EXPLANATORY STATEMENT

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

Migration (LIN 20/158: Class of Persons for Student (Temporary) (Class TU) Visa Applications) Amendment Instrument 2026

The instrument, *Migration (LIN 20/158: Class of Persons for Student (Temporary) (Class TU) Visa Applications) Amendment Instrument 2026* (the instrument), Departmental reference LIN 26/087, is made under the *Migration Regulations 1994* (the Migration Regulations).

This Instrument amends *Migration (LIN 20/158: Class of Persons for Student (Temporary) (Class TU) Visa Applications) Instrument 2020* (LIN 20/158).

Subsection 33(3) of the *Acts Interpretation Act 1901* (the Acts Interpretation Act) 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.

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).

Purpose

The purpose of this instrument is to specify classes of persons relevant to the requirements for making a valid application for a Subclass 500 (Student) visa (Student visa), which are set out in item 1222 of Schedule 1 to the Migration Regulations.

The instrument is made under subitem 1222(5) of Schedule 1 to the Migration Regulations. The instrument specifies classes of applicants for the purposes of paragraph 1222(3A)(d) and subparagraph 1222(3)(da)(v).

The intent of these amendments is to strengthen the integrity of the Student visa program and reinforce its primary purpose, which is to facilitate temporary stay in Australia for study purposes.

The Amendment Regulations insert paragraph 1222(3)(aa) into Schedule 1 to the Migration Regulations, which provides that an applicant who seeks to satisfy the primary criteria for a Student visa who already holds a Student visa must be outside Australia to make a valid application for a further Student visa. An exception applies if the applicant is the primary holder of that visa (i.e. the student) and they are included in a class of persons at subitem 1222(3A) of Schedule 1 to the Migration Regulations.

In addition to the classes set out at paragraphs 1222(3A)(a)-(c), paragraph 1222(3A)(d) provides that a person is also in a class of persons for the purposes of paragraph 1222(3)(aa)(iii) if they are specified in an instrument made under paragraph 1222(5)(d) of Schedule 1 to the Migration Regulations. This instrument specifies those classes of persons.

For the purposes of paragraph 1222(3A)(d), the following classes of persons are specified by this instrument:

- doctoral students;

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- students who are unable to complete a registered course due to provider default;
- students who require a further visa to complete the principal course of study for which their current visa was granted; and
- students who demonstrate course progression.

The effect is that those students may apply for a further Student visa while in Australia, subject to the other requirements in Schedule 1 being met. Further details for each class are set out in the Attachment.

The Amendment Regulations also insert paragraph 1222(3)(da) into Schedule 1 to the Migration Regulations, which provides that an applicant who seeks to satisfy secondary criteria for a Student visa may only apply if any of subparagraphs 1222(3)(da)(i) to (vi) apply.

Subparagraph 1222(3)(da)(vi) applies if the applicant is included in a class of persons specified in an instrument made under paragraph 1222(5)(c) of Schedule 1 to the Migration Regulations. This instrument specifies those classes of persons.

For the purposes of subparagraph 1222(3)(da)(vi), the following classes of persons are specified by this instrument:

- applicants who are a member of the family unit of a student who is a foreign scholarship recipient student;
- applicants who are a member of the family unit of a student who is a doctoral student;
- applicants who are a member of the family unit of a student who is unable to complete a registered course due to provider default;
- applicants who are a member of the family unit of a student who requires a further visa to complete the principal course of study for which their current visa was granted.

The effect is that those applicants may apply for a Student visa from inside Australia, subject to the other requirements in Schedule 1 being met.

Additionally, the instrument specifies classes of person who may apply for a Student visa as a secondary applicant (without specifying their location).

Finally, the instrument also repeals three classes who were eligible for nil visa application charge (VAC) for Student visa applications at the height of the COVID-19 Pandemic, and a further class as a consequential amendment to the Amendment Regulations.

Further details are set out in the Attachment.

Consultation

Consultation on broader reform, including the measures implemented by this instrument, has been undertaken with a number of Commonwealth agencies, including the Department of Education and the Department of Employment and Workplace Relations. Department of Education was consulted on the definitions within the instrument. Non-government organisations have not been consulted.

Parliamentary scrutiny etc.

The instrument is exempt from disallowance as provided by table item 20(b) of regulation 10 of the *(Exemptions and Other Matters) Regulation 2015*. A Statement of Compatibility with Human Rights is therefore not required.

The instrument was made by the Assistant Minister for Citizenship, Customs and Multicultural Affairs, under subitem 1222(5) 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.

Attachment

Details of the *Migration (LIN 20/158: Class of Persons for Student (Temporary) (Class TU) Visa Applications) Amendment Instrument 2026*

Section 1 Name of instrument

This section provides that the name of the instrument is the *Migration (LIN 20/158: Class of Persons for Student (Temporary) (Class TU) Visa Applications) Amendment Instrument 2026* (the instrument).

Section 2 Commencement

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: (a) the day after the instrument is registered; and (b) 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 subitem 1222(5) of Schedule 1 to the *Migration Regulations 1994* (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.

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Schedule 1 – Amendments

Migration (LIN 20/158: Class of Persons for Student (Temporary) Class TU) Visa Applications Instrument 2020 **(LIN 20/158)**

Item [1] Section 4 (paragraph (a) of note 1)

This item has the effect of inserting references to the definitions of *confirmation of enrolment* and *education provider* in 1.03 of the Regulations. *Confirmation of enrolment* is a term used in the new classes of persons specified in new sections 18 and 23. *Education provider* is a term used in the new classes of persons specified ins section 19 and in the definition of *provider default*.

Item [2] Section 4 definitions

This item inserts the following new definitions that are relevant to the amendments made by this instrument.

- *AQF* means the Australian Qualifications Framework, which has the same meaning as in the *Higher Education Support Act 2003;*
- *course of study* has the meaning given by clause 500.111 of Schedule 2 to the Migration Regulations;
- *principal course* means, in relation to a Student visa that is granted to enable the visa holder to undertake one or more courses of study, the course with the highest AQF level;
- *higher education course* has the same meaning as clause 500.111 of Schedule 2 to the Migration Regulations;
- *higher education provider* has the meaning given by section 16-1 of the *Higher Education Support Act 2003*;
- *school student* has the same meaning as clause 500.111 of Schedule 2 to the Migration Regulations;
- *VAC* means a visa application charge.

Item [3] Section 4 (definition of *provider default*)

This item repeals the existing definition of provider default, and substitutes the following definition:

> ***provider default*** in relation to a registered course, means the occurrence of one of the following events, including where the event is as a result of a sanction being imposed on the education provider, or their registration being suspended or cancelled, under Divisions 1, 1AB, or 2 of Part 6 of the *Education Services for Overseas Students Act 2000*:
>
> (a) the course does not start on the agreed starting day; or
>
> (b) the course ceases to be provided at any time after it starts, but before it is completed;
>
> (c) the course not being provided in full to a student.

Item [4] Section 4 (definitions of *PHEIC, relevant PHEIC, reapplying applicant* and *subsequent person)*

This item omits the following definitions that are no longer required because of the repeal of sections 10 and 13 of LIN 20/158:

- *PHEIC*;
- *relevant PHEIC*;
- *reapplying applicant*;
- *subsequent person*.

Item [5] Before section 6

This item inserts a new division heading in LIN 20/158. The effect is that the existing provisions of that instrument, which specify classes of persons relevant to nil VAC arrangements for the Subclass 500 (Student) visa (Student visa), are now contained in *Division 1 – VAC arrangements*. This is intended to make clear which classes of persons are specified for which provisions in the Migration Regulations. This is necessary because of the specification of additional classes of persons as a result of the amendments made by this instrument.

Item [6] Section 6 (heading)

This item inserts the words "*for VAC arrangements*" in the heading for section 6, so that it reads "*Class of persons for VAC arrangements*", to reflect that the section is now part of a division that specifies classes of persons relevant to VAC arrangements only.

Item [7] Section 6

Item [8] Section 6 (note)

These items omit reference to 'sections 7 to 15' and substitute 'this Division', in the context of classes of persons that are specified for the purpose of paragraph 1222(5)(a) of Schedule to the Regulations, as a result of the repeals made by items [9] – [12].

Item [9] Section 10

This item repeals section 10 of LIN 20/158, which specified applicants who are a member of the family unit of a subsequent person, in the context of nil VAC arrangements for a Student visa application. Subsequent person was defined as a secondary applicant for a Student visa who applies after the primary applicant was granted a Student visa. This class is no longer required, due to the amendments to Schedule 1 of the Migration

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Regulations made by the *Migration Amendment (Student Visa Reform) Regulations 2026* (the Amendment Regulations). All applicants for a Student visa must now apply at the same time.

Item [10] Section 13

Item [11] Section 14

Item [12] Section 15

These items repeal sections 13 to 15 of LIN 20/158, which specified classes of applicants relevant to nil VAC arrangements. Those provisions were intended to ensure that Student visa holders who were affected by the COVID-19 Pandemic were able to apply for a further Student visa without paying a further VAC. These arrangements were not intended to be permanent, and their repeal is now appropriate given the time passed since the COVID-19 Pandemic.

Item [13] After section 15

This item inserts new *Division 2 – Location requirements* after Division 1 – *VAC arrangements*, in LIN 20/158.

Section 16 provides that for the purposes of paragraph 1222(3A)(d) of Schedule 1 to the Migration Regulations, the class of persons to which subsection (2) applies is specified. Subsection 16(2) applies in relation to a class of persons where the person is seeking to satisfy the primary criteria for the grant of a Student visa, and at the time of making the visa application, is enrolled in a course of study leading to the award of a doctoral degree. Doctoral programs are typically long-term research intensive courses that attract high-achieving students. The specification of this class recognises high-value contributions doctoral students make to research and innovation in Australia and more broadly.

Section 17 provides that for the purposes of paragraph 1222(3A)(d) of Schedule 1 to the Migration Regulations, the class of persons to which subsection (2) applies is specified. Subsection 17(2) applies in relation to a class of persons where the person is seeking to satisfy the primary criteria for the grant of a Student visa; and was, or is, affected by provider default, as defined in LIN 29/158, and requires a new Student visa to complete an alternative registered course or courses, and they are applying within 12 months of that provider default. The specification of this class is intended to enable Student visa holders to arrange a further Student visa in circumstances where they were unable to complete a course for reasons that were beyond their control and now require a new visa to complete an alternative course or courses.

Section 18 provides that for the purposes of paragraph 1222(3A)(d) of Schedule 1 to the Migration Regulations, the class of persons to which subsection (2) applies is specified. Subsection 18(2) applies in relation to a class of persons where the person holds a Student visa that was granted on the basis of having satisfied the primary criteria, and where the person is seeking to satisfy the primary criteria for a further Student visa in order to complete the principal course they had commenced, and for which their current Student visa was granted. The specification of this class is intended to facilitate the completion of studies for students who have deferred some of their studies for a range of reasons. The course that the applicant has commenced and the course that they intend to complete within the next 12 months must be the same course, delivered by the same provider or an alternative course with the same provider where the course is not inconsistent with the condition on their visa. Those who transferred to a principal course with a new provider will not be eligible to apply onshore under this provision.

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Section 19 provides that for the purposes of paragraph 1222(3A)(d) of Schedule 1 to the Migration Regulations, the class of persons to which subsection (2) applies is specified. Subsection 19(2) applies in relation to a class of persons where the person holds a Student visa that was granted on the basis of having satisfied the primary criteria, and where the person is seeking to satisfy the primary criteria for a further Student visa in order to further progress their studies. The specification of this class is intended to enable international students who completed the principal course on their current visa and who are seeking a further Student visa to undertake a new course to study in Australia at a more advanced level.

Subsections 19(3) and (4) are intended to ensure that the new course of study is more advanced than the completed course of study. Subsection (3) provides that if the completed course of study had an Australian Qualifications Framework (AQF) level attributed to it, then the new course of study must have a higher AQF level. Additionally, if the completed course of study was a higher education course delivered by a higher education provider, such as a Bachelor of Science at a university, then the new course of study must also be a higher education course delivered by a higher education provider.

Subsection (4) provides for circumstances in which the completed course of study did not have an AQF level attributed to it, in which case subparagraph (2)(c)(i)) or (ii) must apply. Paragraph 19(4)(a) applies if the new course of study has any AQF level attributed to it. An example is where an applicant completed foundational studies in Australia and is now applying for a further Student visa to undertake a diploma or a bachelor's degree. Alternatively, paragraph 19(4)(b) applies if the course of study that the applicant completed was in primary or secondary school. An example is where an applicant completed secondary school and is now applying for a further Student visa to undertake a foundational course.

This item also inserts new *Division 3 – Family* in LIN 20/158.

Section 20 provides that for the purposes of paragraph 1222(3A)(d) of Schedule 1 to the Regulations, the class of persons to which subsection (2) applies is specified. Subsection 20(2) applies in relation to a class of persons where the person is seeking to satisfy the secondary criteria for the grant of a Student visa, and where they are a member of the family unit of a person who is seeking to satisfy the primary criteria for the grant of a Student visa and whose studies will be fully funded by a foreign government.

Section 21 provides that for the purposes of paragraph 1222(3A)(d) of Schedule 1 to the Regulations, the class of persons to which subsection (2) applies is specified. Subsection 21(2) applies in relation to a class of persons where the person is seeking to satisfy the secondary criteria for the grant of a Student visa, and where they are a member of the family unit of a person who is seeking to satisfy the primary criteria for the grant of a Student visa to undertake a doctoral degree. The specification of this class is intended to maintain Australia's position as an attractive study destination for high achieving international students who contribute to Australia's research and innovation capabilities.

Section 22 provides that for the purposes of paragraph 1222(3A)(d) of Schedule 1 to the Regulations, the class of persons to which subsection (2) applies is specified. Subsection 22(2) applies in relation to a class of persons where the person is seeking to satisfy the secondary criteria for the grant of a Student visa, and where they are a member of the family unit of a person who is seeking to satisfy the primary criteria for the grant of a Student visa and who was, or is, affected by provider default, as defined in LIN 29/158, and requires a new Student visa to complete an alternative registered course within 12 months of that provider default. An applicant who has made a previous Student visa application in those circumstances would not be specified. The specification of this class is intended to enable the family of a student to arrange a further Student visa in

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circumstances where the student was unable to complete a course, for reasons that were beyond their control, and now require a new visa to complete an alternative course.

A person is only specified by section 22 if they currently hold a Student visa, having satisfied the secondary criteria, and where the applicant who seeks to satisfy the primary criteria in the new application is the same person who satisfied the primary criteria in the application for the existing visa.

Section 23 provides that for the purposes of paragraph 1222(3A)(d) of Schedule 1 to the Regulations, the class of persons to which subsection (2) applies is specified. Subsection 23(2) applies in relation to a class of persons where the person is seeking to satisfy the secondary criteria for the grant of a Student visa, and where they are a member of the family unit of a person who is seeking to satisfy the primary criteria for the grant of a Student visa and who requires a further short-duration Student visa (allowing for no more than 12 months study) to complete the principal course for which their visa was granted.

The specification of this class is intended to facilitate completion of studies for students who have deferred or delayed their studies for a range of reasons, and to enable the student's family to remain together in Australia for the duration of the new visa. The course that the applicant has commenced and the course that they intend to complete within the next 12 months must be the same course, delivered by the same provider or an alternative course with the same provider where the alternative course is not inconsistent with a condition on their visa. Those who transferred to a principal course with a new provider will not be eligible to apply onshore under this provision.

A person is only specified by section 23 if they currently hold a Student visa, having satisfied the secondary criteria, and where the applicant who seeks to satisfy the primary criteria in the new application is the same person who satisfied the primary criteria in the application for the existing visa.

This item also inserts *Part 3 – Application and transitional provisions* into LIN 20/158. Part 3 contains section 24, which provides that the amendments of LIN 20/158 made by this instrument apply in relation to an application for a Student visa made after the commencement of this instrument.

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