

## EXPLANATORY STATEMENT

Issued by authority of the Minister for Immigration and Multicultural Affairs

*Migration Regulations 1994*

### ***Migration (Arrangements for Temporary Work (International Relations) (Class GD) visa applications) Amendment Instrument (LIN 24/070) 2024***

1. The instrument, departmental reference LIN 24/070 is made under regulation 2.07(5) of the *Migration Regulations 1994* (the Migration Regulations).
2. The instrument amends the *Migration (Arrangements for Temporary Work (International Relations) (Class GD) visa applications) (LIN 22/009) Instrument 2022* (LIN 22/009) in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (the Acts Interpretation Act). 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 at the same time as the *Migration Amendment (Mobility Arrangements for Talented Early-professionals Scheme) Regulations 2024*. It is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

#### ***Background***

4. The *Migration Amendment (Mobility Arrangements for Talented Early-professionals Scheme) Regulations 2024* (the amending Regulations) commence the day after they are registered on the Federal Register of Legislation, and amends the Migration Regulations.
5. The amending Regulations create a new Mobility Arrangement for Talented Early-Professionals Scheme stream (the MATES stream) within the Subclass 403 (Temporary Work (International Relations)) visa (the MATES stream visa) through various amendments to item 1234 of Schedule 1 and Part 403 of Schedule 2 to the Migration Regulations. These amendments give effect to Australia's commitment under the 'Migration and Mobility Partnership Arrangement' (the MMPA) to establish the 'Mobility Arrangement for Talented Early-professionals Scheme' (MATES).

#### ***Establishment of the MATES stream visa***

6. Primary applicants for the MATES stream visa must be selected in accordance with a visa pre-application process conducted under subsection 46C(1) of the *Migration Act 1958* (the Migration Act). The *Migration (Subclass 403 (MATES Stream) Visa Pre-application Process) Determination (LIN 24/069) 2024* (the Determination), sets out the rules for the conduct of that process in accordance with subsection 46C(14) of the Migration Act.
7. Under section 15 of the Determination, once a person becomes a 'selected participant' through that process, the Minister must give the person notice (a 'notice of selection') in writing of their selection and specify the date by which the person must make a valid application for a MATES stream visa. That is the period within which the applicant must make their application in accordance with the subsection 15(2) of the Determination.

## **Purpose**

*Migration (Arrangements for Temporary Work (International Relations) (Class GD) visa applications (LIN 22/009) Instrument 2022*

8. The *Migration (Arrangements for Temporary Work (International Relations) (Class GD) visa applications (LIN 22/009) Instrument 2022* (LIN 22/009) was made under subregulation 2.07(5) of the Migration Regulations and specifies (if any) the approved form, the place and the manner in which an application for a Subclass 403 (Temporary Work (International Relations)) visa (the Subclass 403 visa) in its various streams, must be made for the purposes of subitem 1234(1) and paragraph 1234(3)(a) of Schedule 1 to the Migration Regulations.
9. The purpose of the instrument is to amend sections 3 and 6, repeal section 5 and insert a new provision (new section 7) of LIN 22/009 to specify the requirements for making an application for a MATES stream visa, for the purposes of subitem 1234(1) and paragraph 1234(3)(a) of Schedule 1 to the Migration Regulations and to clarify the arrangements for secondary applications for a Subclass 403 visa in certain streams, where that application is not combined with the primary applicant's application for that visa.

## **Consultation**

10. The Department of Home Affairs consulted externally with the Department of Education, the Department of Finance, Treasury, the Department of the Prime Minister and Cabinet, the Indian Ministry of External Affairs, the Indian Ministry of Education and the Indian High Commission. This consultation accords with subsection 17(1) of the Legislation Act.
11. The consultation was conducted in relation to the amending Regulations measures. The changes made by this instrument are consequential to those changes made by the amending Regulations to the Migration Regulations.
12. The Office of Impact Analysis (OIA) was consulted and considered that instrument (the amending Regulations) to have a minor impact and no regulatory impact statement was required. This assessment was informed by OIA's understanding that there are only 3,000 places (noting dependents are not counted towards the 3,000 places) available under the MATES Scheme per program year, and therefore only a small number of participants will arrive in Australia each year. The OIA reference number is OIA24-07566.

## **Details of the instrument**

13. Section 1 sets out the name of the instrument.
14. Section 2 provides the instrument commences at the same time as the *Migration Amendment (Mobility Arrangements for Talented Early-professionals Scheme) Regulations 2024* (the amending Regulations). The amending Regulations commence the day after they are registered on the Federal Register of Legislation.
15. Section 3 provides that the instrument is made under subregulation 2.07(5) of the Migration Regulations.

16. Section 4 provides that each instrument that is specified in a Schedule to the instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the instrument has effect according to its terms.

### **Schedule 1            Amendments of LIN 22/009**

17. Item 1 of Schedule 1 to this instrument inserts new definitions into section 3 of LIN 22/009. These definitions are:

- ***MATES stream visa*** means a Subclass 403 (Temporary Work (International Relations)) visa in the Mobility Arrangement for Talented Early-professionals Scheme stream.
- ***secondary application*** means an application for a Subclass 403 (Temporary Work (International Relations)) visa by an applicant who is:
  - seeking to satisfy the secondary criteria for the grant of that visa; and
  - who is claiming to be a member of the family unit of an applicant seeking to satisfy the primary criteria for the grant of one of the visa streams provided for in section 6 (the *primary applicant*); and
  - who is not making a combined application with that primary applicant.

18. Item 2 of Schedule 1 of this instrument repeals section 5 of LIN 22/009.

19. Item 3 of Schedule 1 to this instrument amends the heading of section 6 of LIN 22/009, by inserting ‘, MATES, Pacific Australia Labour Mobility’ after ‘Government Agreement’. The amended heading of section 6 of LIN 22/009 is ‘Making an application for a Foreign Government Agency, Government Agreement, MATES, Pacific Australia Labour Mobility or Privileges and Immunities stream visa’. This gives effect to the establishment of the MATES stream within the Subclass 403 visa in accordance with the amending Regulations amendments to item 1234 of Schedule 1 and Division 403.2 of Schedule 2 to the Migration Regulations and as defined in amended section 3 of LIN 22/009 due to the amendment to that provision by item 1 of Schedule 1 of this instrument.

20. Additionally the above item of Schedule 1 of this instrument, provides for the arrangements for a Subclass 403 visa in the Pacific Australia Labour Mobility stream (the PALM stream) for subitem 1234(1) and paragraph 1234(3)(a) of Schedule 1 to the Migration Regulations.

21. Item 4 of Schedule 1 inserts new provisions after paragraph 6(1)(b) of LIN 22/009; being new paragraphs 6(1)(ba) and (bb). Those new provisions of section 6 of LIN 22/009 provides for the MATES stream visa, as defined in section 3 of that instrument, as amended by item 1 of Schedule 1 to this instrument and the Subclass 403 visa in the PALM stream, respectively.

22. The effect of the amendments made by items 3 and 4 of Schedule 1 to this instrument to section 6 of LIN 24/009 is to specify, for the purposes of subitem 1234(1) and paragraph 1234(3)(a) of Schedule 1 to the Migration Regulations, the requirements for the making of an application for a MATES stream visa (as defined by item 1 of Schedule 1 of this instrument’s amendment to section 3 of LIN 22/009) and the Subclass 403 visa in the PALM stream, as provided for in amended subsection 6(1) of LIN 22/009.

23. The amended section 6(1) of LIN 22/009 now specifies the arrangements for the MATES stream visa and the Subclass 403 visa in the PALM stream, to enable applications to be made in the same way as

a Subclass 403 visa in the Foreign Government Agency stream, the Government Agreement stream or the Privileges and Immunities stream.

24. This means that in accordance with subsection 6(2) of LIN 22/009 a primary application or a combined application for a MATES stream visa or a Subclass 403 visa in the Foreign Government Agency stream, the Government Agreement stream, the PALM stream or the Privileges and Immunities stream must be made via an internet application, using form 1403 (Internet) and that application should be lodged through ImmiAccount (see paragraph 6(2)(a) of LIN 22/009) or if that applicant has received written notice from the Department, that applicant's application may be made use form 1403 as instructed to do so by that notice (see paragraph 6(2)(b) of LIN 22/009).
25. Item 5 of Schedule 1 of this instrument omits 'All other applications' from subsection 6(3) of LIN 22/009 and replaces those words with 'A secondary application, where the applicant is covered by subsection (1),'. That amended provision provides for the manner and the form for, a secondary application for a Subclass 403 visa for certain streams. The term *secondary application* is defined in section 3 of LIN 22/009, as amended by item 1 of Schedule 1 of this instrument. These amendments are necessary to clarify the requirements for secondary applicants.
26. Amended subsection 6(3) of LIN 22/009 provides for a secondary application for the Subclass 403 visa, where that application is not combined with an applicant's visa, where that applicant is seeking to satisfy the primary criteria for the grant of a MATES stream visa or a Subclass 403 visa in the Foreign Government Agency stream, the Government Agreement stream, the PALM stream or the Privileges and Immunities stream. Additionally, the secondary applicant claiming to be a member of the family unit of the primary applicant for the MATES stream visa (as defined in the definition in section 3 of LIN 22/009, as amended by item 1 of Schedule 1 of this instrument) or one of the above other streams within the Subclass 403 visa, including the PALM stream, must lodge an application through ImmiAccount (see paragraph 6(3)(a) of LIN 22/009) or if that person has received written notice from the Department, that person's application may be made use form 1481 as instructed to do so by that notice (see paragraph 6(3)(b) of LIN 22/009).
27. The effect of the amendments made by item 5 of Schedule 1 to LIN 24/070 to subsection 6(3) of LIN 22/009 is to provide for the manner and the form for a secondary application for a Subclass 403 visa. The term *secondary application* is defined in section 3 of LIN 22/009, as amended by item 1 of Schedule 1 of this instrument.
28. Item 6 of Schedule 1 of this instruments inserts new a provision after section 6 of LIN 22/009, being section 7. New section 7 of LIN 24/009 substantially replicates the settings previously in place under repealed section 5, as that previous provision of LIN 24/009 related to the Subclass 403 visa in the Domestic Worker (Diplomatic or Consular) stream.
29. New section 7 of LIN 22/009 provides for the arrangements for a Subclass 403 (Temporary Work (International Relations)) visa (the Subclass 403 visa) in the Domestic Worker (Diplomatic or Consular) stream for subitem 1234(1) and paragraph 1234(3)(a) of Schedule 1 to the Migration Regulations. New subsection 7(1) of that instrument provides that an application for the Subclass 403 visa in the Domestic Worker (Diplomatic or Consular) stream must be made using form 1403 (Internet) through ImmiAccount (see new paragraph 7(1)(a) of LIN 22/009), or if a person has received a written notice - form 1403 in accordance with the instructions in the written notice (see new paragraph 7(1)(b) of LIN 22/009).

30. The intent of the amendments made by items 1, 3 and 4 to section 3, the heading in section 6 and subsection 6(1) of LIN 22/009 in this instrument is to give effect to Australia's commitment to the bilateral agreement (the MMPA) by making the necessary legislative amendments associated with the implementation of MATES and establishment of the MATES stream within the Subclass 403 visa through the amending Regulations amendments' to the Migration Regulations.

***Parliamentary scrutiny etc.***

31. The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because it is an instrument made under Part 2 to the Migration Regulations as prescribed in item 20(b) of the table in section 10 of the *Legislation (Exemptions and Other Matters) Regulations 2015*. As the instrument is exempt from disallowance, a Statement of Compatibility with Human Rights is not required.
32. The instrument was made by the Minister for Immigration and Multicultural Affairs in accordance with subregulation 2.07(5) of the Migration Regulations.