

Australian Government

Department of Home Affairs

Accreditation Framework for the Workplace Justice Visa Pilot and Strengthening Reporting Protections Pilot

Context

A. Two complementary pilots commenced in July 2024: a Workplace Justice Visa Pilot and a Strengthening Reporting Protections Pilot (the **Pilots**).

B. The Workplace Justice Visa (**WJV**) will enable temporary migrants to remain in Australia under a Temporary Activity Visa (Class GG) (Subclass 408) to seek recourse in relation to a workplace exploitation claim, where their claim has been certified by an Accredited Third Party (**ATP**). It is expected that the ATP will provide appropriate support to the temporary migrant to resolve the workplace issue.

C. The Strengthening Reporting Protections (**SRP**) Pilot will enable temporary migrants to seek protection from visa cancellation under prescribed circumstances outlined in the *Migration Regulations 1994* (Cth) (**Migration Regulations**):

   i. s 2.43B – Circumstances in which the Minister is not to cancel certain temporary visas for breach of restricted work condition (a non-discretionary protection); and

   ii. s 2.43A – Minister must have regard to certain matters in considering cancellation of certain temporary visas for breach of a visa condition (a discretionary protection).

D. The aim is to enable the visa holder to report and resolve a workplace exploitation claim, without fear of visa cancellation.

E. The underlying intent of the Pilots is to address migration related barriers to pursuing and / or resolving issues of workplace exploitation.

F. The Department of Home Affairs (**Home Affairs**) will monitor and evaluate the Pilots through the collection of data in relation to WJVs and SRP, including information provided by ATPs and from applications lodged by temporary migrants.

Introduction

Aim

1. This Accreditation Framework (**Framework**) is intended to provide guidance on the governance and transparency arrangements, in relation to the participation by ATPs in the Pilots by:

   a. setting out the expectations and responsibilities of ATPs to support the efficient operation and integrity of the Pilots; and

   b. establishing information sharing and data reporting requirements to monitor and evaluate the Pilots.

Scope

2. This Framework is issued as guidance only. It is not a legal document and does not create any legally binding obligations on ATPs or Home Affairs in relation to the conduct of the Pilots.

3. The Framework relates to ATPs only and does not apply to other government agencies that may interact with the Pilots.

Accredited Third Parties

Non-Government organisations

4. The following types of non-government organisations can engage with Home Affairs to participate in the Pilots and may have their organisation accredited and listed in a legislative instrument, by the organisation's name and ABN:

   a. Community Legal Centres;

b. Working Women's Centres;

c. Legal Aid;

d. Migrant Worker Centres;

e. University student legal services;

f. Registered trade union or State/Territory Trades and Labour Council or union peak body; or

g. an employment lawyer who:

i. holds specialist accreditation from the relevant Law Society of their State/Territory in employment law; or

ii. has 5+ years post-admission experience and is employed in a law firm that has a pro bono practice.

5. Accreditation permits an ATP to provide certification to temporary migrants applying for the WJV or requesting SRP, where those temporary migrants have reported a workplace exploitation matter to the ATP, and the ATP is listed as a certifying entity in the relevant legislative instrument, and is providing appropriate support to the temporary migrant to resolve the matter.

6. A list of ATPs (and relevant Government agencies) will be made available online on the Home Affairs' website to enable temporary migrants to engage with ATPs to resolve their workplace issues, facilitated where appropriate, by a WJV or protection from visa cancellation under the SRP Pilot.

Accreditation

7. To become an ATP, non-government organisations or individuals listed at paragraph 3.1.1, who wish to participate in the Pilots are required to attend a briefing with Home Affairs about the Pilots. Briefings will be organised on invitation.

8. Where an organisation is accredited and listed as an ATP, that organisation is responsible for ensuring all employees of the organisation who participate in the Pilots understand the intent of the Pilots, and the expectations of ATPs as set out in this Framework, for example with regards to certification, record keeping and reporting.

Removal of Accredited Third Parties from the legislative instrument

9. Where matters are identified or raised with an ATP by Home Affairs, regarding the processing and/or assessment of claims of a workplace exploitation matter (e.g. expectations are not met, or the ATP is not providing certifications in accordance with the intent of the Pilots) and the ATP fails to co-operate and/or respond in a reasonable timeframe, Home Affairs may facilitate removal of the ATP (as a certifying entity) from the relevant legislative instrument.

10. In circumstances where the concerns have been resolved to the satisfaction of the Minister, accreditation for the third party may be re-instated.

11. Where ATPs have been removed from the legislative instrument, Home Affairs will continue to review applications that include certification from the ATP that were completed before their removal from the legislative instrument. Subsequent applications based on certifications undertaken after removal from the legislative instrument will not be accepted by Home Affairs, unless required by law.

Responsibilities of Accredited Third Parties

Communication with temporary migrant workers

12. By participating in the Pilots, an ATP acknowledges that neither it or any of its personnel are an officer, employee, partner or agent of Home Affairs, nor does an ATP have any power or authority to bind or represent Home Affairs. An ATP should not represent to temporary migrant workers that it can achieve any preferred outcome in relation to a WJV and/or SRP application, through the temporary migrant's use of the ATP's services.
13. Temporary migrants or their authorised representatives under migration law are responsible for seeking access to the Pilots directly with Home Affairs.
14. ATPs should provide accurate information about the Pilots and guidance to temporary migrants seeking support, including reinforcing the Government's expectation that temporary migrants will comply with visa conditions and migration law.
15. ATPs should consider the best interests of the temporary migrant, and appropriately communicate the specific purpose and parameters of the Pilots, which are intended to address migration-related barriers to pursuing workplace justice, without undermining the integrity of Australia's visa system. The Government's expectations include:
    a. (As applies to all other subclass 408 applicants), WJV applicants will be required to demonstrate they are able to support themselves and any dependents; and
    b. SRP requests provide assurance to temporary migrant workers so that they can proactively engage with relevant supports to resolve a workplace exploitation matter or pursue a remedy. Any protection from visa cancellation must meet the prescribed criteria. Certification of their workplace exploitation (or the application of the protection) does not provide permission for temporary migrants to continue to breach their visa condition(s) after the certification has been provided.

Conflicts of interest

16. An ATP is requested to disclose to Home Affairs any conflict of interest they have in relation to a temporary migrant, which may impact their impartiality and objectivity in assisting the temporary migrant with their WJV application and/or SRP request. Any such potential conflict of interest, together with the steps proposed by the ATP to manage potential conflict risks, should be disclosed by the ATP, together with their supporting statutory declaration for the temporary migrant.

Statutory declarations & assessment of requests for certification

17. To assist temporary migrants with their WJV application and/or SRP request, the ATP can provide temporary migrants with supporting statutory declarations, certifying the temporary migrant's workplace exploitation matter and circumstances, in accordance with the information set out in Schedule 1 to this Framework. ATPs should only use a Commonwealth statutory declaration form to support the certification of the temporary migrant's workplace exploitation matter.
18. Certifying statutory declarations issued by ATPs must be based on the temporary migrant's evidence together with any evidence the ATP has gathered in the course of investigating or assisting the temporary migrant. Examples of the types of evidence that may be relied upon are set out in Schedule 2 to this Framework. The examples of evidence in Schedule 2 are not exhaustive. They are intended as a guide to support evidence based claims.
19. While participating in the Pilots, there is an expectation that ATPs should support the intent of the Pilots, consistent with the Government policy. In addition, when certifying workplace exploitation matters for the purpose of supporting a WJV application, ATPs should have regard to:
    a. the welfare and wellbeing of the temporary migrant

b. if there are reasonable prospects for securing a successful resolution, including consideration of both the evidence and support available to the temporary migrant to resolve the matter

c. the impact the case will have on the temporary migrant, compared to pursuing the workplace claim offshore, including, but not limited to the costs of pursuing the matter to the visa holder and

d. the nature of the case and societal impacts, e.g. trivial versus substantial claims.

Reporting requirements

20. To support the implementation, ongoing monitoring and evaluation of the Pilots, ATPs are requested to provide data in relation to the WJV and SRP to Home Affairs on the certifications processed by the ATP. The frequency of reporting (minimum three monthly) will depend on the volume of certifications processed by the ATP and will be agreed to with Home Affairs. Key information to be provided to Home Affairs by an ATP should include:

    a. Time Frames

        i. Time taken to obtain the workplace justice case resolution.

    b. Workplace Justice Outcomes

        i. Cases resolved (WJV / SRP certifications / how the workplace issue was resolved)

        ii. Value of compensation/ recovery of wages (aggregate and average)

        iii. Cases involving multiple temporary migrant workers.

    c. Volumes

        i. Enquiries received

        ii. Cases on hand (i.e. backlogs) and cases not progressed (e.g. requests that don't meet evidentiary requirements)

        iii. Number of certifications issued (Home Affairs to cross reference this with lodgement and Pilots outcomes).

    d. Impacts on ATP

        i. Resourcing impacts including time to assess and certify claims as well as provide reporting.

21. Optional pieces of informative data that ATPs may wish to provide to Home Affairs to support their role in the Pilots include:

    e. Anecdotal case study impacts on individuals and society

    f. Details of high impact profile cases (once finalised)

    g. Repeat requests for assistance that do not result in certification

    h. Feedback on Pilots including enhancements, effectiveness of existing settings/processes.

22. Reporting information provided to Home Affairs should be de-identified (not contain any personal information of temporary migrants).

23. If requested, an ATP is to engage with Home Affairs and resolve any concerns about the ATP's process, including verification of certifications issued.

Record keeping

24. ATPs should keep records of their grounds for supporting a claim (including copies/details of evidence) for a WJV and/or SRP for the duration of the Pilots and for the period of 7 years after completion of the temporary migrant's case, or where required by law.

Communication with Home Affairs

25. ATPs should communicate with Home Affairs where capacity is constrained and work collaboratively to identify and implement processes to mitigate associated risks, particularly for protracted cases. This could include triaging or on-referral processes.
26. ATPs should provide written notification as soon as reasonably practicable to Home Affairs on matters which may affect the ability or perception of the ability of the ATP and/or relevant personnel to certify workplace exploitation claims.
27. ATPs should provide written notification as soon as reasonably practicable to Home Affairs if the ATP no longer wishes to participate in the Pilots and provide a fixed date of cessation of function. Certifications made prior to this notification will continue to be considered valid for the purpose of the Pilots.

Responsibilities of Home Affairs

28. The responsibility for implementing, monitoring and evaluating the Pilots rests with Home Affairs as the agency responsible for administering the *Migration Act 1958* (Cth).
29. Home Affairs will conduct briefings regarding the Pilots for non-government organisations interested in becoming an ATP.

Key Department Contacts

Combat Migrant Exploitation Policy
Compliance and Migration Assistance Policy
Department of Home Affairs

SCHEDULE 1 INFORMATION TO BE INCLUDED IN A STATUTORY DECLARATION CERTIFYING MATTERS OF WORKPLACE EXPLOITATION

ATPs should include the following information in the statutory declaration to support the certification of the temporary migrant's case:

i. the contact information (including workplace address, phone number and email) of the individual making the declaration

ii. a statement that the individual making the declaration is currently employed by or is contracted to provide services for the person or body; and

iii. the relevant qualifications and position of the individual making the certificate; and

iv. the full name, date of birth and address of the applicant; and

v. passport number, client identification numbers and the visa subclass of the visa currently held by the applicant; and

vi. if applicable – the visa subclass of the last substantive visa held by the applicant; and

vii. a statement that the applicant is seeking from the following options:

   a. ***protection from cancellation of their visa*** *under Section 2.43B of the Migration Regulations 1994 (non-discretionary protection)*

   b. ***protection from cancellation of their visa*** *under Section 2.43A of the Migration Regulations 1994 (discretionary protection)*

   c. ***support to lodge a Workplace Justice Visa***

   due to a workplace exploitation matter

viii. details of the employer where it is alleged the applicant is being or was subjected to workplace exploitation, including the employer's name (whether person, business or company name), the employer's address, the employer's Australian Business Number, the period of employment and the industry of the employer; and

ix. if applicable – the alternative names/structures that the business may operate under

x. details of the workplace exploitation to which it is alleged the applicant is being or was subjected (mot explicit, but high level), including location of occurrence, duration, period of occurrence, dates of exploitation, any indications that the exploitation is systemic (that is, the matter applies to more than one worker working for a particular employer), and details of any non-compliance with visa conditions (where relevant); and

xi. if applicable (when seeking the SRP), information establishing a connection between exploitation and non-compliance with visa condition(s) and when the exploitation occurred.

xii. if applicable (when seeking the WJV) a statement 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

   This statement will support decisions on the duration of the visa grant. For a visa to be granted for up to 12 months, the statement must include relevant information about what steps have been undertaken to pursue the matter, and the steps that need to be undertaken to pursue the matter that support a longer stay.

xiii. 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

xiv. 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 that they are committed to comply in future with the visa conditions to which the visa holder's visa is subject (noting applicants will be required to confirm this in writing to Home Affairs in their application for a WJV/ SRP request); and

xv. 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

xvi. 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; and

xvii. a statement that outlines actions to address the claim including summary of actions taken to date and details of the extent of client representation including which organisation is providing support, and any ongoing or scheduled matters; and

xviii. any other relevant information.

SCHEDULE 2 EXAMPLES OF EVIDENCE OF WORKPLACE EXPLOITATION

This Schedule outlines types of evidence that may be used by the temporary migrant to demonstrate that they have a prima facie meritorious workplace exploitation matter in scope of the Pilots. ATPs should retain evidence used to inform the certification process as stipulated under paragraph 4.5 of the Framework.

For each of the types of exploitation in scope, the visa holder must have sufficient evidence to verify the employer / employee arrangement. This might include:

- pay slips
- time sheets
- letters of offer specifying role/salary
- contracts for employment
- bank statements
- correspondence regarding work schedules

For all types of exploitation, a Commonwealth Statutory Declaration could be completed by the applicant in lieu of other evidence. The Statutory Declaration will differ depending on the type of exploitation, to include relevant information. Examples are provided below.

Underpayment might include copies of:

- letters, emails, text messages, or pay slips
- records relating to time sheets / time worked

Bullying:

- A Commonwealth Statutory Declaration from the applicant to the 'trusted third party' detailing:
    - A minimum of two examples of bullying
    - How the behaviour risks their health and safety
    - When and where the bullying occurred, and who was involved
    - Witnesses to the bullying - where available
    - Evidence of the bullying (such as physical or electronic evidence) – where available
    - What they have done in relation to the bullying (for example, reporting the matter to any other person/entity/organisation)
    - That the temporary migrant wishes to pursue the matter and will actively assist the investigation
    - That the temporary migrant is aware of their visa conditions and will abide by these in the future

Discrimination:

- A Commonwealth Statutory Declaration from the applicant to the 'trusted third party' detailing:
    - Why they believe the behaviour was discrimination
    - What happened, when and where, and who was involved
    - How many occasions the discrimination has taken place

- If there are any witnesses to the discrimination, and whether those witnesses can verify the discrimination
- If there is any evidence of the discrimination (such as physical or electronic evidence)
- What they have done in relation to the discrimination (e.g. reporting the matter to any other person/entity/organisation)
- That the temporary migrant wishes to pursue the matter and will actively assist the investigation
- That the temporary migrant is aware of their visa conditions and will abide by these in the future

Harassment:

- A Commonwealth Statutory Declaration from the applicant to the 'trusted third party' detailing:
  - Why they believe the behaviour was harassment
  - What happened, when and where and who was involved
  - How many occasions the harassment has taken place
  - If there are any witnesses to the harassment, and whether those witnesses can verify the discrimination
  - If there is any evidence of the harassment (such as physical or electronic evidence) (note, Home Affairs will not seek any evidence that is explicit – such evidence is not to be submitted with the application)
  - What they have done in relation to the harassment (e.g. reporting the matter to another person/entity/organisation)
  - That the temporary migrant wishes to pursue the matter and will actively assist the investigation
  - That the temporary migrant is aware of their visa conditions and will abide by these in the future

Unfair dismissal:

- A Commonwealth Statutory Declaration from the applicant to the 'trusted third party' detailing:
  - Why they believe they were unfairly dismissed
  - When were they dismissed and what grounds were given for dismissal
  - If there were any events leading up to dismissal (such as performance management, disagreements)
  - If there are any witnesses to the unfair dismissal
  - If there is any evidence of the unfair dismissal (such as written grounds)
  - What they have done in relation to the unfair dismissal (e.g. reporting the matter to any other person/entity/organisation)
  - That the temporary migrant wishes to pursue the matter and will actively assist the investigation
  - That the temporary migrant is aware of their visa conditions and will abide by these in the future

Work Health and Safety:

- A Commonwealth Statutory Declaration from the applicant to the 'trusted third party' detailing:
    - Why they believe they have been exposed or suffered an injury or near miss
    - When, where and how did this occur, and whether anyone else was involved
    - If there are any witnesses to the occurrence(s)
    - If there is any evidence of the exposure, injury or near miss (such as medical reports, WH&S reports)
    - What they have done in relation to these matters (e.g. reporting the matter to another person/entity/organisation)
    - That the temporary migrant wishes to pursue the matter and will actively assist the investigation
    - That the temporary migrant is aware of their visa conditions and will abide by these in the future