

## EXPLANATORY STATEMENT

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

*Migration Act 1958*

### ***Migration (International trade obligations relating to labour market testing) Amendment (CEPA) Determination 2025***

The instrument (departmental reference LIN 25/103) is made under subsection 140GBA(2) of the *Migration Act 1958* (the Migration Act).

The instrument amends the *Migration (International trade obligations relating to labour market testing) Determination (LIN 21/075) 2021* (LIN 21/075). Subsection 33(3) of the *Acts Interpretation Act 1901* relevantly 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.

The instrument commences on the later of:

- the day after the instrument is registered on the Federal Register of Legislation; and
- immediately after Schedule 1 to the *Customs Amendment (Australia-United Arab Emirates Comprehensive Economic Partnership Agreement Implementation) Act 2025* commences.

The instrument is a legislative instrument for the purposes of the *Legislation Act 2003* (Legislation Act).

### **Purpose**

The instrument amends LIN 21/075 to insert a reference to the *Comprehensive Economic Partnership Agreement between Australia and the United Arab Emirates* (CEPA) in the list of current free trade agreements covered by LIN 21/075, as well as the *World Trade Organization (WTO) General Agreement on Trade in Services* (GATS). The CEPA is a new free trade agreement made between Australia and the United Arab Emirates (UAE). The instrument is necessary to give full domestic effect to Australia's commitments under the CEPA, by updating LIN 21/075 to include the CEPA alongside the other agreements determined as an international trade obligation of Australia for the purposes of labour market testing requirements under the Migration Act.

### **Background**

Section 140GBA of the Migration 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 (paragraph 140GB(2)(a) of the Act refers). 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)).

LIN 21/075 specifies the agreements that are determined as an international trade obligation of Australia for the purposes of section 140GBA of the Act. The instrument amends LIN 21/075 to include the CEPA.

The CEPA is Australia's first free trade agreement with a nation of the Middle East. It delivers on the Australian Government's commitment to opening new opportunities that will allow Australia to diversify our trade.

The CEPA is a modern and comprehensive free trade agreement delivering outcomes for Australian businesses in trade in goods; trade in services; investment; economic and technical cooperation; digital trade; intellectual property; government procurement; competition and consumer protection; and in relation to small and medium sized enterprises. It also includes outcomes for First Nations and Indigenous peoples and businesses in a standalone chapter for the first time in an Australian free trade agreement. The CEPA also affirms Australia's commitments under multilateral environmental agreements; contains provisions aimed at advancing women's economic empowerment in trade and investment; and supports a transparent and predictable regulatory environment for businesses.

The *Customs Amendment (Australia-United Arab Emirates Comprehensive Economic Partnership Agreement Implementation) Act 2025* amends the *Customs Act 1901* (the Customs Act) to give effect to Australia's customs-related commitments under the Agreement. The amendments of the Customs Act, supported by subordinate legislation, introduce new rules of origin to determine if goods imported from the United Arab Emirates (UAE) into Australia are eligible for preferential tariff treatment under the CEPA, and related matters. The amendments also give effect to the requirements for verifying claims for preferential tariff treatment (in accordance with the CEPA) of goods exported from Australia to the UAE. The *Customs Tariff Amendment (Australia-United Arab Emirates Comprehensive Economic Partnership Agreement Implementation) Act 2025* makes complementary amendments of the *Customs Tariff Act 1995* to set out the preferential tariff treatment applicable to goods that are determined to be eligible goods in accordance with the CEPA.

The amendment of LIN 21/075 to include the CEPA for the purposes of labour market testing requirements under the Migration Act complements the amendments of Australia's customs legislation in order for Australia's domestic implementation requirements to be completed.

## Consultation

Consultation was undertaken with the Department of Foreign Affairs and Trade (DFAT). No concerns were raised with giving full domestic effect to Australia's commitments under the CEPA by amending LIN 21/075 to include the CEPA in the list of agreements determined for the purposes of section 140GBA of the Migration Act. DFAT led consultations in respect of the negotiation and conclusion of the CEPA. These consultations are set out in the National Interest Analysis that was tabled alongside the CEPA in the Parliament.

An Impact Analysis for the Agreement is contained in the Explanatory Memorandum for the *Customs Amendment (Australia-United Arab Emirates Comprehensive Economic Partnership Agreement*

*Implementation) Act 2025*. The Explanatory Memorandum is available, together with the Act, on the Australian Parliament House website.<sup>1</sup>

### **Parliamentary scrutiny and other matters**

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 Migration Act, which is specified in paragraph 20(a) of the table in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*. The instrument it amends, LIN 21/075, is also made under Part 2 of the Migration Act, and as such the same exemption also applied in relation to LIN 21/075 when it was first made.

As the instrument is a non-disallowable legislative instrument, a Statement of Compatibility with Human Rights is not required, in accordance with paragraph 15J(2)(f) of the Legislation Act and subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The instrument was made by the Assistant Minister for Citizenship, Customs and Multicultural Affairs under subsection 140GBA(2) of the Act.

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<sup>1</sup> [https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bld=r7334](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r7334)

## **Details of the instrument**

### Section 1 – Name

This section of the instrument provides that the name of the instrument is the *Migration (International trade obligations relating to labour market testing) Amendment (CEPA) Determination 2025* (the instrument).

### Section 2 – Commencement

This section of the instrument provides that the instrument commences on the later of:

- the day after the instrument is registered on the Federal Register of Legislation; and
- immediately after Schedule 1 to the *Customs Amendment (Australia-United Arab Emirates Comprehensive Economic Partnership Agreement Implementation) Act 2025* commences.

### Section 3 – Authority

This section of the instrument provides that the instrument is made under subsection 140GBA(2) of the *Migration Act 1958*.

### Section 4 – Schedules

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

## **Schedule 1—Amendments**

### ***Migration (International trade obligations relating to labour market testing) Determination (LIN 21/075) 2021***

#### **Item 1 Section 3**

This item makes a technical amendment of the instrument to ensure that it aligns with current Office of Parliamentary Counsel drafting practice for legislative instruments.

The purpose of this amendment is to insert an authority provision (new section 2) in the instrument. This amendment ensures that the authority under which the instrument is made – subsection 140GBA(2) of the *Migration Act* – is clear on the face of the instrument.

The amendment also repeals and substitutes section 3 of the instrument, to remove an inadvertent subsection number, where there is only a single provision in the section. It also revises the note mentioning expressions in the instrument that are defined in the *Migration Act*, to align with standard drafting practice.

When the principal instrument was made on 28 October 2021, it did not include a section specifying the authority under which it was made. Instead, the principal instrument mentioned the authority – subsection 140GBA(2) of the *Migration Act* – in the instrument-making words on the cover page. In accordance with paragraph 15V(5)(d) of the *Legislation Act 2003*, the instrument-making words were subsequently removed from the instrument in the compilation of the principal instrument after it was amended on 29 December 2022

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

## **Item 2 Section 5**

This amendment renumbers section 5 to section 4, in order to align the numbering of the principal instrument. Former section 4 had been omitted from the instrument following the 29 December 2022 compilation event, as that section was a redundant repeal provision.

## **Item 3 After paragraph 5(d)**

This item inserts new paragraph 5(da) (and noting that section 5 is then also renumbered to section 4 by the amendment in item 2). Consistent with Office of Parliamentary Counsel drafting practice, the amending form refers to paragraph 5(d) of the principal instrument (consistent with the numbering of that provision prior to the amendment made by item 2).

This amendment inserts the *Comprehensive Economic Partnership Agreement between Australia and the United Arab Emirates* (CEPA) into the list of agreements that are determined for paragraph 140GBA(1)(c) of the Act as an international trade obligation of Australia.

The effect of this amendment is that the CEPA will be considered an international trade obligation of Australia for the purposes of paragraph 140GBA(1)(c) of the Migration Act.