

EXPLANATORY STATEMENT

Migration Act 1958

Migration (LIN 18/183: Determination of International Trade Obligations relating to Labour Market Testing) Instrument 2018

(Subsection 140GBA(2))

1. Instrument LIN 18/183 is made under subsection 140GBA(2) of the *Migration Act 1958* (the Act).
2. This instrument repeals IMMI 17/109 in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (the Interpretation Act). Subsection 33(3) of the Interpretation Act states that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.
3. 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, in effect, that the labour market testing condition in section 140GBA does not apply to a nomination by an approved sponsor if it would be inconsistent with any international trade obligation of Australia determined in the instrument 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).
4. The purpose of the instrument is to give domestic effect to Australia's obligations under international trade agreements, to which it is a party, for the purposes of labour market testing. The instrument differs from the previous instrument IMMI 17/109 as it includes the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (TPP-11). The TPP-11 includes obligations of Australia under international law that relate to

international trade concerning labour market testing for relevant persons where that persons' country is firstly, a party to the agreement and who secondly, have ratified the TPP-11 into their domestic legislation. Once ratification has occurred in a signatory country, Australia's obligation under the TPP-11 to that country arises. The requirement for labour market testing under section 140GBA would then be inconsistent with Australia's obligations under TPP-11.

5. The Department of Foreign Affairs was consulted before this instrument was made.
6. The Office of Best Practice Regulation (OBPR) has 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. The instrument commences immediately following the commencement of Schedule 1 to the *Customs Amendment (Comprehensive and Progressive Agreement for Trans-Pacific Partnership Implementation) Act 2018*.