

EXPLANATORY STATEMENT

Issued by authority of the Minister for Immigration, Citizenship and Multicultural Affairs

Migration Act 1958

Migration (International trade obligations relating to labour market testing – India-Australia Economic Cooperation and Trade Agreement) Amendment Determination (LIN 22/105) 2022

- 1 The instrument, Departmental reference LIN 22/105, is made under subsection 140GBA(2) of the *Migration Act 1958* (the Act).
- 2 The instrument amends *Migration (International trade obligations relating to labour market testing) Determination (LIN 21/075) 2021* (LIN 21/075) in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*. That subsection provides that a power to make a legislative instrument includes a power to amend or repeal that instrument in the same manner, and subject to the same conditions, as the power to make the instrument.
- 3 The instrument commences after the instrument is registered and Schedule 1 to the *Customs Amendment (India-Australia Economic Cooperation and Trade Agreement Implementation) Act 2022* commences, and is enacted as a legislative instrument for the purposes of the *Legislation Act 2003* (the Legislation Act).

Purpose

- 4 Section 140GBA of the Act sets out a condition for labour market testing that needs to be satisfied by an approved work sponsor in a prescribed class who nominates a proposed occupation in certain circumstances (see paragraph 140GB(2)(a) of the Act). Subsection 140GBA(1) provides that the labour market testing condition applies to a nomination by a person if:
 - the person is, or has applied to be, in a class of approved work sponsors (paragraph 140GBA(1)(a)); and
 - the person nominates a proposed occupation and a particular position, associated with the nominated occupation, that is to be filled by a visa applicant (including proposed applicants) or a visa holder identified in the nomination (paragraph 140GBA(1)(b)); and
 - it would not be inconsistent with any international trade obligation of Australia determined in a legislative instrument made under subsection 140GBA(2) to require the person to satisfy the labour market testing condition, in relation to the nominated position (paragraph 140GBA(1)(c)).
- 5 The purpose of the instrument is to determine Australia's obligations under international trade agreements under subsection 140GBA(2) of the Act, to give domestic effect to those obligations for the purposes of applying the labour market testing condition.
- 6 The international trade obligations are determined for subsection 140GBA(2) in LIN 21/075. The instrument amends LIN 21/075 to insert one additional international trade agreement, namely the India Australia Economic Cooperation and Trade Agreement (IAECTA). The IAECTA is a new international trade agreement made between Australia and India.

- 7 The *Customs Amendment (India-Australia Economic Cooperation and Trade Agreement Implementation) Act 2022* amends the *Customs Act 1901* (the Customs Act) to implement the IAECTA. To give effect to the preferential entry of goods under the IAECTA, the amendments to the Customs Act provide rules for determining whether goods are originating goods to enable goods that satisfy the rules of origin to enter Australia at preferential rates of customs duty.

Consultation

- 8 Consultation was undertaken with the Department of Foreign Affairs and Trade. No concerns were raised with giving domestic effect to Australia's commitments under IAECTA for applying the labour market testing condition.
- 9 The Office of Best Practice Regulation (OBPR) was also consulted and considered that the instrument dealt with matters of a machinery nature and no regulatory impact statement was required. The OBPR reference number is OBPR22-02319.

Details of the instrument

- 10 Section 1 sets out the name of the instrument.
- 11 Subsection 2(1) provides that the instrument commences on the later of the day after this instrument is registered and the day on which Schedule 1 to the *Customs Amendment (India-Australia Economic Cooperation and Trade Agreement Implementation) Act 2022* (amendment) commences. Subsection 2(2) provides that this instrument will not commence if the amendment to the *Customs Act* does not commence. The effect of this provision is that the commencement of the instrument is tied to the day on which the IAECTA enters into force.
- 12 Section 3 provides that Schedule 1 amends *Migration (International trade obligations relating to labour market testing) Determination (LIN 21/075) 2021*.
- 13 Schedule 1 outlines the insertion to be made to section 5 of the *Migration (International trade obligations relating to labour market testing) Determination (LIN 21/075) 2021*. Specifically, the 'India-Australia Economic Cooperation and Trade Agreement (IAECTA)' is added after paragraph 5(f) as paragraph 5(fa).

Parliamentary scrutiny etc.

- 14 The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because it is an instrument (other than a regulation) made under Part 2 of the Act, which is specified in subitem 20(a) of the table in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.
- 15 The instrument was made by the Minister for Immigration, Citizenship and Multicultural Affairs, in accordance with subsection 140GB(2) of the Act.