EXPLANATORY STATEMENT

Migration Act 1958

Migration (LIN 20/029: Determination of International Trade Obligations Relating to Labour Market Testing) Instrument 2020

(Subsection 140GBA(2))

1. This instrument, *Migration (LIN 20/029: Determination of International Trade Obligations Relating to Labour Market Testing) Instrument 2020* (LIN 20/029), is made under subsection 140GBA(2) of the *Migration Act 1958* (the Act).

2. This instrument repeals *Migration (LIN 18/183: Determination of International Trade Obligations Relating to Labour Market Testing) Instrument 2018* (F2018L01479) made under subsection 140GBA(2) of the Act 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. This instrument operates under subsection 140GBA(2) of the Act for the Minister to determine (as an international trade obligation) an obligation of Australia under international law that relates to international trade, which includes an obligation that arises under any agreement between Australia and another country, or countries for the purposes of paragraph 140GBA(1)(c).

4. Subsection 140GBA(1) of the Act provides that the labour market testing condition specified in section 140GBA applies to a nomination by a person if:

   a) the person is or has applied to be, in a class of approved work sponsors; and

   b) 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; and

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c) it would not be inconsistent with any international trade obligation of Australia determined under subsection 140GBA(2) to require the person to satisfy the labour market testing condition, in relation to the nominated position.

5. The purpose of this instrument is to give domestic effect to Australia's obligations under international trade agreements, to which it is a party, for the purposes of applying the labour market testing condition. Specifically, section 6 of the instrument includes three new free trade agreements made under the *Customs Amendment (Growing Australian Export Opportunities Across the Asia-Pacific) Act 2019* (Customs Amendment Act), namely the Peru-Australia Free Trade Agreement (PAFTA), the Indonesia-Australia Comprehensive Economic Partnership Agreement (IA-CEPA), and the Free Trade Agreement between Australia and Hong Kong, China (A-HKFTA). All other free trade agreements mentioned in the instrument were included in the previous instrument LIN 18/183.

6. The instrument commences at the same time as Schedule 1 to the Customs Amendment Act with the exception of the following agreements which commence at the following times:

   a) for IA-CEPA, the instrument commences at the same time as Schedule 2 to the Customs Amendment Act commences; and

   b) for A-HKFTA, the instrument commences at the same time as Schedule 3 to the Customs Amendment Act commences.

7. The Department of Foreign Affairs and Trade consulted with public and targeted stakeholders before, during and after the conclusion of the negotiations of the three new agreements. The consultation included in-person meetings with relevant stakeholders, requests for written submissions and specific outreach sessions with individual businesses, peak bodies and unions and civil society representatives.

8. The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is not required (OBPR Reference 20888).

9. 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.

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