

EXPLANATORY STATEMENT

Issued by the Minister for Immigration and Multicultural Affairs

Migration Act 1958

Migration Amendment (Australia Tuvalu Falepili Union Treaty Visa) Regulations 2025

The *Migration Act 1958* (the Migration Act) is an Act relating to the entry into, and presence in, Australia of aliens, and the departure or deportation from Australia of aliens and certain other persons.

Subsection 504(1) of the Migration Act provides that the Governor-General may make regulations, not inconsistent with the Migration Act, prescribing matters required or permitted to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Migration Act.

In addition, regulations may be made pursuant to the provisions listed in Attachment A.

The Australia-Tuvalu Falepili Union treaty (the treaty) was signed on 9 November 2023 and entered into force on 28 August 2024. The treaty responds to Tuvalu's request for Australia to help safeguard the future of Tuvalu and aims to create a partnership for enhanced collaboration. Use of the Tuvalu term 'falepili' embodies the values underpinning the deeper partnership, including good neighbourliness, care and mutual respect. Australia and Tuvalu entered into the treaty freely and cognisant of the significance of their shared achievement.

Article 3 of the treaty provides for a 'special human mobility pathway' for eligible citizens of Tuvalu to live temporarily or indefinitely, work without restriction and study in Australia.

The purpose of the *Migration Amendment (Australia Tuvalu Falepili Union Treaty Visa) Regulations 2025* (the Regulations) is to amend the *Migration Regulations 1994* (the Migration Regulations) to implement the commitment in Article 3 of the treaty, by establishing the new Treaty stream in the Subclass 192 (Pacific Engagement) visa. The Regulations create two streams in the Subclass 192 (Pacific Engagement) visa – the Pacific Engagement stream and the Treaty stream.

All primary applicants for the visa are required to meet common criteria relating to public interest and the integrity of Australia's visa programs. The remaining previous criteria are retained without change as the Pacific Engagement stream. In addition, a second Treaty stream provides a permanent Subclass 192 (Pacific Engagement) visa for eligible citizens of Tuvalu, subject to conditions agreed to with the government of Tuvalu, including:

- a requirement that applicants must be selected by random ballot to apply for the visa;
- a requirement that a primary applicant must be at least 18 years old but no upper age limit applies; and
- a restriction on grant of the visa where the applicant has a communicable disease or condition, rather than standard health criteria.

Partners and dependent children of primary applicants are eligible for the grant of the visa as secondary applicants.

Subsection 46C(1) of the Migration Act empowers the Minister to arrange a visa pre-application process (“ballot”) involving the random selection of registered participants who are then permitted to lodge an application for a visa in accordance with subsection 46(4A) of that Act. The requirement to be selected in a ballot was a condition agreed to by the government of Tuvalu (as per the Explanatory Memorandum to the treaty) and is intended to assist in managing the program places (initially 280) allocated each program year. It also ensures fairness, with registered participants having an equal chance of selection. The rules regarding the conduct of the ballot for the Subclass 192 (Pacific Engagement) visa will be set out in a disallowable legislative instrument made by the Minister.

The Migration Act specifies no conditions that need to be satisfied before the power to make the Regulations may be exercised.

The matters dealt with in the Regulations are appropriate for implementation in regulations rather than by parliamentary enactment. It has been the consistent practice of the government of the day to provide for detailed visa criteria and conditions in the Migration Regulations rather than in the Migration Act itself. The Migration Act expressly provides for these matters to be prescribed in regulations. The current Migration Regulations have been in place since 1994, when they replaced regulations made in 1989 and 1993. Providing for these details to be in delegated legislation rather than primary legislation gives the Government the ability to effectively manage the operation of Australia’s visa program and respond quickly to emerging needs.

A Statement of Compatibility with Human Rights (the Statement) has been completed in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The overall assessment is that the Regulations are compatible with human rights. A copy of the Statement is at [Attachment A](#).

The Office of Impact Analysis (OIA) has assessed that the Regulations do not trigger the Australian Government Impact Analysis Requirements. The OIA reference is OIA23-06061.

The Department of Home Affairs (the Department) consulted with the Department of Foreign Affairs and Trade, Department of Education, Department of Employment and Workplace Relations, Department of Health and Aged Care, National Disability Insurance Agency, Department of Social Services, Attorney-General's Department, Digital Transformation Agency, Department of Finance, Treasury and the Department of the Prime Minister and Cabinet.

Extensive consultation also took place with the Government of Tuvalu. The treaty was referred to the Joint Standing Committee on Treaties (JSCOT) on 26 March 2024 and in August 2024, JSCOT issued its report recommending that binding treaty action be taken.

This accords with consultation requirements in subsection 17(1) of the *Legislation Act 2003* (the Legislation Act).

The amendments commence on 1 May 2025.

Further details of the Regulations are set out in [Attachment C](#).

The Regulations amend the Migration Regulations, which are exempt from sunseting under table item 38A of section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*. The Migration Regulations are exempt from sunseting on the basis that the repeal and remaking of the Migration Regulations:

- is unnecessary as the Migration Regulations are regularly amended numerous times each year to update policy settings for immigration programs;
- would require complex and difficult to administer transitional provisions to ensure, amongst other things, the position of the many people who hold Australian visas, and similarly, there would likely be a significant impact on undecided visa and sponsorship applications; and
- would demand complicated and costly systems, training and operational changes that would impose significant strain on Government resources and the Australian public for insignificant gain, while not advancing the aims of the Legislation Act.

The Regulations will be repealed by operation of Division 1 of Part 3 of Chapter 3 of the Legislation Act. Specifically, that Division (under section 48A) operates to automatically repeal a legislative instrument that has the sole purpose of amending or repealing another instrument. As the Regulations will automatically repeal, they do not engage the sunseting framework under Part 4 of the Legislation Act.

The Regulations are a disallowable legislative instrument for the purposes of the Legislation Act.

AUTHORISING PROVISIONS

Subsection 504(1) of the *Migration Act 1958* (the Migration Act) relevantly provides that the Governor-General may make regulations (the Regulations) prescribing matters required or permitted to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Migration Act.

In addition, the following provisions of the Migration Act may also be relevant:

- subsection 29(1), which provides that the Minister may grant a non-citizen permission, to be known as a visa, to do either or both of the following: (a) travel to and enter Australia; (b) remain in Australia;
- subsection 29(2), which provides that, without limiting subsection 29(1), a visa to travel to, enter and remain in Australia may be one to:
 - (a) travel to and enter Australia during a prescribed or specified period; and
 - (b) if, and only if, the holder travels to and enters during that period, remain in Australia during a prescribed or specified period or indefinitely;
- subsection 30(1), which provides that a visa to remain in Australia (whether also a visa to travel to and enter Australia) may be a visa, to be known as a permanent visa, to remain indefinitely;
- subsection 31(1), which provides that the Regulations may prescribe classes of visas;
- subsection 31(3), which provides that the Regulations may prescribe criteria for a visa or visas of a specified class;
- subsection 31(4), which provides that the Regulations may prescribe whether visas of a class are visas to travel to and enter Australia, or to remain in Australia, or both;
- subsection 31(5), which provides that the Regulations may specify that a visa is a visa of a particular class;
- section 40, which provides that the Regulations may provide that visas or visas of a specified class may only be granted in specified circumstances;
- subsection 41(1) which provides that the Regulations may provide that visas, or visas of a specified class, are subject to specified conditions;

- subsection 45B(1), which provides that the amount of visa application charge is the amount, not exceeding the visa application charge limit, prescribed in relation to the application (the visa application charge limit is determined under the *Migration (Visa Application) Charge Act 1997*);
- paragraph 46(1)(b), which provides that the Regulations may prescribe the criteria and requirements for making a valid application for a visa;
- subsection 46(4), which provides that, without limiting subsection 46(3), the Regulations may prescribe:
 - (a) the circumstances that must exist for an application for a visa of a specified class to be a valid application; and
 - (b) how an application for a visa of a specified class must be made; and
 - (c) where an application for a visa of a specified class must be made; and
 - (d) where an applicant must be when an application for a visa of a specified class is made;
- subsection 46(4A), which provides that 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);
- subsection 46C(1), which provides that 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;
- subsection 46C(14), which provides that the Minister may, by legislative instrument, determine the rules that apply in relation to the conduct of a specified visa pre-application process under subsection 46C(1); and
- subsection 504(2), which provides that section 14 of the *Legislation Act 2003* does not prevent, and has not prevented, regulations whose operation depends on a country or other matter being specified or certified by the Minister in an instrument in writing made under the regulations after the commencement of the regulations.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Migration Amendment (Australia Tuvalu Falepili Union Treaty Visa) Regulations 2025

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Disallowable Legislative Instrument

The Migration Amendment (Australia Tuvalu Falepili Union Treaty Visa) Regulations 2025 (the Amendment Regulations) amend the *Migration Regulations 1994* (the Migration Regulations) to create two streams in the Subclass 192 (Pacific Engagement) visa, the Pacific Engagement Stream and the Treaty stream. Both the Pacific Engagement and Treaty streams will utilise a visa pre-application process under which registered participants will be selected by ballot to apply for the visa in the particular stream. The Pacific Engagement stream, together with the common criteria reflect the criteria that were previously the primary criteria for the Subclass 192 visa. The Subclass 192 Treaty stream is a new stream and will enable certain Tuvaluan citizens to live temporarily or indefinitely, work without restriction and study in Australia as the holder of a permanent residence visa.

The Amendment Regulations implement the Australian Government's commitment to provide mobility with dignity under the Australia-Tuvalu Falepili Union, a bilateral treaty, entered into with the Government of Tuvalu.

The Amendment Regulations will specify the visa criteria and ballot process for the Subclass 192 Treaty stream. As agreed with the Government of Tuvalu, there will be 280 places allocated under the Australia-Tuvalu Falepili Union in the first year of the program, which will be allocated through the ballot process. Primary applicants will be able to include members of their family unit ('secondary applicants') in their application who will be counted towards the 280 visa places. The rules regarding the conduct of the ballot for the Subclass 192 Treaty stream will be set out in a Determination, which is a disallowable instrument.

The Amendment Regulations amend Schedules 1 and 2 to the Migration Regulations to create the Treaty stream within the Subclass 192 visa, and provide the eligibility criteria for the grant of a Subclass 192 Treaty stream visa.

In order to make a valid application for a Subclass 192 visa in the Treaty stream, a primary applicant must satisfy certain criteria in Schedule 1 to the Migration Regulations, as amended by the Amendment Regulations, including that the applicant:

- be a selected participant through the applicable ballot process;
- be at least 18 years old at the beginning of the registration open period for the ballot process;
- at the time of registration for the ballot process, hold a valid passport issued by the country (Tuvalu) to which that process relates;
- was born or has a parent or grandparent that was born in the country (Tuvalu) to which the ballot process relates;
- be a citizen of that country (Tuvalu) and that citizenship was not obtained due to an investment to that country;
- not be a citizen of New Zealand;
- have made the application for a Subclass 192 visa in the Treaty stream on or before the date specified in the notice of selection (which notifies a person that they were successful in the ballot).

In recognition of Australia's commitments under the Australia-Tuvalu Falepili Union treaty, and the values underpinning the partnership between the two countries, the Visa Application Charge (VAC) for primary and secondary applicants of the Subclass 192 visa in the Treaty stream is less than that prescribed for applicants in the Pacific Engagement stream.

The Amendment Regulations also amend Schedule 2 to the Migration Regulations to prescribe visa criteria that will need to be satisfied by a Subclass 192 Treaty stream primary applicant at the time a decision is made on the visa application, including specific health criteria.

As a result of the creation of the Subclass 192 Treaty stream, the Amendment Regulations also amend Schedule 2 to the Migration Regulations, to move existing Subclass 192 visa primary criteria into the Pacific Engagement stream.

Common primary criteria (shared with the Pacific Engagement stream) includes:

- substantial compliance with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visas;

- standard public interest criteria (including character and national security) that are designed to protect the public interest and maintain the integrity of Australia’s visa programs; and
- family violence provisions.

It should be noted that applicants and members of their family unit (including those who were formerly members but due to family violence are no longer a member of the family unit of the primary applicant) who satisfy the Subclass 192 Treaty stream criteria have an unlimited travel facility on the Subclass 192 visa, if granted. This means that they are able to travel to and enter Australia indefinitely after visa grant, unlike other permanent visas where the travel facility is limited to five years.

Human rights implications

The Amendment Regulations may engage the following right:

- the right to equality and non-discrimination contained in Article 2(1) and Article 26 of the *International Covenant on Civil and Political Rights* (ICCPR) and Article 2(2) of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).

Article 2(1) of the ICCPR states:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 2(1) of ICCPR requires that Australia ensure the rights recognised in the ICCPR extend to all individuals (citizens, residents and non-citizens) within its territory and subject to its jurisdiction.

Article 26 of the ICCPR provides that:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 26 requires that all persons are to be treated equally before the law and no law shall discriminate any of the grounds listed in the Article. The UN Human Rights Committee

(UNHRC) in General Comment No. 18 explains that the term ‘discrimination’ as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference on grounds such as nationality or other status.

Article 2(2) of the ICESCR provides that:

The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

However, in its General Comment 18, the UNHRC stated that:

The Committee observes that not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant.

Similarly, in its General Comment on Article 2 of the ICESCR (E/C.12/GC/20), UNCESCR has stated (at 13) that:

Differential treatment based on prohibited grounds will be viewed as discriminatory unless the justification for differentiation is reasonable and objective. This will include an assessment as to whether the aim and effects of the measures or omissions are legitimate, compatible with the nature of the Covenant rights and solely for the purpose of promoting the general welfare in a democratic society. In addition, there must be a clear and reasonable relationship of proportionality between the aim sought to be realized and the measures or omissions and their effects.

Neither the ICCPR nor the ICESCR give a right for non-citizens to enter Australia for the purposes of seeking residence. The UNHRC, in its General Comment 15 on the position of aliens under the ICCPR, stated that:

The Covenant does not recognize the right of aliens to enter or reside in the territory of a State party. It is in principle a matter for the State to decide who it will admit to its territory. However, in certain circumstances an alien may enjoy the protection of the Covenant even in relation to entry or residence, for example, when considerations of non-discrimination, prohibition of inhuman treatment and respect for family life arise.

Consent for entry may be given subject to conditions relating, for example, to movement, residence and employment. A State may also impose general conditions upon an alien who is in transit. However, once aliens are allowed to enter the territory of a State party they are entitled to the rights set out in the Covenant.

As such, Australia is able to set requirements for the entry of non-citizens into Australia and conditions for their stay, including access to permanent residence and does so on the basis of reasonable and objective criteria formulated following extensive engagement with the Government of Tuvalu.

The Amendment Regulations introduce two new visa streams with criteria that differentiate between prospective visa applicants on the basis of country of citizenship (passport held), as well as providing for a ballot process for prospective applicants for this new stream, and therefore may engage the above rights to non-discrimination.

Applicants for the Treaty stream of the Subclass 192 visa must satisfy certain requirements in Schedule 1 to the Migration Regulations, as amended by the Amendment Regulations, to make a valid application, including that the applicant must have been randomly selected in the applicable ballot process. The rules regarding the conduct of the ballot for the Subclass 192 Treaty stream will be set out in a disallowable instrument.

The purpose of a ballot process that selects registered participants at random for this new visa stream is to ensure there is a fair, equitable and objective method for providing access to the Subclass 192 Treaty stream program, which has an agreed number of visa places each year. The use of a ballot process for the random selection of eligible applicants for visa places in this program is appropriate because demand for visas under this program is expected to significantly exceed the agreed number of visa places in a given program year. The use of random selection ensures fairness as all eligible applicants have an equal chance of being selected to apply for a Subclass 192 Treaty stream visa, rather than being dependent on, for example, having the fastest internet connection. The Pacific Engagement stream, (previously the only criteria applicable to the Subclass 192 visa), will continue to utilise a ballot process.

Among the Migration Regulations, Schedule 1 requirements for the Subclass 192 Treaty stream that are being introduced by the Amendment Regulations is that the primary applicant must have held a valid passport issued by the country to which the process relates (Tuvalu) at the time of registration in the ballot process.

To the extent that the Schedule 1 requirements for the Subclass 192 Treaty stream visa differentiate on the basis of citizenship, this is reasonable and proportionate to meeting legitimate objectives. This is because the Treaty stream is a measure established under the Australia-Tuvalu Falepili Union treaty between Australia and Tuvalu, which sees both countries benefit from enhanced cooperation, including on matters designed to safeguard our collective peace and security, sovereignty, and to work together in the face of the threat posed by climate change.

These visa requirements are therefore reasonable and proportionate to promoting and maintaining the values which underpin the Australia-Tuvalu Falepili Union treaty. The Amendment Regulations do not adversely affect the existing arrangements for visa applicants

who are not Tuvaluan citizens and who are not eligible for the Subclass 192 Treaty stream. They can continue to apply for existing permanent visas. Similarly, Tuvaluan citizens who hold other permanent visas or have applied for other permanent visas are not affected in any way by the introduction of the Subclass 192 Treaty stream.

Conclusion

The Disallowable Legislative Instrument is compatible with human rights to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate to achieving a legitimate objective.

The Hon Tony Burke MP
Minister for Immigration and Multicultural Affairs

Details of the *Migration Amendment (Australia Tuvalu Falepili Union Treaty Visa) Regulations 2025*

Section 1 – Name

This section provides that the name of the Regulations is the *Migration Amendment (Australia Tuvalu Falepili Union Treaty Visa) Regulations 2025* (the Regulations).

Section 2 – Commencement

This section provides for the Regulations to commence on 1 May 2025.

Section 3 – Authority

This section provides that the Regulations are made under the *Migration Act 1958* (the Migration Act).

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to the instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the instrument has effect according to its terms.

Schedule 1—Amendments

Migration Regulations 1994

Item [1] – Paragraph 1140(2)(a) of Schedule 1

This item repeals paragraph 1140(2)(a) in Schedule 1 to the Migration Regulations and substitutes a new paragraph. Subitem 1140(2) of Schedule 2 sets out the Visa Application Charge (VAC) payable on an application for a Subclass 192 (Pacific Engagement) visa. Paragraph 1140(2)(a) sets out the first instalment of VAC to be paid when the application is made.

New subparagraph 1140(2)(a)(i) provides that the base application charge of the first instalment of VAC for a person seeking to satisfy the primary criteria for a Subclass 192 (Pacific Engagement) visa in the Pacific Engagement stream is \$325, and the additional applicant charge for an applicant whose application is combined with that of an applicant seeking to satisfy the primary criteria as a member of that applicant’s family unit is \$80. These amounts are the same as the amounts of VAC previously imposed under the Migration Regulations for an application for a Subclass 192 (Pacific Engagement) visa.

New subparagraph 1140(2)(a)(ii) provides that the base application charge of the first instalment of VAC for a person seeking to satisfy the primary criteria for a Subclass 192 (Pacific Engagement) visa in the new Treaty stream is \$200, and the additional applicant charge for an applicant whose application is combined with that of an applicant seeking to satisfy the primary criteria as a member of that applicant's family unit is \$50.

This amendment is consequential to the introduction of a new Treaty stream in the Subclass 192 (Pacific Engagement) visa, while maintaining the previous settings for the Subclass 192 visa as the Pacific Engagement stream.

No second instalment of VAC is payable by any applicant.

Item [2] – After paragraph 1140(3)(c) of Schedule 1

This item inserts a new paragraph 1140(3)(ca) in Schedule 1 to the Migration Regulations.

New paragraph 1140(3)(ca) requires that an applicant seeking to satisfy the primary criteria for a Subclass 192 (Pacific Engagement) visa must nominate only one stream to which the application relates. Insertion of the new paragraph is consequential to the introduction of two streams, the Pacific Engagement stream and the Treaty stream, in the Subclass 192 visa. This means that an applicant seeking to satisfy the primary criteria must nominate either the Pacific engagement stream or the Treaty stream. The stream nominated determines the criteria under which the application is to be decided.

Item [3] – Subitem 1140(4) of Schedule 1

This item amends subitem 1140(4) of Schedule 1 to the Migration Regulations to insert the words “in the Pacific Engagement stream” after the first use of the word “visa” in this subitem.

This amendment is consequential to the restructuring of Subclass 192 into two streams, the Pacific Engagement stream and the Treaty stream. Subitem 1140(4) sets out requirements for making a valid application by a person seeking to satisfy the primary criteria for a Subclass 192 (Pacific Engagement) visa. This includes the requirement that the applicant must be a selected participant in a visa pre-application process (also referred to as a “ballot”) relating to the stream and the country that issued the applicant with a valid passport.

The Pacific Engagement stream retains the previous settings of the Subclass 192 (Pacific Engagement) visa without any substantive change. Items 4 -7 of this Schedule make consequential amendments to maintain the previous application requirements in respect of an application for a Subclass 192 (Pacific Engagement) visa. This amendment ensures that the previous requirements in subitem 1140(4) are retained in respect of applications for the visa in the Pacific Engagement stream.

Item [4] – Subitem 1140(4) of Schedule 1 (table heading)

This item omits the words “Requirement for applicants seeking to satisfy the primary criteria” in the heading of the table in subitem 1140(4) of Schedule 1 to the Migration Regulations and substitutes the word “Requirements”. This is a technical drafting amendment.

Item [5] – Subitem 1140(4) of Schedule 1 (table item 1)

This item repeals item 1 from the table in subitem 1140(4) of Schedule 1 to the Migration Regulations and replaces it with a new table item 1.

New table item 1 requires that to make a valid application for a Subclass 192 (Pacific Engagement) visa in the Pacific Engagement stream an applicant seeking to satisfy the primary criteria must be a selected participant for a visa pre-application process (referred to in the table as “the *relevant process*”) conducted in relation to the Subclass 192 (Pacific Engagement) visa in the Pacific Engagement stream, and a country that issued the applicant with a valid passport.

This amendment is consequential to the restructure of the Subclass 192 (Pacific Engagement) visa into two streams, the Pacific Engagement stream and the Treaty stream. An applicant seeking to satisfy the primary criteria has to be selected in a ballot conducted in relation to the applicant’s country of citizenship to apply for a Subclass 192 (Pacific Engagement) visa in the particular stream.

Item [6] – Subitem 1140(4) of Schedule 1 (table items 2, 3 and 4)

These item makes technical amendments to items 2, 3 and 4 of the table in subitem 1140(4) of Schedule 1 to the Migration Regulations. These changes are consequential to referring to the visa pre-application process as “the relevant process” in item 1 of the table (see item 5 above).

Item [7] – Subitem 1140(4) of Schedule 1 (table item 5)

This item inserts the words “in the Pacific Engagement stream” after “Subclass 192 (Pacific Engagement) visa” in item 5 of the table in subitem 1140(4) of Schedule 1 to the Migration Regulations.

This amendment is consequential to the introduction of two streams in Subclass 192 (Pacific Engagement), the Pacific Engagement stream and the Treaty stream, and ensures that the previous requirements of subitem 1140(4) for a valid application for a Subclass 192 visa by a person seeking to satisfy the primary criteria are maintained in respect of an application for a Subclass 192 (Pacific Engagement) visa in the Pacific Engagement stream.

Item [8] – After subitem 1140(4) of Schedule 1

This item inserts a new subitem 1140(4A) in item 1140 of Schedule 1 to the Migration Regulations.

Item 1140 sets out the requirements for making a valid application for a Subclass 192 (Pacific Engagement) visa. Previously, the visa did not have streams, however the amendments made by the Regulations restructure the subclass into two streams, the Pacific Engagement stream and the Treaty stream.

New subitem 1140(4A) sets out in table form requirements to be met by a person seeking to satisfy the primary criteria for a Subclass 192 (Pacific Engagement) visa in the new Treaty stream:

- Table item 1 requires that the applicant is a selected participant in a visa pre-application process conducted in relation to a Subclass 192 (Pacific Engagement) visa in the Treaty stream, and the country that issued the applicant's passport. This requirement is made under section 46(4A) of the Migration Act and refers to a visa pre-application process arranged by the Minister to be conducted in accordance with subsection 46C(1) of the Migration Act.
 - The rules for the conduct of a visa pre-application process are set out in a determination made by the Minister. The determination is a legislative instrument which is registered on the Federal Register of Legislation, tabled in both Houses of the Parliament, and subject to disallowance by either House. The determination specifies the eligibility requirements to register to take part in the ballot, and other details relating to the relevant process.
 - The random selection of registered participants through a ballot process assists in the management of the migration program according to the number of allocated visa places. An initial allocation of 280 places for the first program year was agreed between the governments of Australia and Tuvalu.
- Table item 2 requires that at the beginning of the registration open period for the relevant process, the applicant must have been aged at least 18 years. There is no upper-age limit for applicants for a Subclass 192 (Pacific Engagement) visa in the Treaty stream.
- Table item 3 requires that at the time of registration of the applicant as a registered participant in the visa pre-application process, the applicant held a valid passport issued by the country to which the relevant process relates.
- Table item 4 requires that the applicant or a parent or grandparent of the applicant was born in the country to which the relevant process relates, that the applicant is a citizen of that country and their citizenship was not obtained due to an investment in the country, and that the applicant is not a citizen of New Zealand. These requirements are intended to ensure that applicants have a genuine and lasting connection with that country.

- Table item 5 requires that the application must be made on or before the date specified in the notice of selection given to the applicant. The term *notice of selection* is defined in subitem 1140(6), as notice given to a selected participant (also defined in subitem 1140(6)) who has registered for a particular ballot and has been randomly selected under the relevant visa pre-application process. This requirement assists the administration of the program by ensuring that selected participants make their application in a timely manner and facilitate available places being taken up within the program year.

Item [9] – Subitem 1140(6) of Schedule 1 (definition of *applicable visa pre-application process*)

This item repeals the definition of *applicable visa pre-application process* from subitem 1140(6) of Schedule 1 to the Migration Regulations. The definition is no longer required because following the amendments above, item 1 of the tables in subitems 1140(4) and (4A) refer to the applicable visa pre-application process as “the relevant process” mentioned in each table.

Item [10] – Clause 192.111 of Schedule 2

This item inserts a new definition of *relevant medical practitioner* in clause 192.111 of Schedule 2 to the Migration Regulations.

Schedule 2 to the Migration Regulations (Provisions with respect to the grant of Subclasses of visas) includes the prescribed criteria for the grant of a Subclass 192 (Pacific Engagement) visa. Clause 192.111 provides definitions of terms used in the prescribed criteria.

The new definition provides that the term *relevant medical practitioner*, as used in Subclass 192, means a Medical Officer of the Commonwealth, a medical practitioner approved by the Minister for the purposes of paragraph (b) of the definition, and a medical practitioner employed by an organisation approved by the Minister for the purposes of paragraph (c) of the definition.

The term *relevant medical practitioner* is referenced in clauses 192.231, 192.232 and 192.233 concerning arrangements for medical examinations, including chest x-ray examinations, of applicants for a Subclass 192 (Pacific Engagement) visa in the Treaty stream (see below for further details of those clauses). The Minister may separately approve medical practitioners for the purpose of conducting those examinations.

The note provides that the meaning of *Medical Officer of the Commonwealth* is given in regulation 1.03 of Part 1 of the Regulations, which refers to a medical practitioner appointed by the Minister under regulation 1.16AA.

Item [11] – Division 192.2 of Schedule 2

This item repeals and replaces Division 192.2 of Schedule 2 to the Migration Regulations.

Previously, Division 192.2 operated to prescribe the criteria to be satisfied by an applicant seeking to satisfy the primary criteria for the grant of a Subclass 192 (Pacific Engagement) visa.

New Division 192.2, restructures the criteria into common criteria to be satisfied by all applicants seeking to satisfy the primary criteria, and criteria to be satisfied only by applicants applying for the visa in the Pacific Engagement and Treaty streams, respectively. This amendment facilitates the establishment of two streams in Subclass 192 (Pacific Engagement) visa, the Pacific Engagement stream which retains the previous primary criteria for the visa, and the Treaty stream with new primary criteria. Details of new Division 192.2, are as follows:

The Note at the beginning of the Division sets out the requirements to be met by applicants seeking to satisfy the primary criteria for grant of a Subclass 192 (Pacific Engagement) visa. All applicants must satisfy the common criteria in Subdivision 192.21. Applicants seeking a Subclass 192 (Pacific Engagement) visa in the Pacific Engagement stream are also required to satisfy the criteria in Subdivision 192.22. Applicants seeking the grant of a Subclass 192 (Pacific Engagement) visa in the Treaty stream are required to satisfy the criteria in Subdivision 192.23 in addition to Subdivision 192.21.

Subdivision 192.21 – Common criteria

This Subdivision prescribes the criteria to be met by all applicants seeking to satisfy the primary criteria for the grant of a Subclass 192 (Pacific Engagement) visa in the Pacific Engagement stream or the Treaty stream. The criteria is as follows:

Clause 192.211 requires the applicant to have complied substantially with the conditions of any substantive visa, or bridging visa previously held by the applicant, unless the person has complied substantially with condition 8303. The Minister must also be satisfied that the applicant was unable to comply substantially with previous visa conditions (other than condition 8303) because of compelling and compassionate circumstances. Condition 8303 requires that the visa holder must not become involved in activities disruptive to, or violence threatening harm to, the Australian community or group within the Australian community.

Clause 192.212 requires the applicant and persons who are, or were, members of the applicant's family unit and are also applicants for a Subclass 192 (Pacific Engagement) visa to satisfy specified public interest criteria relating to character and protection of the integrity of Australia's migration program.

Clause 192.213 requires persons who are, or were, members of the applicant's family unit and are also applicants for a Subclass 192 visa to have complied substantially with the conditions of

any substantive visa, or bridging visa previously held by the applicant, unless the person has complied substantially with condition 8303. The Minister must also be satisfied that the person was unable to comply substantially with previous visa conditions (other than condition 8303) because of compelling and compassionate circumstances. Condition 8303 requires that the visa holder must not become involved in activities disruptive to, or violence threatening harm to, the Australian community or group within the Australian community.

Clause 192.214 requires persons who are, or were, members of the applicant's family unit but are not an applicant for a Subclass 192 (Pacific Engagement) visa must satisfy specified public interest criteria relating to character and protection of the integrity of Australia's migration program.

Clause 192.215 requires the applicant and persons who are, or were members of the applicant's family unit and are applicants for a Subclass 192 (Pacific Engagement) visa, to satisfy specified special return criteria relating to persons who have previously been in Australia.

Subdivision 192.22 – Criteria for Pacific Engagement stream

This Subdivision prescribes criteria to be met by applicants seeking to satisfy the primary criteria for grant of a Subclass 192 (Pacific Engagement) visa in the Pacific Engagement stream. The criteria substantially retains the previous primary criteria for a Subclass 192 (Pacific Engagement) visa, but the provisions have been renumbered as a result of inserting the common criteria and the criteria for the new Treaty stream. Details of the criteria are:

New clause 192.221 requires that the applicant, or the applicant's spouse or de facto partner who has made a combined application with the applicant, has a written offer of ongoing employment for a genuine position in Australia. The conditions of employment must be no less favourable than those that apply or would apply to an Australia citizen performing equivalent work at the same location, and no adverse information must be known about the employer or a person associated with the employer.

New clause 192.222 requires that the applicant has adequate means, or access to adequate means, to support the applicant and members of the applicant's family included in the application for the first 12 months in Australia as the holder of a Subclass 192 (Pacific Engagement) visa.

New clause 192.223 requires that if required by the Minister or delegate, the applicant, or the applicant's spouse or de facto partner who has made a combined application with the applicant, must satisfy any English language test requirements specified by the Minister in a legislative instrument.

New clause 192.224 requires that the applicant, and persons who are or were members of the applicant's family unit, satisfy specified standard public interest criteria relating to health.

Subdivision 192.23 – Criteria for Treaty stream

Subdivision 192.23 prescribes criteria to be met by applicants seeking to satisfy the primary criteria for grant of a Subclass 192 (Pacific Engagement) visa in the new Treaty stream.

The criteria prescribed in Subdivision 192.23 facilitates grant of a Subclass 192 (Pacific Engagement) visa in the Treaty stream on satisfaction of criteria that is substantively different from the previous Subclass 192 primary criteria which, as explained above, is now contained in a separate Pacific Engagement stream in the Subclass 192 (Pacific Engagement) visa.

The primary criteria for the Treaty stream are in accordance with the policy settings negotiated with the government of Tuvalu. In addition to being aged at least 18 years and meeting other standard public interest criteria, applicants only have to satisfy special health criteria relating to diseases or conditions that would be a threat to public health in Australia or a danger to the Australian community. If an applicant has such a disease or condition, with the exception of tuberculosis, arrangements must have been made for necessary treatment under the professional supervision of a health authority of a State or Territory in Australia. Members of the family unit of an applicant for the Treaty stream who made a combined application for the visa have to meet the same health criteria. However, members of the applicant's family unit who are not applying for a visa are not required to meet any health criteria.

Further details of the criteria

Clause 192.231 requires an applicant to undergo a medical examination carried out by a relevant medical practitioner, unless a Medical Officer of the Commonwealth decides otherwise (see item 10 above for the meaning of *relevant medical practitioner*). Provision for a Medical Officer of the Commonwealth to decide that an applicant does not have to undergo a medical examination is intended to apply only in exceptional or emergency circumstances where facilities or clinical capabilities are not available.

Clause 192.232 requires that the applicant has undergone a chest x-ray examination conducted by a relevant medical practitioner, unless a Medical Officer of the Commonwealth decides otherwise, or an exemption in paragraph 192.232(b) or (c) applies. Provision for a Medical Officer of the Commonwealth to decide that an applicant does not have to undergo a chest x-ray examination is intended to apply only in exceptional or emergency circumstances where facilities or clinical capabilities are not available.

Exemptions to the requirement in clause 192.232 for an applicant to undergo a chest x-ray examination are, under paragraph 192.232(b) if the applicant is aged under 11 years and a

relevant medical practitioner has not requested the examination; and under paragraph 192.232(c), if the applicant is in Australia, and the applicant is confirmed to be pregnant, has signed an undertaking to place themselves under the professional supervision of a State or Territory health authority and to undergo any necessary treatment, and the Minister (including a delegate) is satisfied that the applicant should not be required to undergo a chest x-ray examination. An applicant outside Australia who is confirmed to be pregnant is required to undergo a chest x-ray examination after giving birth, unless a Medical Officer of the Commonwealth decides otherwise in the circumstances described above.

Clause 192.233 provides that a relevant medical practitioner must consider the results of tests carried out for the purposes of any medical examination and the radiological report from any x-ray required. If the relevant medical practitioner is not a Medical Officer of the Commonwealth, and considers that the applicant has a disease or condition that is or may result in the applicant being a threat to public health in Australia or a danger to the Australian community, they must refer any relevant results and reports to a Medical Officer of the Commonwealth.

Clause 192.234 applies if a Medical Officer of the Commonwealth considers that an applicant has a disease or condition that is or may result in the applicant being a threat to public health in Australia or a danger to the Australian community.

In these circumstances, arrangements must have been made on the advice of the Medical Officer of the Commonwealth to place the applicant under the professional supervision of a health authority in a State or Territory to undergo any necessary treatment. This requirement does not apply if the applicant's disease or condition relates to tuberculosis, which is dealt with separately under clause 192.235, below.

Subclause 192.235(1) requires that if the applicant is outside Australia at the time of application, the applicant must be free from tuberculosis.

Subclause 192.235(2) requires that if the applicant is in Australia at the time of application; and a Medical Officer of the Commonwealth considers that the applicant is not free from tuberculosis, arrangements must have been made, on the advice of the Medical Officer of the Commonwealth, to place the applicant under the professional supervision of a health authority in a State or Territory to undergo any necessary treatment.

Clause 192.236 provides that a person who is, or was, a member of the applicant's family unit and is also an applicant for a Subclass 192 visa, must meet the health criteria in clauses 192.231 to 192.235, above.

The health criteria to be satisfied by a person seeking to satisfy the primary criteria for the grant of a Subclass 192 (Pacific Engagement) visa in the Treaty stream differs from the standard health public interest criteria to be satisfied by applicants under the Pacific Engagement stream.

The health criteria in the Treaty stream reflect the conditions agreed to with the government of Tuvalu, and are intended to ensure that an applicant undergoes medical examination (including a chest x-ray) unless special circumstances exist. The health criteria is intended to prevent the entry to Australia of an applicant who suffers from tuberculosis, or if an applicant is already in Australia and suffers from tuberculosis, to ensure that the applicant is placed under the supervision of health authorities to undergo any necessary treatment.

Item [12] – Subclause 192.313(1) of Schedule 2

This item omits the reference to public interest criterion 4007 from subclause 192.313(1) of Schedule 2 to the Migration Regulations. This amendment is a consequential technical amendment made as result of the amendment at item 13 below.

Item [13] – At the end of clause 192.313 of Schedule 2

This item inserts subclauses 192.313(4) and 192.313(5) in Schedule 2 to the Migration Regulations.

Clause 192.313 requires an applicant to have satisfied specified public interest criteria.

New subclauses 192.313(4) and (5) apply to an applicant who meets the criteria in subclause 192.311(2), (3), (4) or (5) on the basis of being, or having been, a member of the family unit of a person, referred to in the relevant subclauses as either a *primary applicant* or a *secondary applicant*, with whom the applicant made a combined application. The terms *primary applicant* and *secondary applicant* have the same meaning in the new subclauses as in the relevant pre-existing subclauses.

New subclause 192.313(4) requires an applicant who:

- is a member of the family unit of a person who holds a Subclass 192 visa in the Pacific Engagement stream granted on the basis of satisfying the primary criteria for the grant of the visa; or
- has made a combined application with a person seeking to satisfy the primary criteria for the grant of a Subclass 192 visa in the Pacific Engagement stream, and:
 - was the spouse or de facto partner of the primary applicant at the time of application; and
 - was onshore at the time of application or subsequently entered Australia; and
 - the relationship has ceased and there has been family violence committed by the primary applicant; and

- either the person holds a Subclass 192 visa in the Pacific Engagement stream granted on the basis of satisfying the primary criteria for the grant of the visa, or it has been decided to refuse to grant that person a visa for reasons including family violence committed by the person; or
- is a member of the family unit of a secondary applicant referred to above and has made a combined application with that applicant;

to satisfy public interest criterion 4007, which relates to standard health requirements.

New subclause 192.313(5) requires an applicant who:

- is a member of the family unit of a person who holds a Subclass 192 visa in the Treaty stream granted on the basis of satisfying the primary criteria for the grant of the visa; or
- has made a combined application with a person seeking to satisfy the primary criteria for the grant of a Subclass 192 visa in the Treaty stream, and:
 - was the spouse or de facto partner of the primary applicant at the time of application; and
 - was onshore at the time of application or subsequently entered Australia; and
 - the relationship has ceased and there has been family violence committed by the person; and
 - either the person is the holder of a Subclass 192 (Pacific Engagement) visa in the treaty stream granted on the basis of satisfying the primary criteria for grant of the visa, or it has been decided to refuse to grant that person a visa for reasons including family violence committed by the person; or
- is a member of the family unit of a secondary applicant referred to above and has made a combined application with that applicant;

to satisfy the special health criteria in clauses 192.231 to 192.235.

Subclauses 192.313(4) and (5) prescribe different health criteria for secondary applicants who are, or were, members of the family unit of applicants who satisfy, or were seeking to satisfy, the primary criteria for the Pacific Engagement stream and the Treaty streams, respectively. As explained under new Subdivision 192.23 (criteria for Treaty stream) in item 11, above, the health criteria for the two streams are different; applicants for the Pacific Engagement stream must meet standard health public interest criteria, while applicants for the Treaty stream are restricted from being granted the visa if the applicant has a communicable disease or condition,

rather than being required to meet standard health criteria. The same distinction applies to the health criteria to be met by secondary applicants as by primary applicants.

Item [14] – Paragraph 192.315(2)(a) of Schedule 2

This item omits the reference to public interest criterion 4007 from paragraph 192.315(2)(a) of Schedule 2 to the Migration Regulations. This amendment is a consequential technical amendment made as result of the amendment at item 15 below.

Item [15] – Subclause 192.315(5) of Schedule 2

This item repeals subclause 192.315(5) of Schedule 2 to the Migration Regulations and replaces it with new subclauses 192.315(5), (6), (7) and (8). The purpose of the subclauses is to prescribe public interest criteria to be satisfied by members of the family unit of secondary applicants for a Subclass 192 (Pacific Engagement) visa.

New subclauses 192.315(5), (6), (7) and (8) apply to secondary applicants who meet the criteria in subclause 192.311(3) or (4) on the basis of being, or having been, a member of the family unit of a person, referred to in the relevant subclauses as a *primary applicant*, with whom the secondary applicant made a combined application. The term *primary applicant* has the same meaning in the new subclauses as in the relevant pre-existing subclauses.

New subclause 192.315(5) retains the previous requirement that members of the family unit of secondary applicants, where the member of the family unit is not an applicant for a Subclass 192 visa, must satisfy specified public interest criteria relating to character, national security, a determination of the Foreign Minister, transfer of critical technology and have no debts to the Commonwealth.

New subclause 192.315(6) requires that a member of the family unit of a secondary applicant in relation to a primary applicant who is the holder of a Subclass 192 visa in the Pacific Engagement stream, granted on the basis of satisfying the primary criteria for the grant of the visa, or who at the time of application was seeking to satisfy the primary criteria for the grant of a Subclass 192 visa in the Pacific Engagement stream, and who is also an applicant for a Subclass 192 visa, must satisfy standard health public interest criterion 4007.

New subclause 192.315(7) requires that a member of the family unit of a secondary applicant in relation to a primary applicant who holds a Subclass 192 in the Pacific Engagement stream, granted on the basis of having satisfied the primary criteria for the grant of the visa, or who at the time of application was seeking to satisfy the primary criteria for the grant of a Subclass 192 visa in the Pacific Engagement stream, and who is not an applicant for a Subclass 192 visa, must satisfy standard health public interest criterion 4007 unless it would be unreasonable to require the family unit member to under assessment in relation to the criterion.

New subclause 192.315(8) requires that a member of the family unit of a secondary applicant in relation to a primary applicant who holds a Subclass 192 in the Treaty stream, granted on the basis of having satisfied the primary criteria for the grant of the visa, or who at the time of application was seeking to satisfy the primary criteria for the grant of a Subclass 192 in the Treaty stream, and who is applicant for a Subclass 192 visa, must satisfy the same health criteria as prescribed for a primary applicant in the Treaty stream in new subclauses 192.231 to 192.235 (see item 11 above for details of those requirements).

Item [16] – Clause 192.511 of Schedule 2

This item repeals clause 192.511 of Schedule 2 to the Migration Regulations and replaces it with a new clause 192.511.

Clause 192.511 sets out when a Subclass 192 (Pacific Engagement) visa is in effect. New clause 192.511 retains the previous provisions in relation to a Subclass 192 (Pacific Engagement) visa which now apply in relation to the Pacific Engagement stream. In addition, the clause sets out new provisions in relation to when a Subclass 192 (Pacific Engagement) visa in the Treaty stream is in effect.

New subclause 192.511(1) provides that in the case of a visa granted to a person on the basis of the person satisfying the criteria in Subdivisions 192.21 and 192.23 or the criteria in Division 192.3, if the visa was granted because the person met the requirements of clause 192.311 in relation to a primary applicant who holds, or was seeking to satisfy the criteria for the grant of a Subclass 192 (Pacific Engagement) visa in the Treaty stream, that person is able to travel to and enter Australia indefinitely.

New subclause 192.511(2) provides that in any other case, the person is able to travel to and enter Australia for 5 years from the date of the grant.

The purpose of this amendment is to clarify that a person who is granted a Subclass 192 (Pacific Engagement) visa in the Treaty stream and members of their family unit who satisfy the criteria in Division 192.3, are able to travel to and enter Australia indefinitely.

This amendment also retains the previous settings for a Subclass 192 (Pacific Engagement) visa, which are now captured within the Pacific Engagement stream. A person who is the holder of a Subclass 192 (Pacific Engagement) visa in the Pacific Engagement stream and members of their family unit who satisfy the criteria in Division 192.3, are able to travel to and enter Australia for 5 years from the date of the grant.

Item [17] – In the appropriate position in Schedule 13

This item inserts Part 151 into Schedule 13 to the Migration Regulations. Schedule 13 sets out the application and transitional provisions that apply to amendments of the Migration Regulations.

Clause 15101 provides that the amendments made by Schedule 1 to the Regulations apply in relation to an application for a visa made on or after 1 May 2025. However, the amendments made by Schedule 1 do not apply in relation to an application for a visa made on or after that date if the application relates to a selected participant for a visa pre-application process conducted before 1 May 2025 in relation to a Subclass 192 (Pacific Engagement) visa.

The application provision clarifies that the amendments do not apply in respect of an application where the visa pre-application process in which the applicant was a selected participant was conducted prior to 1 May 2025.