

## EXPLANATORY STATEMENT

Issued by authority of the Minister for Immigration and Multicultural Affairs

*Migration Act 1958*

### ***Migration (Subclass 192 (Pacific Engagement) Visa Pre-application Process—Treaty Stream) Determination 2025***

1. This instrument (departmental reference LIN 25/021) is made by the Minister for Immigration and Multicultural Affairs under subsection 46C(14) of the *Migration Act 1958* (the Migration Act).
2. The instrument commences on 1 May 2025. It is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

#### ***Purpose***

3. The purpose of the instrument is to make a determination to specify eligibility and other rules in relation to conducting visa pre-application processes for the random selection of registered participants seeking to apply for a permanent Subclass 192 (Pacific Engagement) visa in the Treaty stream (Treaty stream visa). Persons aged 18 and over, who are citizens of Tuvalu, may register as participants in a visa pre-application process. Selected participants will be able to apply for a Treaty stream visa. The instrument supports amendments made by the *Migration Amendment (Australia Tuvalu Falepili Union Treaty Visa) Regulations 2025*, which established two streams within the Subclass 192 (Pacific Engagement) visa. This instrument relates to visa pre-application processes for the Treaty stream only. At this time, only citizens of Tuvalu will be eligible for registration in a visa pre-application process for this visa stream.

#### ***Background***

4. Subsection 46(4A) of the Migration Act provides that a requirement for making a valid application for a visa of a specified class may be that the applicant was selected in accordance with an 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 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).
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 the process, so long as those persons meet the eligibility requirements set out in the determination relating to the process, and registered participants being selected at random to apply for the visa.

7. 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.
8. Subsection 46C(14) provides that the Minister may, by legislative instrument, determine rules that apply to a specified visa pre-application process.
9. Subsection 46C(15) of the Migration Act provides that a determination made under subsection 46C(14) must deal with eligibility requirements for a person to register as a registered participant in a visa pre-application process, and may deal with any other matters including registration, the period within which persons may register (the ‘registration open period’), the period within which selections may be made (the ‘selection open period’), the withdrawal of a person’s registration, the circumstances under which registration lapses, and the selection of registered participants.
10. Item 1140 (Pacific Engagement) (Class PA) of Schedule 1 to the *Migration Regulations 1994* (the Migration Regulations) sets out the requirements to be met to make a valid application for a Subclass 192 (Pacific Engagement) visa.
11. The *Migration Amendment (Australia Tuvalu Falepili Union Treaty Visa) Regulations 2025* amended the Migration Regulations to introduce two streams in the Subclass 192 (Pacific Engagement) visa: the Pacific Engagement stream and the Treaty stream. A requirement for making a valid application by an applicant seeking to satisfy the primary criteria for the grant of the visa in the Treaty stream is that the applicant must be a selected participant in a relevant visa pre-application process (subitem 1140(4A) table item 1, in Schedule 1 to the Migration Regulations). This is a criterion of a kind mentioned in subsection 46(4A) of the Migration Act.
12. The Treaty stream visa is available to citizens of Tuvalu who register to participate in a visa pre-application process (also referred to as a ‘ballot’) and are randomly selected to apply for the visa. The visa permits visa holders to reside and work in Australia permanently. However, visa holders can choose to spend as little or as much time in Australia as they want and can choose whether they wish to work and/or study. Unlike other permanent visas, the Treaty stream visa provides an indefinite travel facility to support Tuvaluans who wish to split their time between Australia and Tuvalu.
13. The Treaty stream visa implements the Government’s commitment under the Australia-Tuvalu Falepili Union treaty (the treaty), which entered into force on 28 August 2024. The treaty responds to Tuvalu’s request for Australia to help safeguard the future of Tuvalu, including a ‘special human mobility pathway’ for eligible citizens of Tuvalu to live temporarily or indefinitely, work without restriction, and study in Australia.

14. The purpose of the instrument is to set out the eligibility requirements for registration and other rules that apply to the conduct of a visa pre-application process for a Treaty stream visa. Other aspects of the visa pre-application process are managed administratively. At this time, registration in a visa pre-application process for the Treaty stream visa will only be available to citizens of Tuvalu.

### ***Consultation***

15. The Department of Home Affairs (the Department) consulted with the Department of Foreign Affairs and Trade, the Department of Education, the Department of Employment and Workplace Relations, the Department of Health and Aged Care, the National Disability Insurance Agency, the Department of Social Services, the Attorney-General's Department, the Digital Transformation Agency, the Department of Finance, the Department of the Treasury, and the Department of the Prime Minister and Cabinet in relation to the development of the Treaty stream visa. Consultation was also undertaken with the government of Tuvalu.
16. The treaty, which commits Australia to providing a special mobility pathway to Tuvaluans, was referred to the Joint Standing Committee on Treaties (JSCOT) on 26 March 2024. The Committee invited interested persons and organisations to make submissions by 16 April 2024. Six submissions were received and were considered by JSCOT. A public hearing was also held. JSCOT issued Report 219 in August 2024 supporting the treaty and recommended that binding treaty action be taken (recommendation 2 refers).
17. Whole of government consultation, consultation with the government of Tuvalu and the JSCOT process accords with the consultation requirements of subsection 17(1) of the *Legislation Act 2003* (the Legislation Act).
18. The Office of Impact Analysis (OIA) was consulted in relation to the implementation of the Treaty stream visa. The OIA advised that a detailed Impact Analysis is not required. The OIA reference number is OIA23-06061.

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

19. 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 it may limit human rights, those limitations are reasonable, necessary and proportionate. The Statement is included at **Attachment A**.

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

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

*Parliamentary scrutiny*

21. 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 192 (Pacific Engagement) Visa Pre-application Process—Treaty Stream) Determination 2025***

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 192 (Pacific Engagement) Visa Pre-application Process—Treaty Stream) Determination 2025* (the Treaty Stream Determination) is made under subsection 46C(14) of the *Migration Act 1958* (the Migration Act) and sets out the rules that apply in relation to the conduct of the Subclass 192 (Pacific Engagement) visa pre-application process in the Treaty stream under subsection 46C(1) of the Migration Act.

The *Migration Amendment (Australia Tuvalu Falepili Union Treaty Visa) Regulations 2025* (the Amendment Regulations) amended item 1140 of Schedule 1 to the *Migration Regulations 1994* (the Migration Regulations) in relation to the Subclass 192 (Pacific Engagement) visa to create two streams, the Pacific Engagement stream and the Treaty stream within this visa.

In particular, amendments to subitem 1140(4) and new subitem 1140(4A) of Schedule 1 to the Migration Regulations, provide that a Subclass 192 (Pacific Engagement) visa applicant seeking to satisfy the primary criteria must be a selected participant in a visa pre-application process (also referred to as a “ballot” in this Statement) that was conducted in relation to a Subclass 192 (Pacific Engagement) visa in either the Pacific Engagement stream or the Treaty stream.

The Pacific Engagement stream contains the criteria that previously applied as the Subclass 192 (Pacific Engagement) visa. This instrument relates to the visa pre-application process for the Treaty stream only.

The Treaty Stream Determination is part of the legislative package that implements Australia’s obligations under the Australia-Tuvalu Falepili Union treaty (the treaty) which entered into force on 28 August 2024. The treaty responds to Tuvalu’s request for Australia to help safeguard the future of Tuvalu and aims to create a partnership for enhanced collaboration. Use of the Tuvalu term ‘falepili’ embodies the values underpinning the deeper partnership, including good neighbourliness, care and mutual respect. Australia and Tuvalu entered into the treaty freely and cognisant of the significance of their shared achievement.

Article 3 of the treaty provides for a ‘special human mobility pathway’ for eligible citizens of Tuvalu to live temporarily or indefinitely, work without restriction and study in Australia.

In the first program year (2025-26), up to 280 visas (including members of the family unit of primary Treaty stream applicants) will be allocated through a ballot process. The Treaty stream

ballot will be open to migrants who are nationals of Tuvalu, located either in or outside Australia, providing equitable and fair access to Australian permanent residence for them and their immediate family members. These permanent visas will be allocated in addition to Australia's overall annual permanent migration program, and in addition to the 3000 places allocated to Pacific Engagement stream applicants.

Subsection 46C(14) of the Migration Act, as amended by *Migration Amendment (Australia's Engagement in the Pacific and Other Measures) Act 2023* (the Amendment Act) which commenced on 29 March 2024, 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 matters dealt with in a determination under subsection 46C(15) of the Migration Act must include rules for eligibility to register to take part in the process. Additional matters may also be included, such as how the registration must be made, the information to be provided when registering for the process, the registration open period, the selection open period, as well as any extensions of those periods, withdrawals of registrations, how registrations may lapse and the selection of registered participants in a visa pre-application process.

The Migration Regulations provide that, to make a valid application for a Subclass 192 (Pacific Engagement) visa in the Treaty stream, an applicant must be selected in accordance with the applicable visa pre-application process.

In accordance with the above provisions, the Treaty Stream Determination sets out the rules that must be met in order for a person to register as a registered participant for the Treaty stream visa pre-application process. To register as a registered participant in the Treaty stream visa pre-application process, the applicant must:

- register using a computer program made available on the internet;
- declare 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 Treaty stream visa pre-application process covered in the Treaty Stream Determination reflect some of the key objective eligibility requirements to make an application for the Subclass 192 (Pacific Engagement) visa in the Treaty stream and require the applicant to satisfy the following criteria at the time of registration in that process:

- hold a valid passport issued by the country to which that process relates;
- be a citizen of the country to which the process relates and that citizenship was not obtained due to an investment to that country
- not be a citizen of New Zealand;
- be born in, have a parent that was born in, or a grandparent born in the country to which that process relates;

- be aged at least 18.

Under the Treaty Stream Determination, a Treaty stream visa pre-application process must be in relation to a single country, and the Minister must cause the country to which a Treaty stream visa pre-application process relates to be published on the Department's website. Whilst multiple Treaty stream visa pre-application processes can be conducted, including concurrent processes in relation to different countries, Tuvalu is the only country intended to be specified on commencement of the Treaty stream.

Country participation in the Treaty stream program is based on Australia's treaty agreements, managed by the Department of Foreign Affairs and Trade (DFAT).

The Treaty 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 Treaty 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 Treaty stream visa pre-application process will be placed in a randomised draw, from the relevant country pool of ballot entries. 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 Treaty 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 Treaty stream visa pre-application ballot 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 192 (Pacific Engagement) visa in the Treaty stream. The notice will specify the date by which they must make their application for a Subclass 192 (Pacific Engagement) visa in the Treaty stream, which will be at least 30 days after the date of the notice. Failure to lodge a valid Subclass 192 (Pacific Engagement) visa application in the Treaty stream in the period specified in the notification will result in the expiry of the offer.

All registrations entered for the Treaty 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); or
- when the person dies (if the person dies before the person is selected as a selected participant for that process).

Unsuccessful registered participants will not be notified when their registration expires.

A registered participant in an applicable Treaty 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.

Applicants will be required to declare in their registration form the number of members of their family unit that they intend to include in the Subclass 192 (Pacific Engagement) visa application in the Treaty stream if successful in the ballot. This is important to ensure that the 280 visa places available under the Treaty stream can be accurately managed.

The applicant will also need to pay the charge for registration in the Treaty stream visa pre-application process at the time of registration. If the applicant does not pay the registration charge, the applicant is taken never to have been registered as a registered participant in the visa pre-application process. The amount of charge payable for each registration in either the Treaty stream visa pre-application process or the Pacific Engagement stream is AUD25, which is prescribed in section 6 of the *Migration (Visa Pre-application Process) Charge Regulations 2024* (the Charge Regulations).

### **Human rights implications**

The Treaty Stream Determination engages the following rights:

- the rights of 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 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 a number of factors, including 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 ballot to enable the random selection of applicants for this visa program is appropriate because demand for the Treaty stream of the Subclass 192 (Pacific Engagement) visa is expected to exceed the number of places available each program year. In addition, the aim of the Treaty stream is to provide a fair and equitable pathway to Australian permanent residence for genuine citizens of Tuvalu irrespective of their skills, work experience education qualifications, and English language ability, which can be best achieved through the use of a ballot. The Statement of Compatibility with Human Rights that accompanies the Amendment Regulations provides further information as to why the use of a visa pre-application process is necessary, reasonable and proportionate to the intent of the Treaty stream of the Subclass 192 (Pacific Engagement) visa.

The Treaty Stream Determination states that a person must register as a participant in the Treaty stream visa pre-application process using a computer program made available on the internet. This may raise the above rights to non-discrimination relating to accessibility to 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 ballot, including because of a disability.

The Treaty Stream Determination does not specifically require the visa pre-application process 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 Treaty stream visa pre-application 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 ballot entry per person, and also is the most fair and equitable way to select participants in the ballot.

The Treaty Stream Determination also specifies eligibility requirements for registration as a registered participant in the Treaty stream visa pre-application process. These eligibility requirements may engage the above rights to non-discrimination as eligibility to apply for a Treaty stream is limited to those who are randomly selected in the ballot process after meeting the eligibility requirements for registration in that process.

The eligibility requirements for registration in the Treaty stream visa pre-application process include that the person must hold a valid passport issued by the country to which the visa pre-application process relates, not be a citizen of New Zealand, must have been born in, or have a parent or grandparent that was born in the country to which that process relates, and must be aged at least 18 at the beginning of the registration open period for the Treaty stream visa pre-application process.

The eligibility requirements covered by the Treaty Stream Determination are part of the framework that is intended to provide access to the benefits of permanent residence in Australia for citizens of Tuvalu, in a way that is fair and equitable.

As the Treaty stream of the Subclass 192 (Pacific Engagement) visa reflects Australia's treaty obligations, applicants must hold a valid passport issued by the country to which the visa pre-application process relates. Applicants must also not be a citizen of New Zealand, as New Zealand citizens already have access to residence in Australia under the Special Category visa. Further, from 1 July 2023 New Zealand citizens have a direct pathway to Australian citizenship.

The Minister must cause the country to which a Treaty stream visa pre-application process relates to be published on the Department's website in accordance with the Treaty Stream Determination. At the time this Determination was made, the only country intended to be published is Tuvalu.

To the extent that the ballot eligibility requirements for the Treaty stream differentiate on the basis of citizenship, this is reasonable and proportionate to the meeting of a legitimate Government objective. This is because the creation of the Treaty stream is aimed at deepening Australia's connections with countries in the Pacific and creating a partnership for enhanced collaboration, including the ability to reside in Australia through a special visa arrangement in circumstances where Australia has a bilateral agreement (treaty) with that country.

Applicants must also be able to demonstrate longstanding ties to the treaty country by being born in, having a parent that was born in, or a grandparent that was born in the country to which the process relates.

At the time this instrument was made, the only country to which the Treaty Stream Determination is intended to relate to is Tuvalu, noting this includes the Gilbert and Ellice Islands Colony of which Tuvalu was a part before Tuvalu gained Independence in 1978.

This requirement is to ensure that access to the Treaty stream program is not provided to applicants without close ties to Tuvalu who may have recently obtained citizenship of Tuvalu, to which a Treaty stream visa pre-application process relates. This is reasonable and proportionate to meet the objectives of the Treaty stream of the Subclass 192 (Pacific Engagement) visa, as it is aimed at providing migration to Australia in circumstances where Australia has significant bilateral treaty based ties with a particular country. This does not prevent other persons from being able to access residence in Australia through other migration programs currently open to all nationalities.

The Treaty Stream Determination also requires the primary applicant to be at least 18 at the beginning of the registration open period of the applicable visa pre-application process in order to register as a registered participant in that process. There is no maximum age limit and no age requirement for members of the primary applicant's family unit, although children must generally be aged under 18 or be otherwise dependent, in accordance with the existing definition of 'member of the family unit' in the Migration Regulations.

The eligibility requirements for registration in the Treaty stream visa pre-application process are directed to providing further opportunities for Tuvaluans who want to live, work or study in Australia on a temporary or permanent basis. The amendments do not adversely affect the existing arrangements for visa holders and applicants who hold other passports or do not meet the other requirements for registration in the ballot, as the allocation of visa places under the Treaty stream will be in addition to the Pacific Engagement stream allocation of 3,000 places and in addition to Australia's permanent migration program.

The Treaty stream ballot eligibility requirements also align with key objective visa eligibility requirements that are prescribed in Schedule 1 to the Migration Regulations, as amended by the Amendment Regulations. The reason for having eligibility requirements for registration in the Treaty stream visa pre-application process is to mitigate circumstances of participants who draw a place in the ballot not meeting the visa requirements of the Treaty stream of the Subclass 192 (Pacific Engagement) 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 ballot 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 ballot. Any person who is not eligible to register for the ballot 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 unsuccessful in a ballot may register for future ballots for which they are eligible, or consider other visa options that may be available to them to enter and/or remain in Australia.

The visa pre-application process aims to promote equitable access to the Treaty stream as it has limited places that are expected to be in high demand, 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 the aims of the Treaty stream program, 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 Treaty Stream Determination sets out the requirements for the conduct of the Treaty 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 ballot registration will be some of the same information that would need to be provided to complete an application for a Subclass 192 (Pacific Engagement) visa in the Treaty stream, including the registered participant's name, date of birth, passport details and the number of members of the family unit.

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 ballot, 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 the Treaty stream and the associated visa applicant are the same person.

The Department of Home Affairs will manage the ballot registration program 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 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 Treaty 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.

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

Details of the Migration (Subclass 192 (Pacific Engagement) Visa Pre-application Process—Treaty Stream) Determination 2025

**Part 1 - Preliminary**

**Section 1 – Name**

This section provides that the name of the instrument is the *Migration (Subclass 192 (Pacific Engagement) Visa Pre-application Process—Treaty Stream) Determination 2025* (the instrument).

**Section 2 – Commencement**

This section provides the instrument commences on 1 May 2025.

**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 definitions of terms used in the instrument:

- *Act* means the *Migration Act 1958*.
- *registered participant* for a particular Treaty stream visa pre-application process, has the meaning given by section 8;
- *registration open period* for a particular Treaty stream visa pre-application process, means the period during which the process is open for registration;
- *selected participant* for a particular Treaty stream visa pre-application process, has the meaning given by section 13;
- *selection open period* for a particular Treaty stream visa pre-application process, means the period during which selection of participants for the process may take place (a note following this definition advises: “See also section 14 which is about requirements for selection open periods”);
- *Treaty stream visa* means a Subclass 192 (Pacific Engagement) visa in the Treaty stream as set out in Subdivision 192.23 of Schedule 2 to the Migration Regulations; and

- *Treaty stream visa pre application process* means a process specified under section 6 (see below).

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

### **Division 1 – Introduction**

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

This section provides that for the purposes of subsection 46C(14) of 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 to which rules apply**

This section provides that for the purposes of subsection 46C(14) of the Migration Act, the instrument applies in relation to a visa pre-application process conducted under subsection 46C(1) of the Migration Act in relation to a Subclass 192 (Pacific Engagement) visa in the Treaty stream.

### **Division 2 – Country to which visa pre-application process relates**

#### **Section 7 – Visa pre-application process must be in relation to a country**

Subsection 7(1) provides that a Treaty stream visa pre-application process must be in relation to a single country.

A note after subsection 7(1) advises that multiple Treaty stream visa pre-application processes can be conducted (see subsection 46C(10) of the Migration Act).

Subsection 7(2) provides that the Minister must cause the country to which the Treaty stream visa pre-application process relates to be published on the Department of Home Affairs' (the Department's) website.

The effect of section 7 is that the rules set out in the instrument will apply to a Treaty stream visa pre-application process in relation to a country when the country is published on the Department's website. Inclusion of countries in the program will be on the basis of a bilateral (treaty) agreement between Australia and a particular country. Currently, Tuvalu is the only country with which Australia has a treaty providing access to the Treaty stream visa.

## **Division 3 – Registration of participants**

### **Section 8 – Registered participants**

This section provides for when a person is a registered participant in relation to a particular pre-application visa process, and therefore eligible to be included in a ballot conducted for that process during the selection open period for the process. The requirements to be a registered participant are:

- the person has registered as a participant in the process using a computer program that is made available on the internet for that purpose. A registration for a particular Treaty 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 eligibility requirements for the process specified under section 9 (see section 9, below, for details of the eligibility requirements). 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. If a registered participant is selected to make an application for a Treaty stream visa, in order to make a valid application for the visa, they are required to provide evidence that the registration eligibility requirements are met (see subitem 1140(4A) of Schedule 1 to the Migration Regulations). This ensures 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 the 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 same country, they may register again in that new process; and
- the registration occurs within the registration open period 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).

Note 1 at the end of section 8 advises that a part of a visa pre-application process may be conducted by the use of a computer program under the Minister’s control (see subsection 46C(11) of the Migration Act). This note makes clear the authority for the requirement in section 8 that a registration for a particular visa pre-application process must be made using a computer program made available on the internet for that purpose (see above).

Note 2 at the end of section 8 advises that any pre-application process charge that is payable in respect of the registration must be paid at the time of registration; see subsection 46C(22) of the Migration 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 a registration of a person as a registered participant in a particular Treaty stream visa pre-application process. The following requirements must be met in order for a person to be eligible to be registered in a Treaty stream visa pre-application process:

- the person must hold a valid passport issued by the country to which the particular Treaty stream visa pre-application process relates (see section 7 above);
- the person must be aged at least 18 years at the beginning of the registration open period (for registration open period, see section 10, below). The intention is that a person must meet the age requirement to register for a process. If selected to apply for a Treaty stream visa, the person will meet the requirements to make a valid application for the visa on the basis of their age as it was at the beginning of the registration open period;
- the person, or a parent of the person, or a grandparent of the person, must have been born in the country to which the visa pre-application process relates. This requirement ensures that an applicant for the grant of a Treaty stream visa has enduring ties with that country. At this time, only citizens with ties to Tuvalu will be eligible for registration in a visa pre-application process for this visa stream. Applicants who acquire citizenship without having been born, or having a parent or grandparent born in Tuvalu will not be eligible to register for the ballot or to apply for a Treaty stream visa. This will assist in achieving the purpose of the Treaty steam visa in strengthening lasting and genuine on-going ties with Tuvalu;
- the person is a citizen of the country to which that process relates and that citizenship was not obtained due to an investment to that country. This further strengthens the purpose of the Treaty stream visa by ensuring applicants have strong ties to Tuvalu. Applicants who acquire citizenship due to an investment in that country will not be eligible to register for the ballot or to apply for a Treaty stream visa; and
- the person must not be a citizen of New Zealand. This requirement prevents people with dual citizenship with New Zealand from registering for a Treaty stream visa pre-application process. These people will already have a right of residence in New Zealand

and indefinite stay in Australia due to access to the Subclass 444 (Special Category) visa. Further, from 1 July 2023, New Zealand citizens who hold a Subclass 444 (Special Category) visa also have a direct pathway to Australian citizenship. As the numbers of Treaty stream visas will be limited, allowing them to register could deprive others, to whom residence in New Zealand is not available, of an opportunity to obtain a place to apply for a Treaty stream visa permitting permanent residence in Australia.

### **Section 10 – Registration open period**

This section provides that a Treaty stream visa pre-application process must involve a finite registration open period for the process, and that the Minister must cause the registration open period, and any extension of the 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. This means that when a country to which a visa pre-application process applies is published on the Department’s website in accordance with section 7, above, the period during which an eligible person may register for that process will also be published on the Department’s website. This ensures transparency and accessibility of information about each particular process.

### **Section 11 – Withdrawal of registration**

Section 11 provides that a registered participant in a Treaty stream visa pre-application process may withdraw their registration as a participant by using a computer program made available on the internet for that purpose. This provision allows individual registered participants who are no longer interested in obtaining a Treaty stream visa to withdraw from the process, leaving the opportunity to be selected to other registered participants who retain their interest in the Treaty stream visa.

A note following section 11 advises that a part of a visa pre-application process may be conducted by the use of a computer program under the Minister’s control (see subsection 46C(11) of the Migration Act). This note makes clear the authority for the provision in section 11 for withdrawal of a registration to be made by using a computer program made available on the internet for that purpose (see above).

### **Section 12 – Duration of registration**

Section 12 provides for when a person’s registration as a registered participant in a particular Treaty stream visa pre-application process lapses. A person will no longer be eligible to be

selected in the process after their registration lapses (or ceases). The times at which registration will lapse are:

- the end of the selection open period for that process (see section 14, below, for details of the selection open period);
- if the person is selected as a selected participant for that process – when the person is selected;
- if the person withdraws their registration as a participant in that process – when the withdrawal is lodged (see section 11, above, for details of withdrawal of registration); or
- 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 visa pre-application process will remain as registered participants and will have the opportunity to be selected in the 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 – Selection of registered participants**

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

This section provides that a person is a selected participant for a particular Treaty stream visa pre-application process if the person has been randomly selected for that process by a computer program. The Department has developed the Registration Gateway Platform (REG) that integrates with existing departmental systems to manage a visa pre-application ballot process. The system requires internal authenticated user access to initiate a selection process, which includes nominating the number of participants to be randomly selected in the ballot. 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 ballot 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 out in this instrument (determination) to meet the requirement of subitem 1104(4A) table item 1 in Schedule 1 to the Migration Regulations to make a valid application for a Treaty stream visa.

A note following section 13 advises that a part of a visa pre-application process may be conducted by the use of a computer program under the Minister's control (see subsection 46C(11) of the Migration Act). This note makes clear the authority for the provision in section 13 for random selection of registered participants by a computer program (see above).

#### **Section 14 – Selection open period**

This section provides for the period during which a registered participant may be randomly selected for a particular Treaty stream visa pre-application process. A process must involve a finite selection open period for the process, and the Minister must cause the selection open period for the 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 Treaty stream visa 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 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) of the instrument, 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 Treaty stream visa pre-application process and the information that must be included in that notice.

Subsection 15(1) provides that as soon as practicable after a person is selected in a particular 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 Treaty stream visa. To be valid, the application for the visa must be made before the date specified in the notice (subitem 1140(4A) table item 5 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 Treaty stream visa within the required timeframe.

Subsection 15(3) provides that the date specified in the notice that a selected participant has to make a valid Treaty stream visa application must be at least 30 days after the date of the notice. This requirement ensures that the time allowed for successful participants to apply for the visa cannot be less than 30 days and that participants will be aware that they will be allowed at least

this minimum time. However, it is intended under policy that a longer period than the minimum will be specified for a Treaty stream visa.

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