

## EXPLANATORY STATEMENT

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

*Migration Act 1958*

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

- 1 The instrument, Departmental reference LIN 21/075, is made under subsection 140GBA(2) of the *Migration Act 1958* (the Act).
- 2 The instrument repeals *Migration (LIN 20/029: Determination of International Trade Obligations Relating to Labour Market Testing) Instrument 2020* (LIN 20/029) and *Migration (LIN 18/219: Determination of International Trade Obligations Relating to Labour Market Testing) Instrument 2018* (LIN 18/219) 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 immediately after the commencement of Schedule 1 to the *Customs Amendment (Regional Comprehensive Economic Partnership Agreement Implementation) Act 2021*, and is a legislative instrument for 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 met by approved work sponsors who wish to apply for work-related visas on behalf of a visa applicant in certain circumstances (see subsection 140GB(2) 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 Prior to the instrument being made, the international trade obligations were determined for subsection 140GBA(2) in two separate instruments, LIN 20/029 and LIN 18/219. The instrument

consolidates the international trade agreements determined in those two instruments into one instrument, and includes one additional trade agreement, the Regional Comprehensive Economic Partnership Agreement (RCEP). The RCEP is a new international trade agreement and is made between the Association of Southeast Asian Nations (ASEAN includes Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Viet Nam) and ASEAN's free trade agreement partners including Australia, China, Japan, New Zealand and the Republic of Korea.

- 7 The *Customs Amendment (Regional Comprehensive Economic Partnership Agreement Implementation) Act 2021* amends the *Customs Act 1901* (the Customs Act) and the *Customs Tariff Amendment (Regional Comprehensive Economic Partnership Agreement Implementation) Act 2021* amends the *Customs Tariff Act 1995* (the Customs Tariff Act) to implement the RCEP. To give effect to the preferential entry of goods under the RCEP, 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. The amendments to the Customs Tariff Act provide for the preferential entry of goods that meet those rules.

### ***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 RCEP 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 20888.

### ***Details of the instrument***

- 10 Section 1 sets out the name of the instrument.
- 11 Section 2 provides the instrument commences immediately after the commencement of Schedule 1 to the *Customs Amendment (Regional Comprehensive Economic Partnership Agreement Implementation) Act 2021*.
- 12 Section 3 sets out the definition of ASEAN, to be the Association of Southeast Asian Nations.
- 13 Section 4 provides that *Migration (LIN 20/029: Determination of International Trade Obligations Relating to Labour Market Testing) Instrument 2020* and *Migration (LIN 18/219: Determination of International Trade Obligations Relating to Labour Market Testing) Instrument 2018* are repealed.
- 14 Section 5 sets out sixteen (16) international trade agreements which the Minister has determined are international trade obligations of Australia for paragraph 140GBA(1)(c) under subsection 140GBA(2) of the Act.

### ***Parliamentary scrutiny etc.***

- 15 The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because it is prescribed in subitem 20(a) of the table in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.

- 16 The instrument was made by the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, in accordance with subsection 140GBA(2) of the Act.

Unless otherwise indicated in this document, it is Copyright of the Commonwealth of Australia and the following applies:

Copyright Commonwealth of Australia.

This material does not purport to be the official or authorised version. Reproduction and use of this material is subject to a [Creative Commons Attribution-NonCommercial-ShareAlike 3.0 Australia License](#).

You should make independent inquiries and obtain appropriate advice before relying on the information in any important matter.

This document has been distributed by LexisNexis Australia. All queries regarding the content should be directed to the author of this document.