

EXPLANATORY STATEMENT

Issued by authority of the Minister for Home Affairs and Minister for Cyber Security

Migration Regulations 1994

Migration (Specification of Categories of Visas that Preclude a Person from Lodging a Student Visa Application in Australia) Amendment Instrument (LIN 24/051) 2024

- 1 The instrument, departmental reference LIN 24/051, is made under paragraph 1222(5)(c) of Schedule 1 to the *Migration Regulations 1994* (the Migration Regulations) for the purposes of subitem 1222(4) of that schedule.
- 2 The instrument amends *Migration Regulations 1994 - Specification of Categories of Visas that Preclude a Person from Lodging a Student Visa Application in Australia 2016/016 – IMMI 16/016* (F2016L00638) in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (the Acts Interpretation Act). That subsection provides that a power to make a legislative instrument includes a power to amend or repeal that instrument in the same manner, and subject to the same conditions, as the power to make the instrument.
- 3 The instrument commences on 1 July 2024. It is a legislative instrument for the purposes of the *Legislation Act 2003* (the Legislation Act).

Purpose

- 4 The instrument specifies matters relating to the making of an application for a Student (Temporary) (Class TU) visa. This visa class encompasses both the Subclass 500 (Student) and Subclass 590 (Student Guardian) visa subclasses.
- 5 Paragraph 1222(5)(c) of Schedule 1 to the Migration Regulations provides that the Minister may, by legislative instrument, specify substantive temporary visas for the purposes of subitem 1222(4). That subitem provides that if an applicant for a Student (Temporary) (Class TU) visa is in Australia, the applicant must hold a substantive temporary visa, other than a substantive temporary visa specified by the Minister in an instrument in writing under paragraph 1222(5)(c).
- 6 *Migration Regulations 1994 - Specification of Categories of Visas that Preclude a Person from Lodging a Student Visa Application in Australia 2016/016 – IMMI 16/016* specifies substantive temporary visas that, if held by an applicant in Australia, would prevent them from making a valid application for a Subclass 500 or 590 visa.
- 7 The purpose of this instrument is to amend IMMI 16/016 to specify additional categories of substantive temporary visas that preclude a person in Australia from making Subclass 500 or 590 visa applications as part of the Government's Migration Strategy published in December 2023.
- 8 The effect of this instrument is that all holders of a substantive temporary visa specified in LIN 24/051 are prevented from making a valid application in Australia for a Student (Temporary) (Class TU) visa – regardless of whether the non-citizen is the primary applicant or a member of the family unit of a primary applicant.

Consultation

- 9 No external consultation was undertaken in relation to this instrument. However, strengthening and providing a high-quality student visa program has been widely supported by education providers, with broader consultation undertaken and feedback considered as part of the Migration Strategy.
- 10 The Office of Impact Analysis (OIA) was consulted and considered that a detailed Impact Analysis is not required for this instrument. OIA reference number is OIA23-05963.

Details of the instrument

- 11 Details of the instrument are set out in **Attachment A**.

Parliamentary scrutiny etc.

- 12 The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because it is an instrument made under Schedule 1 to the Migration Regulations, which is exempt from disallowance under paragraph (b) of item 20 in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.
- 13 As the instrument is exempt from disallowance, a Statement of Compatibility with Human Rights is not required.
- 14 The instrument was made by the Minister for Home Affairs in accordance with paragraph 1222(5)(c) of Schedule 1 to the Migration Regulations.

Details of the *Migration (Specification of Categories of Visas that Preclude a Person from Lodging a Student Visa Application in Australia) Amendment Instrument (LIN 24/051) 2024*

Section 1 Name

This section provides that the name of the instrument is the *Migration (Specification of Categories of Visas that Preclude a Person from Lodging a Student Visa Application in Australia) Amendment Instrument (LIN 24/051) 2024*.

Section 2 Commencement

This section provides that the instrument commences on 1 July 2024.

Section 3 Authority

This section provides that the instrument is made under paragraph 1222(5)(c) of the *Migration Regulations 1994* (the Migration Regulations), for the purpose of subitem 1222(4) of the Migration Regulations.

Section 4 Schedules

This section indicates that Schedule 1 to LIN 24/051 provides a list of items amending IMMI 16/016.

Schedule 1 Amendments

Item 1 of Schedule 1 to LIN 24/051 substitutes the existing table to IMMI 16/016 listing the classes of substantive temporary visas that, if held by a non-citizen in Australia, prevent them from making a valid application for a Student (Temporary) (Class TU) visa.

Five additional substantive temporary visa subclasses have been added to IMMI 16/016, including:

- Subclass 485 (Temporary Graduate);
- Subclass 601 (Electronic Travel Authority);
- Subclass 602 (Medical Treatment);
- Subclass 651 (eVisitor); and
- Subclass 988 (Maritime Crew).

In addition, the Subclass 600 (Visitor) visa is now specified in its entirety for the purpose of subitem 1222(4) of Schedule 1 to the Migration Regulations. Previously, only the Sponsored Family and Approved Destination Status streams were specified. Now, all Subclass 600 visa holders are prevented from applying for a Student (Temporary) (Class TU) visa in Australia.