The temporary skilled visas data matching program with the ATO

At a glance

This protocol has been prepared to meet requirements of the Office of the Australian Information Commissioner's *Guidelines on Data Matching in Australian Government Administration* (2014).

The temporary skilled visas data matching program with the Australian Taxation Office (ATO) has been developed to assist the Department of Home Affairs (through our independent operational arm, the Australian Border Force, referred to in this protocol together as 'we' or 'our') to effectively detect and deal with compliance risks in the temporary skilled visa program. Under the program, we provide to the ATO data about certain clients in the temporary skilled visa program including information about their business sponsors. Where the ATO identity-matches these clients against their records with a high degree of confidence they return income and employment information for these clients.

Program objectives

This data matching program aims to strengthen the integrity of Australia's temporary skilled visa program by protecting foreign workers who are working in Australia from exploitation by business sponsors, and by ensuring that visa holders comply with their visa conditions. The program also protects Australian workers by maintaining the integrity of the Australian labour market.

In more detail this data matching program will assist us to identify:

- temporary skilled visa holders who are not working in the occupation in which, or for the employer by whom, they were sponsored
- sponsors who are breaching their sponsorship obligations by incorrectly paying temporary skilled visa holders.

Data related matters

We are the matching agency and the primary user agency, and the ATO is the source agency. No other agencies or entities will be involved in the data matching program.

We will provide the following data in respect of relevant clients:

- Biographical details, including name, address and date of birth
- Details of their business sponsor

We may also provide tax file numbers (TFNs) of relevant clients to the ATO.

Relevant clients are those who are, or were in the three most recently completed financial years, holders of Temporary Work (Skilled) visa (subclass 457) or Temporary Skill Shortage (subclass 482) primary visas.

Where there is a high confidence identity match for a relevant client, the ATO will provide to us the following data:

- The client's income details from Income Tax Returns and Payment Summaries;
- Employment details from TFN Declarations, Income Tax Returns and Payment Summaries;
- ABNs for all employers who issued the client a payment summary, or who the client has declared on their TFN Declaration or Income Tax Return; and
- Related data from Single Touch Payroll, when it becomes available.

Data matching will enable us to identify instances:

- where ATO data shows that income declared to the ATO is less than what we have approved a sponsor to pay a visa holder. This could be a breach of the sponsorship obligation to continue paying a visa holder the amount approved by us;
- where ATO data shows that a visa holder has received income from multiple employers. This could be a breach of a visa condition to only work for the approved employer; and
- where the occupation code reported to the ATO by the visa holder is different to the occupation code provided to us by the sponsor. This could be a breach of the sponsorship obligation and visa condition to only work in the approved occupation.

We estimate that the total number of records that will be provided for subclass 457 and the subclass 482 visas will be for up to 280,000 individuals in the first data exchange (first quarter).

Data will be of a high quality. We and the ATO maintain sophisticated up-to-date databases of all visa and sponsorship applications and taxation information respectively.

Data will be secure. We and the ATO will exchange encrypted data using a secure internet-based transfer facility. Prior to being transferred to our computer systems, our data will be transformed into a standardised format and validated to ensure it contains the required data elements.

Access to our systems are strictly controlled with features including:

- Login identification and password protection;
- Security roles and groupings; and
- Full audit trails of data and system access.

Access to visa holder, sponsor, and ATO data will be restricted to those of our officers responsible for monitoring compliance with the *Migration Regulations 1994* (regs 2.79 to 2.94) and to our technical support staff.

We will conduct data matching using secure computer systems and in accordance with approved policies and procedures.

We incorporate the data, which we have received from the ATO and which we want to use for compliance purposes, in a separate report that forms part of our records. This report is retained and disposed in line with standard protocols that are applied to all our records.

Data received from the ATO, which we do not use, is destroyed within 90 days.

How the data will be used

We are Australia's border control and border law enforcement agency. Amongst other things, we have a responsibility to maintain the integrity of Australia's temporary skilled visa migration program. Our functions include:

- promoting responsive migration by facilitating the travel and stay of people to support the Australian economy and strengthen social cohesion; and
- protecting Australia by identifying and managing migration and trade risks across the border continuum.

The ATO is the principal revenue collection agency and administrator of Australia's tax system and significant aspects of Australia's superannuation system. The ATO's functions include maintaining an up-to-date, comprehensive source of income and employment information for individuals and companies, including temporary skilled visa holders and their sponsors.

This data matching program enables the identification of

- subclass 457 and subclass 482 visa holders who do not comply with their visa conditions, allows us to maintain the integrity of the temporary skilled visa program; and
- sponsors who do not comply with their obligations, supports Australia's economy by ensuring sponsors correctly pay visa holders. This protects the wages and conditions of Australian workers as well as those of foreign workers who are working in Australia.

We will use the data provided by the ATO for compliance purposes, such as considering whether a sponsor has breached their sponsorship obligations, or whether a visa holder has breached their visa conditions.

Where we identify potential breaches of sponsorship obligations and/or visa conditions, we will follow existing processes for taking any action in relation to a potential breach. These processes include providing the sponsor/visa holder an opportunity to respond to the concerns raised.

Public notification of the program

Our Privacy Notice ( ) notifies individuals that we collect their personal information for the purpose of carrying out our functions and activities. It specifically provides (page 3) that we may exchange information, including through data matching, with the ATO.

We will notify the public of this program by publishing:

- a notice in the Australian Government's notices gazette at the time the data matching commences. A copy of the gazette notice will be provided to the ATO and the OAIC.
- this data matching program protocol on our website.

The ATO may also notify their clients of their participation in this data matching program.

Legal matters

We will comply with the Privacy Act 1988 and our other obligations in respect of information-sharing.

To the extent that we collect tax file numbers (TFNs) from current or former visa holders, this collection is permitted in accordance with Australian Privacy Principle (APP) 3.4.a in

conjunction with s 506B of the *Migration Act 1958* and the *Migration Amendment (Enhanced Integrity) Regulations 2018*.

Personal information is disclosed to the ATO in accordance with APP 6.2.e, which allows us to disclose personal information where we reasonably believe that the disclosure is reasonably necessary for an enforcement related activity conducted by, or on behalf of, an enforcement body.

The enforcement related activity we are conducting is detecting breaches of immigration law and enforcing compliance with visa requirements (see the Addendum to the Explanatory Memorandum to the Privacy Amendment (Enhancing Privacy Protection) Bill 2012). The ATO carries out identity-matching on our behalf and provides data back to us in accordance with item 3 of Table 7 contained in s 355-65(8) of Schedule 1 to the *Taxation Administration Act 1953*.

We collect the data provided by the ATO in accordance with APP 3.4.d.i and use the data for the primary purpose for which it was collected, namely data matching to detect breaches of immigration law and to enforce compliance with visa requirements.

Alternative methods

We considered whether we could request income information directly from sponsors/visa holders instead of the ATO. However, this method is more resource intensive for us and sponsors/visa holders (as well as being not feasible for every sponsor/visa holder) and it carries greater risk of being compromised through the provision of fraudulent information.

We also considered whether the information could be requested from another source. Whilst other entities eg banks may hold some relevant information about a visa holder or sponsor, their records are not necessarily complete or sufficiently comprehensive. Forming a complete picture of each sponsor/visa holder would be resource intensive.

Pilot Program

We and the ATO trialled the matching process for a sample of over 500 records in early November 2017. The trial confirmed the efficacy of identity matching, with a high percentage identity match rate for both visa sponsors and visa holders. A trial full data exchange occurred in December 2017, for all current subclass 457 visa holders. This larger trial also returned a high percentage identity match rate, and allowed the identification and resolution of technical issues. No compliance action has been taken during the pilot program.

Costs and benefits

The following benefits are expected from this data matching program:

- improved service delivery in the temporary skilled visa program, through increased point-in-time accuracy of the identity of sponsors and visa holders;
- increased awareness on the part of sponsors and visa holders of the obligations a sponsor must meet, or the conditions a visa holder must comply with, leading to
- increased community confidence in the integrity of Australia's temporary skilled visa program, and in our ability to take compliance action where they are misused, and
- increased effectiveness in our ability to identify and take action with respect to sponsors and visa holders who do not comply with their sponsorship obligations/visa conditions.

We consider that these benefits make the investing in the data matching program worthwhile despite the cost.