. The effect of item 6 is that the material referred to in subregulation 5.23(2) of the Migration Regulations must also be included in an infringement notice issued in relation to an alleged contravention of subsection 140RB(5) of the Migration Act.

Items [7]-[8] - Regulation 5.21 (definition of *work-related civil penalty provision*)

99. Items 7 and 8 insert references to the following new provisions of the Migration Act into the definition of *work-related civil penalty provision* in regulation 5.21 of the Migration Regulations:
- subsection 245AAA(4)
 - subsection 245AAB(4)
 - subsection 245AAC(4)
 - subsection 245AYL(4)
 - subsection 245AYN(3)
 - subsection 245AYP(5).
100. Each of the above provisions are inserted in the Migration Act by the Strengthening Employer Compliance Act.
101. The effect of items 7-8 is that each of the provisions of the Migration Act referred to in the items is a *work-related civil penalty provision* for the purposes of Division 5.5 of the Migration Regulations.
102. The amendments in items 7-8 are applicable to subregulations 5.23(3)-(4) of the Migration Regulations.
103. Subregulation 5.23(1) of the Migration Regulations sets out what an infringement notice must contain.
104. Subregulation 5.23(3) of the Migration Regulations provides that an infringement notice relating to contravention of a *work-related civil penalty provision* must also state the grounds on which the infringement notice may be withdrawn.
105. Subregulation 5.23(4) of the Migration Regulations provides that an infringement notice relating to contravention of a *work-related civil penalty provision* must also state that the grounds on which the infringement notice may be withdrawn are not exhaustive.

106. The effect of items 7-8 is that the material referred to in subregulations 5.23(3)-(4) of the Migration Regulations must also be included in an infringement notice issued in relation to an alleged contravention of a *work-related civil penalty provision* referred to in items 7-8.