EXPLANATORY STATEMENT

Issued by authority of the Minister for Home Affairs and Minister for Cyber Security

Migration Regulations 1994

Migration (Specification of Categories of Visas that Preclude a Person from Lodging a Student Visa Application in Australia) Amendment Instrument (LIN 24/051) 2024

The instrument, departmental reference LIN 24/051, is made under paragraph 1222(5)(c) of Schedule 1 to the *Migration Regulations 1994* (the Migration Regulations) for the purposes of subitem 1222(4) of that schedule.

The instrument amends *Migration Regulations 1994 - Specification of Categories of Visas that Preclude a Person from Lodging a Student Visa Application in Australia 2016/016 – IMMI 16/016* (F2016L00638) 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.

The instrument commences on 1 July 2024. It is a legislative instrument for the purposes of the *Legislation Act 2003* (the Legislation Act).

Purpose

The instrument specifies matters relating to the making of an application for a Student (Temporary) (Class TU) visa. This visa class encompasses both the Subclass 500 (Student) and Subclass 590 (Student Guardian) visa subclasses.

Paragraph 1222(5)(c) of Schedule 1 to the Migration Regulations provides that the Minister may, by legislative instrument, specify substantive temporary visas for the purposes of subitem 1222(4). That subitem provides that if an applicant for a Student (Temporary) (Class TU) visa is in Australia, the applicant must hold a substantive temporary visa, other than a substantive temporary visa specified by the Minister in an instrument in writing under paragraph 1222(5)(c).

*Migration Regulations 1994 - Specification of Categories of Visas that Preclude a Person from Lodging a Student Visa Application in Australia 2016/016 – IMMI 16/016* specifies substantive temporary visas that, if held by an applicant in Australia, would prevent them from making a valid application for a Subclass 500 or 590 visa.

The purpose of this instrument is to amend IMMI 16/016 to specify additional categories of substantive temporary visas that preclude a person in Australia from making Subclass 500 or 590 visa applications as part of the Government’s Migration Strategy published in December 2023.

The effect of this instrument is that all holders of a substantive temporary visa specified in LIN 24/051 are prevented from making a valid application in Australia for a Student (Temporary) (Class TU) visa – regardless of whether the non-citizen is the primary applicant or a member of the family unit of a primary applicant.

Consultation

No external consultation was undertaken in relation to this instrument. However, strengthening and providing a high-quality student visa program has been widely supported by education providers, with broader consultation undertaken and feedback considered as part of the Migration Strategy.

The Office of Impact Analysis (OIA) was consulted and considered that a detailed Impact Analysis is not required for this instrument. OIA reference number is OIA23-05963.

Details of the instrument

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

Parliamentary scrutiny etc.

The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because it is an instrument made under Schedule 1 to the Migration Regulations, which is exempt from disallowance under paragraph (b) of item 20 in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015.*

As the instrument is exempt from disallowance, a Statement of Compatibility with Human Rights is not required.

The instrument was made by the Minister for Home Affairs in accordance with paragraph 1222(5)(c) of Schedule 1 to the Migration Regulations.

Attachment A

Details of the *Migration (Specification of Categories of Visas that Preclude a Person from Lodging a Student Visa Application in Australia) Amendment Instrument (LIN 24/051) 2024*

Section 1 Name

This section provides that the name of the instrument is the *Migration (Specification of Categories of Visas that Preclude a Person from Lodging a Student Visa Application in Australia) Amendment Instrument (LIN 24/051) 2024*.

Section 2 Commencement

This section provides that the instrument commences on 1 July 2024.

Section 3 Authority

This section provides that the instrument is made under paragraph 1222(5)(c) of the *Migration Regulations 1994* (the Migration Regulations), for the purpose of subitem 1222(4) of the Migration Regulations.

Section 4 Schedules

This section indicates that Schedule 1 to LIN 24/051 provides a list of items amending IMMI 16/016.

Schedule 1 Amendments

Item 1 of Schedule 1 to LIN 24/051 substitutes the existing table to IMMI 16/016 listing the classes of substantive temporary visas that, if held by a non-citizen in Australia, prevent them from making a valid application for a Student (Temporary) (Class TU) visa.

Five additional substantive temporary visa subclasses have been added to IMMI 16/016, including:

* Subclass 485 (Temporary Graduate);
* Subclass 601 (Electronic Travel Authority);
* Subclass 602 (Medical Treatment);
* Subclass 651 (eVisitor); and
* Subclass 988 (Maritime Crew).

In addition, the Subclass 600 (Visitor) visa is now specified in its entirety for the purpose of subitem 1222(4) of Schedule 1 to the Migration Regulations. Previously, only the Sponsored Family and Approved Destination Status streams were specified. Now, all Subclass 600 visa holders are prevented from applying for a Student (Temporary) (Class TU) visa in Australia.