



Migration Amendment (Australia's Engagement in the Pacific and Other Measures) Act 2023

No. 86, 2023

**An Act to amend the *Migration Act 1958*, and for
related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

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Migration Amendment (Australia's Engagement in the Pacific and Other Measures) Act 2023

No. 86, 2023

An Act to amend the *Migration Act 1958*, and for related purposes

[Assented to 26 October 2023]

The Parliament of Australia enacts:

1 Short title

This Act is the *Migration Amendment (Australia's Engagement in the Pacific and Other Measures) Act 2023*.

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2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	29 March 2024 (F2024N00237)

Note: This table relates only to the provisions of this Act as originally enacted.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

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

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Migration Act 1958

1 Subsection 5(1)

Insert:

visa pre-application process charge means charge imposed by the *Migration (Visa Pre-application Process) Charge Act 2023*.

2 After subsection 46(4)

Insert:

- (4A) Without limiting subsection (3) and paragraph (4)(a), the regulations may prescribe, as a circumstance that must exist for an application for a visa of a specified class to be a valid application, that the applicant was selected in accordance with the applicable visa pre-application process conducted under subsection 46C(1).
- (4B) However, the regulations cannot prescribe criteria mentioned in subsection (4A) for any of the following visas:
- (a) protection visas;
 - (b) temporary safe haven visas;
 - (c) visas classified by the regulations as:
 - (i) Refugee and Humanitarian (Class XB) visas; or
 - (ii) Temporary (Humanitarian Concern) (Class UO) visas;
 - or
 - (iii) Resolution of Status (Class CD) visas.

3 After section 46B

Insert:

46C Visa pre-application process

- (1) The Minister may arrange for a visa pre-application process to be conducted in relation to one or more visas if regulations are in force prescribing criteria mentioned in subsection 46(4A) for those visas.

Note: Criteria mentioned in subsection 46(4A) cannot be prescribed for visas mentioned in subsection 46(4B).

Characteristics of a visa pre-application process

- (2) A visa pre-application process must involve:
- (a) the registration of persons as registered participants in the process, so long as those persons meet the eligibility requirements set out in a subsection (14) determination that relates to the process; and
 - (b) registered participants being selected at random.
- Note 1: This means that:
- (a) there will be a pool of registered participants in a visa pre-application process; and
 - (b) registered participants will be selected at random from that pool.
- Note 2: See also subsection (21), which deals with eligibility requirements.
- (3) A visa pre-application process must involve:
- (a) a finite period (the ***finite registration open period***) during which the process is to be open for registration; or
 - (b) an indefinite period (the ***indefinite registration open period***) during which the process is to be open for registration.
- (4) If a visa pre-application process involves a finite registration open period, this Act does not prevent the finite registration open period from being extended for a further period or further periods.
- (5) A visa pre-application process must involve:
- (a) a finite period (the ***finite selection open period***) during which the selection of registered participants may take place; or
 - (b) an indefinite period (the ***indefinite selection open period***) during which the selection of registered participants may take place.
- (6) If a visa pre-application process involves a finite selection open period:
- (a) this Act does not prevent the finite selection open period from being extended for a further period or further periods; and
 - (b) the selection of registered participants may take place on one or more occasions during the finite selection open period.
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- (7) If a visa pre-application process involves an indefinite selection open period, the selection of registered participants may take place on one or more occasions during the indefinite selection open period.
- (8) If:
- (a) a person is a registered participant in a visa pre-application process; and
 - (b) the person is selected in accordance with the process;
- the person ceases to be a registered participant in the process.
- (9) If:
- (a) a visa pre-application process relates to one or more visas; and
 - (b) the visa pre-application process involves a finite registration open period; and
 - (c) the finite registration open period ends;
- this Act does not prevent a fresh visa pre-application process from being conducted in relation to any or all of those visas.
- (10) This Act does not prevent 2 or more visa pre-application processes from being conducted in relation to one or more visas.
- Note: This means that visa pre-application processes can be conducted concurrently.

Use of a computer program

- (11) A visa pre-application process, or a part of a visa pre-application process, may be conducted by the use of a computer program under the Minister's control.
- (12) Subsection (11) does not limit subsection (1).

Ministerial determination

- (13) A visa pre-application process must not be conducted under subsection (1) unless a determination is in force under subsection (14) in relation to the conduct of the visa pre-application process.

- (14) The Minister may, by legislative instrument, determine rules that apply in relation to the conduct of a specified visa pre-application process under subsection (1).

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

- (15) A determination under subsection (14):
- (a) must deal with eligibility requirements for the registration of a person as a registered participant in a visa pre-application process; and
 - (b) may deal with any or all of the following matters:
 - (i) the registration of persons as registered participants in a visa pre-application process;
 - (ii) the manner in which a person may register as a registered participant in a visa pre-application process;
 - (iii) information to be provided by a person when registering as a registered participant in a visa pre-application process;
 - (iv) whether a visa pre-application process must involve a finite registration open period and, if so, the duration of that period;
 - (v) if a visa pre-application process involves a finite registration open period—the extension of that period;
 - (vi) whether a visa pre-application process must involve an indefinite registration open period;
 - (vii) whether a visa pre-application process must involve a finite selection open period and, if so, the duration of that period;
 - (viii) if a visa pre-application process involves a finite selection open period—the extension of that period;
 - (ix) whether a visa pre-application process must involve an indefinite selection open period;
 - (x) the withdrawal of a person’s registration as a registered participant in a visa pre-application process;
 - (xi) the circumstances in which, or the time when, the registration of a person as a registered participant in a visa pre-application process lapses;
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(xii) the selection of registered participants in a visa pre-application process.

- (16) Subsection (15) does not limit subsection (14).
- (17) A determination under subsection (14) may provide for different rules for different visa pre-application processes.
- (18) A determination under subsection (14) may provide for different rules for different classes of persons.
- (19) Subsections (17) and (18) of this section do not limit subsection 33(3A) of the *Acts Interpretation Act 1901*.
- (20) Despite regulations made for the purposes of paragraph 44(2)(b) of the *Legislation Act 2003*, section 42 (disallowance) of that Act applies to a determination under subsection (14) of this section.

Eligibility requirements

- (21) The following provisions have effect:
 - (a) subsections 46(3) and (4) do not, by implication, limit what may be an eligibility requirement for the registration of a person as a registered participant in a visa pre-application process;
 - (b) the eligibility requirements for the registration of a person as a registered participant in a visa pre-application process may be different from the criteria and requirements prescribed for the purposes of subsection 46(3) or (4);
 - (c) an eligibility requirement for the registration of a person as a registered participant in a visa pre-application process must be objective.

Visa pre-application process charge

- (22) If visa pre-application process charge is payable in respect of the registration of a person as a registered participant in a visa pre-application process, the charge is to be paid at the time of registration. If the charge is not paid at that time, the person is taken never to have been registered as a registered participant in the visa pre-application process.

- (23) The regulations may:
- (a) make provision for the remission, refund or waiver of visa pre-application process charge in specified circumstances; or
 - (b) make provision for exemptions from visa pre-application process charge.

Extra-territorial application

- (24) This section extends to acts, omissions, matters and things outside Australia.
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*[Minister's second reading speech made in—
House of Representatives on 16 February 2023
Senate on 9 March 2023]*

(8/23)
