EXPLANATORY STATEMENT

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

Migration Regulations 1994

Migration (Student Visa Applications to Be Made from outside Australia) Instrument 2026

The legislative instrument, *Migration (Student Visa Applicants to Be Made from outside Australia) Instrument 2026*, departmental reference LIN 26/102, is made under paragraph 1222(5)(e) of Schedule 1 to the *Migration Regulations 1994* (the Migration Regulations), for the purposes of subparagraph 1222(4)(a)(ii) of Schedule 1 to the Migration Regulations.

The instrument repeals and replaces *Migration (Visas that Preclude a Person from Lodging a Student Visa Application in Australia) Instrument 2026* (LIN 26/068).

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers power to make, grant or issue any instrument of a legislative or administrative character, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

The instrument commences on the later of the day after registration, or immediately after the commencement of the *Migration Amendment (Student Visa Reform) Regulations 2026* (the Amendment Regulations), however the instrument does not commence at all if the Amendment Regulations do not commence. It is a legislative instrument for the purposes of the *Legislation Act 2003* (the Legislation Act).

The instrument repeals LIN 26/068, which replaced the *Categories of Visas that Preclude a Person from Lodging a Student Visa Application in Australia 2016/016* ahead of its sunset on 1 October 2026, in accordance with section 50 of the *Legislation Act 2003* (the Legislation Act).

The instrument specifies classes of persons for the purposes of subparagraph 1222(4)(a)(ii) of Schedule 1 to the Migration Regulations. Subparagraph 1222(4)(a)(ii), as amended by the *Migration Amendment (Student Visa Reform) Regulations 2026* provides that if an applicant for a Subclass 500 (Student) visa (Subclass 500 visa) or a Subclass 590 (Student Guardian) visa (Subclass 590 visa) is in Australia, they must not be in a class of persons specified in an instrument under paragraph 1222(5)(e).

The effect is that if an applicant is in a class of persons specified in this instrument, they can only make a valid Subclass 500 visa or Subclass 590 visa application from outside of Australia.

An application that does not meet Schedule 1 requirements will not be a valid application. Subsection 47(3) of the *Migration Act 1958* (Migration Act) provides that the Minister will not consider an application that is not a valid application.

The instrument specifies 17 classes of persons, each of which is based on the visa held by a person. The intent of these arrangements is to prevent certain temporary migrants who entered Australia, for a purpose other than study, from applying for a Subclass 500 visa or Subclass 590 visa to prolong their stay in Australia.

Authorised Version Explanatory Statement registered 01/10/2026 to F2026L01348

These classes of persons have been identified based on assessment of data related to onshore applications, to limit extended stays in Australia.

Details of the instrument are set out in the Attachment.

Consultation

Consultation was undertaken with affected Commonwealth agencies, including the Department of Education and the Department of Employment and Workplace Relations, as part of broader reform to student visas.

Parliamentary scrutiny etc.

The instrument is exempt from disallowance under section 44 of the Legislation Act. This is because instruments made under Schedule 1 of the Migration Regulations are exempt from disallowance under table item 20(b) in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*. As the instrument is exempt from disallowance, a Statement of Compatibility with Human Rights is not required (paragraph 15J(2)(f) of the Legislation Act refers).

The instrument was made by the Assistant Minister for Citizenship, Customs and Multicultural Affairs, under paragraph 1222(5)(e) of Schedule 1 to the Migration Regulations.

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

Authorised Version Explanatory Statement registered 01/10/2026 to F2026L01348

Attachment

Details of the Migration (Student Visa Applications to Be Made from outside Australia) Instrument 2026

Section 1 Name of instrument

This section provides that the name of the instrument is the *Migration (Student Visa Applications to Be Made outside Australia) Instrument 2026.*

Section 2 Commencement

This section provides for the commencement of the provisions in the instrument.

Subsection 2(1) provides that 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.

The instrument commences on the later of the day after the instrument is registered, and immediately after the commencement of the *Migration Amendment (Student Visa Reform) Regulations 2026* (the Amendment Regulations). However, the provisions do not commence at all if the Amendment Regulations do not commence.

Subsection 2(2) provides that 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.

Section 3 Authority

This section provides that the instrument is made under paragraph 1222(5)(e) of Schedule 1 to the Migration Regulations, for the purposes of subparagraph 1222(4)(a)(ii) of Schedule 1 to the Migration Regulations.

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.

Section 5 Definitions

This section provides for definitions of terms used in the instrument.

Section 6 Class of persons

This section provides that a person is in a class of persons specified for the purposes of subparagraph 1222(4)(a)(ii) of Schedule 1 to the Migration Regulations if they hold a visa in a subclass mentioned in Column 1 of an item in the table; and the visa was granted on the basis of criteria set out in a stream mentioned in Column 2 of the same item; and the person satisfies any requirements mentioned in Column 3 of the same item.

Authorised Version Explanatory Statement registered 01/10/2026 to F2026L01348

Subparagraph 1222(4)(a)(ii) of Schedule 1 to the Migration Regulations provides that if an applicant for a Subclass 500 or Subclass 590 visa is in Australia, then they must not be in a class of persons specified in an instrument made under paragraph 1222(5)(e). The effect is that an applicant for a Subclass 500 visa or Subclass 590 visa who is in a class of persons, as specified in this section, must be outside Australia in order to make a valid application for the visa.

The table under subsection 6(2) sets out the specified classes of persons. Each class is defined by the visa subclass held by the person. One class of persons, holders of the Subclass 403 Temporary Work (International Relations), is limited to those granted a visa in the Domestic Worker (Diplomatic or Consular) steam. Another class, holders of the Subclass 995 (Diplomatic (Temporary)) visa, is limited to the primary holder of that visa.

The remaining 15 classes are only defined by the subclass of visa held by the person, regardless of the stream in which that visa was granted or whether the persons satisfied primary or secondary criteria. Those other subclasses are:

- Subclass 400 (Temporary Work (Short Stay Specialist)
- Subclass 407 (Training)
- Subclass 408 (Temporary Activity)
- Subclass 417 (Working Holiday)
- Subclass 457 (Temporary Work (Skilled))
- Subclass 462 (Work and Holiday)
- Subclass 482 (Skills in Demand)
- Subclass 482 (Temporary Skill Shortage)
- Subclass 485 (Temporary Graduate)
- Subclass 600 (Visitor)
- Subclass 601 (Electronic Travel Authority)
- Subclass 602 (Medical Treatment)
- Subclass 651 (eVisitor)
- Subclass 771 (Transit)
- Subclass 988 (Maritime Crew)

Some of those visas, such as the Subclass 482 (Temporary Skill Shortage) are closed to new applications. Those visas are specified because there are still persons holding those visas who may wish to apply for a further visa.

Schedule 1 – Repeals

Migration (Visas that Preclude a Person from Lodging a Student Visa Application in Australia) Instrument 2026

Item 1 Whole of the instrument

Item 1 of Schedule 1 repeals the instrument *Migration (Visas that Preclude a Person from Lodging a Student Visa Application in Australia) Instrument 2026.*