

## **SUPPLEMENTARY EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Immigration and Citizenship

*Migration Regulations 1994*

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

### **Purpose of the supplementary explanatory statement**

The *Migration (Workplace Justice Visa—LIN 24/055) Instrument 2024* (the Instrument) commenced on 24 July 2024. The instrument was made under subitem 1237(5B) of Schedule 1 and paragraph 408.228A(1)(b) of Schedule 2 to the *Migration Regulations 1994*.

This supplementary explanatory statement supplements the initial explanatory statement to the Instrument in accordance with paragraph 15J(1)(c) of the *Legislation Act 2003*. This supplementary explanatory statement is made in a response to a request for further information by the Senate Standing Committee for the Scrutiny of Delegated Legislation in the course of its initial scrutiny of the Instrument, relating to how the applicable APPs apply.

### **Amendments of the initial explanatory statement**

*On page 6 of the initial explanatory statement, at the end of paragraph 24, insert:*

24. The Department of Home Affairs (the Department) is an *APP entity* and an *agency* for the purposes of the *Privacy Act 1988* (Privacy Act) and is bound by the Australian Privacy Principles (APPs). The APPs apply to the collection, use and disclosure of personal information by the Department for the purposes of this instrument and related provisions of the Migration Regulations.

### **Collection, use and disclosure of personal information:**

25. The Workplace Justice Visa pilot was established as part of a package of reforms to address migrant worker exploitation. Within this broader package, the pilot seeks to address migration related barriers that may deter temporary migrant workers from pursuing workplace justice. The reforms acknowledge that increased reporting of exploitation is an important step towards strengthening and targeting compliance and enforcement efforts to disrupt, address and deter unscrupulous employers from exploiting temporary migrants in Australia. Over time, increased enforcement targeting exploitative practices seeks to dis-incentivise and reduce the exploitation of temporary workers.

26. Australian Privacy Principle (APP) 3.1 provides that:

If an APP entity is an agency, the entity may collect personal information (other than sensitive information) where it is reasonably necessary for, or directly related to, one or more of the entity's functions or activities. If the information is sensitive

information then in addition to the above requirements, the entity may only collect the information if the individual consents or an exception applies.

27. Under the Instrument, the primary purpose for the collection of personal information in relation to the Workplace Justice visa (including certified evidence of workplace exploitation matters) is for the Department to process and make a decision on those visa applications. The collection of personal information is therefore reasonably necessary for the functions of the Department and administration of provisions of the Migration Act and Regulations.

28. APP 6.1 provides that:

If an APP entity holds personal information about an individual that was collected for a particular purpose (the primary purpose), the entity must not use or disclose the information for another purpose (the secondary purpose) unless:

- (a) the individual has consented to the use or disclosure of the information; or
- (b) subclause 6.2 or 6.3 applies in relation to the use or disclosure of the information.

29. APP 6.2(a) relevantly provides an exception to the prohibition in APP 6.1 where:

... the individual would reasonably expect the APP entity to use or disclose the information for the secondary purpose and the secondary purpose is:

- (i) if the information is sensitive information — directly related to the primary purpose; or
- (ii) if the information is not sensitive information — related to the primary purpose;

30. APP 6.2(b) provides an exception to the prohibition in APP 6.1 where the use or disclosure of the information is required or authorised by or under an Australian law or a court/tribunal order.

31. In order to make an application for a Workplace Justice visa, applicants are required to confirm that they understand that the Department may collect, use and disclose the applicant's personal information (including biometric information and other sensitive information) as outlined in the Privacy Notice (Form 1442i). The provision of information in an application form is a voluntary disclosure. There is no requirement to provide information that requires a duty of confidence.

32. Certificates issued by entities under the Workplace Justice visa pilot contain personal information within the meaning of section 6 of the Privacy Act. This includes personal information about the visa applicant (i.e. the victim of workplace exploitation), about the employer where the applicant is or was subjected to workplace exploitation, and about the non-government entity. Applicants are notified about how the Department collects, uses

and discloses personal information in the Department's Form 1442i, which is available on the Department's website.

33. The Department also publishes its Privacy Policy which contains information about how the Department complies with the Australian Privacy Principles (APPs) set out in the Privacy Act. The Department's Privacy Policy can be found on the Department's website at <https://www.homeaffairs.gov.au/access-and-accountability/our-commitments/plans-and-charters/privacy-policy>.

### **How the Department protects personal information**

34. APP 11.1 provides that:

If an APP entity holds personal information, the entity must take such steps as are reasonable in the circumstances to protect the information:

- (a) from misuse, interference and loss; and
- (b) from unauthorised access, modification or disclosure

35. APP 11 applies to the Department, including in relation to where the Department holds any personal information collected pursuant to the Instrument. Personal information collected by the Department is held in secure electronic databases. Some personal information is also held in paper files. The Commonwealth maintains a Protective Security Policy Framework (PSPF), which includes information security management policies. The PSPF ensures that all official information, including personal information collected for official purposes associated with the Department's functions, is subject to appropriate safeguards to ensure the confidentiality, integrity and appropriate use and disclosure of the information in accordance with the requirements of enabling legislation and the Privacy Act.

### **Suspected privacy breaches and the Notifiable Data Breach Scheme**

36. The Department has a well-established Suspected Privacy Breach Process and Privacy Training Framework, which ensures that staff are aware of, and compliant with, the APPs and the privacy obligations under the Privacy Act. This includes ensuring that staff are aware of and compliant with the obligations of the Department under the Notifiable Data Breaches Scheme under the Privacy Act.