

## **EXPLANATORY STATEMENT**

Issued by the Minister for Immigration and Multicultural Affairs

### *Migration Regulations 1994*

*Migration (Specification of Study and English Language Requirements (Subclass 403 (MATES stream) visa) (LIN 24/072) Instrument 2024*

1. The instrument, departmental reference LIN 24/072 is made under the following provisions of the *Migration Regulations 1994* (the Migration Regulations):
  - item 4(a) of the table in paragraph 1234(3F)(c) of Schedule 1;
  - paragraphs 403.261(1)(a) and (b) of Schedule 2;
  - subclause 403.261(2) of Schedule 2;
  - subclause 403.262(1) of Schedule 2; and
  - subclause 403.262(2) of Schedule 2.
2. The instrument commences at the same time as the *Migration Amendment (Mobility Arrangements for Talented Early-professionals Scheme) Regulations 2024*. It is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

### ***Background***

3. The *Migration Amendment (Mobility Arrangements for Talented Early-professionals Scheme) Regulations 2024* (the amending Regulations), which commence on the day after registration 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).
4. The amending Regulations introduce 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.

5. Paragraph 1234(3)(cag)(ii) of Schedule 1 to the Migration Regulations provides that the primary applicant must meet the requirements in subitem 1234(3F) of that Schedule.
6. Subitem 1234(3F) of Schedule 1 provides that for the purposes of paragraph 1234(3)(cag)(ii) of that Schedule, 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).
7. 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 in a particular MATES stream visa pre-application process. Those requirements set out in that provision to the Migration Regulations prescribe the circumstances that must exist for an application for a visa of a specified class to be a valid application the purpose of subsection 46(4A) of the *Migration Act 1958* (the Migration Act). Subdivision 403.26 of Schedule 2 provides for the academic requirements that an eligible primary applicant would need to meet to be eligible for a grant of a Subclass 403 MATES stream visa, among other things.

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

8. The Determination, also commences at the same time as the amending Regulations and sets out the eligibility requirements for registration and other rules that apply to the conduct of a visa pre-application process for a MATES stream visa in accordance with subsection 46C(14) of the Migration Act. Other aspects of that process are managed administratively.
9. That primary applicant must have been a selected participant (as defined in section 4 of the Determination) for that process and have received a notice of selection (as provided for in section 15 of the Determination) from the Minister in writing, which confirms that applicant's selection and specifies the date by which that applicant must make a valid visa application for the MATES stream visa. The MATES stream was introduced to the Subclass 403 visa through the amending Regulations which amends the Migration Regulations to give effect to Australia's commitment to the bilateral agreement (the MMPA), to implement MATES.

#### ***Purpose***

10. For the purposes of LIN 24/072, the amending Regulations introduces items 4(a) and (b) of the table in paragraph 1234(3F)(c) of Schedule 1 and clauses 403.261 and 403.262 of Schedule 2 to the Migration Regulations.
11. Items 4(a) and (b) of the table in paragraph 1234(3F)(c) of Schedule 1 to the Migration Regulations provides for an applicant, who is seeking to satisfy the primary criteria for the grant of a MATES

stream visa (see paragraph 1234(3)(cag)(ii) of Schedule 1), (who has been selected as a ‘selected participant’ for a relevant ‘MATES stream visa pre-application process’) must:

- have graduated from a foreign education institution specified by the Minister in an instrument in writing for the purposes of item 4(a) of the table in paragraph 1234(3F)(c); and
- have so graduated from one of the specified foreign education institutions (see item 4(a) of the table in paragraph 1234(3F)(c) of Schedule 1) within 2 years of the beginning of the ‘registration open period’ for the relevant process.

12. The terms ‘MATES stream visa pre-application process’, ‘registration open period’ and ‘selected participant’ all have the same meaning as section 4 of the Determination.
13. Paragraph 403.261(1)(a) of Schedule 2 to the Migration Regulations provides for the applicant (see paragraph 11, above) holding a qualification of a kind specified by the Minister in an instrument in writing for the purposes of that provision of the Migration Regulations.
14. Paragraph 403.261(1)(b) of Schedule 2 to the Migration Regulations provides that the qualification (see paragraph 403.261(1)(a) of that Schedule) relates to an industry specified by the Minister in an instrument in writing for the purposes of that provision of the Migration Regulations.
15. Subclause 403.261(2) of Schedule 2 to the Migration Regulations provides that the qualification (see paragraphs 403.261(1)(a) and (b) of that Schedule) was conferred or awarded by a foreign education institution specified by the Minister in an instrument in writing for the purposes of that provision of the Migration Regulations.
16. Subclause 403.262(1) of Schedule 2 to the Migration Regulations provides for the applicant (see paragraph 11, above) satisfying any language test requirements specified by the Minister in an instrument made for the purposes of that provision of the Migration Regulations.
17. Subclause 403.262(2) of Schedule 2 to the Migration Regulations provides that if the Minister requires the applicant to demonstrate their English language proficiency, that applicant will need to demonstrate their English language proficiency in the manner specified by the Minister.
18. The purpose of the instrument is to set out the details of the requirements to that must be satisfied by an applicant in order to make a valid application for a MATES stream visa and the criteria to be met for the grant of that visa.

#### ***Consultation***

19. 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.

20. 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.
21. 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 towards the 3,000 places) available under the MATES Scheme per program year, and therefore only a small number of participants will arrive in Australia each year. The OIA reference number is OIA24-07566.

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

22. Section 1 sets out the name of the instrument.
23. Section 2 provides for the commencement of the instrument at the same time as the *Migration Amendment (Mobility Arrangements for Talented Early-professionals Scheme) Regulations 2024* (the amending Regulations). The amending Regulations commence on the day after it is registered on the Federal Register of Legislation.
24. Section 3 provides that the instrument is made under item 4(a) of the table in paragraph 1234(3F)(c) of Schedule 1 and paragraphs 403.261(1)(a) and (b), subclause 403.261(2) and subclause 403.262(1) for the purposes of subclause 403.262(2) of Schedule 2 to the *Migration Regulations 1994* (the Migration Regulations).
25. Section 4 sets out definitions of terms used in the instrument. These terms are:
  - **AQF** means the Australian Qualifications Framework within the meaning of the *Higher Education Support Act 2003*.
  - **foreign education institution** means one of the foreign education institutions mentioned in Schedule 1 to this instrument.
  - **graduated** means having met the academic requirements for award of that qualification.
  - **Migration Regulations** means the *Migration Regulations 1994*.
  - **qualification** means one of the degrees or higher qualifications mentioned in Schedule 2 to this instrument.
  - **related industries** means one or more of the related industries mentioned in section 8 of this instrument.
  - **test component** means each of the following of an English language test that is specified in section 9 of this instrument:
    - listening;
    - reading;
    - speaking; and
    - writing.

26. Section 5 of the instrument provides that each instrument that is specified in a Schedule to the instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the instrument has effect according to its terms.

27. Section 6 of the instrument provides that, for the purposes of item 4(a) of the table in paragraph 1234(3F)(c) of Schedule 1 and subclause 403.261(2) of Schedule 2 to the Migration Regulations, the foreign education institution, that an applicant must have graduated from, are specified in an item of Schedule 1 of LIN 24/072. The terms *foreign education institutions* and *graduated* are defined in section 4 of this instrument (see paragraph 25, above).

28. Section 7 of the instrument provides that for the purposes of paragraphs 403.261(1)(a) and (b) and subclause 403.261(2) of Schedule 2 to the Migration Regulations, a qualification is specified if all of the following apply:

- the qualification is mentioned in an item of Schedule 2 of this instrument;
- the qualification was conferred or awarded by a foreign education institution mentioned in an item of Schedule 1 of this instrument; and
- the qualification is equivalent to an AQF level 7 degree or higher qualification.

29. The terms *AQF*, *foreign education institution* and *qualification* are defined in section 4 of this instrument (see paragraph 25, above).

30. Section 8 of this instrument provides that for the purposes of paragraphs 403.261(1)(a) and (b) and subclause 403.261(2) of Schedule 2 to the Migration Regulations, each of the following related industries are specified:

- renewable energy;
- mining;
- engineering;
- information communications technology;
- artificial intelligence;
- financial technology; or
- agricultural technology.

31. The effects of sections 6 to 8 of this instrument is to set out the academic requirements that a primary applicant must meet in order to satisfy the criteria in item 4 of the table in paragraph 1234(3F)(c) of Schedule 1 to the Migration Regulations (see paragraph 11, above) for making a valid visa application and also sets out the relevant primary criteria in Subdivision 403.26 of Schedule 2, (found in clause 403.261 of Schedule 2 (see paragraphs 13-15 (above))), for a grant of a MATES stream visa. Subdivision 403.26 contains other criteria that must be met for the grant of a MATES stream visa.

32. Section 9 of this instrument specifies the relevant English language tests. Subclause 403.262(1) of Schedule 2 to the Migration Regulations provides that the primary applicant has undertaken a language test specified in an instrument. The following language tests are specified for that purpose:

- Cambridge English: Advanced (CAE);
- International English Language Testing System (IELTS);
- Occupational English Test (OET);
- Pearson Test of English Academic (PTE); and
- Test of English as a Foreign Language internet-Based Test (TOEFL iBT).

33. Section 10 of this instrument relates to the language test scores to be achieved by the primary applicant. Subclause 403.262(1) of Schedule 2 to the Migration Regulations, requires that applicant to satisfy any language test requirements specified by the Minister in an instrument in writing. Section 10 of this instrument, provides the test scores that the applicant must achieve in relation to each test, as specified in Schedule 3 of the instrument.

34. Section 11 of this instrument provides for the period in which the language test scores must be achieved. Subclauses 403.262(1) and (2) of Schedule 2 to the Migration Regulations provides for the English language requirements that an eligible primary applicant needs to meet for a successful grant of a MATES stream visa (see paragraphs 16-17, above), in accordance with the specified language test and the required test scores that applicant is required to achieve (see section 9 and 10 of LIN 24/072 (paragraphs 32-33, above)). Section 11 specifies that the applicant must have undertaken the language test and achieved the required test scores within one of the following periods (for subclauses 403.261(1) and (2) of Schedule 2):

- within 1 year immediately before the day on which the application for the MATES stream visa is made, if evidence of the test is provided at the time that application is made (see paragraph 11(a)(i) of LIN 24/072); or
- within 1 year immediately before the day on which a decision is made on that application, if evidence of the test is not provided at the time the visa application is made (see paragraph 11(a)(ii) of LIN 24/072);
- unless the test was the OET, in a single sitting (see paragraph 11(b) of LIN 24/072).

#### *Parliamentary scrutiny etc.*

35. The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because the instrument is made under Schedule 1 and 2 to the Migration Regulations and it is prescribed under paragraph 20(b) in the table under section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.

36. As the instrument is exempt from disallowance, a Statement of Compatibility with Human Rights is not required.

37. The instrument was made by the Minister of Immigration and Multicultural Affairs, in accordance with the following provisions of the *Migration Regulations 1994*:

- item 4(a) of the table in paragraph 1234(3F)(c) of Schedule 1;
- paragraphs 403.261(1)(a) and (b) of Schedule 2;
- subclause 403.261(2) of Schedule 2;
- subclause 403.262(1) of Schedule 2; and
- subclause 403.262(2) of Schedule 2.

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