

## **EXPLANATORY STATEMENT**

Issued by authority of the Minister for Immigration and Multicultural Affairs

*Migration Act 1958*

### ***Migration (Subclass 403 (MATES Stream) Visa Pre-application Process) Determination (LIN 24/069) 2024***

1. The instrument, Departmental reference LIN 24/069, is made under subsection 46C(14) of the *Migration Act 1958* (the Migration Act).
2. The instrument commences on the same day as the *Migration Amendment (Mobility Arrangements for Talented Early-professionals Scheme) Regulations 2024* and is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

#### ***Purpose***

3. The purpose of the instrument is to make a determination in relation to visa pre-application processes for the random selection of registered participants, who are aged between 18 and 30 (inclusive), who are passport holders of the Republic of India and who are seeking to apply for a Subclass 403 (Temporary Work (International Relations)) visa in the Mobility Arrangement for Talented Early-professionals Scheme stream (the MATES stream visa).

#### ***Background***

##### ***Establishment of the Visa pre-application process***

4. The *Migration Amendment (Australia's Engagement in the Pacific and Other Measures) Act 2023* (the Amendment Act), which commenced by Proclamation on 29 March 2024, amended the Migration Act. The Amendment Act introduced subsection 46(4A), which provides that the *Migration Regulations 1994* (the Migration Regulations) may prescribe, as a circumstance that must exist for an application for a visa of a specified class to be a valid application, that the applicant was selected in accordance with the applicable visa pre-application process conducted under subsection 46C(1).
5. Subsection 46C(1) of the Migration Act, provides that the Minister may arrange for a visa pre-application process conducted in relation to one or more visas if regulations are in force prescribing criteria mentioned in subsection 46(4A), for those visas.
6. Subsection 46C(2) of the Migration Act, provides that a visa pre-application process must involve the registration of persons as registered participants in that process, so long as those persons meet the

eligibility requirements set out in the determination relating to that process, and registered participants being selected at random to apply for the visa.

7. Subsection 46C(11) of the Migration Act provides that the Minister may arrange for a visa pre-application process to be conducted in relation to one or more visas if regulations are in force prescribing criteria of a kind mentioned in subsection 46(4A).
8. Subsection 46C(13) of the Migration Act, provides that a visa pre-application process must not be conducted under subsection 46C(1) unless a determination made by the Minister under subsection 46C(14) is in force in relation to the conduct of the visa pre-application process.
9. Subsection 46C(14) of the Migration Act, provides that the Minister may by legislative instrument determine rules that apply to a specified visa pre-application process.
10. Subsection 46C(15) of the Migration Act, provides that a determination made under subsection 46C(14) must deal with the eligibility requirements for a person to register as a registered participant in a visa pre-application process, which may deal with any or all of the matters listed in subparagraphs 46C(15)(b)(i)-(xii) of that Act.
11. Item 1234 of Schedule 1 to the Migration Regulations (Temporary Work (International Relations) (Class GD) of Schedule 1 to the Migration Regulations sets out the requirements to be met to make a valid application for the Subclass 403 (Temporary Work (International Relations)) visa.

*Migration Amendment (Mobility Arrangements for Talented Early-professionals Scheme) Regulations 2024*

12. The *Migration Amendment (Mobility Arrangements for Talented Early-professionals Scheme) Regulations 2024* (the amending Regulations), which commence on the day after it is registered on the Federal Register of Legislation, amends Item 1234 of Schedule 1, and Part 403 of Schedule 2, to the Migration Regulations to establish a new stream within the Subclass 403 (Temporary Work (International Relations)) visa (the Subclass 403 visa). This new stream is known as the Mobility Arrangement for Talented Early-professionals Scheme (the MATES stream). 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).
13. The amending Regulations introduces paragraph 1234(3)(cag) and subitem 1234(3F) of Schedule 1 to the Migration Regulations. Paragraph 1234(3)(cag)(i) of Schedule 1 provides that if an applicant is seeking to

satisfy the primary criteria for a Subclass 403 visa in the MATES stream (the MATES stream visa), that applicant must be outside Australia when the application for that visa is made.

14. Paragraph 1234(3)(cag)(ii) of Schedule 1 to the Migration Regulations provides that applicant must meet the requirements in subitem 1234(3F) of Schedule 1.
15. Subitem 1234(3F) of Schedule 1 provides that for the purposes of paragraph 1234(3)(cag)(ii) of Schedule 1 that applicant will meet the requirements in that provision of the Migration Regulations if:
  - that applicant is not, and has not previously been, in Australia as the holder of a MATES stream visa (see paragraph 1234(3F)(a) of Schedule 1); and
  - that applicant holds a valid passport issued by the Republic of India (see paragraph 1234(3F)(b) of Schedule 1); and
  - the requirements of the table under that provision of the Migration Regulations are met (see paragraph 1234(3F)(c) of Schedule 1).
16. The items in the table under paragraph 1234(3F)(c) of Schedule 1 to the Migration Regulations sets out the requirements that a selected participant (which is defined in section 4 of LIN 24/069) in a particular MATES stream visa pre-application process (see the definition in section 4 of this instrument). The criteria set out in that provision to the Migration Regulations is of a kind mentioned in subsection 46(4A) of the Migration Act.
17. The purpose of LIN 24/069 is to set out the eligibility requirements for registration and other rules that apply to the conduct of a particular MATES stream visa pre-application process. Other aspects of that process are managed administratively. The relevant visa pre-application process relates to the Republic of India, with which Australia has negotiated and concluded a bilateral agreement by way of the MMPA to implement MATES. Persons, who are aged between 18 and 30 (inclusive), and who hold valid passports issued by the Republic of India and who meet certain other requirements, may register to participate in the relevant visa pre-application process for their country of citizenship.

### ***Consultation***

18. 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.
19. 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.
20. 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) available under MATES per program year, and therefore only a small number of participants will arrive in Australia each year. The OIA reference number is OIA24-07566.

***Statement of Compatibility with Human Rights***

21. A Statement of Compatibility with Human Rights has been prepared in relation to the instrument. The Statement concludes that the instrument is compatible with human rights because, to the extent that this instrument may limit human rights, those limitations are reasonable, necessary and proportionate to legitimate aims. The Statement is included at **Attachment A**.

***Details of the instrument***

22. Details of the instrument are set out in **Attachment B**.

***Parliamentary scrutiny etc.***

23. Subsection 46C(20) of the Migration Act provides that the determination is a disallowable legislative instrument for the purposes of section 42 of the Legislation Act.

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### ***Migration (Subclass 403 (MATES Stream) Visa Pre-application Process) Determination (LIN 24/069) 2024.***

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Disallowable Legislative Instrument**

The *Migration (Subclass 403 (MATES Stream) Visa Pre-application Process) Determination (LIN 24/069) 2024* (MATES Ballot Determination) sets out the rules that apply in relation to the conduct of the Temporary Work (International Relations) (Subclass 403) Mobility Arrangement for Talented Early-professionals Scheme (MATES) stream visa pre-application process under subsection 46C(1) of the *Migration Act 1958* (Migration Act).

A visa pre-application process (referred to generally as a ‘ballot’), may be conducted where it is a prescribed requirement in Schedule 1 to the *Migration Regulations 1994* (Migration Regulations) that in order to make a valid application for a particular visa, an applicant must have been randomly selected under a relevant visa pre-application process for the visa. The ballot involves the random selection of registered participants who will then be permitted to lodge an application for the relevant visa. Visas will be granted to registered participants who are successful in being selected in the ballot and go on to apply for the visa, subject to satisfaction of the remaining application requirements and criteria for the visa.

The MATES stream is a new stream within the existing Subclass 403 visa that implements the Australian Government’s commitment under the Migration and Mobility Partnership Arrangement (MMPA), entered into with the Government of India, to implement MATES, and will support the Government’s migration priorities by attracting some of India’s most talented graduates with in-demand knowledge and skills to Australia. The MATES stream will enable Indian graduates and early career professionals with knowledge and skills in targeted fields of study to live and work in Australia for up to two years. There will be 3,000 temporary visa places for primary applicants per program year as agreed under the MMPA, who will be able to bring dependents (secondary applicants) that are not counted towards the 3,000 places. The primary applicant must hold a valid passport issued by the Republic of India when registering in the ballot, with entrants successfully drawn in the random ballot able to apply for a Subclass 403 visa in the MATES stream.

The MATES stream is created by amendments to the Migration Regulations made by the *Migration Amendment (Mobility Arrangements for Talented Early-professionals Scheme) Regulations 2024* (the Amendment Regulations). The Amendment Regulations amend Schedule 1 to the Migration Regulations to introduce a requirement that, to make a valid application for a Subclass 403 visa in the MATES stream, applicants must have been randomly selected in a visa pre-application process arranged by the Minister. The aim of this requirement is to provide fair and equitable access to the MATES program as demand is expected to significantly exceed the agreed number of visa places for this program in any given program year.

Subsection 46C(14) of the Migration Act provides that the Minister may, by disallowable legislative instrument, determine the rules that apply in relation to the conduct of a visa pre-application process for one or more specified visas where the use of a visa pre-application process is a validity requirement of that visa.

The MATES Ballot Determination is made under subsection 46C(14) of the Migration Act and is part of the legislative package that creates the MATES stream within the Subclass 403 visa and implements the visa pre-application process for this stream.

The MATES Ballot Determination sets out the rules that must be met in order for a person to register as a registered participant in the Subclass 403 MATES stream visa pre-application process. To register as a registered participant in the Subclass 403 MATES stream visa pre-application process, the applicant must:

- register using a computer program made available on the internet;
- include a declaration that they meet the eligibility requirements for that process;
- not be already registered as a participant in that process; and
- register within the registration open period for that process.

The eligibility requirements for registration in the Subclass 403 MATES stream visa pre-application process that are set out in the MATES Ballot Determination reflect some of the key objective eligibility requirements to be granted a Subclass 403 MATES stream visa and require the applicant to satisfy the following:

- hold a valid passport issued by the Republic of India to which that particular visa pre-application process relates; and
- be aged at least 18 years and no more than 30 years at the beginning of the ballot registration open period for the relevant process.

The MATES Ballot Determination also includes provisions dealing with the registration open period (during which eligible persons may register), the selection open period (during which draws may be made from the pool of registrants), the notice of selection, the expiry of registrations and withdrawal of registrations. These processes are described below.

The Subclass 403 MATES stream visa pre-application process will be open for a finite amount of time and the registration open period for the process will be published on the Department's website each year prior to the registration open period. The registration open period for the Subclass 403 MATES stream visa pre-application process may be extended for a further period, or further periods, and any extension of the registration open period will also be published on the Department's website.

All registrations successfully entered into the Subclass 403 MATES stream visa pre-application process will be placed in a randomised draw. Registrations will be randomly selected for that process using a computer program within the finite selection open period for the process. The selection open period for the Subclass 403 MATES stream visa pre-application process will be published on the Department's website, along with any extensions of the selection open period.

Participants selected through the Subclass 403 MATES stream visa pre-application process will be given written notice of their selection as soon as practicable after they have been selected in that process, providing them with the opportunity to lodge an application for a Subclass 403 MATES

stream visa. The notice will specify the date by which they must make their application for a Subclass 403 MATES stream visa. Failure to lodge a valid Subclass 403 MATES stream visa application in the period specified in the notification will result in the expiry of the offer. Unsuccessful registered participants will not be formally notified when their registration expires, but will be able to monitor the status of their registration through a computer program made available on the internet for that purpose.

All registrations entered for the Subclass 403 MATES stream visa pre-application processes will automatically expire at the earliest of:

- the end of the selection open period for that process;
- when the person is selected (if the person is selected as a selected participant for that process);
- when the withdrawal is lodged (if the person withdraws their registration as a participant in that process);
- when the person dies (if the person dies before the person is selected as a selected participant for that process).

A registered participant in an applicable Subclass 403 MATES stream visa pre-application process may withdraw their registration as a participant in that process using a computer program made available on the internet for that purpose.

Under subsection 46C(22) of the Migration Act, the applicant will also need to pay the charge for registration in the Subclass 403 MATES stream visa pre-application process at the time of registration, otherwise the applicant is taken never to have been registered. The amount of charge is prescribed in the *Migration (Visa Pre-application Process) Charge Amendment (Mobility Arrangements for Talented Early-professionals Scheme) Regulations 2024*.

## **Human rights implications**

This Determination may engage the following rights:

- rights to equality and non-discrimination in Article 2(2) of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and Article 26 of the *International Covenant on Civil and Political Rights* (ICCPR).
- rights relating to privacy in Article 17 of the ICCPR.

### Rights of equality and non-discrimination

Article 2(2) of the ICESCR states:

*The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

Article 26 of the ICCPR states:

*All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee*

*to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

Setting visa pre-application process eligibility requirements that depend on age and country of citizenship, may engage the above rights to non-discrimination.

In its General Comment 18, the UN Human Rights Committee (UNHRC) stated that:

*The Committee observes that not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the [ICCPR].*

Similarly, in its General Comment on Article 2 of the ICESCR, the UN Committee on Economic, Social and Cultural Rights has stated (at 13) that:

*Differential treatment based on prohibited grounds will be viewed as discriminatory unless the justification for differentiation is reasonable and objective. This will include an assessment as to whether the aim and effects of the measures or omissions are legitimate, compatible with the nature of the [ICESCR] rights and solely for the purpose of promoting the general welfare in a democratic society. In addition, there must be a clear and reasonable relationship of proportionality between the aim sought to be realized and the measures or omissions and their effects.*

Neither the ICCPR nor the ICESCR give a right for non-citizens to enter Australia for the purposes of seeking residence or employment. The UNHRC, in its General Comment 15 on the position of aliens under the ICCPR, stated that:

*The [ICCPR] does not recognize the right of aliens to enter or reside in the territory of a State party. It is in principle a matter for the State to decide who it will admit to its territory. However, in certain circumstances an alien may enjoy the protection of the [ICCPR] even in relation to entry or residence, for example, when considerations of non-discrimination, prohibition of inhuman treatment and respect for family life arise.*

*Consent for entry may be given subject to conditions relating, for example, to movement, residence and employment. A State may also impose general conditions upon an alien who is in transit. However, once aliens are allowed to enter the territory of a State party they are entitled to the rights set out in the [ICCPR].*

As such, Australia is able to set requirements for the entry of non-citizens into Australia, and does so on the basis of reasonable and objective criteria.

The use of a visa pre-application process to enable the random selection of prospective applicants for the Subclass 403 MATES stream visa is appropriate because demand is expected to significantly exceed the agreed number of visa places offered in a given year. The Statement of Compatibility of Human Rights that accompanies the Amendment Regulations provides further information as to why the use of a visa pre-application process for this program is reasonable and proportionate to provide eligible registrants an equal chance of being selected and apply for the Subclass 403 MATES stream visa.

The MATES Ballot Determination states that a person must register as a participant in the applicable Subclass 403 MATES stream visa pre-application process using a computer program made available on the internet. This may raise the above rights to non-discrimination in relation to accessibility by

persons who may not be able to use the computer program or may have limited access or ability to use the internet to participate in the pre-application process, including because of a disability.

The MATES Ballot Determination does not specifically require the ballot registration to be lodged personally by the registered participant. Assistance may be sought by a third party in line with other visa application processes to ensure all prospective applicants have access and can be assisted to participate in the Subclass 403 MATES stream ballot process.

The use of a computer program for registration and random selection of registered participants helps to manage the integrity of the process, such as ensuring only one registration per person which is a requirement that is specified in the MATES Ballot Determination, and also is the most fair and equitable way to select participants to apply for the Subclass 403 MATES stream visa.

The MATES Ballot Determination also specifies eligibility requirements for registration as a registered participant in the Subclass 403 MATES stream visa pre-application process. These eligibility requirements may engage the above rights to non-discrimination, as eligibility to apply for a Subclass 403 MATES stream visa, that would allow the holder to enter and work in Australia, are limited to those who are selected in the visa pre-application process after meeting the eligibility requirements for registration in that process.

The eligibility requirements for a participant to register in the visa pre-application process under the MATES Ballot Determination include that the person must hold a valid passport issued by the Republic of India and be aged at least 18 and no more than 30 at the beginning of the registration open period for the Subclass 403 MATES stream visa pre-application process.

As noted above, the MATES program is a measure established under the MMPA between Australia and India, and is intended to support the Australian Government's migration priorities by attracting some of India's best and brightest young talent to Australia. The establishment of the MATES program also reflects the growing strategic, economic and people to people ties between Australia and India, and presents an opportunity for the mutually beneficial skills and knowledge transfer between the two countries in sectors of identified demand. To this end, the fact that one of the ballot eligibility requirements for the Subclass 403 MATES stream visa is that the person holds a valid passport issued by the Republic of India reflects the fact that the MATES program is an arrangement only with India. Passport holders of other countries are not affected by the legislative amendments to implement the MATES program.

Prospective primary applicants must also be aged at least 18 and no more than 30 at the beginning of the registration open period of the Subclass 403 MATES stream visa pre-application process. The purpose of the Subclass 403 MATES stream visa is to provide a mobility opportunity to young Indian graduates and early-career professionals with targeted qualifications to utilise and expand their skills and experience in sectors of identified demand in Australia. Applicants in this age cohort are expected to be recent graduates with limited work experience and therefore may not otherwise be eligible for standard skilled migration programs to access employment opportunities in Australia. For this reason, the specified age cohort for the MATES stream of Subclass 403 is reasonable and proportionate to the intent of the program.

The ballot eligibility requirements align with key objective visa eligibility requirements for the Subclass 403 MATES stream visa that are prescribed in the Migration Regulations, as amended by the Amendment Regulations. These eligibility requirements for registration in the Subclass 403 MATES stream visa pre-application process are directed to providing further opportunities to Indian

nationals who want to live and work in Australia to expand their skills and experience in sectors of identified demand.

The reason for reflecting these key eligibility requirements for registration in the MATES visa pre-application process is to mitigate circumstances of participants who draw a place in the ballot not meeting the visa requirements of the new MATES stream of Subclass 403. The requirements in the MATES Ballot Determination, together with the other legislative amendments that implement the MATES program, do not adversely affect the existing visa pathways for prospective visa applicants who do not meet the requirements for registration in the ballot and/or for the Subclass 403 MATES stream visa.

The requirements a person must meet to be eligible to register in the visa pre-application process are also objective and capable of being randomly selected by a computer program for that process. The registration process requires persons registering to declare that they meet the eligibility requirements by responding to a number of questions in order to submit their registration and enter the visa pre-application process. Any person who is not eligible to register for the visa pre-application process based on objective information declared in their registration form will not be accepted and will not be able to submit their registration.

Persons who are ineligible for, or unsuccessful in, a Subclass 403 MATES stream visa pre-application process may register for future processes for which they are eligible, or consider other visa options that may be available to them to enter Australia.

The visa pre-application process aims to promote equitable access to the Subclass 403 MATES stream visa for eligible registrants where demand is expected to significantly exceed the number of visa places in any given program year, and differentiation in terms of who and how a person may access that process is based on reasonable and objective criteria that are proportionate to legitimate aims, and consistent with the rights of equality and non-discrimination.

#### Rights relating to privacy

Article 17 of the ICCPR states:

- 1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.*
- 2. Everyone has the right to the protection of the law against such interference or attacks.*

The MATES Ballot Determination sets out the requirements for the conduct of the Subclass 403 MATES stream visa pre-application process, including that the person registers as a participant in that process using a computer program made available on the internet for that purpose.

The information needed to complete the Subclass 403 MATES stream visa pre-application registration aligns with the information that would need to be provided to complete an application for a Subclass 403 MATES stream visa, including the registered participant's name, date of birth and passport details.

This information will be self-declared and used to manage eligibility for the visa pre-application process. The provision of basic personal information for registration in the visa pre-application process, also required in a visa application, will also assist to manage the integrity of registrations to ensure that the person named in the registration who is chosen at random to apply for a Subclass 403 visa in the MATES stream and the associated visa applicant are the same person.

The Department of Home Affairs will manage the registration platform and is responsible for the collection of the information. All information collected for the purposes of the registration for the visa pre-application process will be treated in accordance with the requirements of the *Privacy Act 1988* and other applicable legislative requirements relating to the collection, use, handling and disclosure of such information. The collection and use of this information is reasonable and necessary to ensure the eligibility of persons registering for the applicable Subclass 403 MATES stream visa pre-application process and the integrity of that process. Therefore, any interference with the privacy of a person who chooses to register for a visa pre-application process would be lawful and not arbitrary.

## **Conclusion**

The Disallowable Legislative Instrument is compatible with human rights because, to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate to legitimate aims.

**The Hon Tony Burke MP**  
**Minister for Immigration and Multicultural Affairs**

**Details of the *Migration (Subclass 403 (MATES stream) Visa Pre-application Process) Determination (LIN 24/069) 2024***

**Part 1 – Preliminary**

**Section 1 Name**

This section provides that the name of the instrument is the *Migration (Subclass 403 (MATES stream) Visa Pre-application Process) Determination (LIN 24/069) 2024* (the instrument).

**Section 2 Commencement**

This section provides for the commencement of the instrument.

Subsection 2(1) provides that each provision of the instrument specified in column 1 of the table commences, or would be taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Table item 1 provides that the whole instrument commences on the same day as the *Migration Amendment (Mobility Arrangements for Talented Early-professionals Scheme) Regulations 2024*.

The note below the table covered by subsection 2(1) makes it clear that the table relates only to the provisions of the instrument as originally made. The table will not be amended to deal with any later amendments to the instrument.

Subsection 2(2) provides that any information in column 3 of the table is not part of the instrument. Information may be inserted in column 3, or information in it may be edited, in any published version of the instrument. There is currently no information in column 3 of the table.

**Section 3 Authority**

This section provides that the authority under which this instrument is made is subsection 46C(14) of the Migration Act.

**Section 4 Definitions**

This section sets out the definitions of terms used in the instrument:

- ***Act*** means the *Migration Act 1958*;
- ***MATES stream visa*** means a Subclass 403 (Temporary Work (International Relations)) visa in the Mobility Arrangement for Talented Early-professionals Scheme stream;
- ***MATES stream visa pre-application process*** means a process specified under section 6;
- ***registered participant***, for a particular MATES stream visa pre-application process, has the meaning given by section 8;

- **registration open period**, for a particular MATES stream visa pre-application process, means the period during which the process is open for registration;

The note under section 4's definition of *registered participant*, refers the reader to section 10 of LIN 24/069. That section of that instrument is about the requirements for registration open periods.

- **selected participant**, for a particular MATES stream visa pre-application process, has the meaning given by section 13; and
- **selection open period**, for a particular MATES stream visa pre-application process, means the period during which selection of participants for the process may take place.

The note under section 4's definition of *selection open period*, refers the reader to section 14 of LIN 24/069. That section of that instrument is about the requirements for selection open periods.

## **Part 2 - Rules for the conduct of the visa pre-application process**

### **Division 1 - Introduction**

#### **Section 5        Purpose of this Part**

Section 5 provides for the purposes of subsection 46C(14) of the *Migration Act 1958* (the Act), Part 2 sets out the rules that apply in relation to the conduct of a visa pre-application process that is specified in section 6 (see below).

#### **Section 6        Specified visa pre-application process which the rules apply**

Section 6 provides that for the purposes of subsection 46C(14) of the Act, this instrument applies in relation to a visa pre-application process conducted under subsection 46C(1) of the Act in relation to a MATES stream visa. *MATES stream visa* is defined in section 4 of LIN 24/069.

### **Division 2 – The visa pre-application process is in relation to the Republic of India**

#### **Section 7        Visa pre-application process must be in relation to the Republic of India**

Section 7 provides that a MATES stream visa pre-applications process must be in relation to the Republic of India. *MATES stream visa pre-application process* is defined in section 4 of LIN 24/069.

The effect of section 7 is that the rules set out in the instrument will apply to a MATES stream visa pre-application process in relation to the Republic of India when that process is published on the Department's website. Inclusion of the Republic of India in the process will be on the basis of Australia's commitment under the 'Migration and Mobility Partnership Arrangement' (the MMPA) to establish the 'Mobility Arrangement for Talented Early-professionals Scheme' MATES. Eligible Indian nationals will then have the opportunity to register for the particular MATES stream visa pre-application process, at the beginning of the registration open period (as defined in section 4, above) for that process.

## Division 3 – Registration of participants

### Section 8      Registered participants

Section 8 provides for when a person is a registered participant in relation to a particular MATES stream visa pre-application process and therefore eligible to be included in that process during the selection open period for that process. (*registered participant*, *MATES stream visa pre-application process* and *selection open period* are defined in section 4, above). The requirements to be a registered participant are:

- the person has registered as participant in that process using a computer program that is made available on the internet for that purpose. A registration for a particular MATES stream visa pre-application process must be made using the relevant online registration form through ImmiAccount, the interactive portal for online visa services available through the Department’s website;
- the registration includes a declaration by the person that they meet the specified eligibility requirements for the process as detailed in section 9, below. At registration stage, a person will be required only to declare that they meet each of the eligibility requirements rather than to provide evidence that they do. At the time a registered participant, is selected through the process and becomes a selected participant and makes an application for a MATES stream visa (as defined in section 4, above), as part of the requirements for making a valid application for that visa they will then be required to provide evidence that the registration eligibility requirements are met (see subitem 1234(3F) of Schedule 1 to the Migration Regulations (for the purposes of satisfying the requirements of paragraph 1234(3)(cag) of Schedule 1)). This will ensure that a person who makes a false declaration about meeting the eligibility requirements at the time they register will not be able to benefit by making a valid application for that visa if they are selected;
- the person must not already be registered as a participant in the particular process. The intention is that a person may register for a process only once and have only one chance of being selected from that pool during the selection open period for the process. If a new process is conducted the following year in relation to the Republic of India (see section 7, above), they may register again in that new process; and
- the registration occurs within the registration open period (as defined in section 4, above) for the process. The registration open period during which a person may make a registration for the process will be published on the Department’s website (see section 10, below).

A note under section 8 provides that any pre-application process charge that is payable in respect of the registration must be paid at the time of registration and refers the reader to subsection 46C(22) of the Act. Subsection 46C(22) provides that if a charge is payable under the *Migration (Visa Pre-application Process) Charge Act 2023* in respect of the registration of a person, the charge must be paid at the time of registration and if it is not paid, the person is taken never to have been registered.

### Section 9      Eligibility requirements

Section 9 sets out the eligibility requirements for registration of a person as a registered participant in the particular MATES stream visa pre-application process. (*registered participant* and *MATES stream visa pre-application process* are defined in section 4, above). The following requirements must be met:

- the person must hold a valid passport issued by the Republic of India to which that process relates (see section 7, above);

- the person must be aged 18 years and no more than 30 years at the beginning of the registration open period (see section 10, below) for that process. If selected to apply for a MATES stream visa, the person will meet the requirements to make a valid application for that visa on the basis of their age (between 18 and 30 years (inclusive)) as it was at the date they registered (at the beginning of the registration open period rather than at the date the relevant visa application is made). This will avoid any possible disadvantage due to the passage of time between registration and visa application. (*registration open period* and *MATES stream visa* are defined in section 4, above).

## **Section 10      Registration open period**

Subsection 10(1) provides that a MATES stream visa pre-application process must involve a finite registration open period for the process.

Subsection 10(2) provides that the Minister must cause the registration open period, and any extension of that period, to be published on the Department's website.

*Registration open period* for a particular process is defined in section 4, above, to mean the period during which the process is open for registration. Eligible persons who register for the relevant process during this period may then be selected at random in the visa pre-application process during the selection open period for that process (see section 14, below). (*MATES stream visa pre-application process* is also defined in section 4, above).

## **Section 11      Withdrawal of registration**

Section 11 provides for the registration of a person as a registered participant in a particular MATES stream visa pre-application process may withdraw their registration as a participant in that process using a computer program made available on the internet for that purpose. This provision enables individual registered participants who are no longer interested in obtaining a MATES stream visa to withdraw from the process, leaving the opportunity for another registered participant to be selected. (*registered participant*, *MATES stream visa pre-application process* and *MATES stream visa* are defined in section 4, above).

The note under section 11 provides that part of a visa pre-application process may be conducted by the use of a computer program under the Minister's control and refers the reader to subsection 46C(11) of the Act.

Subsection 46C(11) provides that a visa pre-application process, or a part of a visa pre-application process, may be conducted by the use of a computer program under the Minister's control. This note makes it clear that there is authority for the withdrawal of registration to be made by using a computer program, which is to be made available on the internet for that purpose.

## **Section 12      Duration of registration**

Section 12 provides for when a person's registration as a registered participant in a particular MATES stream visa pre-application process lapses. (*registered participant* and *MATES stream visa pre-application process* are defined in section 4, above). A person will no longer be eligible to be selected in that process after their registration ceases. The instances, when this registration will lapse are as follows:

- at the end of the selection open period for that process (see section 14, below);
- if the person is selected as a selected participant for that process, when the person is selected (see section 13, below);

- if the person withdraws their registration as a participant in that process, when the withdrawal is lodged (see section 11, above);
- if the person dies before the person is selected as a selected participant for that process, when the person dies.

The purpose of this section is to ensure the efficient management of each visa pre-application process conducted as well as equitable and fair access to each process. In particular, it ensures that the same person cannot be selected twice, and that a person who is no longer interested in being selected or cannot be selected does not continue to be a registered participant. It is intended that only registered participants who continue to be interested in selection under a specific MATES stream visa pre-application process will remain as registered participants and will have the opportunity to be selected in that process. The end of the selection open period indicates the end of a particular process. A person's registration lapses at that time and does not carry over into any future processes. If a new process is commenced for the following year, a person would need to register afresh for that process.

#### **Division 4 – Selected of registered participants**

##### **Section 13      Selected participants**

Section 13 provides that a person is a selected participant for a particular MATES stream visa pre application (as defined in section 4, above) process if the person has been randomly selected for that process by a computer program.

The first note under section 13 provides that the person must be a registered participant in that process and refers the reader to subsection 46C(2) of the Act. Subsection 46C(2) provides that a visa pre-application process must involve the registration of persons as registered participants in that process, so long as those persons meet the eligibility requirements set out in the determination relating to that process, and registered participants being selected at random to apply for the visa. (*registered participant* is defined in section 4, above).

The second note under section 13 provides that part of a visa pre-application process may be conducted by the use of a computer program under the Minister's control and refers the reader to subsection 46C(11) of the Act. This note makes it clear the authority for the provision in section 13 for random selection of registered participants by a computer program.

This process will be run through the Department's Registration Gateway Platform (REG), which integrates with existing departmental systems to manage a visa pre-application process. The system required internal authenticated user access to initiate a selection process, which includes nominating the number of participants to be randomly selected for the process. The selection activities are automatically managed by REG through an algorithm, removing all human intervention in the random selection of registered participants and the notification process. To maintain integrity in the process all user access is limited to viewing the number of registrations submitted and selected in each process, and does not include access to personal details or identifiers of the registered participants in the process.

A person must be a selected participant under the rules set in this instrument to meet the requirements of item 3 of the table in paragraph 1234(3F)(c) of Schedule 1 to the Migration Regulations, for the purpose satisfying the requirements in paragraph 1234(3)(cag) of that Schedule, to make a valid application for a MATES stream visa (as defined in section 4, above).

## **Section 14 Selection open period**

Subsection 14(1) provides for a MATES stream visa pre application process (as defined in section 4, above) must involve a finite selection open period for that process.

Subsection 14(2) provides that the Minister must cause the selection open period for that process, and any extension of the period, to be published on the Department's website.

The effect of this section is that the selection open period for all MATES stream selection processes will be finite (that is, the period will have a commencement date and an end date, which may be extended). A registered participant (as defined in section 4, above) in a particular process will be eligible to be selected at any time during the selection open period, but in accordance with paragraph 12(a), above, the person's registration will lapse or cease at the end of the selection open period for the process.

## **Section 15 Notice of selection**

Section 15 provides for when a selected participant must be notified if they are successful in being selected in a MATES scheme visa pre-application process and the information that must be included in that notice. (*selected participant* and *MATES stream visa pre-application process* are defined in section 4, above).

Subsection 15(1) provides that as soon as practicable after a person is selected as a selected participant for a particular MATES stream visa pre-application process, the Minister must give the person notice in writing of their selection.

Subsection 15(2) provides that the notice must specify the date by which the person must make a valid visa application for a MATES stream visa (as defined in section 4, above). To be valid, the application for that visa must be made before the date specified in the notice (see item 5 of the table in paragraph 1234(3F)(c) of Schedule 1 to the Migration Regulations). This ensures that a person who is successful in being selected for a process makes an application for a MATES stream visa within the timeframe of the program.

Subsection 15(3) provides that the date specified under subsection 15(2) of the instrument must be at least 28 days after the day the notice is given. This requirement ensures that the time allowed for successful selected participants to apply for the MATES steam visa cannot be less than 28 days and that those participants will be aware that they will be allowed at least this minimum time.

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