



Migration Amendment (Subclass 192 (Pacific Engagement) Visa) Regulations 2024

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 14 March 2024

David Hurley
Governor-General

By His Excellency's Command

Andrew Giles
Minister for Immigration, Citizenship and Multicultural Affairs

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1 Name

This instrument is the *Migration Amendment (Subclass 192 (Pacific Engagement) Visa) Regulations 2024*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	Immediately after the commencement of the <i>Migration Amendment (Australia's Engagement in the Pacific and Other Measures) Act 2023</i> .	29 March 2024

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Migration Act 1958*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Migration Regulations 1994

1 At the end of Part 1 of Schedule 1

Add:

1140 Pacific Engagement (Class PA)

- (1) Form: The approved form specified by the Minister in a legislative instrument made for the purposes of this item under subregulation 2.07(5).
- (2) Visa application charge:
 - (a) first instalment (payable at the time the application is made):

First instalment		
Item	Component	Amount
1	Base application charge	\$325
2	Additional applicant charge for an applicant who is at least 18	\$80
3	Additional applicant charge for an applicant who is less than 18	\$80

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

- (b) the second instalment (payable before grant of visa) is nil.

- (3) Other:
 - (a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
 - (b) An applicant may be in or outside Australia but not in immigration clearance.
 - (c) An applicant in Australia must hold:
 - (i) a substantive visa; or
 - (ii) a Subclass 010 Bridging A visa; or
 - (iii) a Subclass 020 Bridging B visa; or
 - (iv) a Subclass 030 Bridging C visa.
 - (d) An application by a person claiming to be a member of the family unit of a person who is an applicant for a Subclass 192 (Pacific Engagement) visa must be made at the same time as, and combined with, the application by that person.
- (4) An applicant seeking to satisfy the primary criteria for the grant of a Subclass 192 (Pacific Engagement) visa must meet the requirements in the following table.

Requirements for applicants seeking to satisfy primary criteria

Item	Requirements
1	The applicant must be a selected participant in the applicable visa pre-application process
2	At the beginning of the registration open period for that process, the applicant must be aged at least 18 and no more than 45
3	At the time of registration of the applicant as a registered participant in that process, the applicant held a valid passport issued by the country to which that process relates
4	All of the following: <ul style="list-style-type: none"> (a) the applicant, or a parent of the applicant, was born in a country specified in Schedule 1 to the visa pre-application process determination for that process; (b) the applicant must be a citizen of the country to which that process relates; (c) the applicant must not be a citizen of New Zealand
5	The application must be made on or before the date specified in the notice of selection given to the applicant as the date by which the applicant must make a valid visa application for a Subclass 192 (Pacific Engagement) visa

(5) Subclasses:

Subclass 192 (Pacific Engagement)

(6) In this item:

applicable visa pre-application process, in relation to a person, means a visa pre-application process in relation to a Subclass 192 (Pacific Engagement) visa in which the person was most recently a registered participant.

notice of selection, in relation to a particular visa pre-application process, means the notice of selection given to a selected participant in that process in accordance with the visa pre-application process determination for that process.

registered participant, for a particular visa pre-application process, means a person registered as a participant in that process in accordance with the visa pre-application process determination for that process.

registration open period, for a particular visa pre-application process, means the period during which the process is open for registration in accordance with the visa pre-application process determination for that process.

selected participant, for a particular visa pre-application process, means a person selected as a participant in that process in accordance with the visa pre-application process determination for that process.

Note: The person must be a registered participant in that process: see subsection 46C(2) of the Act.

visa pre-application process means a visa pre-application process conducted under subsection 46C(1) of the Act.

visa pre-application process determination, in relation to a particular pre-visa application process, means the determination:

- (a) made for the purposes of subsection 46C(14) of the Act that applies in relation to that process; and
- (b) as in force at the beginning of the registration open period for that process.

2 After Part 191 of Schedule 2

Insert:

Subclass 192—Pacific Engagement

192.1—Interpretation

192.111

In this Part:

adverse employer information: see clause 192.112.

Note: For **member of the family unit:** see regulation 1.03.

192.112

- (1) In this Part, **adverse employer information** about a person or organisation (the **employer**) is any adverse information relevant to the suitability of the employer to employ a person:
 - (a) who is an applicant for a Subclass 192 (Pacific Engagement) visa; or
 - (b) who is a spouse or de facto partner of, and has made a combined application with, a person who is an applicant for a Subclass 192 (Pacific Engagement) visa.
- (2) Without limiting subclause (1), adverse employer information about an employer includes information that the employer:
 - (a) has contravened a law of the Commonwealth, a State or a Territory; or
 - (b) is under investigation, subject to disciplinary action or subject to legal proceedings in relation to a contravention of such a law; or
 - (c) has been the subject of administrative action (including being issued with a warning) for a possible contravention of such a law by a Department or regulatory authority that administers or enforces the law; or
 - (d) has become insolvent (within the meaning of section 95A of the *Corporations Act 2001*); or
 - (e) has given, or caused to be given, to the Minister, an officer, the Tribunal or an assessing authority a bogus document, or information that is false or misleading in a material particular.
- (3) Nothing in this clause affects the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).
- (4) In this clause:

information that is false or misleading in a material particular means information that is:

 - (a) false or misleading at the time it is given; and
 - (b) relevant to any of the matters the Minister may consider when making a decision under the Act or these Regulations, whether or not the decision is made because of that information.

Note: For the definition of **bogus document**, see subsection 5(1) of the Act.

- (5) The definition of *adverse information* in regulation 1.03 does not apply for the purposes of this clause.

192.2—Primary criteria

Note: The primary criteria for the grant of a Subclass 192 visa must be satisfied by at least one member of a family unit. The other members of the family unit who are applicants for a visa of this subclass need satisfy only the secondary criteria.

All criteria must be satisfied at the time a decision is made on the application.

192.21—Criteria

192.211

- (1) Either:
- (a) the applicant; or
 - (b) if the applicant's spouse or de facto partner has made a combined application for a visa with the applicant—the applicant's spouse or de facto partner;
- has a written offer of ongoing employment by a person or an associated entity of the person (the *employer*) for a position that is genuine and is in Australia.
- (2) The employment conditions for the position that will apply to the applicant or the applicant's spouse or de facto partner are not less favourable than those that apply, or would apply, to an Australian citizen performing equivalent work at the same location.
- (3) Either:
- (a) there is no adverse employer information known to Immigration about the employer, or a person associated with the employer; or
 - (b) it is reasonable to disregard any adverse employer information known to Immigration about the employer, or a person associated with the employer.

Note: For the definition of *adverse employer information*, see clause 192.112.

192.212

The applicant has adequate means, or access to adequate means, to support:

- (a) the applicant; and
- (b) each member of the family unit of the applicant who has made a combined application with the applicant;

during the period of the first 12 months in Australia as the holder of the visa.

192.213

The applicant has complied substantially with the conditions (the *previous visa conditions*) that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa, unless:

- (a) if condition 8303 was a previous visa condition—the applicant has complied substantially with that condition; and
- (b) the Minister is satisfied that the applicant was unable to comply substantially with the previous visa conditions (other than condition 8303) because of compassionate and compelling circumstances.

192.214

If required by the Minister:

- (a) the applicant; or
- (b) if the applicant's spouse or de facto partner has made a combined application for a visa with the applicant—the applicant's spouse or de facto partner;

satisfies any English language test requirements specified by the Minister in a legislative instrument made for the purposes of this clause.

192.215

- (1) The applicant satisfies public interest criteria 4001, 4002, 4003, 4003B, 4004, 4007, 4010, 4019, 4020 and 4021.
- (2) Each member of the family unit of the applicant who is an applicant for a Subclass 192 visa satisfies public interest criteria 4001, 4002, 4003, 4003B, 4004, 4007, 4010, 4020 and 4021.
- (3) Each member of the family unit of the applicant who:
 - (a) is an applicant for a Subclass 192 visa; and
 - (b) had turned 18 at the time of application;satisfies public interest criterion 4019.
- (4) Each member of the family unit of the applicant who:
 - (a) is an applicant for a Subclass 192 visa; and
 - (b) had not turned 18 at the time of application;satisfies public interest criteria 4015 and 4016.
- (5) Each member of the family unit of the applicant who is not an applicant for a Subclass 192 visa:
 - (a) satisfies public interest criteria 4001, 4002, 4003, 4003B and 4004; and
 - (b) satisfies public interest criterion 4007, unless it would be unreasonable to require the person to undergo assessment in relation to that criterion.

192.216

- (1) The applicant satisfies special return criteria 5001, 5002 and 5010.
- (2) Each member of the family unit of the applicant who is an applicant for a Subclass 192 visa satisfies special return criteria 5001, 5002 and 5010.

192.3—Secondary criteria

Note: These criteria are for applicants who are members of the family unit of a person who satisfies the primary criteria. All criteria must be satisfied at the time a decision is made on the application.

192.31—Criteria

192.311

The applicant:

-
- (a) is a member of the family unit of a person who holds a Subclass 192 visa granted on the basis of satisfying the primary criteria for the grant of the visa; and
 - (b) made a combined application with that person.

192.312

The applicant has complied substantially with the conditions (the *previous visa conditions*) that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa, unless:

- (a) if condition 8303 was a previous visa condition—the applicant has complied substantially with that condition; and
- (b) the Minister is satisfied that the applicant was unable to comply substantially with the previous visa conditions (other than condition 8303) because of compassionate and compelling circumstances.

192.313

- (1) The applicant satisfies public interest criteria 4001, 4002, 4003, 4003B, 4004, 4007, 4010, 4020 and 4021.
- (2) If the applicant had turned 18 at the time of application, the applicant satisfies public interest criterion 4019.
- (3) If the applicant had not turned 18 at the time of the application, the applicant satisfies public interest criteria 4017 and 4018.

192.314

The applicant satisfies special return criteria 5001, 5002 and 5010.

192.4—Circumstances applicable to grant**192.411**

The applicant may be in or outside Australia when the visa is granted, but not in immigration clearance.

192.5—When visa is in effect**192.511**

Permanent visa permitting the holder to travel to and enter Australia for 5 years from the date of grant.

192.6—Conditions**192.611**

If the applicant is outside Australia when the visa is granted, first entry must be made before the date specified by the Minister.

EXPLANATORY STATEMENT

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

Migration Act 1958

Migration Amendment (Subclass 192 (Pacific Engagement) Visa) 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 listed in Attachment A.

The *Migration Amendment (Subclass 192 (Pacific Engagement) Visa) Regulations 2024* (the Regulations) amend the *Migration Regulations 1994* (the Migration Regulations) to introduce a new permanent Subclass 192 (Pacific Engagement) visa (the Pacific Engagement visa). The Pacific Engagement visa will provide access to permanent residence in Australia for citizens of a number of Pacific island countries and Timor-Leste, and members of their family units. Inclusion of countries in the program will be on the basis of consultation and agreement between Australia and eligible countries. The new visa seeks to deepen Australia's connections to the region by growing the Pacific and Timor-Leste diaspora in Australia and encouraging a greater cultural, business and educational exchange.

The new Pacific Engagement visa will be available to applicants who are citizens of a relevant country and are randomly selected on the basis of a ballot conducted in accordance with a visa pre-application process for that country. The power for the Minister to conduct a visa pre-application process is new and was introduced by the *Migration Amendment (Australia's Engagement in the Pacific and Other Measures) Act 2023* (the Amendment Act), which commenced by Proclamation on 29 March 2024. The Amendment Act inserts provisions in the Migration Act to allow the Minister to conduct a visa pre-application process, involving the random selection of registered participants who will then be permitted to lodge an application for a relevant visa. Applicants who are successful in a ballot for the Pacific Engagement visa will be eligible to apply for the visa. The visa will be granted to applicants and members of their family unit, subject to satisfaction of criteria relating to public interest, including health, character and security checks, English language, employment and financial capacity.

In particular, Schedule 1 to the Regulations:

- creates a new visa class, Pacific Engagement (Class PA), with one Subclass 192 (Pacific Engagement) visa, and prescribes the requirements to be met for making a valid application for the visa including the requirement that a primary applicant must

have been randomly selected in a visa pre-application process relating to the country of which the applicant is a citizen; and

- prescribe the criteria to be met and other requirements in relation to the grant of a Subclass 192 (Pacific Engagement) visa.

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 Regulations are compatible with human rights. A copy of the Statement is at [Attachment B](#).

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

Consultation in relation to the Regulations was undertaken with the Department of Foreign Affairs and Trade. Consultation was also undertaken with the Department of Employment and Workplace Relations, the Department of Prime Minister and Cabinet, the Department of Social Services, the Department of Education and the Department of Finance in relation to the development of the Pacific Engagement visa program and key eligibility requirements. This consultation accords with subsection 17(1) of the *Legislation Act 2003* (the Legislation Act).

The Office of Impact Analysis (OIA) was also consulted and advised that the instrument is implementing a previous decision of Government and no further analysis is required. The OIA reference number is OBPR22-02320.

The matters dealt with in the 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 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, subsection 31(3), which provides that the regulations may prescribe criteria for a visa or visas of a specified class. 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.

The Regulations amend the Migration Regulations, which are exempt from sunseting under table item 38A of section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*. The Migration Regulations are exempt from sunseting 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 the Legislation Act.

The Regulations commence immediately after the commencement of the Amendment Act.

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

AUTHORISING PROVISIONS

Subsection 504(1) of the *Migration Act 1958* (the Migration Act) relevantly provides that the Governor-General may make regulations (the Regulations) 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, the following provisions of the Migration Act may also be relevant:

- subsection 29(1), 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), 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 30(1), which provides that a visa to remain in Australia (whether also a visa to travel to and enter Australia) may be a visa, to be known as a permanent visa, to remain indefinitely;
- subsection 31(1), which provides that the Regulations may prescribe classes of visas;
- subsection 31(3), which provides that the Regulations may prescribe criteria for a visa or visas of a specified class;
- subsection 31(4), which provides that the 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), which provides that the Regulations may specify that a visa is a visa of a particular class;
- section 40, which provides that the Regulations may provide that visas or visas of a specified class may only be granted in specified circumstances;
- subsection 41(1) which provides that the regulations may provide that visas, or visas of a specified class, are subject to specified conditions;
- subsection 45B(1), 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), which provides that the Regulations may prescribe the criteria and requirements for making a valid application for a visa;
- subsection 46(4), which provides that, without limiting subsection 46(3), the 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), which provides that the 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);
- section 46C(1), 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; and
- subsection 504(2), which provides that section 14 of the *Legislation Act 2003* does not prevent, and has not prevented, 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.

Statement of Compatibility with Human Rights

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

Migration Amendment (Subclass 192 (Pacific Engagement) Visa) 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 (Subclass 192 (Pacific Engagement) Visa) Regulations 2024 (Amendment Regulations) amend the *Migration Regulations 1994* (Migration Regulations) to create the Class PA, Subclass 192 Pacific Engagement Visa (PEV), as a class of permanent visa. The Amendment Regulations are part of a legislative package that will implement the Government's election commitment to boost Pacific permanent migration.

The PEV program will offer permanent residency to eligible citizens of participating Pacific island countries and Timor-Leste, and their immediate family members, who have been randomly selected through a visa pre-application process, referred to generally as a 'ballot'. Entrants successfully drawn in the ballot and their immediate family members are able to apply for a PEV. The framework for the visa pre-application process was created by amendments to the *Migration Act 1958* made by the *Migration Amendment (Australia's Engagement in the Pacific and Other Measures) Act 2023* which was assented to on 26 October 2023 and commences on 29 March 2024.

The implementation of the PEV supports the Government's commitment to strengthen Australia's ties with the Pacific and will significantly increase the number of nationals of Pacific island countries and Timor-Leste who have access to permanent residency in Australia. There is currently no dedicated permanent residency pathway for nationals of Pacific island countries and Timor-Leste. It is proposed that up to 3,000 PEVs (including family members) will be allocated annually through a visa pre-application process. The numbers of these permanent visas would be allocated in addition to Australia's overall annual permanent migration program.

The rules for conduct of the PEV pre-application process will be set out in the Migration (Subclass 192 (Pacific Engagement) Visa Pre-application Process) Determination 2024 (the PEV Determination), a disallowable legislative instrument.

The PEV program will be open to eligible citizens of a country to which the PEV pre-application process relates. Participation in the program is subject to each country's interest and the Department of Foreign Affairs and Trade (DFAT) will manage the allocation of visa places following consultations with Pacific countries. Visa allocations will be based on several factors including population size, diaspora in Australia, existing migration opportunities, expected demand and participating country views. Under the PEV

Determination, the Minister must cause the country to which a PEV pre-application process relates to be published on the Department's website.

The approach of the PEV program, and the use of the visa pre-application process, is for all eligible applicants to have an equal chance of being invited to apply for the visa, regardless of their skills or educational background. The program is designed to provide a fair and equitable way to ensure all prospective eligible migrants have an equal opportunity to be invited to apply for the PEV.

The Amendment Regulations amend Schedule 1 and Schedule 2 to the Migration Regulations to introduce the PEV, and provide the eligibility criteria for the grant of the PEV. These visa requirements are described in more detail below.

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

- be a selected participant through the applicable visa pre-application process;
- be aged at least 18 years but no more than 45 at the beginning of the registration open period for the applicable visa pre-application process;
- have held a valid passport issued by the country to which the applicable visa pre-application process relates at the time of registration as a registered participant in that process;
- be born in, or have a parent that was born in, a specified country in Schedule 1 to the PEV Determination;
- be a citizen of the country to which the PEV pre-application process relates;
- not be a citizen of New Zealand;
- have made an application for the PEV on or before the date specified in the notice of selection (which notifies a person that they were successful in the ballot).

The Amendment Regulations further amend Schedule 1 to the Migration Regulations to provide that the visa application charge (VAC) for the PEV is AUD325 for the primary applicant and AUD80 for each additional applicant included in the application as a migrating family member, payable at the time the visa application is made.

The Amendment Regulations also amend Schedule 2 to the Migration Regulations to prescribe the visa criteria that will need to be satisfied by PEV applicants at the time a decision is made on the visa application. These visa criteria include that:

- the primary applicant, or the primary applicant's spouse or de facto partner if they have made a combined application for the visa with the primary applicant, has a written offer of ongoing employment for a position that is genuine and in Australia, and where:
 - the employment conditions applicable to the positions are not less favourable than those applying to an Australian citizen performing equivalent work at the same location, and

- there is no adverse information known to the Department about the employer or their associates, or, if there is, it would be reasonable to disregard that information;
- the primary applicant has adequate means, or access to adequate means to support themselves and each member of the family unit who has made a combined application with the applicant during the period of the first 12 months as the holder of the visa; and
- the primary applicant, or the primary applicant's spouse or de facto partner if they have made a combined application for the visa with the primary applicant satisfies any language test requirements if required by the Minister as specified in a legislative instrument.

The primary applicant, and each member of their family unit that has made a combined application with the applicant, must also have complied substantially with the conditions that apply or applied to the last substantive visa held by the applicant, and to any subsequent bridging visa held by the applicant, unless the Minister is satisfied that the applicant was unable to comply substantially with the conditions (other than condition 8303, which provides that 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) because of compassionate and compelling circumstances.

In addition, the primary applicant and all members of their family unit must satisfy standard public interest criteria, including criteria relating to health, character and national security.

Human rights implications

The Amendment Regulations 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.
- rights relating to social security and an adequate standard of living in Articles 9 and 11 of the ICESCR and Article 26 of the *Convention on the Rights of the Child* (CRC).

Right of equality and non-discrimination

The Amendment Regulations engage the rights of equality and non-discrimination in Article 2(2) of the ICESCR and Article 26 of the ICCPR.

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 requirements that depend on a number of factors 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 United Nations Committee on Economic Social and Cultural Rights has stated 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 set up a framework that will permit differentiation between visa applicants including on the basis of age, employment-related status, country of citizenship, national origin and language, and the visa criteria therefore engage the above rights to non-discrimination. In particular, eligibility to apply for and be granted the PEV is limited to persons that satisfy the visa criteria prescribed in the Migration Regulations as amended by the Amendment Regulations.

The Amendment Regulations are intended to provide beneficial access to permanent residency in Australia for nationals of Pacific island countries and Timor-Leste that is fair and equitable, and for whom there was no dedicated permanent residence pathway available.

Applicants for the PEV 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 visa pre-application ballot process. The rules that apply in relation to the eligibility for, and conduct of, the PEV pre-application ballot process will be set out in the PEV Determination, which will be accompanied by a separate Statement of Compatibility with Human Rights.

The ultimate aim of having a visa pre-application process that selects registered participants at random is to ensure there is a fair, equitable and objective method for providing access to a PEV, which only has 3,000 visa places available each year. The use of a ballot to enable the random selection of eligible applicants for the PEV is appropriate because demand for this visa is expected to exceed the number of PEVs available annually under Australia's migration program.

The use of the visa pre-application process in the PEV program is also reasonable, necessary and proportionate to the intent of the visa, which is to provide a fair and equitable pathway to Australian permanent residence for nationals of Pacific island countries and Timor-Leste of all skill, experience and education levels.

The eligibility requirements for a participant to register in the visa pre-application ballot process under the PEV Determination aligns with the key objective visa eligibility criteria prescribed in Schedule 1 to the Migration Regulations for the PEV, as created by the Amendment Regulations. This is to mitigate circumstances of participants who draw a place in the ballot not meeting the visa requirements of the PEV.

Among the Migration Regulations Schedule 1 requirements for the PEV that are being introduced by the Amendment Regulations and that must be satisfied at the time of ballot registration are that a person must have held a valid passport issued by the country to which the applicable ballot process relates, and must not be a citizen of New Zealand. This is because dual nationals of New Zealand 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 PEV pre-application process relates to be published on the Department's website and participation in the program will be subject to a range of factors including population size, diaspora in Australia, existing migration opportunities, expected demand and participating country views. DFAT is managing the consultations with Pacific island countries and Timor-Leste to determine interest in the PEV program.

To the extent that the Amendment Regulations differentiate on the basis of nationality or citizenship, this is reasonable and proportionate to the meeting of a legitimate Government objectives. This is because the creation of the PEV is aimed at deepening Australia's connections with Pacific island countries and Timor-Leste; supporting wider mobility within the region, thereby contributing to Pacific economies; and providing opportunities for cultural, business, educational and skills exchange, in support of a peaceful, prosperous and resilient Pacific region.

The amendments are directed to providing further opportunities for eligible Pacific island countries and Timor-Leste who want to live and work in Australia on a permanent basis. The amendments do not adversely affect the existing arrangements for visa holders and applicants who hold other passports, as the allocation of visa places under the PEV will be in addition to Australia's overall annual permanent migration program.

Eligible applicants must also be a citizen of the country to which the PEV pre-application process relates and able to demonstrate longstanding ties to the Pacific region by either being

born in, or have a parent that was born in, one of the specified countries in Schedule 1 to the PEV Determination.

The countries listed in Schedule 1 to the PEV Determination are not required to be a country to which a PEV pre-application process relates and will include all eligible countries (the Federated States of Micronesia, Fiji, Kiribati, Nauru, Palau, Papua New Guinea, the Republic of the Marshall Islands, Samoa, Solomon Islands, Timor-Leste, Tonga, Tuvalu, Vanuatu), as well as Australia and New Zealand.

The inclusion of Australia and New Zealand in this list recognises that eligible applicants may have been born outside of their country of citizenship on genuine and compelling grounds, such as medical reasons or to access birthing facilities, but have still been able to maintain longstanding and close ties with the Pacific.

This requirement is to ensure that access to the PEV program is not provided to applicants without close ties to the region who may have recently obtained citizenship of one of the participating countries. This is reasonable and proportionate to meet the objectives of the PEV program, as it is aimed at strengthening Australia's cultural ties with the Pacific region. This does not prevent other persons from being able to access residence in Australia through other migration programs currently open to all nationalities.

Schedule 1 to the Migration Regulations, as amended by the Amendment Regulations, also impose an age requirement for the primary applicant to be of at least 18 and no more than 45 years of age at the beginning of the registration open period of the applicable pre-application process. There is no specific 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 PEV program will target a specified age cohort of migrants who will be in a position to benefit most from the program. The reason is that the success of the program is contingent on ensuring economic and social cohesion of PEV migrants in the Australian community and having access to employment in Australia is a key indicator of success. Migrants who arrive at an older age have lower rates of labour force participation compared to permanent migrants who arrive at a relatively younger age.¹ For this reason, the specified age cohort for the PEV has been identified as having greater prospects of achieving positive settlement outcomes in Australia, and therefore the differentiation is reasonable and proportionate to ensure the purpose of the program is achieved.

The primary applicant, or the applicant's spouse or de facto partner that has made a combined application with the applicant, will be required to satisfy Schedule 2 criteria in the Migration Regulations, as amended by the Amendment Regulations, that they have a formal written offer of employment for a position that is genuine and in Australia, as well as satisfying any English language test requirements, if required, as specified by the Minister in a legislative instrument at the time of decision of the visa application.

The employment-related criterion requires that the applicant only provide evidence of a written offer of ongoing employment, and the employment conditions that will apply to the applicant or the applicant's spouse or de facto partner's employment are not less favourable than those that apply, or would apply, to an Australian citizen performing equivalent work at the same location.

¹ Productivity Commission 2016, Migrant Intake into Australia, Inquiry Report No. 77, Canberra.

The primary applicant will also be required to demonstrate that they, and each member of the family unit of the applicant who has made a combined application with the applicant, has adequate means, or access to adequate means, to support themselves during the period of the first 12 months in Australia as the holder of the visa.

The requirement to have a written offer of ongoing employment and adequate means of support is to ensure that PEV holders have a means of supporting themselves and their family at the time of visa grant, or upon first entry for persons applying from outside Australia, and, along with demonstrating English language proficiency, to improve their permanent settlement outcomes. PEV holders will not be required to maintain those ongoing employment arrangements after visa grant, as they will benefit from full labour market mobility.

With regard to English language proficiency, it is intended that consideration will first be given to whether the primary applicant, or the primary applicant's spouse or de facto partner if they have made a combined application for the visa with the primary applicant, can demonstrate English language proficiency based on their circumstances (for example, time spent working or studying in Australia or an English-speaking country, or previously satisfied an English language test for the grant of an Australian visa). If they are not able to demonstrate English language proficiency based on their circumstances, it is intended that the primary applicant, or the primary applicant's spouse or de facto partner, will be given the opportunity to sign an undertaking to enrol in the Adult Migrant English Program (AMEP) once in Australia or to satisfy the English test requirements as specified in the legislative instrument under the Migration Regulations.

The generality of these requirements is also aimed at ensuring that all eligible PEV applicants have an equal chance of satisfying the visa criteria, regardless of their occupation, skill level or educational background.

These visa requirements are therefore necessary, reasonable and proportionate to helping ensure positive settlement outcomes for PEV holders without imposing the more onerous requirements of the skilled migration visa program, as this is consistent with the intent of the PEV program, which is not a skills or merit based program.

Primary applicants, and migrating family members, will also need to satisfy certain other Schedule 2 criteria in the Migration Regulations, as amended by the Amendment Regulations to provide for the PEV, including that they have complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa, unless the Minister is satisfied that the applicant was unable to comply substantially with the conditions (other than condition 8303 which relates to involvement in disruptive activities or violence to the Australian community) because of compassionate and compelling circumstances..

This Schedule 2 criterion is aimed at ensuring only persons with a history of substantial visa compliance will be eligible to apply for the PEV, while also ensuring that applicants who may not have complied with their previous visa conditions due to compelling circumstances, other than in relation to condition 8303, are not excluded from the program. Assessment of this criterion will be undertaken on a case by case basis however, examples of compassionate and compelling circumstances could include where the person did not comply with previous visa conditions because they were exploited at work, there was fraudulent conduct by a third party or there was domestic violence.

The Amendment Regulations also have the effect of imposing a range of standard public interest criteria in the Migration Regulations for the grant of a PEV, including those relating

to health, character and national security. The applicable health requirement is the general requirement to be free from any disease or condition which would require health care or community services. However, unlike many visas, this requirement may be waived for a PEV applicant if the applicant satisfies all other criteria for grant of the visa and the decision maker is satisfied that grant of the visa would not result in undue cost to the Australia community or undue prejudice to access to health care or community services of an Australian citizen or permanent resident. This existing health requirement is reasonable, necessary and proportionate to the aim of ensuring the continued access of Australian residents to health services that are in demand.

The Amendment Regulations will also introduce a VAC of AUD325 for the primary applicant and AUD80 for each migrating member of the family unit, which is payable at the time of lodgement of the visa application. This may make it somewhat difficult for persons of more limited financial means to apply for this visa however, the VAC amount is considered reasonable for this cohort and the visa program. As such, the VAC for this program is reasonable and is not expected to have a significant impact on the ability of a person to apply for a PEV or adversely affect the rights of equality and non-discrimination of such persons.

Right to work and rights at work

The Amendment Regulations engage Articles 6(1) and 7 of the ICESCR. 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 PEV holders.

The PEV is a permanent visa subclass and provides holders with the right to work in Australia without restriction. Upon undertaking work with an employer in Australia, they are subject to the protections of Australian conditions and awards as any other Australian worker.

The visa criteria being introduced by the Amendment Regulations for the PEV are also intended to help address potential issues of worker exploitation, and support the rights in Articles 6 and 7 of the ICESCR, by requiring both that the employment conditions applicable to the position in the written letter of offer are not less favourable than those applying to an Australian citizen performing equivalent work at the same location, and that there is no adverse information known to the Department about the employer or their associates, or, if there is, it would be reasonable to disregard that information.

In any event, as stated above, PEV holders are not required to maintain those ongoing employment arrangements after visa grant, as they will benefit from full labour market mobility, further supporting their rights under Articles 6 and 7 of the ICESCR.

Rights to social security and an adequate standard of living

Article 9 of the ICESCR recognises the right to social security and requires a social security scheme to be established under domestic law that provides a minimum essential level of benefits to all individuals and families that will enable them to cover essential living costs. Article 26 of the CRC requires countries to recognise the right of the child to benefit from social security. Benefits should take into account the resources and circumstances of the child and persons having responsibility for the maintenance of the child.

Article 11 of the ICESCR recognises the right to an adequate standard of living, which provides that everyone is entitled to adequate food, clothing and housing and to the continuous improvement of living conditions.

The amendments made by the Amendment Regulations provide as a requirement for visa grant that the primary applicant is able to show adequate means to support themselves and their family for the first 12 months, which is intended to ensure that they have an adequate standard of living. In addition, the broader legislative framework for the PEV is designed to ensure that PEV holders, as permanent residents, have access to a range of services and social security supports to further support these rights.

In particular, while permanent visa holders are generally required to wait between one and four years before they can receive most social security payments and benefits, PEV holders are able to access Youth Allowance (student), Youth Allowance (apprentice), Austudy and Family Tax Benefit Part A immediately, as well as access to the Higher Education Loan Program (HELP) and VET Student Loans (VSL) Program, which are in addition to government support and benefits already available to permanent residents in Australia.

PEV holders will also be able to access support through the Settlement Engagement and Transition Support (SETS) Program and AMEP for their first five years after arrival in Australia to assist with their settlement in Australia.

The ability to access SETS, AMEP and targeted government benefits immediately recognises that Pacific island and Timor-Leste nationals in the PEV program may be less skilled and in lower wage jobs compared to other visa holders and may therefore need additional assistance to ensure they can adequately support any children in their care or to engage in further study or training to improve their permanent settlement outcomes.

Conclusion

The Amendment Regulations are compatible with human rights because they promote the protection of human rights and, to the extent that it may limit human rights, those limitations are necessary, reasonable and proportionate to legitimate objectives.

The Hon Andrew Giles MP
Minister for Immigration, Citizenship and Multicultural Affairs

Details of the Migration Amendment (Subclass 192 (Pacific Engagement) Visa) Regulations 2024

Section 1 - Name

This section provides that the name of the instrument is the *Migration Amendment (Subclass 192 (Pacific Engagement) Visa) Regulations 2024*.

Section 2 - Commencement

This section provides for the commencement of the instrument.

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

Table item 1 provides that the entire instrument commences immediately after the commencement of the *Migration Amendment (Australia's Engagement in the Pacific and Other Measures) Act 2023*.

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

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

Section 3 - Authority

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

Section 4 - Schedules

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

Schedule 1 – Amendments

Migration Regulations 1994

Item [1] – At the end of Part 1 of Schedule 1

This item adds a new item 1140 (Pacific Engagement (Class PA)) at the end of Part 1 (Permanent visas) to Schedule 1 (Classes of visa) to the Migration Regulations.

Item 1140 creates the Pacific Engagement (Class PA) visa, containing one subclass, the Subclass 192 (Pacific Engagement) visa. Item 1140 sets out the criteria and requirements which must be met to make a valid application for a Subclass 192 visa.

Subitem 1140(1) provides that an application must be made using the form specified by the Minister in a legislative instrument made for the purposes of item 1140 under subregulation 2.07(5) of the Migration Regulations.

Subitem 1140(2) sets out the visa application charge which must be paid in respect of an application for a Subclass 192 visa. Paragraph 1140(2)(a) prescribes the first instalment of the visa application charge, payable when the application is made. Item 1 of the table provides that the base application charge, payable by an applicant who is not eligible to pay the additional applicant charge, is \$325. Items 2 and 3 of the table provide that the additional applicant charge, payable by an applicant claiming to be a member of the family unit of another applicant and whose application is combined with the application of the other applicant, is \$80. Paragraph 1140(2)(b) prescribes that the second instalment of the visa application charge, payable before the visa is granted, is nil.

Subitem 1140(3) prescribes additional criteria that must be satisfied to make a valid application for a Subclass 192 visa. These requirements are:

- the application must be made at the place, and in the manner (if any) specified by the Minister in a legislative instrument made for item 1140 under subregulation 2.07(5) of the Migration Regulations (paragraph 1140(3)(a));
- at the time the application is made the applicant may be in or outside Australia but not in immigration clearance (paragraph 1140(3)(b)). If an applicant is in Australia the applicant must hold a substantive visa or a Bridging A, B or C visa (paragraph 1140(3)(c)). It is not possible to make an application for a Subclass 192 visa in Australia if the person is an unlawful non-citizen or holds a Bridging E visa. An applicant in this situation would need to depart Australia and apply while overseas;
- an application by a person claiming to be a member of the family unit of another applicant for a Subclass 192 must be made at the same time as, and combined with, the application by that person. The effect of this requirement is that applicants claiming to be family members of a person seeking to satisfy the primary criteria can only be made when combined with the application of that person. An applicant cannot apply to meet the secondary criteria after the primary person has been granted a Subclass 192 visa (paragraph 1140(3)(d)). Following grant of the visa, a permanent resident could sponsor a member of the family for a relevant visa, such as partner or child visa, if that family member did not get included in the Subclass 192 visa application.

Subitem 1140(4) sets out further requirements, in table form, for making a valid application by a person seeking to satisfy the primary criteria for grant of a Subclass 192 visa. These requirements are:

- Table item 1 requires that the applicant must be a selected participant in the applicable visa pre-application process. The effect of this requirement is that the applicant must have been randomly selected in a ballot under a visa pre-application process in

relation to the country of which the applicant is a citizen, conducted by the Minister under subsection 46C(1) of the Migration Act. This requirement for making a valid application for the visa is in accordance with subsection 46(4A) of the Migration Act as inserted by the Amendment Act. The terms *selected participant* and *applicable visa pre-application process* are defined in subitem 1140(6), below. The effect of this requirement is that the person who registered for the ballot under the relevant process and was successful in the draw, must be the same person as the person making the application. It is not possible to transfer the right to make the visa application to another person.

- Table item 2 requires the applicant to be aged between 18 and 45 (inclusive) at the beginning of the registration open period. *Registration open period* is defined in subitem 1140(6), below. Applicants are required to meet the age requirement as at the date the relevant registration process opened 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 person is successful. For instance, a person may have been aged under 45 when registration opened but may have passed that age by the time they were randomly drawn and an application was made.
- Table item 3 requires that at the time of registering as a registered participant in the relevant visa pre-application process, the applicant held a valid passport issued by the country to which that process relates. This requirement ensures that the visa applicant demonstrates that they held the required documentation at the time of registration in the relevant visa pre-application process when the applicant declared that a valid passport was held. *Registered participant* is defined in subitem 1140(6), below. The applicant is not required to still hold the valid passport held at the time of registration as it is recognised that it may have expired between registration and visa application.
- Table item 4, paragraph (a) requires that the applicant, or a parent of the applicant, must have been born in a country specified in Schedule 1 to the visa pre-application process determination for the relevant process. The countries specified in Schedule 1 are the Pacific island countries and Timor-Leste, Australia and New Zealand. An applicant for the visa does not need to have been born in the specific country to which the pre-application visa process relates, but does need to have been born in, or have a parent who was born in, one of the relevant Pacific island countries or Timor-Leste, or in Australia or New Zealand. This recognises that a parent may have travelled to another country in the region to give birth at alternative medical facilities. This requirement ensures that an applicant for the grant of a Subclass 192 visa has enduring ties with the Pacific island countries or Timor-Leste. Applicants who acquire citizenship of a relevant Pacific island country or Timor-Leste without having been born, or having a parent born, in a relevant country will not be eligible to register for the ballot or to apply for a Subclass 192 visa. This will assist in achieving the purpose of the Subclass 192 visa in strengthening lasting and genuine on-going ties with the Pacific island countries and Timor-Leste.
- Table item 4, paragraph (b) requires that the applicant is a citizen of the country to which the relevant visa pre-application process relates. This will require the Department to verify an applicant's claim at the time of registration to be a citizen of

the relevant country, as registration for the ballot process will require the person only to declare their citizenship and evidence will not be required at the registration stage.

- Table item 4, paragraph (c) provides that applicants must not be New Zealand citizens. This requirement prevents people with dual citizenship with New Zealand from making an application for a Subclass 192 visa which on grant would allow them to access permanent residence in Australia while also having a right of permanent residence in New Zealand. As the numbers of Subclass 192 visas will be limited, this would deprive others, to whom residence in New Zealand is not available, of the opportunity of permanent residence in Australia. Further, from 1 July 2023 New Zealand citizens have a direct pathway to Australian citizenship.
- Table item 5 requires that to make a valid visa application, an applicant must have made their visa application on or before the date specified in the notice of selection. The term *notice of selection* is defined in subitem 1140(6), below, as notice given to a person (a *selected participant* as defined in subitem 1140(6)) who has registered for a particular ballot and has been randomly selected under the relevant visa pre-application process. The notice will include a date by which the selected participant must make their visa application. This requirement will assist the administration of the program by ensuring that selected participants make their application and commence processing in a timely manner.

Subitem 1140(5) provides that the only subclass in Pacific Engagement (Class PA) is Subclass 192 (Pacific Engagement).

Subitem 1140(6) provides definitions of terms used in item 1140. These terms are:

Applicable visa pre-application process (used in subclause 1140(4) table item 1, above), which means a visa pre-application process in relation to a Subclass 192 visa, in which the person was most recently a registered participant. The processes will be arranged by the Minister under subsection 46C(1) of the Migration Act, and under a determination made by the Minister under subsection 46C(14). The determination will set out the eligibility requirements and other rules for a number of processes relating to a Pacific island country or Timor-Leste. Under the process, citizens of the country to which the process relates may register during the registration open period for the process, to be eligible for random selection during the selection open period for the process.

Notice of selection (used in subclause 1140(4) table item 5, above), means the notice given to registered participants that they have been successful in being randomly selected under a process for which they have registered.

Registered participant (used in subclause 1140(4) table item 3, above), means a person who has registered as a participant in a visa pre-application process.

Registration open period (used in subclause 1140(4) table item 2, above), means the period during which a process is open for registration in accordance with the relevant determination.

Selected participant (used in subclause 1140(4) table item 1, above), means a person selected as a participant in a process in accordance with the relevant determination. That is, a person who has registered for the process and subsequently been randomly selected in a ballot draw

for that process. A selected participant is eligible to make an application for a Subclass 192 visa on or before the date specified in the notice of selection.

Visa pre-application process (used in subclause 1140(4) table item 1 above, and definition of *applicable visa pre-application process*), means a visa pre-application process conducted under subsection 46C(1) of the Migration Act.

Visa pre-application process determination (used in subclause 1140(4) table item 4, above), means the determination made for the purposes of subsection 46C(14) of the Migration Act that applies in relation to the process and that is in force at the beginning of the registration open period for the process.

Item [2] – After Part 191 of Schedule 2

This item inserts a new Part 192 (Subclass 192 – Pacific Engagement) in Schedule 2 (Provisions with respect to the grant of subclasses of visas) to the Migration Regulations. New Part 192 prescribes the criteria to be satisfied for the grant of a Subclass 192 (Pacific Engagement) visa, which is the only subclass of Pacific Engagement (Class PA), created by item 1 of this Schedule, above. Part 192 also sets out the visa conditions, circumstances applicable to grant, and when the visa is in effect.

Division 192.1 (Interpretation) gives details of defined terms used in Part 192. Clause 192.111 provides that the meaning of *adverse employer information* is in clause 192.112. A note advises that for the meaning of *member of the family unit*, see regulation 1.03 of the Migration Regulations.

Subclause 192.112(1) provides that in Part 192, *adverse employer information* about a person or organisation (the employer) is any adverse information relevant to the suitability of the employer to employ a person who is an applicant for a Subclass 192 visa, or that person's spouse or de facto partner.

Subclause 192.112(2) provides that, without limiting subclause 192.211(1), adverse information about an employer includes information that the employer:

- has contravened Commonwealth, State, or Territory law;
- is under investigation, subject to disciplinary action or legal proceedings in relation to that contravention of law;
- has been subject of administrative action by a Department or regulatory authority;
- has become insolvent in accordance with the *Corporations Act 2001*; or
- has given a bogus document or information that is false or misleading in a material particular to a Minister, officer, Tribunal or assessing authority.

Subclause 192.112(3) provides that the definition of adverse employer information in clause 192.112 does not affect the operation of Part VIIC of the *Crimes Act 1914*, which includes provisions that relieve persons from the requirement to disclose spent convictions and requires other persons (which would include decision makers) to disregard them.

Subclause 192.112(4) provides a definition of the phrase *information that is false or misleading in a material particular* as used in subclause 192.112(2) (see above). The phrase is defined to mean information that is false or misleading at the time it is given, and that is relevant to matters the Minister may consider when making a decision under the Migration

Act or Regulations, regardless of whether or not the decision is made because of that information.

A note following subclause 192.112(4) advises that the definition of the term *bogus document*, which is used in subclause 192.112(2) (see above), is given in subsection 5(1) of the Migration Act.

Subclause 192.112(5) provides that the definition of *adverse information* in regulation 1.03 of the Migration Regulations does not apply for the purposes of clause 192.112. The effect of this provision is that the general definition of *adverse information* in regulation 1.03 does not apply to the meaning of *adverse employer information* as defined in clause 192.112. That is, for the purposes of Subclass 192, the meaning of the term *adverse employer information* is solely as set out in clause 192.112.

Division 192.2 (Primary criteria) and subdivision 192.21 set out the primary criteria which must be met by an applicant who was selected in the relevant visa pre-application process and has made a valid application for a Subclass 192 visa. Details of the criteria are as follows.

Subclauses 192.211(1) and (2) require that either the applicant, or the applicant's spouse or de facto partner if the spouse or de facto partner has made a combined application with the applicant, has a written offer of ongoing employment in a genuine position in Australia, and that the employment conditions of the position are not less favourable than those that apply or would apply to an Australian citizen performing equivalent work at the same location. The intention is to ensure that at least one person included in the application, either the applicant or the applicant's spouse or de facto partner if included, has a satisfactory offer of ongoing employment in Australia under the same conditions as for an Australian citizen. If the conditions under a job offer are less favourable, the job offer will not meet the requirement, for example, where the employment arrangement does not allow for leave provisions (e.g. no paid leave), or salary deductions are being proposed, but the person to whom the employment is offered may be either the applicant or the applicant's spouse or de facto partner, if included in a combined application.

Subclause 192.211(3) requires that either there is no adverse employer information known to the Department about the employer or a person associated with the employer, or, if such information is known to the Department about the employer or a person associated with the employer, it would be reasonable to disregard the information. *Adverse employer information* is defined in clause 192.112, above. A decision on whether it would be reasonable to disregard any adverse employer information would depend on factors such as the nature of the information and the circumstances and whether they were ongoing, and whether any adverse impact on the employment of the applicant (or the applicant's spouse or de facto partner) by the employer would be likely in all the circumstances.

Clause 192.212 requires the applicant to have adequate means, or access to adequate means, to support the applicant and each member of the applicant's family unit who has made a combined application with the applicant, during the period of the first 12 months in Australia as the holder of the visa. In assessing this criterion decision-makers will take into account a range of factors relating to resources available to the applicant, including the applicant's own assets, income from the employment offered to the applicant (or the applicant's spouse or de facto partner if making a combined application) in Australia, and any other resources that would be available to the applicant and family unit including services, social security, family,

community or other government support. This will ensure that the applicant and family unit will be economically viable in Australia with sufficient financial capacity to adequately support the applicant and all members of the family unit who have made a combined application with the applicant for a period of 12 months after the grant of the visa. The criterion will allow decision makers to consider broader evidence of support including savings, credit cards, loans and other forms of financial support. Consideration of this requirement will be set out in Department policy guidelines and follow similar approaches taken in other visa subclasses where the decision makers must assess means of support using their judgment. The decision maker will consider a range of relevant factors such as the applicant's salary, allowances, numbers of members of the family unit including their earning capacity, savings, loans, and communications from persons offering financial support.

Clause 192.213 requires the applicant to have complied substantially with the conditions of the last of any substantive visas they held and any subsequent bridging visa, unless the person has complied substantially with condition 8303 (if that was a condition of the visa) and the Minister is satisfied that the applicant was unable to comply substantially with any other condition because of compassionate and compelling circumstances. The effect of this criterion is that if the applicant has previously held a visa in Australia that was subject to condition 8303, the applicant must have complied substantially with that condition. Condition 8303 requires that the visa holder must not become involved in activities disruptive to, or violence threatening harm to, the Australian community or group within the Australian community. The applicant must also have substantially complied with all other conditions unless non-compliance was due to compelling and compassionate circumstances. Compelling and compassionate circumstances could arise, for instance, if the visa holder was exploited at work, there was fraudulent conduct by a third party such as an employer, or domestic violence occurred.

Clause 192.214 requires that, if required by the Minister, the applicant or the applicant's spouse or de facto partner must satisfy a test of English language proficiency specified in a legislative instrument for the purposes of the clause. This criterion facilitates ensuring that the applicant, or at least one person in a combined application, has English or appropriate prospects of acquiring English. Applicants who can demonstrate English language proficiency, for example through time spent working or studying in an English speaking country or by previously satisfying an approved English language test would not be required to take an English test. Applicants who do not meet these circumstances would have the option of undertaking to participate in the (free of charge) Australian Migrant English Program (AMEP) in Australia or satisfying the English test requirements specified in the legislative instrument.

Clause 192.215 sets out the public interest criteria the applicant and members of the applicant's family unit are required to satisfy.

Subclause 192.215(1) requires the applicant to satisfy standard public interest criteria relating to character, national security, outstanding debts to the Commonwealth if any, ability to become established in Australia, signing the values statement, fraud, and holding a valid passport.

The applicant is also required to meet standard health criteria including a general requirement to be free from any disease or condition which would require health care or community services. However, this requirement may be waived if the applicant satisfies all other criteria

for grant of the visa and the decision maker is satisfied that grant of the visa would not result in undue cost to the Australian community or undue prejudice to access to health care or community services of an Australian citizen or permanent resident (public interest criterion 4007).

Subclause 192.215(2) requires members of the applicant's family unit who are included in the application to meet the same standard public interest criteria as the applicant, except that applicants aged under 18 do not have to sign the values statement (see subclause 192.215(3), below). Members of the applicant's family unit also have to meet the same health criterion (PIC 4007) as the applicant (see above).

Subclause 192.215(3) requires each member of the applicant's family unit who is included in the application for a Subclass 192 visa and has turned 18 years of age at the time they apply to sign the values statement (public interest criterion 4019). Applicants aged under 18 at the time they apply are not required to sign the values statement.

Subclause 192.215(4) requires each member of the applicant's family unit who is included in the application for a Subclass 192 visa and is aged under 18 at the time of application to satisfy additional standard public interest criteria relating to child welfare and the best interests of the child (public interest criteria 4015 and 4016).

Subclause 192.215(5) requires members of the applicant's family unit who are not included in the application for a Subclass 192 visa to satisfy standard public interest criteria relating to character, national security, and outstanding debts to the Commonwealth if any. Non-applying members of the applicant's family unit are also required to satisfy the same health criterion as the applicant and members of the family unit who are included in the application.

The effect of the criteria in subclauses 192.215 (2), (3), (4) and (5) is that if any member of the family unit of an applicant seeking to satisfy the primary criteria fails to meet a relevant public interest criterion, whether or not the family unit member is also an applicant for a Subclass 192 visa, the primary applicant will fail to meet the primary criteria. These provisions are intended to maintain the integrity of the family unit and avoid separating family members where only some members meet critical public interest criteria.

Clause 192.216 requires the applicant and members of the applicant's family unit who are included in the application to meet special return criteria which restrict the return to Australia for a period of time of persons who have been deported or removed from Australia, or who are or were a government-supported student.

Division 192.3 (Secondary criteria) and subdivision 192.31 set out the secondary criteria which must be met by applicants who are members of the family unit the applicant seeking to satisfy the primary criteria. Details of the criteria are as follows.

Clause 192.311 requires a secondary applicant to be a member of the family unit of a person who holds a Subclass 192 visa granted on the basis of satisfying the primary criteria, and who made a combined application with that person. The effect of this criterion is that a Subclass 192 cannot be granted to a member of the family unit of a person seeking to satisfy the primary criteria unless the family member made a combined application with that person and the person has been granted a Subclass 192 visa.

Clause 192.312 requires the applicant to have complied substantially with conditions of the last of any substantive visas they held and any subsequent bridging visa, unless it would be reasonable to disregard any non-compliance, except in relation to condition 8303. The operation of this criterion is the same as that of clause 192.213 in the primary criteria. Please see the notes on that clause, above.

Clause 192.313 requires a secondary applicant to have satisfied specified public interest criteria. The effect of these requirements is the same as for the criteria to be satisfied by members of the primary applicant's family unit in subclauses 192.215(2), (3) and (4). Please see the notes on those subclauses, above.

Subclause 192.314 requires the applicant to have satisfied specified special return criteria. The effect of these requirements is the same as the special return criteria that members of a primary applicant's family unit are required to satisfy under clause 192.216. Please see the notes on that clause, above.

Division 192.4 (Circumstances applicable to grant) sets out the circumstances applicable to grant of a Subclass 192 visa. Clause 192.411 provides that the applicant may be in or outside Australia but not immigration clearance at the time the visa is granted.

Division 192.5 (When visa is in effect) sets out the period within which a Subclass 192 visa is in effect. Clause 192.511 provides that a Subclass 192 visa is a permanent visa permitting the holder to travel to and enter Australia for 5 years from the date of grant

Division 192.6 (Conditions) prescribes the condition on a Subclass 192 visa. Clause 192.611 provides that the condition is that if the visa holder is outside Australia when the visa is granted, the visa holder's first entry to Australia must be made before the date specified by the Minister.