

**EXPLANATORY STATEMENT**

*Migration Act 1958*

**Migration (LIN 18/219: Determination of International Trade Obligations Relating to Labour Market Testing) Instrument 2018**

*(Subsection 140GBA(2))*

1. The instrument, LIN 18/219, is made under subsection 140GBA(2) of the *Migration Act 1958* (the Act).
2. The instrument operates to determine international trade obligations of Australia for the purposes of paragraph 140GBA(1)(c) of the Act. Paragraph 140GBA(1)(c) provides that the labour market testing condition in section 140GBA only applies to a nomination by an approved sponsor if it would not be inconsistent with any international trade obligation of Australia to require the sponsor to satisfy conditions relating to labour market testing, as defined in subsection 140GBA(7). Subsection 140GBA(2) allows the Minister to determine, by legislative instrument, an obligation of Australia under international law that relates to international trade. An obligation determined by the Minister by legislative instrument includes obligations that may arise under any agreement between Australia and another country (or other countries).
3. The instrument acts alongside instrument *Migration (LIN 18/183: Determination of International Trade Obligations relating to Labour Market Testing) Instrument 2018*, made under the same head of power. That instrument, known as LIN 18/183, provides a list of eleven international trade agreements which the Minister determines to be an international trade obligation for the purposes of paragraph 140GBA(1)(c) of the Act. The purpose of instrument LIN 18/219 is not to repeal LIN 18/183, but to add another international trade agreement to the legislative framework, under paragraph 140GBA(1)(c) of the Act. In particular, the instrument gives domestic effect to Australia's commitments under the Pacific Agreement on Closer Economic Relations Plus (PACER Plus) for the purposes of labour market testing. PACER Plus will enter into force 60 days after the date on which eight countries notify the Depository (in this instance, the Government of Tonga) of their ratification of PACER Plus. As the date for entry into force of PACER Plus is contingent upon a minimum of eight signatories

ratifying the agreement in their domestic legislation, a threshold has not been reached at the time of request for the approval of this instrument, a separate instrument with a bespoke commencement date is required.

4. Australia's obligations under PACER Plus will arise towards countries who have ratified PACER Plus into their domestic legislation, including obligations that relate to employer-sponsored temporary entry and stay of skilled workers. The requirement for labour market testing under section 140GBA of the Act would then be inconsistent with Australia's obligations under PACER Plus, in certain circumstances. These circumstances include during sponsor nominations of intra-corporate transferees and independent executives. Australia is not obliged under PACER Plus to broadly waive labour market testing for all visa applicants from PACER Plus countries.
5. Consultation was undertaken with the Department of Foreign Affairs and Trade before the instrument was made.
6. The Office of Best Practice Regulation (OBPR) have advised that a Regulatory Impact Statement is not required (OBPR Reference: 20888).
7. Under section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*, the instrument is exempt from disallowance and therefore a Statement of Compatibility with Human Rights is not required.
8. This instrument commences immediately following the commencement of Schedule 1 to the *Customs Amendment (Pacific Agreement on Closer Economic Relations Plus Implementation) Act 2018* which commences on the day the Pacific Agreement on Closer Economic Relations Plus, done at Nuku'alofa, Tonga on 14 June 2017, enters into force for Australia.