

EXPLANATORY STATEMENT

Migration Regulations 1994

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

(paragraph 1222(5)(a) of Schedule 1 to the Regulations.)

1. The instrument, LIN 20/158, is made under paragraph 1222(5) of Schedule 1 to the *Migration Regulations 1994* (the Regulations).
2. The instrument repeals LIN 20/099 (*F2020L00158*) made under subitem 1222(5) of Schedule 1 to the Regulations in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (the AIA). Subsection 33(3) of the AIA states that where an Act confers a 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.
3. The instrument operates for the Minister to specify classes of persons to whom subparagraph 1222(2)(a)(i) of Schedule 1 to the Regulations applies and the first instalment of the visa application charge (VAC) amount is nil for a Student (Temporary) (Class TU) visa. The instrument operates to specify as classes of persons certain applicants for a Subclass 500 (Student) visa (Subclass 500 visa).
4. The purpose of the instrument is to update LIN 20/099 to specify an additional class of persons applying for a Subclass 500 visa to whom the nil VAC amount applies. As a result of the coronavirus known as COVID-19 and the consequential pandemic, some Subclass 500 visa holders will be unable to complete their studies within the validity period of their Subclass 500 visa. The instrument specifies that a nil VAC amount is applicable to a Subclass 500 visa holder who held the visa on or after 1 February 2020 and are seeking to reapply for further Subclass 500 visa to complete their study, if they were unable to complete their course within their original visa validity due to the COVID-19 pandemic.

5. Consultation was undertaken before the instrument was made with international education stakeholders through the Global Reputation Taskforce and Education Visa Consultative Committee (EVCC). Stakeholders consulted include the Department of Education, Skills and Employment, Austrade, State and Territory government agencies and industry peak bodies.
6. The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is required (OBPR Reference 42612).
7. The Senior Executive Service, Band Two officer in the Immigration and Community Protection Policy Division who made the instrument was delegated the powers required to make the instrument in Instrument Making Powers (Minister) Instrument 2019/228 (LIN 19/228), signed on 12 September 2019.
8. Under section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*, the instrument is exempt from disallowance and therefore a Statement of Compatibility with Human Rights is not required.
9. The instrument commences on the day after it is registered on the Federal Register of Legislation.

Regulation Impact Statement

Name of department/agency: *Department of Home Affairs*
OBPR Reference Number: *42612*
Name of proposal: *Visa application charge (VAC) waiver for Student (subclass 500) visa holders affected by COVID-19*

Summary of the proposed policy and any options considered:

The proposal aims to support the international education sector and ensure that international students are not adversely impacted by COVID-19. Providing a VAC waiver for students who are unable to complete their course within their existing visa validity due to COVID-19 will support recovery of the international education sector and maintain Australia's reputation as a safe and welcoming education destination.

What are the regulatory impacts associated with this proposal? Explain.

To be eligible for a VAC waiver, international students will be required to provide evidence that their study plans were impacted by COVID-19 and therefore they were unable to complete their studies within their original visa validity.

What are the regulatory costs/savings associated with this proposal? Explain and quantify.

There are no regulatory costs or savings associated with this proposal.

Students who require a further Student (subclass) visa to complete their course due to COVID-19 will not be required to pay a VAC but will instead be required to provide evidence that their studies were adversely impacted by COVID-19.

Regulatory burden estimate (RBE) table

Average annual regulatory costs (from business as usual)				
Change in costs (\$ million)	Business	Community organisations	Individuals	Total change in cost
Total, by sector	\$0	\$0	\$0	\$0