

## EXPLANATORY STATEMENT

Issued by the Minister for Immigration and Multicultural Affairs

*Migration Act 1958*

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

The *Migration Act 1958* (the Migration Act) is an Act relating to the entry into, and presence in, Australia of aliens, and the departure or deportation from Australia of aliens and certain other persons.

Subsection 504(1) of the Migration Act provides that the Governor-General may make regulations, not inconsistent with the Migration Act, prescribing matters required or permitted to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Migration Act.

In addition, regulations may be made pursuant to the provisions of the Migration Act in Attachment A.

On 23 May 2023, the Governments of Australia and India entered into the *Migration and Mobility Partnership Arrangement* (the MMPA), a bilateral framework that supports and promotes two-way migration and mobility between the two countries. Through this bilateral agreement, it was agreed to establish the *Mobility Arrangements for Talented Early-professionals Scheme* (MATES).

The *Migration Amendment (Mobility Arrangements for Talented Early-professionals Scheme) Regulations 2024* (the amending Regulations) amends the *Migration Regulations 1994* (the Migration Regulations) to establish MATES, which allows 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. Australian industry sectors and businesses will also benefit from their access to India's talented graduates with in-demand knowledge and skills. Eligible fields of study include renewable energy, mining, engineering, information and communications technology, artificial intelligence, financial technology, and agricultural technology. As agreed to under the MMPA, there will be 3,000 temporary visa places available under MATES each program year.

The amending Regulations amend the Migration Regulations as follows:

- create a new Mobility Arrangement for Talented Early-professionals Scheme stream (the MATES stream) within the Subclass 403 (Temporary Work (International Relations)) visa (the Subclass 403 visa) through amendments to subitem 1234 of Schedule 1 and Division 403.2 of Schedule 2 to the Migration Regulations; and
- prescribe criteria for the MATES stream requiring applicants to satisfy language requirements specified by legislative instrument; and to hold a qualification of a kind specified by the Minister in a legislative instrument, which relates to an industry specified by the Minister in a legislative instrument, and which was conferred or awarded by a foreign educational institution specified by the Minister in a legislative instrument; and
- allow Subclass 403 MATES stream visa holders to remain in Australia for 24 months after first entry.

Further details of the Amending Regulations are set out in Attachment C.

The amending Regulations commence the day after they are registered on the Federal Register of Legislation.

The amending Regulations give effect to the Australian Government's commitment under the MMPA to establish MATES, as well as the announcement in the Budget 2024-25.

The amending Regulations require individuals who are between 18 and 30 (inclusive) and who hold a passport issued by the Republic of India, to register to take part in a visa pre-application process (also referred to generally as a 'ballot') for that country. Drawing a place in the ballot will enable an applicant to make a valid application for a Subclass 403 visa in the MATES stream (the MATES stream visa). Applicants who hold passports issued by the Republic of India cannot make a valid application for the MATES stream visa unless they have drawn a place in a relevant ballot.

The requirement to be selected in a ballot has been introduced because demand for a MATES stream visa is expected to be high and may exceed the numbers of visas intended to be granted as agreed through the MMPA under the MATES program. The use of random selection assists in efficiently managing the volume of applications received by the Department and ensures fairness as all registered participants have an equal chance of being selected.

Subsection 46C(1) of the Migration Act empowers the Minister to arrange a ballot involving the random selection of registered participants who will then be permitted to lodge an application for a relevant visa in accordance with subsection 46A(4A) of that Act. A ballot must involve the random selection of eligible persons who have registered to take part in a ballot. Rules for the conduct of the ballot are set out in a determination made by the Minister under subsection 46C(14) of the Migration Act. Visas will be granted to registered participants who are successful in being selected in the ballot and go on to apply for the MATES stream visa, subject to satisfaction of the remaining criteria for that visa.

The matters dealt with in the amending Regulations are appropriate for implementation in regulations rather than by Parliamentary enactment. It has been the consistent practice of the Government of the day to provide for detailed visa criteria and conditions, including the requirements for making a valid application for a visa, in the Migration Regulations rather than in the Migration Act itself. The Migration Act expressly provides for these matters to be prescribed in regulations, as can be seen in the authorising provisions listed at Attachment A. These include, for example, paragraph 46(1)(b) of that Act, which provides that the Migration Regulations may prescribe the criteria and requirements for making a valid application for a visa.

The current Migration Regulations have been in place since 1994, when they replaced regulations made in 1989 and 1993. Providing for these details to be in delegated legislation rather than primary legislation gives the Government the ability to respond quickly to emerging situations such as the COVID-19 pandemic.

The Amending Regulations amend the Migration Regulations, which are exempt from sunsetting under table item 38A of section 12 of the *Legislation (Exemptions and other Matters) Regulations 2015*. The Migration Regulations are exempt from sunsetting on the basis that the repeal and remaking of the Migration Regulations:

- is unnecessary as the Migration Regulations are regularly amended numerous times each year to update policy settings for immigration programs;

- would require complex and difficult to administer transitional provisions to ensure, amongst other things, the position of the many people who hold Australian visas, and similarly, there would likely be a significant impact on undecided visa and sponsorship applications; and
- would demand complicated and costly systems, training and operational changes that would impose significant strain on Government resources and the Australian public for insignificant gain, while not advancing the aims of Legislation Act.

The Amendment Regulations will be repealed by operation of Division 1 of Part 3 of Chapter 3 of the Legislation Act. Specifically, that Division (under section 48A) operates to automatically repeal a legislative instrument that has the sole purpose of amending or repealing another instrument. As the Amendment Regulations will automatically repeal, they do not engage the sunsetting framework under Part 4 of the Legislation Act.

A Statement of Compatibility with Human Rights (the Statement) has been completed in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The overall assessment is that the amending Regulations are compatible with human rights because, to the extent that they may limit human rights, those limitations are reasonable, necessary and proportionate to legitimate aims. A copy of the Statement is at [Attachment B](#).

The amending Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*. Section 17 of that Act provides that the rule-maker must be satisfied that any consultation that is appropriate and reasonably practicable has been undertaken before making a legislative instrument. 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 2003* (the Legislation Act).

The Office of Impact Analysis (OIA) was consulted and considered that the 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 annual cap) 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.

The amending Regulations commence the day after they are registered on the Federal Register of Legislation.

Further details of the amending Regulations are set out in [Attachment C](#).

The Migration Act specifies no conditions that need to be satisfied before the power to make the amending Regulations may be exercised.

The amending Regulations are a legislative instrument for the purposes of the Legislation Act.

The instrument was made by the Governor-General, in accordance with subsection 504(1) of the Migration Act.

## **ATTACHMENT A**

### **AUTHORISING PROVISIONS**

Subsection 504(1) of the *Migration Act 1958* (the Migration Act), provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters that are required or permitted by the Act to be prescribed or which are necessary and convenient to be prescribed.

In addition, the following provisions of the Migration Act may also be relevant:

- subsection 29(1) of the Migration Act, which provides that the Minister may grant a non-citizen permission, to be known as a visa, to do either or both of the following:
  - a) travel to and enter Australia;
  - b) remain in Australia;
- subsection 29(2) of the Migration Act, which provides that, without limiting subsection 29(1), a visa to travel to, enter and remain in Australia may be one to:
  - a) travel to and enter Australia during a prescribed or specified period; and
  - b) if, and only if, the holder travels to and enters during that period, remain in Australia during a prescribed or specified period or indefinitely;
- subsection 31(1) of the Migration Act, which provides that the *Migration Regulations 1994* (the Migration Regulations) may prescribe classes of visas;
- subsection 31(3) of the Migration Act, which provides that the Migration Regulations may prescribe criteria for a visa or visas of a specified class;
- subsection 31(4) of the Migration Act, which provides that the Migration Regulations may prescribe whether visas of a class are visas to travel to and enter Australia, or to remain in Australia, or both;
- subsection 31(5) of the Migration Act, which provides that the Migration Regulations may specify that a visa is a visa of a particular class;
- section 40 of the Migration Act, which provides that the Migration Regulations may provide that visas or visas of a specified class may only be granted in specified circumstances;
- subsection 41(1) of the Migration Act, which provides that the Migration Regulations may provide that visas, or visas of a specified class, are subject to specified conditions;
- subsection 45B(1) of the Migration Act, which provides that the amount of visa application charge is the amount, not exceeding the visa application charge limit, prescribed in relation to the application (the visa application charge limit is determined under the *Migration (Visa Application) Charge Act 1997*);
- paragraph 46(1)(b) of the Migration Act, which provides that the Migration Regulations may prescribe the criteria and requirements for making a valid application for a visa.
- subsection 46(4) of the Migration Act, which provides that, without limiting subsection 46(3), the Migration Regulations may prescribe:
  - a) the circumstances that must exist for an application for a visa of a specified class to be a valid application; and
  - b) how an application for a visa of a specified class must be made; and

- c) where an application for a visa of a specified class must be made; and
  - d) where an applicant must be when an application for a visa of a specified class is made;
- subsection 46(4A) of the Migration Act, which provides that 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);
- subsection 46C(1) of the Migration Act, which 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 mentioned in subsection 46(4A), for those visas;
- subsection 504(2) of the Migration Act, which provides that section 14 of the *Legislation Act 2003* (the Legislation Act) does not prevent regulations whose operation depends on a country or other matter being specified or certified by the Minister in an instrument in writing made under the regulations after the commencement of the regulations; and
- subsection 8(1) of the *Migration (Visa Pre-application Process) Charge Act 2023* (Visa Pre-application Process Act), which provides for the amount of charge imposed on the registration of a person as a registered participant in a visa pre-application process is the amount prescribed by the *Migration (Visa Pre-application Process) Charge Regulations 2024* (Visa Pre-application Process Regulations);
- subsection 8(2) of the Visa Pre-application Process Act, which provides that the Visa Pre-application Process Regulations may prescribe different amounts in relation to:
  - a) different visa pre-application processes; or
  - b) different classes of visa pre-application processes.
- subsection 8(3) of the Visa Pre-application Process Act, which provides that the Visa Pre-application Process Regulations may prescribe different amounts in relation to different classes of persons;
- subsection 8(4) of the Visa Pre-application Process Act, which provides that subsections 8(2) and 8(3) do not limit section 33(3A) of the *Acts Interpretation Act 1901*; and
- section 11 of the Visa Pre-application Process Act, which provides that the Governor-General may make regulations prescribing matters:
  - a) required or permitted by that Act to be prescribed; or
  - b) necessary or convenient to be prescribed for carrying out or giving effect to that Act.

## **ATTACHMENT B**

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

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

#### ***Migration Amendment (Mobility Arrangements for Talented Early-professionals Scheme) Regulations 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 Amendment (Mobility Arrangements for Talented Early-professionals Scheme) Regulations 2024* (Amendment Regulations) amend the *Migration Regulations 1994* (Migration Regulations) to create a new stream within the Temporary Work (International Relations) (Subclass 403) visa called the Mobility Arrangement for Talented Early-professionals Scheme (MATES) stream, as well as implement a visa pre-application ‘ballot’ process for the stream. The Subclass 403 MATES stream will allow 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.

The Amendment Regulations are part of the legislative package that will implement 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. MATES will also provide the opportunity for mutually beneficial skills and knowledge transfer between Australia and India in industry sectors of identified demand, facilitating a pipeline of skilled professionals in those industries.

The Amendment Regulations are part of the legislative package that will specify the visa criteria and ballot process for the Subclass 403 MATES stream. As agreed to under the MMPA, there will be 3,000 temporary visa places in the program, which will be allocated annually through the ballot process. Primary applicants will be able to bring dependent family members (‘secondary applicants’), who will not be counted towards the 3,000 visa places. The rules and conduct for the MATES ballot process are set out in the *Migration (Subclass 403 (MATES Stream) Visa Pre-application Process) Determination ((LIN 24/069) 2024* (MATES Ballot Determination).

The Amendment Regulations amend Schedule 1 and 2 to the Migration Regulations to create the MATES stream within the Subclass 403 visa, and provide the eligibility criteria for the grant of a Subclass 403 MATES stream visa.

In order to make a valid application for a Subclass 403 visa in the MATES stream, a primary applicant must satisfy certain criteria in Schedule 1 to the Migration Regulations, as amended by the Amendment Regulations, including:

- not have previously been in Australia as the holder of a Subclass 403 visa in the MATES stream;
- be a selected participant through the applicable ballot process;
- held a valid passport issued by the Republic of India at the time of registration as a registered participant in that process;
- be aged at least 18 and no more than 30 at the beginning of the registration open period for the relevant process;
- have graduated from a foreign educational institution specified by the Minister within two years of the beginning of the registration open period for the relevant process; and
- have made the application for a Subclass 403 visa in the MATES stream before the date specified in the notice of selection (which notifies a person that they were successful in the ballot).

Persons seeking to satisfy the primary criteria for the MATES stream of the Subclass 403 visa will also be required to be outside of Australia when the application is made in order to make a valid application.

The Amendment Regulations also amend Schedule 2 to the Migration Regulations to prescribe visa criteria that will need to be satisfied by a Subclass 403 MATES stream primary applicant at the time a decision is made on the visa application, including:

- that they hold a qualification that:
  - is of a kind specified by the Minister in an instrument in writing;
  - relates to an industry specified by the Minister in an instrument in writing; and
  - was conferred or awarded by a foreign educational institution specified by the Minister in an instrument in writing;
- English language test requirements specified by the Minister in an instrument in writing.

In addition, applicants will be required to satisfy standard public interest visa criteria, including criteria relating to health, character and national security.

### **Human rights implications**

The Amendment Regulations may engage the following rights:

- the right 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).
- the right to work and rights at work in Articles 6(1) and 7 of the ICESCR.

### Right 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.*

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 United Nations 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 Amendment Regulations introduce a new visa stream with criteria that differentiate between prospective visa applicants on the basis of country of citizenship (passport held), age, education

status and language, as well as providing for a ballot process for prospective applicants for this new stream, and therefore may engage the above rights to non-discrimination.

Applicants for the MATES stream of Subclass 403 must satisfy certain requirements in Schedule 1 to the Migration Regulations, as amended by the Amendment Regulations, to make a valid application, including that the applicant must have been randomly selected in the applicable ballot process. The rules that apply in relation to the eligibility for, and conduct of, the MATES ballot process is set out in the MATES Ballot Determination, which is accompanied by a separate Statement of Compatibility with Human Rights.

The purpose of a ballot process that selects registered participants at random for this new visa stream is to ensure there is a fair, equitable and objective method for providing access to the Subclass 403 MATES stream program, which has an agreed number of visa places each year. The use of a ballot process for the random selection of eligible applicants for visa places in this program is appropriate because demand for visas under this program is expected to significantly exceed the agreed number of visa places in a given year. The use of random selection ensures fairness as all eligible applicants have an equal chance of being selected to apply for a Subclass 403 MATES stream visa, rather than being dependent on, for example, having the fastest internet connection.

Among the Migration Regulations Schedule 1 requirements for the Subclass 403 MATES stream that are being introduced by the Amendment Regulations is that the primary applicant must have held a valid passport issued by the Republic of India at the time of registration in the ballot process.

To the extent that the Schedule 1 requirements for the Subclass 403 MATES stream visa differentiate on the basis of citizenship, this is reasonable and proportionate to meeting legitimate objectives. This is because the MATES program is a measure established under the MMPA between Australia and India, which will see both countries benefit from enhanced cooperation on migration issues. MATES 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.

The amendments are directed to providing further mobility opportunities for eligible Indian passport holders, who wish to expand their skills, experience and networks in the specified industries in Australia. The amendments do not adversely affect the existing arrangements for visa holders and applicants who hold other passports.

Schedule 1 to the Migration Regulations, as amended by the Amendment Regulations, also imposes an age requirement for the primary applicant to be at least 18 and no more than 30 at the beginning of the registration open period of the relevant ballot process. There is no specific age requirement for members of the primary applicant's family unit (secondary applicants), although children must generally be under 18 or be otherwise dependent, in accordance with the existing definition of 'member of the family unit' in the Migration Regulations.

The MATES program will target a specified age cohort of prospective applicants who will be in a position to benefit most from the program. The purpose of the Subclass 403 MATES stream visa is to provide enhanced mobility opportunities 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 primary applicant will also be required to have graduated from an eligible foreign educational institution within two years of the beginning of the registration open period of the relevant ballot process. This requirement is again to ensure that eligibility is limited to recent Indian graduates and early-career professionals who would benefit most from being able to access a temporary mobility pathway to expand their skills and experience in targeted industries in Australia, and who may not have the required skills and experience to meet standard skilled visa programs.

The list of eligible foreign education institutions will be specified in a legislative instrument and will align with the Indian Ministry of Education's National Institutional Ranking Framework (NIRF) Top 100 Overall List. Limiting participating education institutions in the MATES program is considered reasonable and proportionate to the objectives of the MATES program given the limited number of places available each program year. The NIRF Top 100 Overall List is also a regularly reviewed, transparent and easily accessible list, and the public methodology of ranking institutions contains five broad parameters that support equity and diverse participation, including teaching; learning and resources; research and professional practices; graduation outcomes; outreach and inclusivity; and perception. The list of eligible foreign educational institutions specified in the legislative instrument will be reviewed on an annual basis, and may be updated following that review process.

The primary applicant will also be required to satisfy certain criteria in Schedule 2 to the Migration Regulations, as amended by the Amendment Regulations, including that they hold a qualification that is of a kind specified by the Minister in an instrument in writing for this purpose. The specified qualification is at least a Bachelor degree, and can be up to the Doctoral degree level.

The primary applicant's qualification must also be related to an industry specified by the Minister in an instrument in writing. The specified industries are renewable energy, mining, engineering, financial technology, agricultural technology, artificial intelligence and information communications technology. Limiting the eligible sectors ensures that the MATES program is in alignment with encouraging skilled migration, and to support the mutually beneficial skills and knowledge transfer between Australia and India in key sectors. The list of industries was agreed to between the Governments of Australia and India, and will also be reviewed to ensure it remains current with migration priorities. Holders of a Subclass 403 visa in the MATES stream will not however, be required to work only in their specified sector upon arrival in Australia and will have full labour market mobility.

To the extent that these requirements permit differentiation on the basis of education status and field of study, this is considered reasonable and proportionate to the purpose of the MATES program, which is to facilitate mutually beneficial skills and knowledge transfer between Australia and India in sectors of identified demand, while also supporting young Indian professionals expand their skills and networks in those industries. It is considered that persons with at least a Bachelor degree or higher will gain the most benefit out of the MATES program, as they will have greater prospects of skills development and successful skilled employment in Australia in the targeted industries.

With regard to English language proficiency, the primary applicant will be required to demonstrate that they satisfy the English language test requirements as specified by the Minister in a legislative instrument, which is an International English Language Testing System (IELTS) overall test score, or equivalent, of at least 6 with a minimum score of 5 in each of the four test components. English language skills are essential to ensuring that MATES stream visa holders will be able to fully enjoy

the benefits of the MATES program, including accessing skilled employment opportunities, while also reducing their vulnerability to workplace exploitation.

These visa requirements are therefore reasonable and proportionate to helping ensure participants in the MATES program have the best opportunity to expand their skills and networks in Australia in their field of study, and is consistent with the intent of the program. Providing this visa pathway for participants in the MATES program to enter and work in Australia does not detract from existing visa pathways for foreign nationals who do not meet the requirements of the new MATES stream of the Subclass 403 visa and who wish to come to Australia for work or other purposes.

### Right to work and rights at work

Article 6(1) states:

*The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.*

Article 7 states:

*The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work, which ensure, in particular:*

- (a) Remuneration which provides all workers, as a minimum, with:*
  - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;*
  - (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;*
- (b) Safe and healthy working conditions;*
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;*
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays*

The Amendment Regulations positively engage the right to work and rights at work of Subclass 403 MATES stream visa holders.

The Subclass 403 MATES stream visa provides holders with the right to work in Australia without restriction, giving full labour market access. Upon undertaking work with an employer in Australia, they are subject to the same protections of Australian workplace laws, conditions and awards as any other Australian worker, as well as certain enhanced protections under the *Migration Act 1958* aimed at protecting migrant workers.

### **Conclusion**

The Amendment Regulations are compatible with human rights because, to the extent that they 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**

## **ATTACHMENT C**

### **Details of the *Migration Amendment (Mobility Arrangements for Talented Early-professionals Scheme) Regulations 2024***

#### **Section 1 – Name**

This section provides that the name of the instrument is the *Migration Amendment (Mobility Arrangements for Talented Early-professionals Scheme) Regulations 2024* (the **amending Regulations**).

#### **Section 2 – Commencement**

This section provides for the commencement of these amending Regulations (instrument).

Subsection 2(1) provides that each provision of the instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table.

Table item 1 provides that the entire instrument commences on the day after the instrument is registered on the Federal Register of Legislation.

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 of 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 this column, or information in it may be edited, in any published version of the instrument. Column 3 of the table confirms only that the date of commencement of the instrument, as the day after the instrument is registered.

#### **Section 3 – Authority**

This section provides that the instrument is made under the *Migration Act 1958* (the *Migration Act*).

#### **Section 4 – Schedules**

This section provides for how the amendments in the amending Regulations operate.

#### **Schedule 1 – Amendments**

##### ***Migration Regulations 1994***

###### **Item [1] – Paragraph 1234(3)(b) of Schedule 1**

This item omits ‘paragraph (cae)’ from paragraph 1234(3)(b) of Schedule 1 to the *Migration Regulations 1994* (the *Migration Regulations*) and substitute ‘paragraphs (cae) and (cag)’ in its place.

Currently, paragraph 1234(3)(b) of Schedule 1 to the Migration Regulations provides that subject to paragraph (cae), an applicant for a Temporary Work (International Relations) (Class GD) visa may be in or outside Australia, but not in immigration clearance.

The amended paragraph 1234(3)(b) of Schedule 1 to the Migration Regulations provides that subject to paragraphs 1234(3)(cae) and (cag) of Schedule 1, an applicant may be in or outside Australia, but not in immigration clearance.

The effect of item 1 provides for an eligible applicant being able to be in or outside Australia, but not in immigration clearance, at the time they made their application for a Subclass 403 (Temporary Work) (International Relations) visa (the Subclass 403 visa), subject to the Pacific Australia Labour Mobility stream (see paragraph 1234(3)(cae) of Schedule 1 to the Migration Regulations) and the Mobility Arrangement for Talented Early-professionals Scheme stream (the MATES stream) (see item 2 below).

Item 1 also gives effect to the policy intent, which is to ensure that an eligible family member(s) of an eligible primary Subclass 403 visa in the MATES stream (the Subclass 403 MATES stream visa) applicant is able to be in or outside Australia, but not in immigration clearance, when they make their application for the Subclass 403 visa.

**Item [2] – After paragraph 1234(3) (caf) of Schedule 1**

**Item [3] – After subitem 1234(3E) of Schedule 1**

**Item [4] – At the end of item 1234 of Schedule 1**

Item 2 inserts a new provision after paragraph 1234(3)(caf) of Schedule 1 to the Migration Regulations, being paragraph 1234(3)(cag) of Schedule 1.

New paragraph 1234(3)(cag) of Schedule 1 to the Migration Regulations sets out the requirements for making a valid application for a Subclass 403 MATES stream visa.

New subparagraphs 1234(3)(cag)(i) and (ii) of Schedule 1 to the Migration Regulations inserts the criteria that a primary applicant must satisfy, when they are seeking to make a valid application for a Subclass 403 MATES stream visa. That applicant:

- must be outside Australia when the application is made (see paragraph 1234(3)(cag)(i) of Schedule 1); and
- must meet the requirements in subitem 1234(3F) of Schedule 1 (see item 3, below) (see paragraph 1234(3)(cag)(ii) of Schedule 1).

Item 3 inserts a new provision after subitem 1234(3E) of Schedule 1 to the Migration Regulations, being subitem 1234(3F) of Schedule 1.

New subitem 1234(3F) of Schedule 1 to the Migration Regulations inserts additional requirements for making a valid Subclass 403 MATES stream visa application, for the purposes of paragraph 1234(3)(cag)(ii) of Schedule 1. These additional requirements only apply to primary applicants. The applicant will meet these criteria if:

- that applicant is not, and has not previously been, in Australia as the holder of a Subclass 403 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 paragraph 1234(3F)(c) of Schedule 1, are met (see paragraph 1234(3F)(c) of Schedule 1).

New paragraph 1234(3F)(c) of Schedule 1 to the Migration Regulations introduces a table following that provision of the Migration Regulations, that set outs the requirements to be met by primary applicants (or certain applicants, as provided for in the heading of that table) to which that subitem applies. These requirements are:

- Item 1 of the table requires that applicant to be a selected participant for a visa pre-application process (*the relevant process*) conducted under subsection 46C(1) of the Migration Act in relation to a Subclass 403 MATES stream visa (see subitem 1(a) of the table in paragraph 1234(3F)(c) of Schedule 1) and which is conducted in relation to the Republic of India (see item 1(b) of the table in paragraph 1234(3F)(c) of Schedule 1). The effect of this is, certain applicants to which subitem 1234(3F) of Schedule 1 applies, must be randomly selected in a visa pre-application process (commonly known as a ballot) conducted for the Subclass 403 MATES stream visa and in relation to the Republic of India. The requirement to be selected in a visa pre-application process before making a valid application for that visa is in accordance with subsection 46(4A) of the Migration Act. The definitions for *selected participant* and *visa pre-application process* (a ballot or the relevant process) are explained in new subitem 1234(5) of Schedule 1 (see item 4, below).
- Item 2 of the table requires that at the beginning of the registration open period for the relevant process, that applicant is at least 18 years old and no more than 30 years old (inclusive). The definition for *registration open period* is explained in the new subitem 1234(5) of Schedule 1 (see item 4, below). Applicants are required to meet that age requirement at the beginning of the relevant registration process, rather than at the date of application (or any later date), to prevent any disadvantage to applicants due to the effluxion of time between the registration open date and visa application if the registered participant is successful. For instance, a person may have been aged under 30 when registration for the relevant process opened but may have passed that age by the time they became a selected participant through that ballot process and an application for the Subclass 403 MATES stream visa was made. In this instance, that applicant is still be able to make a valid application for that visa, even though they are older than 30 at the time that application was made.
- Item 3 of the table requires that at the time the applicant became a registered participant for the relevant ballot process, that applicant held a valid passport issued by the Republic of India, which is the foreign country to which that process relates. This requirement works as an integrity measure to assist in confirming the identity of that applicant throughout the relevant process and to ensure that at the time of registration, selection and visa application, that applicant continues to hold a relevant passport issued by the Republic of India in relation to which that process is conducted. The definition for *registered participant* is explained in new subitem 1234(5) of Schedule 1 (see item 4, below).
- Item 4 of the table requires that the applicant:
  - must have graduated from a foreign educational institution specified by the Minister in an instrument in writing for the purposes of that table item (see subitem 4(a) of the table in paragraph 1234(3F)(c) of Schedule 1); and

- must have graduated from one of the specified foreign education institutions mentioned in the legislative instrument made by the Minister under subitem 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 (see subitem 4(b) of the table in paragraph 1234(3F)(c) of Schedule 1). For the purposes of subitems 4(a) and (b) of the table in paragraph 1234(3F)(c) of that Schedule, it is intended that an eligible primary applicant must have graduated with a qualification, having met the academic requirements for the award of that qualification, which operates as an integrity measure to ensure that suitably qualified persons are able to apply for a Subclass 403 MATES stream visa.
- Item 5 of the table requires the application to be made on or before the date specified in the notice given to the applicant after becoming a selected participant for the relevant ballot process, as the date by which that applicant must make a valid application for a Subclass 403 MATES stream visa (see paragraph 1234(3)(cag) of Schedule 1, item 1, above). The determination made under subsection 46C(14) of the Migration Act for the relevant ballot process, provides for the giving of the notice of selection to successful applicants, who are selected participants. The definitions for *notice of selection* and *visa pre-application process determination* are explained in the new subitem 1234(5) of Schedule 1 (see item 4, below).

Item 4 inserts a new provision at the end of item 1234 of Schedule 1 to the Migration Regulations, being subitem 1234(5) of Schedule 1. New subitem 1234(5) of Schedule 1 provides definitions of terms used in subitem 1234(3F) of Schedule 1. Those terms are:

- ***notice of selection***, (used in item 5 of the table in item 3, above), means the notice given to registered participants that they have been successful in being randomly selected under the relevant ballot process for which they registered.
- ***registered participant***, (used in item 3 of the table in item 3, above), means a person who has registered as a participant in the relevant ballot process.
- ***registration open period***, (used in item 2 of the table in item 3, above), means the period during which the relevant ballot process is open for registration in accordance with the relevant determination.
- ***selected participant***, (used in item 1 of the table in item 3, above), means a person selected as a participant in the relevant ballot process in accordance with the relevant determination. That is, a person who has registered for that process and subsequently been randomly selected in that ballot draw for that process. A selected participant is eligible to make an application for a Subclass 403 MATES stream visa on or before the date specified in the notice of selection. The note under the definition for *selected participant* in subitem 1234(5) of Schedule 1 (item 4 of the amended Regulations), refers the reader to subsection 46C(2) of the Migration Act. That provision of that Act provides for 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 a determination (made for the purposes of subsection 46C(14) of the Migration Act), that relates to that process and registered participants are randomly selected, through that process.
- ***visa pre-application process***, (used in item 1 of the table in item 3, above), means a visa pre-application process conducted under subsection 46C(1) of the Migration Act.
- ***visa pre-application process determination***, (used in some of the definitions in item 4 of the amending Regulations (see subitem 1234(5) of Schedule 1)), means the determination made for the purposes of subsection 46C(14) of the Migration Act that applies in relation to the

relevant ballot process that is in force at the beginning of the registration open period for that process.

Items 2-4 supports efficient management of visa applications for the Subclass 403 MATES stream visa. Arranging for a ballot to be conducted in relation to the Republic of India assists in ensuring the proposed number of visa applications better aligns with the number of visa places available, as agreed to through the bilateral agreement with that country, the Migration and Mobility Partnership Arrangement (MMPA). While this could result in Indian nationals having to meet additional requirements, the use of a ballot allows MATES to function equitably with random selection being the fairest way to allocate visa places to eligible primary applicants. The use of a ballot process in MATES is reasonable, necessary and proportionate to the aim of the program. As agreed to under the MMPA, there will be 3,000 temporary visa places available under MATES each program year.

#### **Item [5] – Division 403.2 of Schedule 2 (note to Division heading)**

Item 5 omits the third sentence under Division 403.2 of Schedule 2 to the Migration Regulations and insert a new sentence in its place.

That new sentence provides that for an eligible primary applicant applying for a Subclass 403 MATES stream visa, the criteria in Subdivisions 403.21 and 403.26 of Schedule 2 (see item 6, below for the latter subdivision of that Schedule) are the primary criteria that applicant must satisfy for the grant of that visa.

That item also provides for where an applicant applies for a Subclass 403 visa and specifies a stream other than the MATES stream, or where a Subclass 403 visa applicant does not specify a particular stream, that applicant's application will be assessed against as many streams (other than the MATES stream) as is necessary. The criteria in Subdivisions 403.22 to 403.25 and 403.29 of Schedule 2 will be used in turn as primary criteria for the grant of the visa in any other stream in the Subclass 403 visa, excluding the MATES stream, as that applicant's application is assessed.

The effect of this item is to maintain the existing Government Agreement, Foreign Government Agency, Domestic Worker (Diplomatic or Consular), Privileges and Immunities and Pacific Australia Labour Mobility streams within the Subclass 403 visa, whilst giving effect to the policy intent, which is to honour Australia's commitment to the MMPA, through the establishment of MATES. It will also prevent a Subclass 403 applicant from being considered for a Subclass 403 MATES stream visa in circumstances where that applicant has not been selected via a visa pre-application process, and has not met the Schedule 1 criteria specific to the MATES stream.

#### **Item [6] – After Subdivision 403.25 of Schedule 2**

Item 6 inserts a new subdivision after Subdivision 403.25 of Schedule 2 to the Migration Regulations, being Subdivision 403.26 of Schedule 2.

New Subdivision 403.26 of Schedule 2 to the Migration Regulations is titled 'Criteria for Mobility Arrangement for Talented Early-professionals Scheme stream'.

This item also inserts a note under Subdivision 403.26 of Schedule 2 to the Migration Regulations. The note confirms that the relevant criteria under that subdivision only applies to an eligible applicant, who is seeking to satisfy the primary criteria for the grant of a Subclass 403 MATES stream visa (see items 1- 4, above).

The effect of the above note makes it clear that a person who applies for another stream within the Subclass 403 visa, will not be assessed against the MATES stream criteria, found under new Subdivision 403.26 of Schedule 2 to the Migration Regulations and vice versa in accordance with Australia's commitment to the MMPA and the policy intent that the MATES stream is only open to those eligible applicants, who have been selected as a selected participant (see items 3 and 4, above) through the relevant ballot process.

The above note also gives effect to the policy intent, which is to ensure that eligible primary applicants for the Subclass 403 MATES stream visa are not excluded from being required to satisfy the common criteria for the Subclass 403 visa, as are currently provided for in Subdivision 403.21 of Schedule 2 to the Migration Regulations (see item 5, above).

Item 6 also inserts new clauses into Subdivision 403.26 of Schedule 2 to the Migration Regulations, being clauses 403.261, 403.262 and 403.263 of Schedule 2.

New clause 403.261 of Schedule 2 to the Migration Regulations provides for the academic requirements that an eligible primary applicant will need to meet for a successful grant of a Subclass 403 MATES stream visa.

New paragraph 403.261(1)(a) of Schedule 2 to the Migration Regulations requires that applicant to hold a qualification of a kind specified by the Minister in an instrument in writing for the purposes of that provision of the Migration Regulations.

New paragraph 403.261(1)(b) of Schedule 2 requires that applicant's specified qualification (see paragraph 1234(1)(a) to that Schedule) to be related to an industry specified by the Minister in an instrument in writing for the purposes of that provision of the Migration Regulations.

New subclause 403.261(2) of Schedule 2 to the Migration Regulations requires that the eligible primary applicant's specified qualification (as provided for in new paragraph 403.261(1)(a) of Schedule 2), which relates to a specified industry (see paragraph 403.261(1)(b) of that Schedule), was conferred or awarded by a foreign educational institution specified by the Minister in an instrument in writing for the purposes of that provision of the Migration Regulations.

New clause 403.262 of Schedule 2 to the Migration Regulations provides for the English language requirements that an eligible primary applicant will need to meet for the grant of a Subclass 403 MATES stream visa.

New subclause 403.262(1) of Schedule 2 to the Migration Regulations requires that the applicant satisfies any language test requirements specified by the Minister in an instrument in writing.

New subclause 403.262(2) of Schedule 2 to the Migration Regulations applies 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.

The following provisions of the Migration Regulations, set out in items 3 and 6, above, achieve the policy intent, which is to give effect to the MMPA and to implement MATES, as detailed in Annexure A to the MMPA:

- paragraphs 1234(3F)(a) and (b) of Schedule 1;
- item 2 and subitems 4(a) and (b) of the table in paragraph 1234(3F)(c) of that Schedule; and

- clauses 403.261 and 403.262 of Schedule 2.

Item 6 also inserts new clause 403.263 of Schedule 2 to the Migration Regulations. That new provision requires the primary applicant to satisfy the following public interest criteria (PIC):

- the health requirements (PIC 4005) (see paragraph 403.263(a) of Schedule 2); and
- if the applicant had turned 18 at the time of application, that applicant will be required to sign the values statement (PIC 4019) (see paragraph 403.263(b) of Schedule 2).

**Item [7] – After paragraph 403.311(c) of Schedule 2**

**Item [8] – After paragraph 403.316(3)(b) of Schedule 2**

**Item [9] – After subparagraph 403.316(4)(a)(ii) of Schedule 2**

Item 7 amends paragraph 403.311 of Schedule 2 to the Migration Regulations by inserting a new provision after paragraph 403.311(c), being the new paragraph 403.311(ca) of Schedule 2.

That item inserts ‘(ca) a Subclass 403 visa in the Mobility Arrangement for Talented Early-professionals Scheme stream;’ into the relevant position in clause 403.311 of Schedule 2.

New paragraph 403.311(ca) of Schedule 2 to the Migration Regulations provides for a member of the primary applicant’s family unit (a secondary applicant, who is a family member(s) of that applicant), where the primary applicant holds a Subclass 403 MATES stream visa, where that visa was granted on the basis of the primary applicant having satisfied the primary criteria for a grant of that visa (see items 5 and 6, above).

The effect of this item is to require the secondary applicant(s), who is a family member of the Subclass 403 MATES stream visa holder’s family unit, to satisfy the relevant secondary criteria for a grant of a Subclass 403 visa set out in Division 403.3 of Schedule 2 to the Migration Regulations (as amended by this item and items 8-9 (below) of these amending Regulations) at the time a decision is made on their application for that visa, in accordance with the notes under that Division.

Item 8 amends subclause 403.316(3) of Schedule 2 to the Migration Regulations by inserting a new provision after paragraph 403.316(3)(b), being the new paragraph 403.316(3)(ba) of Schedule 2.

That item inserts ‘(ba) a Subclass 403 visa in the Mobility Arrangement for Talented Early-professionals Scheme stream; or’ into the relevant position in subclause 403.316(3) of Schedule 2.

New paragraph 403.316(3)(ba) of Schedule 2 to the Migration Regulations requires the secondary applicant of a Subclass 403 MATES stream visa holder to satisfy the same public interest criterion (PIC 4005) as the primary applicant for a Subclass 403 MATES stream visa as is provided for in paragraph 403.263(a) of Schedule 2 (see item 6, above).

Item 9 amends paragraph 403.316(4)(a) of Schedule 2 to the Migration Regulations by inserting a new provision after paragraph 403.316(4)(a)(ii), being new subparagraph 403.316(4)(a)(iia) of Schedule 2.

This item inserts ‘(iia) a Subclass 403 visa in the Mobility Arrangement for Talented Early-professionals Scheme stream; or’ into the relevant position in subclause 403.316(4) of Schedule 2.

New paragraph 403.316(4)(a)(iia) of Schedule 2 to the Migration Regulations requires the secondary applicant of a Subclass 403 MATES stream visa to satisfy the same public interest criterion (PIC 4019) as the primary applicant for a Subclass 403 MATES stream visa as is provided for in paragraph 403.263(b) of Schedule 2 (see item 6, above).

Items 7-9 gives effect to the policy intent, which is to ensure that family member(s) of an eligible primary Subclass 403 MATES stream visa applicant is not be required to participate in the ballot process.

Those items also ensure that secondary applicants for the Subclass 403 visa, who apply for that visa in accordance with the relevant provisions in Item 1234 of Schedule 1 (including paragraph 1234(3)(b) as amended by item 1, above) and 1234(3)(d) of Schedule 1 to the Migration Regulations and who claim to be a member of the family unit of a primary Subclass 403 MATES stream visa applicant, only need to satisfy the secondary criteria for a successful grant of that visa.

The above items also give effect to paragraph 7 of Annexure A to the MMPA, which provides for ‘dependants (of the Subclass 403 MATES stream visa holder) will not count towards the annual cap (for MATES), and will have unlimited work rights in Australia’, as detailed in Annexure A to the MMPA.

**Item [10] – Subclause 403.511(1) of Schedule 2**

**Item [11] – After subclause 403.511(1) of Schedule 2**

Item 10 omits ‘If’ from subclause 403.511(1) of Schedule 2 to the Migration Regulations and substitute ‘Unless subclause (1A) applies, if’ in its place.

The effect of the above item is that amended subclause 403.511(1) of Schedule 1 to the Migration Regulations applies to an applicant who is outside of Australia at the time of grant unless new subclause 403.511(1A) of Schedule 2 (see item 11, below) applies instead.

Item 11 inserts a new provision after subclause 403.511(1) of Schedule 2 to the Migration Regulations, being new subclause 403.511(1A) of Schedule 2.

New subclause 403.511(1A) of Schedule 2 to the Migration Regulations applies where an eligible primary applicant has made a valid application for, and has met the relevant criteria for, and as a result, has been granted a Subclass 403 MATES stream visa. This provision provides that the MATES visa is a temporary visa, which permits that visa holder:

- to have up to 12 months to make their first entry to Australia from the date of visa grant (see paragraph 403.511(1A)(a) of Schedule 2); and
- to stay in Australia for up to 24 months from the date of first entry (see paragraph 403.511(1A)(b) of Schedule 2).

The effect of the above items is that it achieves the policy intent, which is to give effect to paragraph 8 of the MATES Scheme, which was established by the MMPA, which provides for ‘visa holders (the Subclass 403 MATES stream visa) will have up to 12 months to make their first entry to Australia from the date of visa grant, and may stay in Australia for up to 24 months from the date of first entry’, as provided for in Annexure A to the MMPA. Those visa holders will have the opportunity to seek to remain in Australia beyond that period by applying for another visa

permitting temporary or permanent residence for skilled employment purposes, in accordance with Australia's domestic laws and regulations.

### **Item [12] – After clause 403.613 of Schedule 2**

This item inserts a new provision after clause 403.613 of Schedule 2 to the Migration Regulations, being the new clause 403.614 of Schedule 2.

New subclause 403.614(1) of Schedule 2 to the Migration Regulations applies where an eligible primary applicant has successfully met the primary criteria (see items 5 and 6, above) and as a result has been granted a Subclass 403 MATES stream visa.

New subclause 403.614(2) of Schedule 2 to the Migration Regulations requires that visa holder to comply with the following visa conditions (conditions):

- condition 8303 – the visa holder must not become involved in activities disruptive to, or violence threatening harm to, the Australian community or a group within the Australian community;
- condition 8501 – the visa holder must maintain adequate health insurance; and
- condition 8516 – the visa holder must continue to be a person who satisfies the primary or secondary criteria, as the case requires, for the grant of the Subclass 403 MATES stream visa.

New subclause 403.614(3) of Schedule 2 to the Migration Regulations provides that the certain conditions (8301, 8502, 8503, 8525 and 8526) may be imposed on the Subclass 403 MATES stream visa.

The effect of this item is to give effect to the policy intent which is to implement MATES, in accordance with Australia's commitment in the MMPA.

This item provides that a Subclass 403 MATES stream visa granted to a primary applicant will be subject to certain visa conditions, including those which may be imposed on that visa. The aim of this is to ensure the integrity of the MATES program.

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