

EXPLANATORY STATEMENT

Issued by authority of the Minister for Home Affairs

Migration Regulation 1994

Migration Legislation Amendment (Graduate Visas) Instrument (LIN 24/044) 2024

1. The instrument, departmental reference LIN 24/044, is made under the following provisions of the *Migration Regulations 1994* (the Migration Regulations):
 - subregulation 2.07(5);
 - paragraph 1229(2A)(b) of Schedule 1; and
 - clauses 476.212, 476.213 and 485.212 of Schedule 2.
2. The instrument amends *Migration (Arrangements for Certain Skilled and Temporary Graduate Visa Applications) Instrument (LIN 20/162) 2020* (LIN 20/162) and *Migration (English Language Requirements for Subclass 476 (Skilled – Recognised Graduate) and Subclass 485 (Temporary Graduate) Visas) Instrument (LIN 24/021) 2024* (LIN 24/021).
3. The instrument repeals *Migration (Specified Qualifications Applicable for Extension of Subclass 485 Visa) Instrument (LIN 23/048) 2023* (LIN 23/048) and *Migration (Institutions and Disciplines for Subclass 476) (LIN 24/015) Specification 2024* (LIN 24/015).
4. The instrument does this in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (the Acts Interpretation Act). That subsection 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.
5. The instrument commences on 1 July 2024. It is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

Background

6. The *Migration Amendment (Graduate Visas) Regulations 2024* (the amending Regulations), which commenced on 1 July 2024, make various changes to the Migration Regulations. For the purposes of LIN 24/044, the amending Regulations amend the Migration Regulations to:
 - close the Skilled (Provisional) (Class VF) visa's Subclass 476 (Skilled – Recognised Graduate) (the Subclass 476 Skilled-Recognised Graduate visa) to all applications from 1 July 2024;
 - close the Temporary Graduate visa in the Replacement stream to all new applications from 1 July 2024;
 - close the Temporary Graduate visa in the Post-Study Work stream two year nil visa application charge (VAC) visa extension (the 'nil' VAC visa extension) (to which the former subparagraph 1229(2)(a)(ia) of Schedule 1 to the Migration Regulations applied), to all applications from 1 July 2024; and

- rename the Temporary Graduate visa in the Graduate Work stream and the Post-Study Work stream to the Post-Vocational Education Work stream and the Post-Higher Education Work stream, respectively.

7. LIN 20/162, LIN 23/048, LIN 24/015 and LIN 24/021 are instruments made under the Migration Regulations before the commencement of the amending Regulations.

Migration (Arrangements for Certain Skilled and Temporary Graduate Visa Applications) Instrument (LIN 20/162) 2020 (LIN 20/162)

8. LIN 20/162 provides for the form, place and manner required for making applications for a Subclass 476 Skilled-Recognised Graduate visa, a Temporary Graduate visa in either the Graduate Work stream, the Post-Study Work stream or the Replacement stream and other skilled visas.

Migration (English Language Requirements for Subclass 476 (Skilled – Recognised Graduate) and Subclass 485 (Temporary Graduate) Visas) Instrument (LIN 24/021) 2024 (LIN 24/021)

9. LIN 24/021 was made under clauses 476.213 and 485.212 of Schedule 2 to the Migration Regulations.

10. Clauses 476.213 and 485.212 of Schedule 2 to the Migration Regulations require that visa applicants for the Subclass 476 Skilled-Recognised Graduate visa or the former Subclass 485 (Temporary Graduate) visa (respectively) to have undertaken a specified language test; to have achieved within the specified period, the specified score, in accordance with the requirements specified by the Minister in that instrument; and to hold a passport of a type specified by the Minister in a legislative instrument.

Migration (Specified Qualifications Applicable for Extension of Subclass 485 Visa) Instrument (LIN 23/048) 2023 (LIN 23/048)

11. LIN 23/048 was made under the former paragraph 1229(2A)(b) of Schedule 1 to the Migration Regulations.

12. Previously, paragraph 1229(2A)(b) of Schedule 1 to the Migration Regulations provided for the Minister to specify the qualifications required to be held by an existing Subclass 485 (Temporary Graduate) visa holder in either the Post-Study Work stream or the Replacement stream (see the former paragraph 1229(2A)(a) of Schedule 1), who was applying for a subsequent visa in the Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream.

13. LIN 23/048 specified the qualification(s) that entitle an eligible applicant to satisfy the requirement in the former paragraph 1229(2A)(b) to Schedule 1 to the Migration Regulations to apply for an additional Temporary Graduate visa in the Post-Study Work stream, without paying a VAC.

Migration (Institutions and Disciplines for Subclass 476) (LIN 24/015) Specification 2024 (LIN 24/015)

14. LIN 24/015 was made under clause 476.212 of Schedule 2 to the Migration Regulations. That provision provides that applicants for a Subclass 476 Skilled-Recognised Graduate visa must have completed a course at an institution specified by the Minister in a legislative instrument in the period of 24 months ending immediately before the day on which the application was made, for the award of a degree or a higher qualification specified in an instrument in writing.

15. LIN 24/015 specifies the institutions for the purposes of subclause 476.212(b) of Schedule 2 to the Migration Regulations and disciplines for the purposes of clause 476.212 of Schedule 2. The instrument operates to enable recent engineering graduates of eligible institutions to live, work or study in Australia for up to 18 months, subject to satisfying the relevant primary visa criteria for grant of a Subclass 476 Skilled-Recognised Graduate visa.

Purpose

Migration Legislation Amendment (Graduate Visas) Instrument (LIN 24/044) 2024 (LIN 24/044)

16. The Australian Government released the Migration Strategy on 11 December 2023, building on the findings of the ‘Review of the Migration System’ report (the Parkinson Review) and the ‘Rapid Review into the Exploitation of Australia’s Visa System’ (Nixon Review). As part of the Migration Strategy, the Government has committed to strengthen and simplify the Temporary Graduate visas program.
17. The *Migration Amendment (Graduate Visas) Regulations 2024* (the amending Regulations) amend the Migration Regulations to give effect to the Government’s commitments to implement those recommendations of the Migration Strategy.
18. This instrument is made in conjunction with those amending Regulations.
19. The purpose of this instrument is to implement consequential amendments required to the following instruments to give effect to the amendments to the Migration Regulations (as detailed above at paragraph 6):
 - This instrument amends LIN 20/162 by repealing section 7 of that instrument. This amendment ensures references to the closed Subclass 476 Skilled-Recognised Graduate visa are removed while maintaining the form, place and manner requirements for the visa application in either of the Temporary Graduate visa streams (the Post-Vocational Education Work stream and the Post-Higher Education Work Stream) or other Skilled visas.
 - This instrument amends LIN 24/021 by removing references to the closed Subclass 476 Skilled – Recognised Graduate visa. This amendment provides that the English language test requirements continue to be specified for the Temporary Graduate visa’s streams applications while reflecting the closure of the Subclass 476 Skilled-Recognised Graduate visa.
 - This instrument repeals LIN 23/048 and LIN 24/015. LIN 23/048 deals with the additional visa pathway for the Subclass 485 (Temporary Graduate) visa in the Post-Study Work Stream and has no legal effect from 1 July 2024 due to the repeal of its enabling provision by the amending Regulations. LIN 24/015 deals with the Subclass 476 (Skilled-Recognised Graduate) visa and would have no practical effect from 1 July 2024, as applications for that visa have closed to new applicants.

Consultation

20. The Department consulted with relevant internal stakeholders and with external government agencies. Consultation was undertaken on post-study work arrangements with a wide variety of groups through the Migration Review. This review found that generous Temporary Graduate visa arrangements were one of the key drivers of visa applicants becoming ‘permanently temporary’ and longer periods of stay in Australia did not usually result in better labour market outcomes. Consultation was also undertaken

through the Council for International Education that includes relevant Commonwealth Ministers and expert members from Universities, Vocational Education and Training providers, peak bodies and State and Territory Governments. Members provided input on issues and possible policy solutions in relation to post study work rights.

21. The Department also consulted with external Commonwealth agencies, including the Department of Prime Minister and Cabinet, the Department of Finance, the Treasury, the Department of Foreign Affairs and Trade, the Department of Education, the Department of Employment and Workplace Relations and regulators, the Tertiary Education Qualification and Standards Agency and the Australian Skills Quality Authority.
22. The Department engaged key international education sector stakeholders, including non-government peak bodies, states and territories, business representatives and unions, and other Australian Government agencies through the Education Visa Consultative Committee to discuss the proposed changes to graduate work right arrangements. Discussions were held on 8 June 2023, 14 September 2023, 13 December 2023 and 8 May 2024. At these meetings the Department advised members of the proposed changes to the Temporary Graduate visa, including policy updates, implementation processes and timeframes.
23. This consultation was conducted in relation to the amending Regulations measures. The changes made by this instrument are consequential to those changes made by the amending Regulations to the Migration Regulations.
24. The Office of Impact Analysis (OIA) was consulted and considered that the instrument dealt with matters of a machinery nature and no regulatory impact statement was required. The OIA reference number is OIA23-05963.

Details of the instrument

25. Details of the instrument are set out in **Attachment A**.

Parliamentary scrutiny etc.

26. The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because it is an instrument made under Schedules 1 and 2 of the Migration Regulations as prescribed in section 10, item 20(b) of the *Legislation (Exemptions and Other Matters) Regulations 2015*. As the instrument is exempt from disallowance, a Statement of Compatibility with Human Rights is not required.
27. The instrument was made by the Minister of Home Affairs in accordance with the Migration Regulations.

Details of the Migration Amendment Legislation (Graduate Visas) Amendment Instrument (LIN 24/044) 2024

Section 1 Name

1. This section provides that the name of the instrument is the *Migration Legislation Amendment (Graduate Visas) Instrument (LIN 24/044) 2024* (LIN 24/044).

Section 2 Commencement

2. This section provides that the instrument commences at the same time as the *Migration Amendment (Graduate Visas) Regulations 2024* (the amending Regulations).

Section 3 Authority

3. This section provides that the instrument is made under the following provisions of the *Migration Regulations 1994* (the **Migration Regulations**):
 - subregulation 2.07(5);
 - paragraph 1229(2A)(b) of Schedule 1; and
 - clauses 476.212, 476.213 and 485.212 of Schedule 2.

Section 4 Schedules

4. This section provides that the instruments listed in a Schedule to the instrument are amended or repealed as set out in the applicable items in the Schedule concerned.

Schedule 1 Amendments of LIN 20/162

5. Item 1 of Schedule 1 to this instrument repeals section 7 of the *Migration (Arrangements for Certain Skilled and Temporary Graduate Visa Applications) Instrument (LIN 20/162) 2024* (LIN 20/162). Following the commencement of the amending Regulations, no new applications will be able to be made on or after 1 July 2024 for the Subclass 476 Skilled-Recognised Graduate visa. As a result, there is no need to specify place and manner of application requirements after that date.

Schedule 2 Amendments of LIN 24/021

6. Item 1 of Schedule 2 of this instrument omits ‘Subclass 476 (Skilled – Recognised Graduate) and’ from the title and section 1 of the *Migration (English Language Requirements for Subclass 476 (Skilled – Recognised Graduate) and Subclass 485 (Temporary Graduate) Visas) Instrument (LIN 24/021) 2024* (LIN 24/021).
7. That instrument will be known as the *Migration (English Language Requirements for Subclass 485 (Temporary Graduate) Visas) Instrument (LIN 24/021) 2024* from 1 July 2024.
8. Item 2 of Schedule 2 to this instrument amends section 3 of LIN 24/021 by replacing ‘clauses 476.213 and’ with ‘clause’. That instrument will be made under and for the purposes of the amended clause 485.212 of Schedule 2 to the Migrations Regulations only, from 1 July 2024.

9. Item 3 of Schedule 2 to this instrument amends section 5 of LIN 24/021 by replacing ‘subparagraphs 476.213(a)(i) and’ with ‘subparagraph’. The specified English language tests in section 5 of that instrument, will be specified for the purposes of subparagraph 485.212(1)(a)(i) of Schedule 2 to the Migrations Regulations only, from 1 July 2024.
10. Item 4 of Schedule 2 to this instrument amends section 6 of LIN 24/021 by replacing ‘subparagraphs 476.213(a)(ii) and’ with ‘subparagraph’. The specified test scores to be achieved in section 6 of that instrument, will be specified for the purposes of subparagraph 485.212(1)(a)(ii) of Schedule 2 to the Migrations Regulations only, from 1 July 2024.
11. Item 5 of Schedule 2 to this instrument amends section 7 of LIN 24/021 by replacing ‘subparagraphs 476.213(a)(ii) and’ with ‘subparagraph’. The specified period and requirements in section 7 of that instrument, will be specified for the purposes of subparagraph 485.212(1)(a)(ii) of Schedule 2 to the Migrations Regulations only, from 1 July 2024.
12. Item 6 of Schedule 2 to this instrument amends section 8 of LIN 24/021 by replacing ‘paragraphs 476.213(b) and’ with ‘paragraph’. The specified passports in relation to which English proficiency requirements not applying in section 8 of that instrument, will be specified for the purposes of subparagraph 485.212(1)(b) of Schedule 2 to the Migrations Regulations only, from 1 July 2024.
13. Item 7 of Schedule 2 to this instrument inserts a new provision after section 10 in LIN 24/021. The new provision will be section 11: ‘Application of amendments made by LIN 24/044’. This new provision applies the instrument to applications for a Skilled (Provisional) (Class VC) visa’s Subclass 485 (Temporary Graduate) visa’s (the Temporary Graduate visa) streams in either the Post-Vocational Education Work stream or the Post-Higher Education Work stream, where that application was made on or after 1 July 2024.
14. Schedule 2 to this instrument amends LIN 24/021 to give effect to the amending Regulation’s amendments to the Migration Regulations to close the Subclass 476 Skilled- Recognised Graduate visa to all applications, from 1 July 2024 see amended paragraph 1228(3)(aa) of Schedule 1 to the Migration Regulations).

Schedule 3 Repeals

15. Item 1 of Schedule 3 to this instrument repeals the *Migration (Specified Qualifications Applicable for Extension of Subclass 485 Visa) Instrument (LIN 23/048) 2023*. This is to give effect to the closure of the former Temporary Graduate visa in the Post-Study Work stream with a ‘nil’ VAC visa extension attached to all applications from 1 July 2024.
16. Item 2 of Schedule 3 to this instrument repeals the *Migration (Institutions and Disciplines for Subclass 476) (LIN 24/015) Specification 2024 (LIN 24/015)*. This is to give effect to the amending Regulation’s amendment to the Migration Regulations to close the Subclass 476 (Skilled- Recognised Graduate) visa to all applications from 1 July 2024.