



Migration Legislation Amendment (2016 Measures No. 1) Regulation 2016

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation.

Dated 14 April 2016

Peter Cosgrove
Governor-General

By His Excellency's Command

Peter Dutton
Minister for Immigration and Border Protection

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1 Name

This is the *Migration Legislation Amendment (2016 Measures No. 1) Regulation 2016*.

2 Commencement

- (1) 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.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 4 and anything in this instrument not elsewhere covered by this table	The day after this instrument is registered.	16 April 2016
2. Schedules 1 to 3	19 April 2016.	19 April 2016
3. Schedule 4	1 July 2016.	1 July 2016
4. Schedule 5, item 1	19 April 2016.	19 April 2016
5. Schedule 5, item 2	1 July 2016.	1 July 2016

Note: This table relates only to the provisions of this instrument as originally made.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

- (2) 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.

3 Authority

This instrument is made under the *Migration Act 1958*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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—Discriminatory recruitment practices

Migration Regulations 1994

1 Subregulation 2.57(1)

Insert:

discriminatory recruitment practice means a recruitment practice that directly or indirectly discriminates against a person based on the immigration status or citizenship of the person, other than a practice engaged in to comply with a Commonwealth, State or Territory law.

2 Paragraph 2.59(f)

Repeal the paragraph, substitute:

- (f) if the applicant is lawfully operating a business in Australia:
 - (i) the applicant has attested, in writing, that the applicant has a strong record of, or a demonstrated commitment to, employing local labour; and
 - (ii) the applicant has declared, in writing, that the applicant will not engage in discriminatory recruitment practices; and

3 Paragraph 2.68(g)

Repeal the paragraph, substitute:

- (g) if the applicant is lawfully operating a business in Australia:
 - (i) the applicant has attested, in writing, that the applicant has a strong record of, or a demonstrated commitment to, employing local labour; and
 - (ii) the applicant has declared, in writing, that the applicant will not engage in discriminatory recruitment practices; and

4 After regulation 2.87B

Insert:

2.87C Obligation not to engage in discriminatory recruitment practices

- (1) This regulation applies to a person who:
 - (a) is or was a standard business sponsor; and
 - (b) is lawfully operating a business in Australia.
- (2) The person must not engage in, or have engaged in, discriminatory recruitment practices during the period of the person's approval as a sponsor.
- (3) The obligation referred to in subregulation (2):
 - (a) starts to apply on the day the person is, or was, approved as a standard business sponsor; and
 - (b) ends when the person ceases, or ceased, to be a standard business sponsor.

Schedule 2—Processing of subclass 457 visas

Migration Regulations 1994

1 Paragraphs 1223A(3)(d) and (da) of Schedule 1

Repeal the paragraphs, substitute:

- (d) In the case of an applicant who seeks to satisfy the primary criteria for the grant of a Subclass 457 (Temporary Work (Skilled)) visa on the basis that the applicant meets the requirements of subclause 457.223(2) of Schedule 2:
 - (i) a person must have nominated an occupation in relation to the applicant; and
 - (ii) either of the following applies:
 - (A) the nomination has been approved under section 140GB of the Act and the approval of the nomination has not ceased under regulation 2.75;
 - (B) a decision in respect of the nomination has not been made under section 140GB of the Act.
- (da) In the case of an applicant who seeks to satisfy the primary criteria for the grant of a Subclass 457 (Temporary Work (Skilled)) visa on the basis that the applicant meets the requirements of subclause 457.223(4) of Schedule 2:
 - (i) a person must have nominated an occupation in relation to the applicant; and
 - (ii) either of the following applies:
 - (A) the nomination has been approved under section 140GB of the Act and the approval of the nomination has not ceased under regulation 2.75;
 - (B) a decision in respect of the nomination has not been made under section 140GB of the Act; and
 - (iii) the person who nominated the occupation is not the subject of a bar under section 140M of the Act.

2 Paragraph 457.223(4)(ea) of Schedule 2

Repeal the paragraph.

3 Subparagraph 457.223(4)(eb)(ii) of Schedule 2

Omit “and”.

4 Subparagraph 457.223(4)(eb)(iii) of Schedule 2

Repeal the subparagraph.

Schedule 3—Subclass 202 (Global Special Humanitarian) visas

Migration Regulations 1994

1 Paragraph 202.222(2)(d) of Schedule 2

After “settlement of”, insert “persons such as”.

Schedule 4—Student visa simplification

Migration Regulations 1994

1 Regulation 1.03

Insert:

AASES form, for a secondary exchange student, means an Acceptance Advice of Secondary Exchange Student form from the relevant State or Territory education authority, containing the following declarations:

- (a) a declaration made by the student’s exchange organisation, accepting the student;
- (b) a declaration made by the student’s parents, or the person or persons having custody of the student, agreeing to the exchange.

2 Regulation 1.03

Repeal the following definitions:

- (a) definition of *agreed starting day*;
- (b) definition of *assessment level*;
- (c) definition of *certificate of enrolment*.

3 Regulation 1.03

Insert:

confirmation of enrolment, in relation to a student and a registered provider, means a confirmation by the registered provider that the student is enrolled in a registered course provided by the registered provider, as required by section 19 of the *Education Services for Overseas Students Act 2000*.

4 Regulation 1.03 (definition of education provider)

Omit “State or Territory” (wherever occurring), substitute “location”.

5 Regulation 1.03

Repeal the following definitions:

- (a) definition of *electronic confirmation of enrolment*;
- (b) definition of *eligible passport*;
- (c) definition of *eligible student visa*;
- (d) definition of *highest assessment level*;
- (e) definition of *provider default*;
- (f) definition of *provider default day*;
- (g) definition of *relevant course of study*.

6 Regulation 1.03 (definition of secondary exchange student)

Omit all the words after “approved”, substitute “by the State or Territory education authority that administers the program”.

7 Regulation 1.03 (before paragraph (a) of the definition of student visa)

Insert:

- (aa) a Subclass 500 (Student) visa;

8 Regulation 1.03

Repeal the following definitions:

- (a) definition of *subsidised student*;
- (b) definition of *suspended education provider*.

9 Subregulation 1.04A(1)

Repeal the following definitions:

- (a) definition of *AIDAB*;
- (b) definition of *equivalent former visa or entry permit*;
- (c) definition of *equivalent transitional visa*.

10 Subregulation 1.04A(1) (definition of *Foreign Affairs student visa*)

Repeal the definition, substitute:

Foreign Affairs student visa means a student visa granted to a person who, as an applicant:

- (a) satisfied the primary criteria for the grant of the visa; and
- (b) was a student in a full-time course of study or training under a scholarship scheme or training program approved by the Foreign Minister or AusAID Minister.

11 Subparagraph 1.04B(b)(i)

Omit “Subclass 576 (Foreign Affairs or Defence Sector) visa”, substitute “student visa”.

12 Division 1.8

Repeal the Division.

13 Subregulation 2.05(5)

Repeal the subregulation.

14 Subregulation 2.06AAB(1) (table items 15 to 21)

Repeal the items, substitute:

15	Subclass 500 (Student)
16	Subclass 590 (Student Guardian)

15 Regulation 2.07AF (heading)

Repeal the heading, substitute:

2.07AF Applications for Student (Temporary) (Class TU) visas

16 Subregulations 2.07AF(1) and (2)

Repeal the subregulations, substitute:

- (1) This regulation applies in respect of an application for a Student (Temporary) (Class TU) visa.

- (2) Despite anything in regulation 2.07, an application may be made on behalf of an applicant.

17 Subregulation 2.07AF(3)

Omit “made on form 157A, 157A (Internet), 157E or 157G”.

18 Subregulation 2.07AF(6)

Repeal the subregulation.

19 Regulation 2.07AG (heading)

Repeal the heading, substitute:

2.07AG Applications for certain substantive visas by persons for whom condition 8503 or 8534 has been waived under subregulation 2.05(4AA) or (5A)

20 Subregulation 2.07AG(2)

Omit “(5) or”.

21 Paragraph 2.21B(1)(a)

Omit “form 157P,”.

22 Subdivision 2.9.2A

Repeal the Subdivision.

23 Item 1222 of Schedule 1

Repeal the item, substitute:

1222. Student (Temporary) (Class TU)

- (1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (2) Visa application charge:
- (a) first instalment (payable at the time the application is made):
 - (i) for an applicant who is included in a class of persons specified in an instrument under paragraph (5)(a), the amount is nil; and
 - (ii) for any other applicant:

First instalment

Item	Component	Amount
1	Base application charge	\$550
2	Additional applicant charge for any other applicant who is at least 18	\$410
3	Additional applicant charge for any other applicant who is less than 18	\$135

Note 1: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-internet application charge. Not all of the components may apply to a particular application.

Note 2: Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant’s application.

- (b) the second instalment (payable before grant of visa) is nil.
- (3) Other:
- (a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
 - (b) An applicant may be in or outside Australia, but not in immigration clearance.
 - (c) If the applicant seeks to satisfy the primary criteria for the grant of a Subclass 500 (Student) visa, the application must be accompanied by evidence of the applicant's intended course of study in Australia, or activities related to study in Australia, being evidence that satisfies the requirements specified in an instrument under paragraph (5)(b).
 - (d) If the applicant seeks to satisfy the primary criteria for the grant of a Subclass 500 (Student) visa and will be under 18 years of age at any time while in Australia, the application must be accompanied by evidence of intended arrangements for the applicant's accommodation, support and general welfare.
 - (e) An application by a person claiming to be a member of the family unit of a person who is seeking to satisfy the primary criteria for the grant of a Subclass 500 (Student) visa may be made at the same time and place as, and combined with, the application by that person.
 - (f) An application by a person claiming to be a member of the family unit of a person who is seeking to satisfy the primary criteria for the grant of a Subclass 590 (Student Guardian) visa must be made at the same time as, and combined with, the application by that person.
- (4) If the applicant is in Australia, the applicant must hold a substantive temporary visa (other than a substantive temporary visa specified in an instrument under paragraph (5)(c)), or must satisfy the following paragraphs:
- (a) the applicant is not the holder of a substantive visa;
 - (b) the last substantive visa held by the applicant was:
 - (i) a student visa; or
 - (ii) a special purpose visa; or
 - (iii) a Diplomatic (Temporary) (Class TF) visa granted to the holder as the spouse or de facto partner, or a dependent relative, of a diplomatic or consular representative of a foreign country;
 - (c) the application is made within 28 days after:
 - (i) the day when that last substantive visa ceased to be in effect; or
 - (ii) if that last substantive visa was cancelled, and the Tribunal has made a decision to set aside and substitute the cancellation decision or the Minister's decision not to revoke the cancellation—the later of:
 - (A) the day when that last substantive visa ceased to be in effect; and
 - (B) the day when the applicant is taken, under sections 368D and 379C of the Act, to have been notified of the Tribunal's decision;
 - (d) the applicant has not previously been granted a visa based on an application made when the applicant did not hold a substantive visa.
- (5) The Minister may, by legislative instrument, specify all or any of the following:

-
- (a) classes of persons to whom subparagraph (2)(a)(i) applies;
 - (b) the requirements that evidence required by paragraph (3)(c) must satisfy;
 - (c) substantive temporary visas for the purposes of subitem (4).

- (6) Subclasses:
 - 500 (Student)
 - 590 (Student Guardian)

- (7) In this item:

course of study has the same meaning as in clause 500.111.

24 Subparagraph 1229(4)(a)(ii) of Schedule 1

Repeal the subparagraph, substitute:

- (ii) the applicant must:
 - (A) hold a Bridging A (Class WA) visa or Bridging B (Class WB) visa that was granted on the basis of a valid application for a visa; and
 - (B) have held an eligible student visa at any time during the period of 6 months ending immediately before the day on which the application for the Skilled (Provisional) (Class VC) visa is made;

25 Sub-subparagraph 1229(4)(a)(iii)(A) of Schedule 1

Omit “other than a visa mentioned in sub-subparagraphs (ii)(A) to (F)”.

26 At the end of item 1229 of Schedule 1

Add:

- (11) In this item:

eligible student visa means a student visa, other than:

- (a) a visa granted to a Foreign Affairs student or Defence student; or
- (b) a visa granted on the basis of the applicant being a member of the family unit of the holder of a student visa.

27 Paragraph 010.611(3A)(a) of Schedule 2

Repeal the paragraph.

28 Clause 020.222 of Schedule 2

Repeal the clause.

29 Paragraph 020.611(3)(a) of Schedule 2

Repeal the paragraph.

30 Clause 402.111 of Schedule 2 (definition of *principal course*)

Repeal the definition, substitute:

principal course: see clause 402.112.

31 At the end of Part 402.1 of Schedule 2

Add:

402.112

- (1) If an applicant has undertaken a course of study that is a registered course, the course is the *principal course*.
- (2) For subclause (1), if:
 - (a) an applicant has undertaken 2 or more courses of study that are registered courses; and
 - (b) either:
 - (i) one of the courses of study (*course A*) is a prerequisite to another of the courses (*course B*); or
 - (ii) one of the courses of study (*course B*) may be taken only after the completion of another of the courses (*course A*);course B, not course A, is the *principal course*.

32 Parts 570 to 580 of Schedule 2

Repeal the Parts, substitute:

Subclass 500—Student

500.1—Interpretation

500.111

In this Part:

course of study means the following:

- (a) in relation to a secondary exchange student—a full-time course of study under a secondary school student exchange program administered by a State or Territory education authority;
- (b) in relation to a Foreign Affairs student—either:
 - (i) a full-time course of study or training under a scholarship scheme approved by the Foreign Minister; or
 - (ii) a full-time course of study or training under a training program approved by the Foreign Minister;
- (c) in relation to a Defence student—either:
 - (i) a full-time course of study or training under a scholarship scheme approved by the Defence Minister; or
 - (ii) a full-time course of study or training under a training program approved by the Defence Minister;
- (d) in any other case—a full-time registered course.

higher education course means a course of study leading to the award of any of the following:

- (a) a diploma (higher education);
- (b) an advanced diploma (higher education);
- (c) an associate degree;
- (d) a bachelor degree;
- (e) a graduate certificate (higher education);
- (f) a graduate diploma (higher education);

- (g) a bachelor honours degree;
- (h) a masters degree (course work);
- (i) a masters degree (extended).

postgraduate research course means a course of study leading to the award of:

- (a) a masters degree (research); or
- (b) a doctoral degree.

school student means a student who is enrolled in, or intends to enrol in, a course of study at a primary or secondary school.

Note: For *Defence student*, *Foreign Affairs student*, *registered course*, *school-age dependant* and *secondary exchange student*, see regulation 1.03.

500.2—Primary criteria

Note: The primary criteria must be satisfied by at least one member of a family unit. The other members of the family unit who are applicants for a visa of this subclass need satisfy only the secondary criteria.

All criteria must be satisfied at the time a decision is made on the application.

500.211

One of the following applies:

- (a) the applicant is enrolled in a course of study;
- (b) if the application is made in Australia—the applicant is seeking to remain in Australia because the relevant educational institution requires the applicant to do so during the marking of the applicant’s postgraduate thesis;
- (c) if the applicant is a Foreign Affairs student—the applicant has the support of the Foreign Minister for the grant of the visa;
- (d) if the applicant is a Defence student—the applicant has the support of the Defence Minister for the grant of the visa.

500.212

The applicant is a genuine applicant for entry and stay as a student because:

- (a) the applicant intends genuinely to stay in Australia temporarily, having regard to:
 - (i) the applicant’s circumstances; and
 - (ii) the applicant’s immigration history; and
 - (iii) if the applicant is a minor—the intentions of a parent, legal guardian or spouse of the applicant; and
 - (iv) any other relevant matter; and
- (b) the applicant intends to comply with any conditions subject to which the visa is granted, having regard to:
 - (i) the applicant’s record of compliance with any condition of a visa previously held by the applicant (if any); and
 - (ii) the applicant’s stated intention to comply with any conditions to which the visa may be subject; and
- (c) of any other relevant matter.

500.213

- (1) If required to do so by the Minister, in writing or by use of a computer program available online, at any time, the applicant gives to the Minister evidence that the applicant has a level of English language proficiency that meets the requirements specified in an instrument under paragraph (3)(a).

Note: For arrangements for the use of a computer program, see section 495A of the Act.

- (2) Subclause (1) does not apply to an applicant within a class of applicants specified in an instrument under paragraph (3)(b).
- (3) The Minister may, by legislative instrument, specify:
 - (a) requirements for the purposes of subclause (1); or
 - (b) a class of applicants to which subclause (1) does not apply.

500.214

- (1) The applicant will have genuine access to funds of a kind mentioned in subclause (2) and, if subclause (3) applies, subclause (3).
- (2) While the applicant holds the visa, sufficient funds will be available to meet:
 - (a) the costs and expenses of the applicant during the applicant's intended stay in Australia; and
 - (b) the costs and expenses of each member of the applicant's family unit (if any) who will be in Australia.
- (3) If required to do so by the Minister, in writing or by use of a computer program available online, at any time, the applicant gives to the Minister evidence of financial capacity that satisfies the requirements specified in an instrument under subclause (4).

Note: For arrangements for the use of a computer program, see section 495A of the Act.

- (4) The Minister may, by legislative instrument, specify requirements for the purposes of subclause (3).

500.215

The applicant gives to the Minister evidence of adequate arrangements in Australia for health insurance during the period of the applicant's intended stay in Australia.

500.216

If the applicant is a school student (other than a school student participating in a secondary school student exchange program), the applicant is:

- (a) at least 6 years old at the time of application; and
- (b) if proposing to undertake year 9 studies—less than 17 years old when commencing year 9; and
- (c) if proposing to undertake year 10 studies—less than 18 years old when commencing year 10; and
- (d) if proposing to undertake year 11 studies—less than 19 years old when commencing year 11; and

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- (e) if proposing to undertake year 12 studies—less than 20 years old when commencing year 12.

500.217

- (1) The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4010, 4013, 4014, 4020 and 4021.
- (2) If the applicant has not turned 18, public interest criteria 4012A, 4017 and 4018 are satisfied in relation to the applicant.
- (3) If the applicant had turned 18 at the time of application, the applicant satisfies public interest criterion 4019.
- (4) The applicant (other than a Foreign Affairs student or a Defence Student) satisfies public interest criterion 4005.
- (5) The applicant, being a Foreign Affairs student or a Defence Student, satisfies public interest criterion 4007.

500.218

The applicant satisfies special return criteria 5001, 5002 and 5010.

500.3—Secondary criteria

Note: Requirements to be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

500.311

The applicant is a member of the family unit of a person (the *primary person*) who holds a student visa, having satisfied the primary criteria for that visa, and either:

- (a) the applicant became a member of the family unit of the primary person before the grant of the student visa to the primary person, and was included in:
 - (i) the primary person's application under subregulation 2.07AF(3); or
 - (ii) information provided in relation to the primary person's application under subregulation 2.07AF(4); or
- (b) the applicant became a member of the family unit of the primary person:
 - (i) after the grant of the student visa to the primary person; and
 - (ii) before the application was made.

500.312

The applicant is a genuine applicant for entry and stay as a member of the family unit of a person who holds a student visa, having satisfied the primary criteria for that visa, because:

- (a) the applicant intends genuinely to stay in Australia temporarily, having regard to:
 - (i) the applicant's circumstances; and
 - (ii) the applicant's immigration history; and

- (iii) if the applicant is a minor—the intentions of a parent, legal guardian or spouse of the applicant; and
- (iv) any other relevant matter; and
- (b) the applicant intends to comply with any conditions subject to which the visa is granted, having regard to:
 - (i) the applicant's record of compliance with any condition of a visa previously held by the applicant (if any); and
 - (ii) the applicant's stated intention to comply with any conditions to which the visa may be subject; and
- (c) of any other relevant matter.

500.313

- (1) The applicant will have genuine access to funds of a kind mentioned in subclause (2) and, if subclause (3) applies, subclause (3).
- (2) While the applicant holds the visa, sufficient funds will be available to meet:
 - (a) the costs and expenses of the applicant during the applicant's intended stay in Australia; and
 - (b) the costs and expenses of each member of the applicant's family unit (if any) who will be in Australia.
- (3) If required to do so by the Minister, in writing or by use of a computer program available online, at any time, the applicant gives to the Minister evidence of financial capacity that satisfies the requirements specified in an instrument under subclause (4).

Note: For arrangements for the use of a computer program, see section 495A of the Act.
- (4) The Minister may, by legislative instrument, specify requirements for the purposes of subclause (3).

500.314

The applicant gives to the Minister evidence of adequate arrangements in Australia for health insurance during the period of the applicant's intended stay in Australia.

500.315

If:

- (a) the applicant is a school-age dependant of the primary person mentioned in clause 500.311; and
- (b) the period of stay proposed in the application is more than 3 months;

the applicant gives to the Minister evidence that adequate arrangements have been made for the education of the applicant in Australia.

500.316

- (1) If the applicant is a member of the family unit of a Foreign Affairs student, the applicant has the support of the Foreign Minister for the grant of the visa.
- (2) If the applicant is a member of the family unit of a Defence student, the applicant has the support of the Defence Minister for the grant of the visa.

500.317

- (1) The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4010, 4013, 4014, 4020 and 4021.
- (2) If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.
- (3) If the applicant had turned 18 at the time of application, the applicant satisfies public interest criterion 4019.
- (4) The applicant (other than a member of the family unit of a Foreign Affairs student or a Defence Student) satisfies public interest criterion 4005.
- (5) The applicant, being a member of the family unit of a Foreign Affairs student or Defence Student, satisfies public interest criterion 4007.

500.318

The applicant satisfies special return criteria 5001, 5002 and 5010.

500.4—Circumstances applicable to grant**500.411**

The applicant may be in or outside Australia when the visa is granted, but not in immigration clearance.

500.5—When visa is in effect**500.511**

Temporary visa permitting the holder to travel to, enter and remain in Australia until a date specified by the Minister.

500.6—Conditions**500.611**

- (1) If the applicant satisfies the primary criteria, the following conditions must be imposed:
 - (a) in all cases, conditions 8105, 8202, 8501, 8516, 8517, 8532 and 8533;
 - (b) if the applicant is a citizen of Iran and intends to undertake a higher education course or a postgraduate research course, condition 8203;
 - (c) if the applicant is a citizen of Iran and intends to undertake a course of study other than a higher education course or a postgraduate research course, condition 8204;
 - (d) if the applicant is a Foreign Affairs student or Defence student, condition 8535.
- (2) If the applicant satisfies the primary criteria, the following conditions may be imposed:
 - (a) if the applicant is provided with financial assistance by the Commonwealth or the government of a foreign country, condition 8535;

- (b) either or both of conditions 8303 and 8534.

500.612

- (1) If the applicant satisfies the secondary criteria, the following conditions must be imposed:
 - (a) in all cases, conditions 8104, 8501 and 8516;
 - (b) if the applicant has not turned 18, condition 8518;
 - (c) if the applicant has turned 18, condition 8201;
 - (d) if the applicant is a citizen of Iran, condition 8204.
- (2) If the applicant satisfies the secondary criteria, conditions 8303 and 8534 may be imposed.

Subclass 590 (Student Guardian)

590.1—Interpretation

590.111

In this Part:

nominating student, for an applicant, means a person who:

- (a) nominates the applicant on form 157N; and
- (b) at the time of decision for the applicant, holds a student visa that was granted on the basis that the person met the primary criteria for the grant of the student visa.

590.2—Primary criteria

Note: An applicant must satisfy all primary criteria. All criteria must be satisfied at the time a decision is made on the application.

590.211

- (1) The applicant meets the requirements of subclause (2), (3) or (4).
- (2) The applicant meets the requirements of this subclause if:
 - (a) the nominating student has not turned 18; and
 - (b) the applicant is able to:
 - (i) provide appropriate accommodation and support for the nominating student; and
 - (ii) provide for the general welfare of the nominating student; and
 - (c) the applicant is either:
 - (i) a parent of the nominating student or a person who has custody of the nominating student; or
 - (ii) a person who is a relative of the nominating student and who has turned 21; and
 - (d) if subparagraph (c)(ii) applies—the nomination of the applicant is supported in writing by:
 - (i) a parent of the nominating student; or
 - (ii) a person who has custody of the nominating student.

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- (3) The applicant meets the requirements of this subclause if:
- (a) the nominating student has turned 18; and
 - (b) there are exceptional reasons why the nominating student needs the applicant to reside with the nominating student in Australia; and
 - (c) the applicant is able to:
 - (i) provide appropriate accommodation and support for the nominating student; and
 - (ii) provide for the general welfare of the nominating student; and
 - (d) the applicant is a person who:
 - (i) is a relative of the nominating student; and
 - (ii) has turned 21.
- (4) An applicant meets the requirements of this subclause if:
- (a) the grant of the visa to the applicant will significantly benefit the relationship between the government of Australia and the government of a foreign country; and
 - (b) the applicant has turned 21; and
 - (c) if the nominating student has not turned 18—the nomination of the applicant is supported in writing by:
 - (i) a parent of the nominating student; or
 - (ii) a person who has custody of the nominating student.

590.212

- (1) The applicant has a genuine intention to reside in Australia with the nominating student.
- (2) The nominating student has a genuine intention to reside in Australia with the applicant.
- (3) Unless the applicant meets the requirements of subclause 590.211(4), the nominating student does not intend to reside in Australia with:
- (a) a holder of a Subclass 580 or 590 visa other than the applicant; or
 - (b) a parent of the nominating student, or a person who has custody of the nominating student, other than the applicant.

Note: If the applicant meets the requirements of subclause 590.211(4), the nominating student may intend to reside with one or more holders of a Subclass 580 or 590 visa in addition to the applicant.

590.213

If any member of the family unit of the applicant has not turned 6:

- (a) the applicant has established compelling and compassionate reasons for the grant of the visa; or
- (b) the applicant satisfies the requirements of subclause 590.211(4).

590.214

The applicant has made appropriate arrangements, for the period of the applicant's proposed stay in Australia, for the accommodation, support and general welfare of each member of the applicant's family unit:

- (a) who has not turned 18; and

- (b) who does not hold a student visa.

590.215

The applicant is a genuine applicant for entry and stay as a student guardian because:

- (a) the applicant intends genuinely to stay in Australia temporarily, having regard to:
 - (i) the applicant's circumstances; and
 - (ii) the applicant's immigration history; and
 - (iii) any other relevant matter; and
- (b) the applicant intends to comply with any conditions to which the visa may be subject, having regard to:
 - (i) the applicant's record of compliance with any condition of a visa previously held by the applicant (if any); and
 - (ii) the applicant's stated intention to comply with any conditions to which the visa may be subject; and
- (c) of any other relevant matter.

590.216

- (1) The applicant will have genuine access to:
 - (a) funds of a kind mentioned in subclause (2); and
 - (b) funds that evidence financial capacity, as mentioned in subclause (3).
- (2) While the applicant holds the visa, sufficient funds will be available to meet:
 - (a) the costs and expenses of the applicant during the applicant's intended stay in Australia; and
 - (b) the costs and expenses of each member of the applicant's family unit (if any) who will be in Australia; and
 - (c) unless the applicant meets the requirements of subclause 590.211(4), the costs and expenses of each nominating student.
- (3) The applicant gives to the Minister evidence of financial capacity that satisfies the requirements specified in an instrument under subclause (4).
- (4) The Minister may, by legislative instrument, specify requirements for the purposes of subclause (3).

590.217

The applicant gives to the Minister evidence of adequate arrangements in Australia for health insurance during the period of the applicant's intended stay in Australia.

590.218

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4010, 4013, 4014, 4019, 4020 and 4021.

590.219

The applicant satisfies special return criteria 5001, 5002 and 5010.

590.3—Secondary criteria

Note: These criteria must be satisfied by applicants who are members of the family unit of an applicant who satisfies the primary criteria. All criteria must be satisfied at the time a decision is made on the application.

590.311

The applicant is a member of the family unit of a person who satisfies the primary criteria in Division 590.2.

590.312

The applicant must not have turned 6.

590.313

The applicant gives to the Minister evidence of adequate arrangements in Australia for health insurance during the period of the applicant's intended stay in Australia.

590.314

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4010, 4013, 4014, 4017, 4018, 4020 and 4021.

590.315

The applicant satisfies special return criteria 5001 and 5002.

590.4—Circumstances applicable to grant**590.411**

The applicant may be in or outside Australia when the visa is granted, but not in immigration clearance.

590.5—When visa is in effect**590.511**

Temporary visa permitting the holder to travel to, enter and remain in Australia until a date specified by the Minister.

590.6—Conditions**590.611**

- (1) In the case of a visa granted to an applicant who meets the requirements of subclause 590.211(2) or (3)—conditions 8101, 8201, 8501, 8516, 8534, 8537 and 8538 must be imposed.
- (2) In the case of a visa granted to an applicant who meets the requirements of subclause 590.211(4)—conditions 8106, 8201, 8501, 8516, 8534, 8537 and 8538 must be imposed.

590.612

In the case of a visa granted to an applicant who satisfies the secondary criteria for the grant of the visa—conditions 8101, 8501, 8502 and 8516 must be imposed.

33 Clause 4012A of Schedule 4

Omit “and who is not a Foreign Affairs student or a Defence student”.

34 Subparagraphs 4012A(b)(i), (ii) and (iii) of Schedule 4

Repeal the subparagraphs, substitute:

- (i) confirmation of enrolment; or
- (ii) AASES form;

35 At the end of clause 4012A of Schedule 4

Add:

- ; or (c) if the applicant is a Foreign Affairs student or a Defence student, appropriate arrangements for the applicant’s accommodation, support and general welfare have been approved by:
 - (i) in the case of a Foreign Affairs student—the Foreign Minister; and
 - (ii) in the case of a Defence student—the Defence Minister.

36 Part 2 of Schedule 4 (table items 4055A, 4056, 4057 and 4058)

Repeal the items, substitute:

4056	500 (Student)	8104, 8105, 8202, 8501, 8517 or 8518
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37 Paragraph 5010(1)(b) of Schedule 5

Repeal the paragraph, substitute:

- (b) the applicant is the holder of a student visa granted to the applicant who is provided financial support by the government of a foreign country;

38 Subparagraph 5010(2)(b)(ii) of Schedule 5

Repeal the subparagraph, substitute:

- (ii) the last substantive visa held by the applicant was a student visa granted to the applicant who was provided financial support by the government of a foreign country;

39 Schedules 5A and 5B

Repeal the Schedules.

40 Clause 8104 of Schedule 8

Repeal the clause, substitute:

- 8104 (1) The holder must not engage in work for more than 40 hours a fortnight while the holder is in Australia.

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- (2) If the holder is a member of the family unit of a person who satisfies the primary criteria for the grant of a student visa, the holder must not engage in work in Australia until the person who satisfies the primary criteria has commenced a course of study.
 - (3) If the course of study mentioned in subclause (2) is for the award of a masters or doctoral degree, then despite subclause (1), the holder may engage in work for more than 40 hours a fortnight while the holder is in Australia.
 - (4) In this clause:

fortnight means the period of 14 days commencing on a Monday.

41 Paragraph 8105(2)(b) of Schedule 8

Omit “Subclass 574 (Postgraduate Research Sector) visa”, substitute “student visa granted in relation to a masters degree by research or doctoral degree”.

42 Subclause 8201(2) of Schedule 8 (table item 1)

Omit “580”, substitute “590”.

43 Clause 8202 of Schedule 8

Repeal the clause, substitute:

- 8202 (1) The holder must be enrolled in a full-time course of study or training if the holder is:
- (a) a Defence student; or
 - (b) a Foreign Affairs student; or
 - (c) a secondary exchange student.
- (2) A holder not covered by subclause (1):
- (a) must be enrolled in a full-time registered course; and
 - (b) subject to subclause (3), must maintain enrolment in a registered course that, once completed, will provide a qualification from the Australian Qualifications Framework that is at the same level as, or at a higher level than, the registered course in relation to which the visa was granted; and
 - (c) must ensure that neither of the following subparagraphs applies in respect of a registered course undertaken by the holder:
 - (i) the education provider has certified the holder, for a registered course undertaken by the holder, as not achieving satisfactory course progress for section 19 of the *Education Services for Overseas Students Act 2000* and the relevant standard of the national code made by the Education Minister under section 33 of that Act;
 - (ii) the education provider has certified the holder, for a registered course undertaken by the holder, as not achieving satisfactory course attendance for section 19 of the *Education Services for Overseas Students Act 2000* and the relevant standard of the national code made by the Education Minister under section 33 of that Act.
- (3) A holder is taken to satisfy the requirement set out in paragraph (2)(b) if the holder:
- (a) is enrolled in a course at the Australian Qualifications Framework level 10; and

- (b) changes their enrolment to a course at the Australian Qualifications Framework level 9.

44 Clause 8517 of Schedule 8

Omit “Subclass 560, 570, 571, 572, 573, 574, 575 or 576 visa”, substitute “student visa”.

45 Clause 8532 of Schedule 8

Omit “and is not a Foreign Affairs student or a Defence student”.

46 At the end of clause 8532 of Schedule 8

Add:

- ; or (c) in the case that the holder is a Defence student—both:
 - (i) the arrangements for the holder’s accommodation, support and general welfare must be approved by the Defence Minister; and
 - (ii) the holder must not enter Australia before the day those arrangements are to commence; or
- (d) in the case that the holder is a Foreign Affairs student—both:
 - (i) the arrangements for the holder’s accommodation, support and general welfare must be approved by the Foreign Minister; and
 - (ii) the holder must not enter Australia before the day those arrangements are to commence.

47 Sub-subparagraphs 8533(b)(ii)(A) and (B) of Schedule 8

Omit “certificate” (wherever occurring), substitute “confirmation”.

48 Paragraphs 8534(b) to (d) of Schedule 8

Repeal the paragraphs, substitute:

- (b) a Subclass 485 (Temporary Graduate) visa; or
- (c) a Subclass 590 (Student Guardian) visa;

49 Paragraphs 8535(b) and (c) of Schedule 8

Repeal the paragraphs, substitute:

- (b) a Student (Temporary) (Class TU) visa that is granted to the holder on the basis of support from the Commonwealth government or a foreign government;

50 Subclauses 8537(1) and (2) and 8538(1) of Schedule 8

Omit “580”, substitute “590”.

Schedule 5—Application and transitional provisions

Migration Regulations 1994

1 Schedule 13

Insert in its appropriate numerical position:

Part 54—Amendments made by the Migration Legislation Amendment (2016 Measures No. 1) Regulation 2016

5401 Operation of Schedule 1

- (1) The amendment of these Regulations made by item 1 of Schedule 1 to the *Migration Legislation Amendment (2016 Measures No. 1) Regulation 2016* applies on and after 19 April 2016.
- (2) The amendments of these Regulations made by items 2 and 3 of Schedule 1 to the *Migration Legislation Amendment (2016 Measures No. 1) Regulation 2016* apply in relation to:
 - (a) an application for approval of a sponsor:
 - (i) made, but not finally determined, before 19 April 2016; or
 - (ii) made on or after 19 April 2016; and
 - (b) an application for the variation of the terms of an approval of a sponsor:
 - (i) made, but not finally determined, before 19 April 2016; or
 - (ii) made on or after 19 April 2016.
- (3) The amendment of these Regulations made by item 4 of Schedule 1 to the *Migration Legislation Amendment (2016 Measures No. 1) Regulation 2016* applies in relation to discriminatory recruitment practices engaged in on or after 19 April 2016 by a standard business sponsor or a former standard business sponsor.

Note: Schedule 1 to the *Migration Legislation Amendment (2016 Measures No. 1) Regulation 2016* commences on 19 April 2016.

5402 Operation of Schedule 2

- (1) The amendment of these Regulations made by item 1 of Schedule 2 to the *Migration Legislation Amendment (2016 Measures No. 1) Regulation 2016* applies in relation to an application for a visa made on or after 19 April 2016.
- (2) The amendments of these Regulations made by items 2 to 4 of Schedule 2 to the *Migration Legislation Amendment (2016 Measures No. 1) Regulation 2016* apply in relation to the following:
 - (a) an application for a visa made, but not finally determined, before 19 April 2016;
 - (b) an application for a visa made on or after 19 April 2016.

Note: Schedule 2 to the *Migration Legislation Amendment (2016 Measures No. 1) Regulation 2016* commences on 19 April 2016.

5403 Operation of Schedule 3

The amendment of these Regulations made by item 1 of Schedule 3 to the *Migration Legislation Amendment (2016 Measures No. 1) Regulation 2016* applies in relation to the following applications for a visa:

- (a) an application made, but not finally determined, before 19 April 2016;
- (b) an application made on or after 19 April 2016.

Note: Schedule 3 to the *Migration Legislation Amendment (2016 Measures No. 1) Regulation 2016* commences on 19 April 2016.

2 At the end of Part 54 of Schedule 13

Add:

5404 Operation of Schedule 4

- (1) The amendments of these Regulations made by Schedule 4 to the *Migration Legislation Amendment (2016 Measures No. 1) Regulation 2016* (other than items 44, 48 and 49 of that Schedule) apply in relation to an application for a visa made on or after 1 July 2016.
- (2) The amendments of these Regulations made by items 44, 48 and 49 of Schedule 4 to the *Migration Legislation Amendment (2016 Measures No. 1) Regulation 2016* apply in relation to a visa granted before, on or after 1 July 2016.

Note: Schedule 4 to the *Migration Legislation Amendment (2016 Measures No. 1) Regulation 2016* commences on 1 July 2016.