

# NEWSLETTER 153

## RAPID REVIEW INTO EXPLOITATION OF AUSTRALIA'S VISA SYSTEM

- increasing investment in ABF led multi agency taskforces to investigate and prosecute migration fraud and non-compliance and prioritising these matters
- increasing the powers and investigative capacity of the OMARA and to include power to investigate 'any person' providing migration advice, whether lawfully or unlawfully
- requiring offshore operators to be registered or adopt the NZ model of only accepting applications from registered or exempt persons
- amending the use of the term 'agent' to reduce confusion regarding lawful and unlawful operators
- undertaking a trusted branding exercise for Registered Migration Agents as the lawful providers of migration advice
- enhancing background and character checks for new and renewing RMAs
- increasing regulation of education agents and privately owned Registered training Organisations (RTOs)
- reviewing the role of education providers in regulating their commissioned education agents
- re-evaluating the role of TESQA and ASQA in the regulation of CRICOS providers
- targeting data matching across Commonwealth agencies including ATO, AUSTRAC and ACIC
- extending anti money laundering reforms to include RMAs, education agents and privately owned VET providers
- increasing financial penalties for misconduct related to migration advice
- enhancing data matching with the authorities of source countries.

## 'STRENGTHENING EMPLOYER COMPLIANCE' BILL

The major features of the bill are:

- establishing criminal offences and associated civil penalty provisions for a person who unduly influences, pressures or coerces a non-citizen to breach a work-related condition of their visa or accept an exploitative work arrangement to meet a work-related condition of their visa
- enable the minister to prohibit certain employers from employing any additional non-citizens and introduce associated offence and civil penalty provision
- require the Minister to publish certain information about a prohibited employer; increase and align the maximum criminal and civil penalties for current and proposed work-related and employer-sponsored related breaches
- the trigger the enforceable undertaking provisions in the Regulatory Powers (Standard Provisions) Act 2014; provide for enforceable compliance notices where an officer suspects a contravention of a work or sponsorship-related offence or related provision
- remove the criminal offence of breaching a work-related visa condition and insert an avoidance of doubt clause for remaining work-related offence provisions
- and enable the Migration Regulations 1994 to prescribe matters the minister may, must or must not take into account when considering the exercise of the power to cancel visas on certain grounds.

The bill also focuses on the behaviour of companies and their officers that is reckless or negligent in controlling exploitative work-related offences and those officers taking all reasonable steps to prevent the work-related offence being committed.

## ATO REVEALS MORE THAN \$557 MILLION CLAIMED BY FRAUDSTERS EXPLOITING SECURITY LOOPHOLE

### A-UKFTA UPDATE

In order to comply with the Australia-United Kingdom Free Trade Agreement's LMT standards, the Department has yet to explain how it interprets those requirements. The Department has been allowing numerous applications even when they do not seem to fit the requirements, as applicants are aware. The applicants are advised to talk to their clients about any potential problems until this is more definitively settled, should the Department decide to unexpectedly modify its course of action.

In order to prevent applications from being rejected or delayed on this account, several applicants are choosing to perform LMT for all applicants.

## CHANGES TO VETASSESS PRIORITY PROCESSING

From July 31 our Priority Processing service will change so that applicants with evidence of urgent need will receive priority when places are allocated. Applicants without an urgent need can still apply for Priority Processing.

Once places are allocated to those with an urgent need, any remaining slots will be offered to other applicants in the queue on a first-come-first-served basis. Urgent reasons for an applicant to apply for Priority Processing are:

The applicants who have received an invitation from the Department of Home Affairs or an Australian state or territory government, which has an expiry date

- The visa expires within eight weeks and they are unable to obtain another visa
- The applicant is are turning 33, 40 or 45 within eight weeks
- The English test result (IELTS or PTE) expires within eight weeks
- Partner Skills Assessment or English test result expires within eight weeks.

## AAT – MRD – PRE-CONNECTION TEST CHANGES

From 1 September 2023, the MRD will no longer automatically offer applicants who are represented by a migration agent or legal representative a Pre Connection Test (PCT) before a hearing held by Microsoft Teams video.

After this date, represented applicants who would like a pre connection test before a hearing held by Microsoft Teams video will need to contact [MRDivision@aat.gov.au](mailto:MRDivision@aat.gov.au) to ask for one to be scheduled. This change has been made in an attempt to better utilize the MRD's our resources, mindful of the fact that recent experiences has been that these tests are identifying significantly less issues, particularly for represented applicants.

You can read more about MRD hearings on this [fact sheet](#).

## AUSTRALIA-INDIA MIGRATION AND MOBILITY PARTNERSHIP ARRANGEMENT

A significant Migration and Mobility Partnership Arrangement (MMPA) has been signed between Australia and India. Both nations will gain from improved collaboration on migratory concerns as a result of this arrangement.

In addition to maintaining the current visa options for students, visitors, businesspeople, and other professionals who facilitate mobility and migration between our two countries, the MMPA also calls for the creation of a new mobility pathway (the Mobility Arrangement for Talented Early-career professionals Scheme, or MATES) for Indian graduates and early-career professionals. The MMPA also extends the validity of new subclass 600 business visitor stream visas to up to five years, supporting strengthened commercial relationships.

For more information about MATES, see the [MATES fact sheet](#).

## CITIZENSHIP APPLICATION FOR NEW ZEALAND APPLICANTS

From July 1, 2023, some New Zealanders with Special Category (subclass 444) visas are subject to changes in eligibility. Make sure you are eligible.

Important: When submitting an online application, make sure to include your New Zealand citizenship in the "Citizenship details" area on the "Applicant details" page of the form. This will guarantee that your application is submitted in accordance with the proper criteria, enabling you to submit it online.

### All candidates for Citizenship through Conferral

We are getting more requests than normal for information on international travel movement. An estimated date will be allowed when entering your travel dates, dates of first arrival, or dates of visa issuance; a processing officer will check exact dates in our systems as needed after you submit your application.

### Australian citizenship fees increased

New citizenship application fees will apply for applications lodged on or after 1 July 2023.

The fees are available on the [Department's website](#)

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## **ATO - PASSENGER MOVEMENTS DATA-MATCHING PROGRAM**

From 2023 through 2025, the ATO will obtain passenger movement information from the Department of Home Affairs.

In order to identify taxpayers who can be given specialized information to help them fulfil their tax and superannuation responsibilities or to ensure compliance with taxation and superannuation rules, this information will be accessed and electronically matched with certain parts of ATO data holdings.

## **AAT – MRD – PRE-CONNECTION TEST CHANGES**

The Temporary Skilled Migration Income Threshold (TSMIT) is now \$70,000. From 1 July 2023, new nomination applications will be required to meet this threshold or the annual market salary rate, whichever is higher.

- Nominations lodged on or before 30 June 2023 will need to meet the 'old' TSMIT of \$53,900.
- Nominations lodged on or after 1 July 2023 will need to meet the 'new' TSMIT of \$70,000.

The TSMIT applies to a number of skilled visas, including the Temporary Skill shortage (subclass 482), Skilled Employer Sponsored Regional (Provisional) (subclass 494), Employer Nomination Scheme (subclass 186) and Regional Sponsored Migration Scheme (subclass 187) visas.

The annual market salary rate (AMSR) is the Australian industry standard pay a worker receives for their occupation. AMSR may differ for an occupation based on years of experience, location and an employees' skills.

The AMSR ensures an overseas worker is paid no less than an Australian worker doing the same work in the same location. It can be determined by enterprise agreements or industrial awards, job outlook information, remuneration surveys, job advertisements for roles in the same location or advice from unions or employer associations.

## **LANDMARK CLASS ACTION, UNJUST CHARGES INVOLVED IN EX-SOLICITOR'S PROCEEDINGS**

An ex-solicitor who had his name stripped from the roll has taken on his former solicitor in proceedings involving wrongful fraud allegations and a landmark class action against a collapsed insurer.

DC Legal, a firm established by former solicitor Bruce Dennis, is seeking to dive into the inner workings of a trust account that had been operated by solicitor Marcel Joukhador to receive \$2,382,000 from the successful HIH Insurance class action.

The crux of the current proceedings in the NSW Supreme Court relates to how that settlement money was distributed.

When Mr Joukhador's practising certificate was cancelled in 2017, Phillip Madden, on behalf of Harrow Legal, agreed with Mr Dennis to recover and negotiate a settlement of costs to DC Legal.

This was linked to wrongful allegations made by police. The charges were dropped, and Lawyers Weekly does not allege any wrongdoing against Mr Joukhador and understands his certificate was reinstated.

Mr Dennis has not held a practising certificate since June 2015, and orders were made in 2016 to remove his name from the roll. DC Legal has not had any active clients since 2015.

Running alongside this dispute is a cross-claim brought by Mr Joukhador seeking a payment of \$381,980 that he alleges was an overpayment of monies paid by him to DC Legal.

The proceedings have been stayed until DC Legal pays a security sum of \$91,764 and costs to Mr Joukhador and Harrow Legal.

## **VICTORIAN BARRISTERS SLAM DAN ANDREWS' LAWYER X COMMENTS AS 'MISGUIDED, WRONG'**

Premier Daniel Andrews' comments after the closure of the Lawyer X investigative office have been denounced as "misguided, wrong and inappropriate" by 38 of Victoria's most eminent barristers.

Following a public dispute between former High Court judge Geoffrey Nettle and Director of Public Prosecutions Kerri Judd over the handling of the Lawyer X investigation, Mr Andrews told The Age Mr Nettle was "altogether too close" to decide on criminal convictions.

Mr Andrews added investigators "don't make good prosecutors".

"These statements reflect little understanding of the separation of powers, and the need for the executive not to comment on or involve itself in the investigation and prosecution of criminal offences.

In response, Ms Judd said she knocked back three of the office's briefs "on the basis there were not reasonable prospects" of success.

The barristers said they would not comment on this dispute between Mr Nettle and Ms Judd, but they said the statements made by Mr Andrews should "never have been made in respect of such a distinguished and well-respected jurist as Mr Nettle".

"They ought to be retracted and a public apology issued," the letter read.

## **NSW BUSINESSES WIN SYDNEY LIGHT RAIL CLASS ACTION**

Transport NSW has been found to be liable for the financial damage two businesses suffered during the construction of the Sydney railway line, but a court said there remains a big question mark over the approximately 300 other group members in the class action.

The Supreme Court found Hunt Leather's George Street store and Ancio Investment's Thai and Italian restaurant suffered an interference by the construction that was "both substantial and unreasonable". Its owners, Sophie Hunt and Nicholas Zisti, were not successful.

Although nuisance was established for both businesses, Justice Cavanagh said this could not be applied to all businesses along the construction path merely because of its proximity.

"This is not a particularly apt vehicle for a class action, albeit as I have identified, some of the issues might be common and have been determined by this judgment," Justice Cavanagh said.

"Going forward, there will need to be a process or mechanism developed for the determination of both entitlement and loss."

Justice Cavanagh said there would need to be another hearing to determine damages for the lead plaintiffs and establish a process for the remaining class action group members, including whether there might be any "common questions which could be answered".

"My preliminary view is that referees should be appointed to determine the outcomes based on guidelines and parameters," he said.

## **'HEARTBREAKING' \$5M PUBLIC HOUSING SETTLEMENT COMES WITHOUT APOLOGY FROM VICTORIAN GOVERNMENT**

The Victorian Supreme Court has been told that the "hard" public housing lockdowns of 2020 in Melbourne were "reasonable and demonstrably justifiable", despite a class action alleging that residents were wrongly detained without access to proper food and medicine.

The Victorian government has stood by the lockdown of public housing towers in July 2020, agreeing to a settlement of \$5 million without an apology or any admission of wrongdoing.

Lead plaintiffs Idris Hassan and Hawa Warsame filed the class action against the state of Victoria in the Victorian Supreme Court in March 2021, following the mandatory lockdown of the public housing towers in Melbourne between 4 July and 18 July 2020.

The settlement was originally proposed in May this year and was agreed upon in the Supreme Court on Monday (24 July). Eligible residents will now receive \$2,200 each, with children under 16 to receive \$1,100. Compensation is set to be paid to 1,800 adults and 750 children, with legal costs still under discussion.

## **TEENS ASSAULTED, STRIP-SEARCHED IN DETENTION CENTRE, CLASS ACTION ALLEGES**

Two teenagers inside a unit attached to a maximum security prison in Western Australia alleged they were discriminated against because of their disabilities and age, according to an affidavit from a solicitor hoping to add the proceeding to the WA youth detention class action.

Casuarina Prison, the main maximum-security prison for adult men in Western Australia, contains a juvenile detention centre known as Unit 18, where 10 current and former detainees alleged they were unlawfully discriminated against by the minister, chief executive, superintendent and officers.

Two boys, both under the age of 18, have alleged they were subjected to lengthy solitary confinement periods and were kept from education programs, social opportunities with other detainees, psychological assessments and, in the case of one boy, hygiene products.

In an affidavit filed with the Federal Court, Levitt Robinson Solicitors senior partner Stewart Alan Levitt said they have suffered "loss and damage, including physical injury, psychiatric injury, economic loss, deprivation of liberty, discomfort, fear and distress, and loss of dignity".

A complaint was lodged on behalf of both boys but then dismissed by the Australian Human Rights Commission in March 2023.

The applicants have claimed the state of Western Australia failed to ensure there were appropriate treatment, programs and services for group members with a disability. They alleged they were also restricted from education services and facilities within the adult detention centre.

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