

EXPLANATORY STATEMENT

Issued by authority of the Minister for Immigration, Citizenship and Multicultural Affairs

Migration Act 1958

Migration (Workplace Justice Visa—LIN 24/055) Instrument 2024

1. The instrument *Migration (Workplace Justice Visa—LIN 24/055) Instrument 2024* (departmental reference LIN 24/055) is made under subitem 1237(5B) of Schedule 1 and paragraph 408.228A(1)(b) of Schedule 2 to the *Migration Regulations 1994* (Migration Regulations).
2. The instrument commences on the day after registration on the Federal Register of Legislation. The instrument is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

Purpose

3. The *Migration Amendment (Workplace Justice Visa) Regulations 2024* (the Workplace Justice Visa Regulations) amended the Migration Regulations on 1 July 2024. The Workplace Justice Visa Regulations established a new clause under the subclass 408 Temporary Activity Visa in Schedule 2 of the Migration Regulations for a workplace justice visa. The workplace justice visa enables a temporary migrant worker to remain in Australia for a period of time to undertake a workplace justice activity in relation to a matter of workplace exploitation. Further information about the Workplace Justice Visa Regulations can be found in the Explanatory Statement for those Regulations on the Federal Register of Legislation.
4. As amended by the Workplace Justice Visa Regulations, the Migration Regulations provide for a legislative instrument to be made by the Minister to specify the following matters:
 - the persons, bodies or government entities that may issue a certificate as to a matter of workplace exploitation;
 - the kind of matters relating to workplace exploitation that may be set out in the certificate; and
 - the class of persons who may apply for the workplace justice visa.
5. The purpose of LIN 24/055 is to specify those matters in a legislative instrument.
6. Further details of the instrument are set out in the **Attachment**.

Consultation

7. The Department of Home Affairs consulted relevant government agencies, including the Department of Employment and Workplace Relations and the Fair Work Ombudsman. The consultation outcomes were considered and informed the drafting of the instrument. Policy settings were also informed by consultation with practitioners engaged in supporting temporary migrant workers to pursue workplace exploitation matters and academics with a background in researching the barriers temporary migrants cite for not reporting exploitation.

8. The Office of Impact Analysis (OIA) was consulted and considered that the instrument dealt with matters of a minor or machinery nature and no regulatory impact statement was required. The OIA reference number is OIA23-05660.

Parliamentary scrutiny etc.

9. This instrument is exempt from disallowance under section 42 of the *Legislation Act 2003* (the Legislation Act). Paragraph 44(2)(b) of the Legislation Act provides that section 42 of that Act does not apply if a legislative instrument is prescribed by regulation for the purposes of that paragraph. This instrument is made under Schedule 2 to the Migration Regulations, which is prescribed under item 20(b) of regulation 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.
10. As the instrument is exempt from disallowance, under paragraph 15J(2)(f) of the Legislation Act a Statement of Compatibility with Human Rights is not required.
11. The instrument was made by the Minister for Immigration, Citizenship and Multicultural Affairs in accordance with subitem 1237(5B) of Schedule 1 and paragraph 408.228A(1)(b) of Schedule 2 to the Migration Regulations.
12. The Migration Regulations specify no conditions that need to be satisfied before the power to make the instrument may be exercised.

Details of the *Migration (Workplace Justice Visa—LIN 24/055) Instrument 2024*

Section 1 Name

1. This section provides that the name of the instrument is the *Migration (Workplace Justice Visa—LIN 24/055) Instrument 2024* (the instrument)

Section 2 Commencement

2. This section provides that the instrument commences on the day after the instrument is registered on the Federal Register of Legislation.

Section 3 Authority

3. This section provides that the instrument is made under subitem 1237(5B) of Schedule 1 and paragraph 408.228A(1)(b) of Schedule 2 to the *Migration Regulations 1994* (Migration Regulations).

Section 4 Definitions

4. This section provides for definitions used or referred to in the instrument.

Section 5 Persons, bodies and government entities

5. This section specifies persons, bodies and government entities for the purposes of paragraph 1237(5B)(a) of Schedule 1 to the Migration Regulations.

6. The term *government entity* is defined in subitem 1237(8) of Schedule 1 to the Migration Regulations for item 1237 as meaning:

- a Department, agency or authority of the Commonwealth, a State or a Territory; or
- a person who holds an office or appointment under a law of the Commonwealth, a State or a Territory.

7. This section specifies the following persons, bodies and government entities for the purposes of paragraph (a) of item 3A of the table in subitem 1237(3):

- The Office of the Fair Work Ombudsman
- Australian Rail, Tram and Bus Industry Union (ARTBIU)
- Australian Workers' Union
- Australasian Meat Industry Employees' Union
- Electrical Trades Union of Australia National Council
- Human Rights Law Centre
- Migrant Workers Centre
- Redfern Legal Centre Ltd
- SA Unions
- Shop, Distributive and Allied Employees' Association (the Association)
- Unions Tasmania
- The Association of Professional Engineers, Scientists and Managers

- UnionsACT
- Transport Workers' Union of Australia
- Unions NSW
- UnionsWA
- United Workers Union (UWU)
- Western Community Legal Centre Ltd (Westjustice)

8. The *Migration Amendment (Workplace Justice Visa) Regulations 2024* (the Workplace Justice Visa Regulations) inserted a new table item 3A in subitem 1237(3) of Schedule 1 to the Migration Regulations (table item 3A).

9. Table item 3A sets out requirements in Schedule 1 to the Migration Regulations that must be met by a workplace justice visa applicant to make a valid visa application. Paragraph (a) of table item (3A) provides that one of these requirements is that a certificate has been issued in relation to the applicant by a person, body or government entity determined in an instrument made under subitem 1237(5B).

10. The effect of this section is that a person, body or government entity specified in the section may issue a certificate in relation to workplace exploitation under the relevant provisions of the Migration Regulations – where if the applicant has been issued a certificate by that person, body or government entity, and also meets the requirements in paragraphs (b) and (c) of table item 3A, the applicant meets the requirements in this table item to make a valid application for a workplace justice visa.

Section 6 Matters relating to workplace exploitation

11. This section specifies kinds of matter relating to workplace exploitation under paragraph 1237(5B)(b) of Schedule 1 to the Migration Regulations for the purposes of paragraph (b) of item 3A of the table in subitem 1237(3).

12. This section specifies the following kinds of matters:

- (a) underpayment or non-payment of wages or other workplace entitlements;
- (b) unlawful unpaid or underpaid training or trials;
- (c) up-front payment or deposit for a job;
- (d) misclassification of workers as independent contractors instead of employees;
- (e) unlawful deductions from wages;
- (f) unfair dismissal;
- (g) non-compliance with workplace health and safety requirements;
- (h) bullying;
- (i) sexual harassment;
- (j) discrimination; and
- (k) coercion, or undue influence or pressure, or misrepresentation.

13. Table item 3A of the table in subitem 1237(3) specifies requirements in Schedule 1 to the Migration Regulations that must be met by a workplace justice visa applicant to make a valid visa application for this stream of the Subclass 408 (Temporary Activity) visa. Paragraph (b) of table item 3A provides that one of these requirements is that the certificate referred to in paragraph (a) of table item 3A states that a matter relating to workplace exploitation that is of a kind determined in the instrument made under subitem 1237(5B) applies in relation to the applicant.

14. This section specifies the kinds of workplace exploitation matters that may be set out in a certificate.

Section 7 Class of persons

15. This section specifies the class of persons who may apply for a workplace justice visa for the purposes of paragraph 408.228A(1)(b) of Schedule 2 to the Migration Regulations. To be eligible to apply for the workplace justice visa, the applicant must satisfy each of the requirements specified in this section at the time of their application.
16. Paragraphs (a) and (b) specify that the applicant must, at the time of application, either:
 - hold a substantive visa that does not have any conditions set out in Schedule 8 of the Migration Regulations prohibiting the person from working in Australia (such as visa condition 8101), and hold a visa with 28 days or less remaining on that visa; or
 - not hold a substantive visa, and the last-held substantive visa ceased no more than 28 days before the application, and was not subject to visa conditions prohibiting the person from working in Australia (such as visa condition 8101).
17. The policy intention is that a workplace justice visa would only be granted to an applicant who needs to remain in Australia to pursue a workplace justice matter.
18. Paragraph (c) specifies that a certificate has been issued by a person, body or government entity determined in section 5. This is a certificate made in relation to paragraph (a) of table item (3A) of subitem 3 and paragraph (a) of subitem 5B of item 1237 of Schedule 1 to the Migration Regulations.
19. Subparagraph (c)(i) specifies that the certificate states that a matter relating to workplace exploitation that is of a kind determined under section 6 applies in relation to the applicant. This is a certificate that sets out the matters referred to in paragraph (b) of table item (3A) of subitem 3 and paragraph (b) of subitem 5B of item 1237 of Schedule 1 to the Migration Regulations.
20. Subparagraph (c)(ii) specifies that the certificate must state, in the opinion of the person, body or government entity issuing the certificate that the applicant's presence in Australia is either:
 - beneficial to enable the workplace exploitation matter to be addressed in an effective and efficient manner; or
 - necessary to enable the effective and efficient progress of the workplace exploitation matter and it is in the public interest to address the matter in this manner; and
 - the certificate has not been revoked or set aside.
21. Paragraph (d) specifies that the certificate is covered by subsection (2) in relation to a certificate issued by a government entity, or subsection (3) in relation to a certificate issued by a non-government entity.
22. Subsection 7(2) specifies certain matters that must be set out in the certificate where the certificate was issued by a government entity. This includes:
 - the name and address of the government entity;
 - the full name, date of birth and address of the applicant;

- the details of the visa subclass held by the applicant, and if relevant, the applicant's last substantive visa;
- the details of the employer where it is alleged the applicant is being or was subjected to workplace exploitation;
- details of the alleged workplace exploitation.

23. Subsection 7(3) specifies certain matters that must be set out in the certificate where the certificate was issued by a person or body that is not a government entity (referred to here as a 'non-government entity'). This includes:

- the name and workplace address of the non-government entity issuing the certificate;
- the full name, workplace address and workplace contact details of the individual making the certificate (noting that 'individual' takes its meaning from section 2B of the *Acts Interpretation Act 1901* as a 'natural person');
- a statement that the individual making the certificate is currently employed by or contracted to provide services to the person or body issuing the certificate;
- a statement setting out the individual's position and qualifications to make the certificate;
- the full name, date of birth and address of the applicant for the workplace justice visa;
- the details of the visa subclass held by the applicant, and if applicable, the applicant's last substantive visa;
- the details of the employer where it is alleged the applicant is being or was subjected to workplace exploitation;
- details of the alleged workplace exploitation.

24. Under subsection 7(3), a certificate issued by a non-government entity must also include:

- a statement that the person or body considers that the applicant is committed to seeking justice or redress in a timely manner in relation to the alleged workplace exploitation matter set out in the certificate;
- a statement that the person or body considers that adequate resourcing has been allocated either to investigate the matter or to assist the applicant to resolve the matter; and
- a statement that the person or body considers that if any law (such as a statute of limitations) limits the time within which a proceeding may be instituted, or a complaint made, in relation to the workplace exploitation matter—that time has not expired.

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