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# Procedural Gaps and Promises: A Critical Review of Australia's Workplace Justice Visa

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ISHRAT JAHAN<sup>1</sup>

## ABSTRACT

*Australia's Workplace Justice Visa (Subclass 408), introduced in 2024, was introduced as a commanding tool to support migrant workers experiencing exploitation. While promising in theory, the visa's procedural design reveals serious structural flaws. This article critically examines the visa's reliance on third-party certification, absence of anti-retaliation safeguards, lack of bridging mechanisms which creates vulnerable migrant situations for migrant workers. Drawing on comparative models including the United States's U and T visas and Canada's open work permits for vulnerable workers this article proposes legal and actionable reforms to ensure procedural fairness, migrant workers dignity and access to justice.*

**Keywords:** *Workplace Justice Visa, migrant workers, labour exploitation, Australia, human rights, procedural justice.*

## I. INTRODUCTION

Access to justice is not a luxury, it is a basic human right—especially for those who live at the margins of law<sup>2</sup>. For many days Australia has faced global criticism because it fails to protect temporary migrant workers from labour exploitation. Due to the rise of temporary visa schemes attached to employer sponsorship, a lot of workers tolerate coercion, wage theft and unsafe conditions in the workplace. Then the Federal government announced a pilot Workplace Justice Visa in the month of July 2024. This visa scheme offers temporary legal protection for those workers who are being exploited in their workplace. But after a year of its announcement, legal scholars and advocates have raised urgent concerns. The WJV creates a route for temporary protections but it is obstructed by lack of legal clarity, procedural delays, and non-appearance of enforceable rights. Moreover, the visa gives too much power in the hands of the certifying authorities and fails to promote automatic bridging visa. Due to this reasons the framework leaves workers vulnerable to delays, retaliation, and deportation. These lacunas in the framework have turned the WJV into a fragile mechanism. Although this visa offers theoretical protection but often failing in practice. This article argues that the WJV's present structure

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<sup>1</sup> Author is an LL.M. (Master of Laws) student at Faculty of Law, University of Rajshahi, Bangladesh.

<sup>2</sup> Deborah L. Rhode, *Access to Justice* 3 (Oxford Univ. Press 2004).

leaves the migrant workers to continued legal and personal precarity. Without statutory safeguards or due process, the visa risks doing more harm than good. The article intends to propose a legal framework that centres access to justice, migrant worker dignity. WJV must be urgently reformed if the visa is to fulfill its justice-oriented purpose.

## II. GENERAL REVIEW OF THE WORKPLACE JUSTICE VISA FRAMEWORK

Australia has introduced a pioneering visa, the workplace Justice visa (Subclass 408) and launched it on 1st July 2024. WJV is a part of a package of reforms intended to fight migrant workers exploitation. The primary goal of the visa is to withdraw visa barriers which may obstruct temporary migrants from reporting exploitation due to concern about the consequence on their visa status.

### *Main Features*

- **No visa application charge:** For Workplace Justice visas, Home Affairs doesn't collect any charge.
- **Full working rights:** The visa provides full working rights to applicants and authorizes them to financially support themselves during the workplace exploitation claim process.
- **Visa Period:** Commonly, the visa period is six to twelve months and as per the legislation, the maximum visa period is four years.

### *Key Eligibility Criteria*

Applicants must:

- be in Australia to apply for this visa.
- carry a temporary substantive visa with work rights, with no more than 28 days remaining.
- have held a temporary substantive visa with work rights that ceased no more than 28 days before applying for the Workplace Justice Visa.
- desire to remain in Australia to comply with workplace justice activity. This means being a complainant, victim, alleged victim or party to court proceedings or investigations of workplace exploitation by a participating organisation. The relevant proceedings or complaint must have commenced before applying for the visa.
- provide certification of the claimed workplace exploitation matter from a participating organisation.

Although the introduction of the Workplace Justice visa is one of the modern solutions to combat workplace exploitation, its procedural foundation can be vulnerable for migrant workers.

### III. LEGAL AND PROCEDURAL GAPS: A SCHEME AT RISK OF COLLAPSE

The Fair Work Ombudsman exhibits in a recent case that a record of \$15.3 million in penalties was imposed on the operators of Sushi Bay outlets in NSW, Darwin, and Canberra for the deliberate exploitation of vulnerable migrant workers<sup>3</sup>. Then 163 workers were underpaid by the companies who were primarily Korean nationals on student, working holiday, and 457 skilled worker visas—more than \$650,000 over a four-year period.<sup>4</sup> The workers were severely exploited through practices such as falsifying records to suppress underpayments, with individual amounts ranging from \$48 to \$83,968.<sup>5</sup> Although the Workplace Justice Visa commenced under Ministerial Direction 100, aims to offer a remedy which is a temporary protection for workers assisting in "serious" labour law investigations, but the devil lies in the detail. There are some key flaws in the visa framework including;

#### 1. *Absence of Timely and Transparent Certification Processes*

To access the visa, applicants must first gain a certificate of exploitation, and this requirement introduces a new gatekeeping mechanism. Without mandatory timeframe or appeal rights and the dependence on certification by third parties, which can be vulnerable to workers. This also results in:

- No legal deadline for issuing certification.
- Incompatibility between certifying bodies.
- No commitments to provide reasons for the denial of certificate.
- No right to review or appeal, unlike decisions made by Home Affairs or tribunals.

This leaves applicants in limbo; some clients wait over a month for certification during which their lawful status may expire.

#### 2. *No Bridging Visa while Certification is Pending*

Unlike most protection-related visa processes, the WJV doesn't automatically provide a Bridging Visa during the certification stage of visa applications. This creates the consequence

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<sup>3</sup> Fair Work Ombudsman, Record \$15.3 Million Penalty for Exploitation of Sushi Bay Workers (May 22, 2024), <https://www.fairwork.gov.au/newsroom/media-releases/2024-media-releases/may-2024/20240522-sushi-bay-penalty-media-release>.

<sup>4</sup> Id.

<sup>5</sup> Id.

of:

- Visa expiry leading to unlawful status.
- Loss of work rights and healthcare access.

Actually, the procedural gap generates what advocates have called a "legal vacuum" where applicants fall out of the system precisely when they need protection the most.

### ***3. Lack of Legal Protection Against Employer Retaliation***

The WJV does not offer specific statutory protection from retaliation by employers. This includes:

- Termination of employment.
- Threats of deportation on reporting to immigration authorities.
- Harassment or eviction from employer-provided accommodation.
- Pressure to withdraw complaints.

This leaves workers to vulnerable conditions during the most uncertain phase of asserting their justifiable rights.

### ***4. No Legal Aid Guarantee***

Although legal support is crucial to navigating exploitation claims, the WJV scheme doesn't guarantee access to publicly funded legal support. This issue is especially problematic as most exploitation claims include:

- Wage theft and underpayment.
- Unsafe work conditions and contract breaches.

## **IV. COMPARATIVE JURISDICTIONS: SHOW BETTER PRACTICE MODELS FOR WORKER PROTECTION**

### ***1. United States- U Visa and T Visa***

In the United States, the U Visa for victims of certain crimes and the T Visa for victims of human trafficking which are serving as prominence models of how immigration systems can uphold rights through integrated protection mechanisms. Basically, the U Visa is designated for non-citizen victims of serious crimes and T Visa is formulated for victims of human trafficking. These visas are grounded in the U.S. Victims of Trafficking and Violence Protection Act (2000) and comprise several best-practice features.

- **Duration of Four Years:** Both Visas are issued initially for four years with possible extension. Most importantly, they offer a clean route to permanent residency (green card) after three years of continuous physical presence.
- **Public Benefits and Work Rights:** Recipients are granted employment authorization and are compatible for a range of public services along with access to healthcare and housing assistance.
- **Protections from Retaliation:** U and T Visa applicants are defended by anti-retaliation laws. If any employer retaliates against victims for participating in investigations, they may face legal penalties.

Actually, the U.S. model contains how strong procedural safeguards which are combined with clear routes to permanent protection can enhance not only access to justice but also long-term social integration of diverse groups.

## 2. *Canada - Open Work Permit for Vulnerable Workers (OWP - VW)*

Canada provides an open work permit specifically for migrants facing abuse, codified under its Immigration and Refugee Protection Regulations. This policy reflects a combination of approach which is both rights-based and trauma-informed based.

- **Immediate Access to Work Rights:** The OWP-VW allows open employment with any employer, removing the control of abusive sponsors. This is conclusive in breaking cycles of exploitation and dependency.
- **No Legal Action Required:** Unlike the WJV, applicants for the OWP-VW don't need to inaugurate formal legal proceedings. They only need to present credible evidence of abuse, including verbal harassment, unsafe working conditions, sexual misconduct and which lowers the barrier to justice and protection.
- **No Time Limitations Based on Abuse Date:** There is no strict requirement that abuse be recent. This recognizes the complex timelines and trauma responses of victims, especially in gendered contexts.

Actually, the Canadian model demonstrates how survivor support and accessibility can be embedded in immigration mechanisms. Moreover it offers valuable lessons for Australia in constructing a more inclusive and effective WJV.

Conclusively, together the U.S. and Canadian models interpret that effective migrant protection schemes must do more than just allow legal stay and actively support the pursuit of justice through approachable processes, extensive legal support and enforceable rights.

## V. RECOMMENDATION FOR LEGAL AND POLICY REFORM

Australia must implement the following legal reforms to ensure that the WJV achieves its stated goal of protecting exploited workers:

### *a) Guaranteed Bridging Visa Upon Application*

- Amendment in migration schemes to grant a Bridging Visa E automatically when a WJV application is submitted or a certification request is made.
- The bridging visa must grant work rights.

### *b) Statutory Certification Deadlines and Review Rights*

- Introduce a certain statutory deadline for issuing or refusing certification.
- Require certifying bodies to grant written reasons for denial.
- Enable review of refusals via Administrative Appeals Tribunal.

### *c) Anti-Retaliation Provisions*

Amendment should be made to the Migration Act and the Fair Work Act 2009 to prohibit:

- Eviction from employer-owned housing.
- Threats or dismissal by employers once a worker seeks certification.
- Employer reporting of workers to immigration authorities during ongoing claims.

### *d) Legal Aid and Survivor Support Funding*

- Establish general funding for legal aid services supporting WJV applicants.
- Provide a nationwide referral network that assists workers to discrimination and harassment claims representation, and family violence or trafficking support.

## VI. CONCLUSION

Although Workplace Justice Visa is a potentially a strong tool in Australia's migration justice landscape, without specific legal protections and clear procedures it may fail to protect the workers. The WJV should be reframed not just as a visa category, but as a tool of justice in the migration system. Process and architecture should be ensured as timely, transparent and protective measures to avoid reproducing the vulnerabilities faced by workers in the first place. Justice can't be delayed on conditional migrant workers deserve more legal certainty, institutional support and the dignity of fair process than temporary relief. So, if Australia is serious about upholding its international human rights obligations, it must embed systemic justice into the migration scheme.

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