EXPLANATORY STATEMENT

Issued by the Assistant Minister for Citizenship, Customs and Multicultural Affairs

Migration Act 1958

Migration Amendment (Student Visa Reform) Regulations 2026

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.

Subsection 31(3) of the Migration Act provides the regulations may prescribe criteria for a visa or visas of a specified class. Subsection 46(3) provides the regulations may prescribe criteria that must be satisfied for an application for a visa of a specified class to be a valid application, while subsection 46(4) provides the regulations may also prescribe the circumstances that must exist for an application for a visa of a specified class to be a valid application.

Purpose

The *Migration Amendment (Student Visa Reform) Regulations 2026* (the Amendment Regulations) amend the *Migration Regulations 1994* (the Migration Regulations) to provide new criteria for the Subclass 500 (Student) visa (Student visa) related to Schedule 1 criteria for making a valid application; and Schedule 2 criteria for the grant of a visa.

Background

The Government has introduced changes to the migration system to ensure it continues to operate in the national interest. These changes include reforms to the Student visa program to further strengthen its integrity and better align program settings with the primary purpose of the visa, which is to facilitate temporary stay in Australia for study purposes.

These Student visa reforms will strengthen the integrity of Australia's student visa program by reducing its use as a means for extending stay in Australia. The Amendment Regulations restrict the ability to apply for, and be granted, a Subclass 500 (Student) visa (Student visa) onshore, and the ability for an applicant to be onshore when a visa is granted to them (or at the time of visa grant). The Amendment Regulations also restrict the ability for international students to include family members in an application.

Overall, the changes will reduce the number of temporary migrants in Australia by narrowing opportunities for individuals to 'visa hop' and lodge multiple successive temporary visa applications while remaining in the country.

The amendments include new Schedule 1 criteria related to the location of applicants for a Student visa when making an application, and new Schedule 2 criteria related to the location of applicants for a Student visa at the time a decision is made on that application.

Specifically, the amendments:

- provide that, in certain circumstances, a valid application for a Student visa can only be made from outside Australia; and

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- require that certain applicants who must be outside of Australia when making a Student visa application must also be outside of Australia when a visa is granted to them; and
- restrict the circumstances in which a student may include the members of their family unit (referred to as "secondary applicants") in their Student visa.

Item 1222 of Schedule 1 to the Migration Regulations, prior to amendment, provided that a Student visa applicant may be inside or outside Australia, but not in immigration clearance. As an exception to that general rule, the applicant must apply from outside Australia if they hold a specified substantive temporary visa.

The Amendment Regulations provide a further exception to that rule, so that a primary applicant who already holds a Student visa needs to make any further Student visa applications from offshore. This applies to Student visa holders who previously satisfied secondary criteria but are now seeking to satisfy primary criteria. It also applies to Student visa holders who previously satisfied primary criteria, with exemptions for:

- Defence students;
- Foreign Affairs students; or
- school students; or
- students in a specified class of persons.

Prior to amendment, Schedule 2 to the Migration Regulations, which sets out the criteria for grant of a visa, provided that at the time a decision is made on a Student visa application, an applicant may be inside or outside Australia, but not in immigration clearance. The Amendment Regulations instead provide that if an applicant was required by certain provisions in Schedule to apply from outside Australia, then they must also be outside Australia when a visa is granted to them.

The Amendment Regulations also sets out new criteria for secondary applicants. Prior to amendment, a secondary applicant could apply for a Student visa if they demonstrated that they met the definition of a member of the family unit of the primary applicant (generally, the student's spouse and children). If they satisfy the secondary criteria, they are granted a Student visa as a secondary holder. Additionally, members of the family unit can apply for a Student visa after the primary applicant's visa is granted. This is referred to as a 'subsequent entrant' application.

The Amendment Regulations provide that secondary applicants can only make an application for a Student visa if:

- the primary applicant is a Defence student; or
- the primary applicant is a Foreign Affairs student; or
- the primary applicant holds a passport from a Pacific regional country or a country that is a member of the Association of Southeast Asian nations (ASEAN); or
- the secondary applicant held, or had applied for, a Student visa (as a secondary applicant) on commencement, and is now making a new application onshore; or
- the secondary applicant is a child who was born in Australia, after commencement, and is the child of a primary applicant who held, or had applied for, a Student visa on commencement, and is now making an application onshore; or
- the secondary applicant is in a specified class of persons.

The Amendment Regulations require that secondary applicants, where eligible to make an application, must apply at the same time and same place as the primary applicant. The effect of this amendment is that a Student visa cannot 'add' family members to an existing visa by making a subsequent entrant application.

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Consultation

The Department has consulted with the Department of Education and Department of Employment and Workplace Relations. Non-governmental organisations were not consulted.

Details and operation

The Amendment Regulations commence on the day after registration on the Federal Register of Legislation.

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

Details of the Amendment Regulations are provided in Attachment B.

Parliamentary scrutiny and other matters

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

A Statement of Compatibility with Human Rights has been completed in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The overall assessment is that the Amendment Regulations are compatible with human rights, because to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate to the objective of strengthening the integrity of the Student visa program. A copy of the Statement is at Attachment A.

The matters dealt with in the Amendment 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 settings 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 provision. Providing for these details to be in delegated legislation rather than primary legislation gives the Government the ability to effectively manage the operation of Australia's visa program and respond quickly to emerging needs.

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

- is unnecessary as the Migration Regulations are regularly amended numerous times each year to update policy settings for immigration programs;
- would require complex and difficult to administer transitional provisions to ensure, amongst other things, the position of the many people who hold Australian visas, and similarly, there would likely be a significant impact on undecided visa and sponsorship applications; and
- would demand complicated and costly systems, training and operational changes that would impose significant strain on Government resources and the Australian public for insignificant gain, while not advancing the aims of the Legislation Act 2003 (Legislation Act).

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

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ATTACHMENT A

Statement of Compatibility with Human Rights

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

Migration Amendment (Student Visa Reform) Regulations 2026

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 (Student Visa Reform) Regulations 2026* (the amendment regulations) amend the *Migration Regulations 1994* (the Migration Regulations) to provide new criteria for the Subclass 500 (Student) visa with respect to:

- Schedule 1 criteria for making a valid application; and
- Schedule 2 criteria for grant of a visa.

The measures are intended to reinforce the intent of the Student visa program, which is to facilitate a temporary stay for the purpose of study, and strengthen the integrity of the program, by reducing use of the Student visa as a means of prolonging temporary stay in Australia.

Specifically, the amendments will:

- provide that, in certain circumstances, a valid application for a Student visa can only be made from outside Australia; and
- require that applicants who must be outside of Australia when making a Student visa application must also be outside of Australia at the time of visa grant; and
- restrict the circumstances in which a student may 'include' the members of their family unit (referred to as "secondary applicants") in their Student visa application.

These amendments are outlined in further detail under the headings below.

Amendments relating to time and location requirements for visa lodgement and grant

Item 1222 of Schedule 1 to the Migration Regulations, as currently in effect, provides that a Student visa applicant may be inside or outside Australia, but not in immigration clearance. As an exception to that general rule, the applicant must apply from outside Australia if they hold a specific temporary visa.

The amendment regulations would provide a further exception to the general rule, so that a Student visa holder who seeks to apply for a further Student visa as a primary applicant would need to make that application from outside Australia. This would also apply to Student visa holders who were granted their current Student visa as secondary applicants but are now seeking to satisfy the primary criteria for the grant of a further Student visa. Exemptions will apply to:

- Defence students; or
- Foreign Affairs students; or
- school students; or
- students in a specified class of persons.

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Location related requirements are prescribed at Schedule 1 to the Migration Regulations. From commencement, all new applicants would need to meet the amended Schedule 1 criteria. An application that does not meet Schedule 1 criteria is not a valid visa application. Subsection 47(3) of the *Migration Act 1958* (the Migration Act) provides that the Minister is not to consider an application that is not a valid application.

Schedule 2 to the Migration Regulations, which sets out the criteria for grant of a visa, currently provides that at the time a decision is made on a Student visa application, an applicant may be inside or outside Australia, but not in immigration clearance. The amendment regulations would amend Schedule 2 of the Migration Regulations to provide that if an applicant was required by Schedule 1 to apply from outside Australia or did not meet the criteria in Schedule 1 to make the application from Australia, then they must also be outside Australia at the time their visa is granted.

Amendments related to secondary, including subsequent, applicants for a Student visa

In addition to location criteria, the amendment regulations would also set out new criteria for secondary applicants. Currently, secondary applicants can be included in a Student visa application if they meet the definition of a member of the family unit of the primary applicant (generally, the student's spouse and children). If they satisfy the secondary criteria, these applicants can be granted a Student visa as a secondary visa holder. Additionally, members of the primary visa applicant's family unit can apply for a Student visa as a secondary applicant after the primary applicant's visa is granted. This is referred to as a 'subsequent entrant' application.

The amendment regulations would provide that secondary applicants could only make an application for a Student visa if the primary applicant is: a Defence student or a Foreign Affairs student, or holds a passport from a Pacific-regional country or the Association of Southeast Asian Nations (ASEAN) member country; or the secondary applicant is in a specified class of persons. Additionally, a secondary applicant could apply for a Student visa if they held or had applied for (and were later granted) a Student visa (as a secondary applicant) at the time of commencement of the amendment regulations, or if they were a child born in Australia, after commencement, to a primary applicant who held or had applied for a Student visa (that was later granted) at the time of commencement. These provisions aim to ensure families already in Australia are not separated if the primary visa holder is eligible to apply for a further Student visa onshore.

The amendment regulations would also amend the requirements for how secondary applicants apply for a Student visa by requiring that secondary applicants, where eligible to make an application, must apply at the same time and place as the primary applicant. The effect of this amendment is that a Student visa holder could not 'add' family members to their visa after it is granted. It would also have the effect that if any of the applicants in a family unit must apply from outside Australia, then all applicants would need to apply from outside Australia in order to apply at the same time and place.

Finally, the amendment regulations would establish three new instrument making powers that would enable the Minister to specify classes of persons relevant to Schedule 1.

These measures will apply to an application for a visa made on or after the commencement of the amendment regulations. Student visa applications lodged prior to the date the amendment regulations take effect, but not yet finalised, will not be impacted by the proposed amended application and grant criteria.

Overall, these amendments will reinforce the intent of the Student program to facilitate study, reduce the misuse of the Student visa program, and the cohort of temporary visa holders who remain in Australia for prolonged periods of time, often with no pathways to permanent

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residency. Restrictions on onshore lodgements of a Student visa will also reduce the number of applications for review of a Student visa refusal decision at the Administrative Review Tribunal.

Human rights implications

This Disallowable Legislative Instrument engages the following rights:

- the rights relating to families and children, including those under Articles 17 and 23 of the *International Covenant on Civil and Political Rights* (ICCPR) and Articles 3(1) and 16 of the *Convention on the Rights of the Child* (CRC);
- the right to education under Article 13(1) of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR); and,
- the right to equality and non-discrimination under Articles 2(1) and 26 of the ICCPR.

In many instances, Student visa applicants may be located outside Australia, and the measures will not engage applicable rights and freedoms for those applicants while they are outside of Australia. However, if Student visa applicants located outside Australia have family members in Australia, the applicable rights of those family members in Australia may still be engaged.

Rights relating to families and children

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.*

Article 23(1) of the ICCPR states:

> *The family is the natural and fundamental group unit of society and is entitled to protection by society and the State*

Article 3(1) of the CRC states:

> *In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*

Article 16 of the CRC states:

1. *No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.*
2. *The child has the right to the protection of the law against such interference or attacks.*

A family unity is not an absolute right under either the ICCPR or the CRC, interference with this right is permissible where it is not arbitrary and where it is lawful at domestic law. Therefore, any measure seeking to limit family unity rights must be reasonable, necessary and proportionate to achieving a legitimate objective, in this case being to reinforce the intent of the visa to facilitate temporary stay in Australia for study purposes. While the best interests of the child must be a primary consideration in all actions affecting children, it may be outweighed by other countervailing considerations. Further, the protection of family unity or considerations about the best interests of children do not amount to a right to enter or remain in Australia where there is no other right to do so. It is open to the Government to change visa settings for the Student visa program to meet its

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policy priorities for a well-managed migration program, consistent with its international obligations, that is intended to benefit the Australian community as a whole.

The amendment regulations may limit family unity rights by generally removing (subject to exemptions) the ability for family members to apply for a Student visa as a secondary, including subsequent, applicant. This may impact family members of prospective Student visa applicants who decide to study in Australia and are not in one of the exemptions which allow Student visa applicants to include family members on their application. Any such impact would only arise in relation to prospective Student visa applicants who apply after the commencement of the amendment regulations. Should a family member of a Student visa holder who had intended to apply for a Student visa as a secondary applicant not be able to obtain any other visa, they would be required to depart (or not enter) Australia, which may cause family separation if the primary Student visa holder chooses to remain in Australia.

Family unity and children's rights may also be limited where a primary Student visa holder has a new partner or has a child offshore, as these family members will no longer be able to apply for a Student visa as a subsequent applicant after the primary applicant is granted a Student visa. However, these amendments are not intended to affect children born onshore to a Student visa holder parent, as by operation of section 78 of the Migration Act, they are taken to have been granted a visa of the same kind and terms and conditions as their parents at time of birth.

The majority of Student visa applicants do not include partners or children as secondary applicants, and Student visas have been granted on average for a period of around two years to facilitate temporary stay in Australia while studying. The Student visa program is not intended to be a means of facilitating family reunification in Australia. Before making a decision to study in Australia, prospective international students with families will need to consider how studying in Australia will affect their family life and make decisions in the interests of their family. This will include considering the means for maintaining contact with family overseas if they choose to study in Australia.

While these measures may result in temporary family separation, this separation is unlikely to be permanent. Student visas are temporary visas, which are granted on average for a period of around two years, and Student visa holders can travel outside Australia and return as many times as they wish, while the visa is valid. Family members are also not prevented from applying for their own separate visas to enter and stay in Australia, subject to meeting eligibility requirements. Further, the intention is that if an existing Student visa holder or applicant has dependents on their visa or visa application at the time of commencement of the amendment regulations, then they could continue including those dependents in future applications, where the primary applicant is eligible to make a further Student visa application onshore. This is achieved through prescribing a circumstance in which secondary applicants can be included in a new onshore Student visa application. Specifically, this would be for secondary applicants who, on the day of commencement of the amendment regulations, held a Student visa (having satisfied secondary criteria), or who, on or before the day of commencement of the amendment regulations, had applied for a Student visa that is later granted (having satisfied secondary criteria). Children born onshore after the commencement of the amendment regulations to a primary applicant who held or had applied for a Student visa (that was later granted) at the time of commencement, will also be able to be added to their future onshore Student visa applications as a secondary applicant.

As mentioned above, the restriction of the inclusion of family members is subject to further exemptions, including for Defence and Foreign Affairs students, or passport holders of Pacific-regional and ASEAN member countries. These exemptions support Australia's strategic interests and bilateral partnerships. Further exemptions may be introduced by way of a legislative instrument. Amendments to the requirement for secondary Student visa applicants to make a combined

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application with the primary applicant at the same time and location, will also encourage families to remain together during the visa application process.

The amendment regulations support the legitimate objective of ensuring that the Student visa program settings are aligned with the primary purpose of the visa program, being to facilitate temporary stay in Australia for study purposes. These measures are rationally connected to achieving these objectives, as they ensure that Student visas are granted to persons who are enrolled to study in Australia.

To the extent that the amendment regulations may limit rights relating to families and children, these limitations are reasonable, necessary, proportionate and rationally connected to achieving the legitimate objectives of restoring the intent of the Student visa program being to facilitate temporary stay in Australia for study purposes.

The right to education

Article 13(1) of ICESCR states:

> *The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.*

The right to education under ICESCR does not amount to a right to enter or remain in Australia where there is no other right to do so. While Article 13 recognises the right to education, it does not guarantee a right to education in a country where the person is not a national. It is open to the Government to change visa settings for new applicants to meet its policy priorities for a well-managed migration program, consistent with its international obligations, that is intended to benefit the Australian community as a whole.

The amendment regulations may engage the right to education for non-citizens, in circumstances where the amendments create an additional barrier to accessing education in Australia. This may occur where, for example, non-citizens due to the location requirements, must be outside of Australia to apply for a further Student visa. However, the amendment regulations do not operate to deprive people of the right to education but rather place conditions on that ability, including through setting criteria such as location requirements for making a valid Student visa application. The amendment regulations do not restrict the number of Student visa applications that a person can make, and genuine students who will no longer be able to apply for a Student visa onshore, will continue to be able to apply for a Student visa offshore. The choice to study in Australia by non-citizens is voluntary and should be informed by consideration of the visa requirements that may allow them to undertake studies in Australia.

The location requirements for further Student visa applications will also be subject to exemptions. As mentioned above, this will include school students, ensuring that children who are the primary Student visa holders are able to apply for further Student visas onshore which would allow them to continue their primary or secondary studies in Australia. Further exemptions are intended to be specified by legislative instrument.

The amendment regulations support the legitimate objective of reducing the misuse of the Student visa program for purposes other than genuine study, and the cohort of temporary visa holders who remain in Australia for prolonged periods of time, often with no pathways to permanent residency.

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Requiring subsequent Student visa applications (subject to exempt cohorts) to be made offshore is rationally connected to this objective and reinforces the intention of Student visas being to facilitate non-citizens' temporary entry to Australia to engage in studies.

Any limitation on the right to education by the amendment regulations is reasonable, necessary and proportionate to achieving the legitimate objective of strengthening the integrity of the Student visa program.

The right to equality and non-discrimination

Article 2(1) of the ICCPR states:

> *Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

Article 26 of the ICCPR states:

> *All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

In its General Comment 18, the UN Human Rights Committee (UNHRC) stated that:

> *The Committee observes that not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the [ICCPR].*

The ICCPR does not 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.

Pacific regional and ASEAN member country passport holders are subject to an exemption from the measure which would prevent members of the family unit from being included as secondary applicants on the primary Student visa application. This may engage the right to equality and non-discrimination, through providing for a differentiation based on national origin.

These exemptions, for nationals of Pacific regional and ASEAN member countries is in recognition of Australia's existing commitments to deepening engagement with countries in the Pacific and

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Southeast Asia, by enhancing opportunities for cultural, educational and skills exchange. The exemptions are considered objective, reasonable and positively discriminate in favour of nationals of Pacific-regional and ASEAN member countries. They recognise that certain students provide a materially different level of strategic, economic, social or cultural benefit that justifies differentiated treatment within a sustainable temporary migration program.

Noting that the amendment regulations provide that further classes of persons to which the exemption applies could be specified by instrument for the purposes of subitem 1222(3)(da)(iv), the equality and non-discrimination rights could also be directly engaged depending on the classes of persons prescribed. Any resulting differentiation would be reasonable, necessary and proportionate, and would positively discriminate in favour of the class of persons to which the exemption is provided.

The right to equality and non-discrimination may also be engaged should the classes of substantive temporary visas prescribed under subitem 1222(5)(c) result in an indirect differentiation. Holders of a substantive temporary visa class prescribed by subitem 1222(5)(c) would be required to be offshore to make a valid Student visa application. These requirements would be objective, noting that they would be prescribed via a legislative instrument, and would be reasonable. Allowing the Minister to prescribe classes of substantive temporary visas for which a holder must be offshore to apply for a valid Student visa supports the abovementioned legitimate objective of ensuring that the Student visa program is used in line with its original intent and not to create an incentive for temporary visa holders to delay their departure by moving from one visa to another.

To the extent that the amendment regulations may limit the right to equality and non-discrimination, any such limitation is reasonable, necessary and proportionate to achieving the legitimate objective of strengthening the integrity of the Student visa program.

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 to the objective of strengthening the integrity of the Student visa program.

The Honourable Julian Hill MP
Assistant Minister for Citizenship, Customs and Multicultural Affairs

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ATTACHMENT B

Details of the amending regulations

Section 1 Name of Regulations

This section provides that the name of the instrument is the *Migration Amendment (Student Visa Reform) Regulations 2026.*

Section 2 Commencement

This section provides that the instrument commences on the day after registration on the Federal Register of Legislation.

Section 3 Authority

This section provides that the instrument is made under the *Migration Act 1958* (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] Sub-subparagraph 1222(2)(a)(ia)(B) of Schedule 1

This item effectively omits the word "or" after the second of three sub-subparagraphs that set out visa application charges (VAC) for the Class TU visa, because of the third sub-subparagraph being repealed.

The Class TU comprises the Subclass 500 (Student) visa (**the Student visa**) and the Subclass 590 (Student Guardian) visa (**the Student Guardian visa**).

Item [2] Sub-subparagraph 1222(2)(a)(ia)(C) of Schedule 1

This item repeals sub-subparagraph 1222(2)(a)(ia)(C), which sets out the applicable VAC in circumstances where a secondary applicant applies for a Student visa separately to the primary applicant, and where the secondary applicant holds a valid passport issued by a Pacific regional country.

This item is a consequential amendment because of amendments to paragraph 1222(3)(e) of Schedule 1 to the *Migration Regulations* 1994 (Migration Regulations) which now requires all applicants for a Student visa to apply at the same time and at the same place.

Applicants for a Student Guardian visa are unaffected by this amendment.

Item [3] Sub-subparagraph 1222(2)(a)(ib)(B) of Schedule 1

This item effectively omits the word "or" after the second of three sub-subparagraphs, because of the third sub-subparagraph being repealed.

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Item [4] Sub-subparagraph 1222(2)(a)(ib)(C) of Schedule 1

This item repeals sub-subparagraph 1222(2)(a)(ib)(C), which sets out the applicable VAC in circumstances where a secondary applicant applies for a Student visa separately to the primary applicant, and where the secondary applicant holds a valid passport issued by a country specified in subitem 1222(5A) of Schedule 1 to the Migration Regulations.

This item is a consequential amendment because of amendments to paragraph 1222(3)(e) of Schedule 1 to the Migration Regulations which requires all applicants for a Student visa to apply at the same time.

Applicants for a Student Guardian visa are unaffected by this amendment.

Item [5] Sub-subparagraph 1222(2)(a)(ic)(B) of Schedule 1

This item effectively omits the word "or" after the second of three sub-subparagraphs that set out visa application charges (VAC), because of the third sub-subparagraph being repealed.

Item [6] Sub-subparagraph 1222(2)(a)(ic)(C) of Schedule 1

This item repeals sub-subparagraph 1222(2)(a)(ic)(C), which sets out the applicable VAC in circumstances where a secondary applicant applies for a Student visa separately to the primary applicant, where the primary applicant is enrolled in an ELICOS or non-award course, and where the secondary applicant does not hold a valid passport issued by a Pacific-regional country or a country specified in subitem 1222(5A) of Schedule 1 to the Migration Regulations.

This item is a consequential amendment because of amendments to paragraph 1222(3)(e) of Schedule 1 to the Migration Regulations which requires all applicants for a Student visa to apply at the same time.

Applicants for a Student Guardian visa are unaffected by this amendment.

Item [7] After paragraph 1222(3)(a) of Schedule 1

This item provides that a primary applicant for a Student visa who, at the time of making an application already holds a Student visa, must be outside Australia to make a valid application for a further Student visa.

New subparagraph 1222(3)(aa)(ii) of Schedule 1 to the Migration Regulations provides that an applicant is affected by this item irrespective of whether they were granted their existing Student visa based on having satisfied primary or secondary criteria for that visa.

However, subparagraph 1222(3)(aa)(iii) provides that if the applicant was granted their Student visa on the basis of having satisfied the primary criteria for the grant of that visa, and they are in a class of persons specified in subitem 1222(3A) Schedule 1 to the Migration Regulations, they will be unaffected by this item and therefore not required to apply from outside of Australia.

The effect of this item is that some Student visa holders who wish to apply for a further Student visa must apply from outside Australia to make a valid application. Subsection 45(3) of the Migration Act provides that the Minister is not to consider an application that is not a valid application.

The restrictions on the ability to make a Student application in Australia is intended to address the misuse of the Student visa as a means of prolonging temporary stay in Australia, moving from one visa to another, often with no prospect of obtaining permanent residence.

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Item [8] Paragraph 1222(3)(b) of Schedule 1

This item amends paragraph 1222(3)(b) of Schedule 1 to the Migration Regulations, which had provided that an applicant may be in or outside Australia but not in immigration clearance when making an application.

In light of the amendments by items [7] and [12] which introduces new requirements related to the location of an applicant, this item amends paragraph 1222(3)(b) to instead provide that subject to paragraph 1222(3)(e), any other applicant can make a valid application from inside or outside Australia.

Paragraph 1222(3)(e) of Schedule 1 to the Migration Regulations, as amended by item [10], requires that all applicants for a Student visa to apply at the same time and place. In circumstances where applicants hold different visas, one applicant may be required to apply from outside Australia. In this scenario, an amended 1222(3)(b) requires all applicants to apply from outside Australia, to satisfy paragraph 1222(3)(e). This ensures families remain together during the visa application process and strengthens the integrity of the Student visa program to facilitate temporary stay in Australia for genuine study purposes, rather than to extend stay in Australia through successive onshore applications.

For a Student visa, this means that an applicant can apply (subject to meeting other criteria in Item 1222 of Schedule 1 to the Migration Regulations from inside Australia if:

- none of the applicants (whether primary or secondary) are affected by paragraph 1222(3)(aa), unless the applicant who is affected is in a class of persons specified in subitem 1222(3A); **and**
- none of the applicants (whether primary or secondary) are in a class of persons specified in an instrument made under paragraph 1222(5)(e) for the purposes of subparagraph 1222(4)(a)(ii); **and**
- all applicants either hold a substantive visa, or subitem 1222(4A) applies.

Paragraph 1222(3)(b) also applies to the Student Guardian visa. The requirements for the location of an applicant for that visa are unamended by this instrument, other than by the amendments at item 12. For a Student Guardian visa, an applicant can apply (subject to meeting other criteria in Item 1222) from inside Australia if:

- none of the applicants (whether primary or secondary) are in a class of persons specified in an instrument made under paragraph 1222(5)(e) for the purposes of subparagraph 1222(4)(a)(ii); **and**
- all applicants either hold a substantive visa, or subitem 1222(4A) applies.

If an applicant can apply for a Student visa or Student Guardian visa from inside Australia, they are not compelled to do so and could apply from outside Australia if preferred.

Item [9] After paragraph 1222(3)(d) of Schedule 1

This item inserts new paragraph 1222(3)(da) of Schedule 1 to the Migration Regulations, which sets out requirements for a secondary applicant for a Student visa. The effect is that a secondary applicant can only apply if any of subparagraphs 1222(3)(da)(i) – (vi) apply.

Subparagraph 1222(3)(da)(i) applies if the primary applicant is a Defence student, a Foreign Affairs student or the holder of a passport from either a Pacific regional country, or a country specified in subitem 1222(5A) of Schedule 1 to the Migration Regulations. The countries specified in subitem 1222(5A) are member countries of the Association of Southeast Asian Nations (ASEAN). Timor-Leste, which is an ASEAN member country, is not specified at subitem 1222(5A) but is a Pacific regional country for the purposes of subparagraph 1222(3)(da)(i).

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These exemptions are in recognition of the importance of these international student cohorts to advancing Australia's strategic interests and foreign policy objectives, including strengthening educational links with Pacific and ASEAN partners.

Subparagraphs 1222(3)(da)(ii) and (iii) apply to secondary applicants for a new Student visa who, at the time these subparagraphs commenced, either held a Student visa (having satisfied secondary criteria for grant of that earlier visa) or had applied for a Student visa that was subsequently granted (having satisfied the secondary criteria for grant of that visa), provided that the new application is made in Australia. This exemption is intended to support existing family units to remain together in circumstances where they are eligible to make a further student application from inside Australia.

Subparagraphs 1222(3)(da)(iv) and (v) apply to secondary applicants who were born in Australia after the commencement of the subparagraph, and who are the child of a person who, at the time the subparagraph commenced, either held a Student visa (having satisfied primary criteria for grant of that earlier visa) or had applied for a Student visa that was subsequently granted (having satisfied the primary criteria for grant of that visa), provided that the new application is made in Australia. These subparagraphs are intended to ensure that the arrangements in subparagraphs 1222(3)(da)(ii) and (iii), which are intended to prevent family separation, also extend to children who became part of the family unit after the commencement of those subparagraphs.

Section 78 of Migration Act provides that if a child is born in Australia and one of their parents holds a visa at the time of birth, the child is taken to hold the same visa as their parent. The date of grant on the child's visa will be their date of birth, which may be after the commencement of subparagraphs 1222(3)(da)(ii) or (iii).

Subparagraph 1222(3)(da)(vi) applies if the secondary applicant is included in a class of persons specified in a legislative instrument made under paragraph 1222(5)(c).

This item will have the effect that fewer international students can be accompanied by members of their family unit when studying in Australia. These changes reinforce the intent of the Student program, which is to facilitate entry and temporary stay in Australia for study purposes.

Item [10] Paragraph 1222(3)(e) of Schedule 1

This item omits the word "may" and substitutes the word "must" in the context of when and how applicants for a Student visa may apply, as provided for by paragraph 1222(3)(e) of Schedule 1 to the Migration Regulations. The effect is all applicants for the Student visa must apply at the same time and the same place.

This item requires that a member of the family unit of a Student visa holder cannot apply for a Student visa (as a secondary applicant) unless they apply at the same time and place as the primary applicant.

A secondary effect is that if one applicant is required to apply from outside Australia, all applicants must apply from outside Australia in order to make an application at the same place.

Item [11] After subitem 1222(3) of Schedule 1

This item inserts new subitem 1222(3A) of Schedule 1 to the Migration Regulations, which sets out classes of persons for the purposes of subparagraph 1222(3)(aa)(iii), as inserted by amending item [7].

Subitem 1222(3A) sets out classes of primary applicants for a Student visa who, despite holding a Student visa as a primary holder, can make a valid application from inside Australia. This item prescribes four such classes of persons.

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The first class is Defence students, within the meaning of regulation 1.04B. The second class is Foreign Affairs students, within the meaning of subregulation 1.04A(3). The third class of persons is school students, within the meaning of clause 500.111 of Schedule 2 to the Migration Regulations.

These exemptions support school age children and in recognition of the importance of Defence and Foreign Affairs sponsored students in advancing Australia strategic interest and bilateral partnerships.

The fourth class is a class of persons specified in an instrument made under paragraph 1222(5)(d) of Schedule 1. This paragraph enables further classes to be set out in a legislative instrument.

Item [12] Subitem 1222(4) of Schedule 1

This item inserts a new subitem 1222(4) of Schedule 1 to the Migration Regulations, which sets out requirements for the visa (if any) held by an applicant for either a Student or Student Guardian visa, if the applicant is in Australia.

Prior to amendment, subitem 1222(4) provided that an applicant for either visa who is in Australia must hold a substantive temporary visa, other than a visa specified in an instrument made under paragraph 1222(5)(c). If the applicant does not hold a substantive visa, then paragraphs 1222(5)(a)-(d) apply. If those requirements were not met, the application must be made from outside Australia.

This item reframes those requirements, including to refer to specified classes of persons rather than specified substantive temporary visas.

Subparagraph 1222(4)(a)(i) provides that the applicant must hold a substantive visa, while subparagraph 1222(4)(a)(ii) provides that if the applicant holds a substantive visa, they must not be included in a class of persons specified in an instrument made under paragraph 1222(5)(e). The effect is that if an applicant is in a specified class of persons, then they cannot satisfy subitem 1222(4) and must therefore apply from outside Australia.

Paragraph 1222(4)(b) alternatively provides that an applicant meets subitem 1222(4) if either subitem 1222(4A) or subitem 1222(4B) applies. The item also inserts new subitem 1222(4A), which includes existing paragraphs 1222(4A)(a) to (d), other than paragraph 1222(4)(b)(i) which is amended by item [13]. Those paragraphs set out limited circumstances where a person may apply for a Student visa or Student Guardian visa from inside Australia, without holding a substantive visa.

Item [13] Subparagraph 1222(4)(b)(i) of Schedule 1

This item repeals subparagraph 1222(4)(b)(i) of Schedule 1 to the Migration Regulations, which enables a Student visa or Student Guardian visa application to be made inside Australia by a person who does not hold a substantive visa but who, in the last 28 days, held a Student visa. The effect is that such an applicant needs to apply from outside Australia.

This amendment is necessary to ensure that a Student visa holder who, unless they are included in a class of persons specified in subitem 1222(3A), is required to apply for a further Student visa from outside Australia, could not circumvent those requirements by allowing their Student visa to expire and then making an application from inside Australia.

Item [14] After subitem 1222(4) of Schedule 1

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This item inserts new subitem 1222(4B) of Schedule 1 to the Migration Regulations, setting out a further circumstance in which an application for a Student visa or a Student Guardian visa may be made from inside Australia, without the applicant holding a substantive visa.

This new subitem is a consequence of the repeal of subparagraph 1222(4)(b)(i), which allows an application for a Student visa to be made in Australia by an applicant who does not hold a substantive visa but whose last substantive visa was a Student visa, and where that visa either ceased in the last 28 days, or a decision was made by the Administrative Review Tribunal (ART) in the last 28 days to revoke an earlier cancellation of that visa.

New subitem 1222(4B) continues those arrangements for the latter cohort of applicants only. This is intended for circumstances in which the ART revokes the cancellation of a Student visa, but where that decision does not result in the previously cancelled Student visa being reinstated, because the original expiry date has since passed. In those circumstances, the former Student visa is permitted to apply onshore for a further Student visa if one is required, subject to meeting all relevant criteria.

Item [15] Paragraph 1222(5)(c) of Schedule 1

This item repeals paragraph 1222(5)(c) of Schedule 1 to the Migration Regulations, which provided that an instrument made by the Minister under subitem 1222(5) may specify substantive temporary visas for the purposes of subitem 1222(4). This is a consequential repeal that is necessary because of the amendments to subitem 1222(4) by item [12].

The item also inserts three new paragraphs that each set out matters that are specified in an instrument made by the Minister under subitem 1222(5).

Paragraph 1222(5)(c) enables the specification of classes of persons for the purposes of subparagraph 1222(3)(da)(vi), with the effect being that a person in that class (or classes) can apply for a Student visa as a secondary applicant.

Paragraph 1222(5)(d) enables the specification of classes of persons for the purposes of paragraph 1222(3A)(d), with the effect being that a person in that class (or classes) could, despite paragraph (3)(aa), make a valid Student visa application from inside Australia.

Paragraph 1222(5)(e) enables the specification of classes of persons for the purposes of subparagraph 1222(4)(a)(ii), with the effect being that a person in that class (or classes) can only make a valid Student visa or Student Guardian visa application from outside Australia..

Item [16] Subregulation 1222(5A) of Schedule 1

This item inserts a reference to subparagraph 1222(3)(da)(i) at subregulation 1222(5A) of Schedule 1 to the Migration Regulations It is consequential to the amendment made by item [9], which refers to the countries specified at subregulation 1222(5A).

Item [17] Clause 500.311 of Schedule 2

This item repeals clause 500.311 of Schedule 2 to the Migration Regulations, which set out criteria for an applicant for a Student visa who is a member of the family unit of a person who hold a Student visa having satisfied the primary criteria.

Prior to amendment, paragraph 500.311(a) applied to applicants who were a member of the family unit of the primary person before the primary person was granted a Student visa, while paragraph 500.311(b) applied to

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applicants who become a member of the family unit of the primary person after that person was granted a Student visa.

Following amendments to paragraph 1222(3)(e) of Schedule 1 to the Migration Regulations, this distinction is no longer necessary as all applicants for a Student visa must make a combined application.

The item substitutes a simpler criterion that the applicant is a member of the family unit of the primary applicant

Item [18] Paragraph 500.315(a) of Schedule 2

This item omits a reference to clause 500.111 of Schedule 2 to the Migration Regulations and substitutes a reference to Division 500.2. This is a consequential amendment due to the repeal of clause 500.311.

Item [19] Clause 500.411 of Schedule 2

This item omits clause 500.411 in Schedule 2 to the Migration Regulations, which provided that, at the time of grant of a Student visa, the applicant may be inside or outside or Australia. The item substitutes subclauses 500.411(1) and (2).

Subclause 500.411(1) now provides that an applicant must be outside Australia at the time a decision is made on their application if, at the time the application was made, the applicant was outside of Australia because of a requirement at paragraph 1222(3)(aa) of Schedule 1 to the Migration Regulations (as inserted by item [7]) or because they did not meet the criteria at subitem 1222(4) of Schedule 1, as inserted by item [12].

Subclause 500.411(2) provides that in any other case, the applicant may be in or outside of Australia when the visa is granted, but not in immigration clearance. This includes an applicant who applied for a Student visa outside Australia, but who was not required to do so by the provisions noted at subclause 500.411(1).

The intent of these amendments is to mitigate disingenuous use of the Student visa as a means of remaining in Australia. The introduction of subclause 500.411(1) specifically is intended to require applicants to be offshore at the time of application and time of decision.

Prior to amendment, a visa holder who is required to make a Student visa application from outside of Australia may depart Australia for a very short period to make their application while offshore, then returning to Australia and apply for a Bridging Visa while they await a decision on their Student visa application. Part 010 of Schedule 2 to the Migration Regulations sets out criteria for grant of a bridging visa including, amongst other things, that a person has applied for a visa of a kind that can be granted while the applicant is in Australia, as provided by paragraph 010.211(2)(a).

Item [20] In the appropriate position in Schedule 13

This item inserts new Part 166 into the Migration Regulations, which sets out the application of the amendments that are made by this instrument. The amendments apply to visa applications made on or after the commencement of this instrument.

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