



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<br>Name of entity   | Column 2<br>Type of entity | Column 3<br>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<br/>Name of entity</b>                                 | <b>Column 2<br/>Type of entity</b> | <b>Column 3<br/>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.