



LIN 24/057

## **Migration (Strengthening Reporting Protections—LIN 24/057) Instrument 2024**

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I, Andrew Giles, Minister for Immigration, Citizenship and Multicultural Affairs, make the following instrument.

Dated 23 July 2024

Andrew Giles  
Minister for Immigration, Citizenship and Multicultural Affairs

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## 1 Name

This instrument is the *Migration (Strengthening Reporting Protections—LIN 24/057) Instrument 2024*.

## 2 Commencement

This instrument commences **on the day after it is registered.**

## 3 Authority

This instrument is made under subregulations **1.15R(1) and (2)** of the *Migration Regulations 1994*.

## 4 Definitions

Note: A number of expressions used in this instrument are defined in the *Migration Act 1958* or in the Regulations, including the following:

- (a) **arrangement in relation to work**, which has the meaning given by section 245AGA of the *Migration Act 1958*;
- (b) **government entity**, which has the meaning given by regulation 1.03 of the Regulations.

In this instrument:

**Office of the Fair Work Ombudsman** has the same meaning as in section 12 of the *Fair Work Act 2009*.

**Regulations** means the *Migration Regulations 1994*.

## 5 Persons, bodies and government entities

For the purposes of regulations 2.43A and 2.43B and under subregulation 1.15R(1) of the Regulations, a person, body or government entity mentioned in column 1 of an item in the following table is determined to be a certifying entity.

Item No.	Column 1 Name of entity	Column 2 Type of entity	Column 3 ABN
1	The Office of the Fair Work Ombudsman	government	43 884 188 232
2	Australian Rail, Tram and Bus Industry Union (ARTBIU)	body	28 921 128 419
3	Australian Workers' Union	body	28 853 022 982
4	Australasian Meat Industry Employees' Union	body	12 206 758 691
5	Electrical Trades Union of Australia National Council	body	60 429 406 804
6	Human Rights Law Centre	body	31 117 719 267
7	Migrant Workers Centre	body	75 362 088 900
8	Redfern Legal Centre Ltd	body	31 001 442 039
9	SA Unions	body	49 207 741 085

<b>Item No.</b>	<b>Column 1 Name of entity</b>	<b>Column 2 Type of entity</b>	<b>Column 3 ABN</b>
10	Shop, Distributive and Allied Employees' Association (the Association)	body	99 789 302 470
11	Unions Tasmania	body	55 482 384 108
12	The Association of Professional Engineers, Scientists and Managers	body	99 589 872 974
13	UnionsACT	body	31 724 041 495
14	Transport Workers' Union of Australia	body	18 559 030 246
15	Unions NSW	body	43 132 138 531
16	UnionsWA	body	64 950 883 305
17	United Workers Union (UWU)	body	52 728 088 684
18	Western Community Legal Centre Ltd (Westjustice)	body	72 604 181 071

## 6 Matters relating to workplace exploitation

For the purposes of regulations 2.43A and 2.43B and under subregulation 1.15R(2) of the Regulations, each of the following matters is determined to be a workplace exploitation matter:

- (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, in relation to work or an arrangement in relation to work;
- (i) sexual harassment, in relation to work or an arrangement in relation to work;
- (j) discrimination, in relation to work or an arrangement in relation to work;
- (k) coercion, undue influence or pressure, or misrepresentation, in relation to work or an arrangement in relation to work.

## EXPLANATORY STATEMENT

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

*Migration Act 1958*

### ***Migration (Strengthening Reporting Protections—LIN 24/057) Instrument 2024***

1. The instrument *Migration (Strengthening Reporting Protections—LIN 24/057) Instrument 2024* (departmental reference LIN 24/057) is made under subregulations 1.15R(1) and 1.15R(2) in Division 1.2 of Part 1 of the *Migration Regulations 1994* (Migration Regulations).
2. The instrument commences on the day after it is registered 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 (Strengthening Reporting Protections) Regulations 2024* (the Strengthening Reporting Protections Regulations) commenced on 1 July 2024, amending the Migration Regulations.
4. The Strengthening Reporting Protections Regulations amended the Migration Regulations to prescribe matters that the Minister must have regard to in determining under paragraph 116(1)(b) of the *Migration Act 1958*, whether to cancel certain temporary visas for a breach of a visa condition in certain circumstances. The Strengthening Reporting Protections Regulations also prescribe:
  - circumstances in which the visa of a temporary migrant worker who has been subject to a workplace exploitation matter **must not** be cancelled (***non-discretionary protection***); and
  - where the non-discretionary circumstances do not apply – matters that the Minister must have regard to when determining **whether** to cancel the visa of a temporary migration worker (***discretionary protection***).
5. The Strengthening Reporting Protections Regulations enhance the protections available to migrant workers to provide them with **confidence to report a workplace exploitation matter**.
6. Further information about the Strengthening Reporting Protections can be found in the Explanatory Statement for those Regulations.
7. As amended by the Strengthening Reporting Protections 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; and
  - the kind of matters relating to workplace exploitation that may be set out in the certificate.

8. The purpose of LIN 24/057 is to specify those matters in a legislative instrument.
9. Further details of the instrument are set out in the **Attachment**.

### ***Consultation***

10. 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.
11. The Office of Impact Analysis (OIA) was consulted and considered that the proposal does not trigger the Australian Government's Impact Analysis requirements and no regulatory impact statement was required. The OIA reference number is OIA23-05660.

### ***Parliamentary scrutiny etc.***

12. 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 Part 1 of the Migration Regulations, which is prescribed under item 20(b) of regulation 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.
13. 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.
14. The instrument was made by the Minister for Immigration, Citizenship and Multicultural Affairs in accordance with subregulations 1.15R(1) and 1.15R(2) in Division 1.2 of Part 1 of the Migration Regulations.
15. 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 (Strengthening Reporting Protections—LIN 24/057) Instrument 2024*

### Section 1 Name

1. This section provides that the name of the instrument is the *Migration (Strengthening Reporting Protections—LIN 24/057) Instrument 2024* (the instrument).

### Section 2 Commencement

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

### Section 3 Authority

3. This section provides that the instrument is made under subregulations 1.15R(1) and 1.15R(2) in Division 1.2 of Part 1 of 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 as certifying entities for the purposes of regulations 2.43A and 2.43B and under subregulation 1.15R(1) of 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 determines the following persons, bodies and government entities as certifying entities:
  - 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 (Strengthening Reporting Protections) Regulations 2024* (Strengthening Reporting Protections Regulations) inserted new regulations 2.43A and 2.43B into Division 2.9 of Part 2 of the Migration Regulations. These provisions respectively provide for discretionary and non-discretionary protections against visa cancellation.

*The discretionary protection against visa cancellation*

9. Regulation 2.43A of the Migration Regulations prescribes matters, for the purposes of paragraph 116(1A)(a) of the *Migration Act 1958* (Migration Act), that the Minister must have regard to in determining under paragraph 116(1)(b) of that Act whether to cancel certain temporary visas for breach of a visa condition.
10. Paragraph 2.43A(2)(a) provides that one matter that the Minister must have regard to is any written certificate issued by a certifying entity that is a government entity if the certificate:
- (i) was issued in relation to the visa holder in respect of a workplace exploitation matter; and
  - (ii) sets out the matters agreed to by Immigration and the government entity.
11. Paragraph 2.43A(2)(b) provides that one matter that the Minister must have regard to is any written certificate issued by a certifying entity that is not a government entity and states that the entity considers that:
- (i) there is prima facie evidence that the visa holder has been affected by a workplace exploitation matter; and
  - (ii) of any law limits the time in which a proceeding may be instituted, or a complaint made, in relation to the workplace exploitation matter – that time has not expired; and
  - (iii) there is a connection between the circumstances relating to the breach of the relevant condition and the workplace exploitation matter in which a certificate mentioned in paragraph (a) or (b) relates.

*The non-discretionary protection against visa cancellation*

12. Regulation 2.43B of the Migration Regulations prescribes, for the purposes of subsection 116(2) of the Migration Act, circumstances in which the Minister is not to cancel certain temporary visas under subsection 116(1)(b) of the Migration Act for breach of a restricted work condition.
13. Paragraph 2.43B(2)(a) of the Migration Regulations provides that the Minister is not to cancel a visa under paragraph 116(1)(b) of the Migration Act, if amongst other things, a certifying entity that is a government entity has issued a written certificate in relation to the visa holder in respect of a workplace exploitation matter that sets out the matters agreed by Immigration and the government entity.
14. Paragraph 2.43B(3)(a) of the Migration Regulations provides that the Minister is not to cancel a visa under paragraph 116(1)(b) of the Migration Act, if amongst other things, a certifying entity that is not a government entity has issued a written certificate stating that the entity considers that:

- (i) there is prima facie evidence that the visa holder is currently, or has been within the 12-month period preceding the issue of the certificate, the subject of a workplace exploitation matter; and
- (ii) there is a connection between the circumstances relating to the breach of the restricted work condition and the workplace exploitation matter to which the visa holder is, or has been subject.

15. The effect of section 5 of the instrument is that the persons, bodies or government entities specified are certifying entities for the purposes of regulations 2.43A and 2.43B. These certifying entities may issue a certificate in respect of a workplace exploitation matter for the purposes of these regulations. This written certificate will be a matter that the Minister must have regard to for the discretionary protection against visa cancellation under regulation 2.43A to be available. The issuing of this written certificate is a circumstance that must exist for the non-discretionary protection under regulation 2.43B to be available if a restricted work condition was breached.

## **Section 6 Matters relating to workplace exploitation**

16. This section specifies that the following matters are a workplace exploitation matter for the purposes of regulations 2.43A and 2.43B and under subregulation 1.15R(2) of the Migration Regulations:

- (a) underpayment or non-payment of 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, in relation to work or an arrangement in relation to work;
- (i) sexual harassment, in relation to work or an arrangement in relation to work;
- (j) discrimination, in relation to work or an arrangement in relation to work; and
- (k) coercion, undue influence or pressure, or misrepresentation, in relation to work or an arrangement in relation to work.

17. Subregulation 1.15(2) operates to provide the workplace exploitation matters for the purposes of regulations 2.43A and 2.43B. The protections afforded in regulation 2.43A and 2.43B are only available in circumstances where a certifying entity has issued a written certificate in relation to a workplace exploitation matters that is specified under subregulation 1.15(2) of the Migration Regulations.

18. The workplace exploitation matters generally correspond with (but are not limited to) breaches under the *Fair Work Act 2009*. Section 6 does not rely on the definition of “exploitation” set out in section 271.1A of the *Criminal Code* that applies for the purposes of Divisions 270 and 271 of that Act.



LIN 24/055

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

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I, Andrew Giles, Minister for Immigration, Citizenship and Multicultural Affairs, make the following instrument.

Dated 23 July 2024

Andrew Giles  
Minister for Immigration, Citizenship and Multicultural Affairs

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## 1 Name

This instrument is the *Migration (Workplace Justice Visa—LIN 24/055) Instrument 2024*.

## 2 Commencement

This instrument commences **on the day after it is registered.**

## 3 Authority

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

## 4 Definitions

Note: The expression **government entity** is defined in subitem 1237(8) of Schedule 1 to the Regulations.

In this instrument:

**Act** means the *Migration Act 1958*.

**Office of the Fair Work Ombudsman** has the same meaning as in section 12 of the *Fair Work Act 2009*.

**Regulations** means the *Migration Regulations 1994*.

## 5 Persons, bodies and government entities

For the purposes of paragraph (a) of item 3A of the table in subitem 1237(3) and under paragraph 1237(5B)(a) of Schedule 1 to the Regulations, each person, body or government entity mentioned in column 1 of an item in the following table is determined.

Item No.	Column 1 Name of entity	Column 2 Type of entity	Column 3 ABN
1	The Office of the Fair Work Ombudsman	government	43 884 188 232
2	Australian Rail, Tram and Bus Industry Union (ARTBIU)	body	28 921 128 419
3	Australian Workers' Union	body	28 853 022 982
4	Australasian Meat Industry Employees' Union	body	12 206 758 691
5	Electrical Trades Union of Australia National Council	body	60 429 406 804
6	Human Rights Law Centre	body	31 117 719 267
7	Migrant Workers Centre	body	75 362 088 900
8	Redfern Legal Centre Ltd	body	31 001 442 039
9	SA Unions	body	49 207 741 085
10	Shop, Distributive and Allied Employees' Association (the Association)	body	99 789 302 470



<b>Item No.</b>	<b>Column 1 Name of entity</b>	<b>Column 2 Type of entity</b>	<b>Column 3 ABN</b>
11	Unions Tasmania	body	55 482 384 108
12	The Association of Professional Engineers, Scientists and Managers	body	99 589 872 974
13	UnionsACT	body	31 724 041 495
14	Transport Workers' Union of Australia	body	18 559 030 246
15	Unions NSW	body	43 132 138 531
16	UnionsWA	body	64 950 883 305
17	United Workers Union (UWU)	body	52 728 088 684
18	Western Community Legal Centre Ltd (Westjustice)	body	72 604 181 071

## 6 Matters relating to workplace exploitation

For the purposes of paragraph (b) of item 3A of the table in subitem 1237(3) and under paragraph 1237(5B)(b) of Schedule 1 to the Regulations, each of the following kinds of matter relating to workplace exploitation is determined:

- (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;
- (k) coercion, or undue influence or pressure, or misrepresentation.

## 7 Class of persons

- (1) For the purposes of paragraph 408.228A(1)(b) of Schedule 2 to the Regulations, an applicant for a Subclass 408 (Temporary Activity) visa is specified as being in a class of persons for that paragraph if, at the time of making the visa application, the applicant either:
- (a) holds a substantive visa that:
    - (i) is not subject to a condition that prohibits the visa holder from engaging in any work in Australia; and
    - (ii) would cease to be in effect in the period of 28 days from the day the application is made; or
  - (b) does not hold a substantive visa, and the last substantive visa held by the applicant:
    - (i) ceased to be in effect no more than 28 days before the day of application; and

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- (ii) was not subject to a condition that prohibits the visa holder from engaging in any work in Australia;

and the applicant:

- (c) has been issued a certificate by a person, body or government entity determined under section 5 (the *certifying entity*) that:
    - (i) states that a matter relating to workplace exploitation that is of a kind determined under section 6 applies in relation to the applicant; and
    - (ii) states that, in the opinion of the certifying entity:
      - (A) the applicant's presence in Australia is beneficial to enable the workplace exploitation matter to be addressed in an effective and efficient manner; or
      - (B) the applicant's presence in Australia is necessary to enable the workplace exploitation matter to be addressed in an effective and efficient manner and it is in the public interest to address the matter in this manner; and
    - (iii) has not been revoked or set aside; and
  - (d) is covered by subsection (2) or (3).
- (2) The applicant is covered by this subsection if the applicant has been issued a certificate, by a government entity determined under section 5, which includes the following information:
- (a) the name and workplace address of the government entity; and
  - (b) the full name, date of birth and address of the applicant; and
  - (c) the visa subclass held by the applicant; and
  - (d) if applicable—the last visa subclass held by the applicant; and
  - (e) details of the employer where it is alleged the applicant is being or was subjected to workplace exploitation, including the employer's name (whether personal, business or company name), the employer's address and the employer's Australian Business Number; and
  - (f) details of the workplace exploitation to which it is alleged the applicant is being or was subjected, including its nature, location of occurrence, duration and frequency of occurrence.
- (3) The applicant is covered by this subsection if the applicant has been issued a certificate, by a person or body determined under section 5 that is not a government entity, which includes the following information:
- (a) the name and workplace address of the person or body; and
  - (b) the full name of the individual making the certificate; and
  - (c) the contact information (including workplace address, phone number and email) of the individual making the certificate; and
  - (d) a statement that the individual making the certificate is currently employed by or is contracted to provide services for the person or body; and
  - (e) the relevant qualifications and position of the individual making the certificate; and
  - (f) the full name, date of birth and address of the applicant; and
  - (g) the visa subclass of the visa currently held by the applicant; and

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- (h) if applicable—the visa subclass of the most recent substantive visa held by the applicant before the visa mentioned in paragraph (g); and
  - (i) details of the employer where it is alleged that the applicant is being or was subjected to workplace exploitation, including the name of the employer (whether personal, business or company name), the address of the employer address and the Australian Business Number of the employer; and
  - (j) details of the workplace exploitation to which it is alleged the applicant is being or was subjected, including the nature of the exploitation, location of occurrence, duration and frequency of occurrence; and
  - (k) a statement that the person or body holds a reasonable belief on the basis of client evidence that there is prima facie evidence the applicant is or was the subject of a workplace exploitation matter; and
  - (l) 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; and
  - (m) 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
  - (n) a statement that the person or body considers that if any law 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.

## 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 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.