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Subclass 500 (Student) visa

Procedural Instruction

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Table of Contents

1. Purpose	4
2. Scope	4
3. Procedural Instruction	4
3.1. Latest Changes	4
3.2. Strategic context	5
3.3. Objectives of the Subclass 500 visa program	5
3.4. Stakeholder roles and responsibilities	5
3.4.1. Role of the Department of Education	5
3.4.2. Role of the Department of Foreign Affairs and Trade and the Department of Defence	6
3.5. Overview to this instruction	6
3.5.1. Simplified Student Visa Framework (SSVF)	6
3.5.2. Country and education provider evidence framework	6
3.6. The Subclass 500 visa	6
3.6.1. About the Subclass 500 visa	6
3.6.2. Study on other visas	7
3.7. Education providers	7
3.7.1. Definition of education provider	7
3.7.2. CRICOS registration codes – National registration	7
3.7.3. Monitoring education providers	7
3.7.4. Dealing with complaints and referrals	8
3.7.5. Provider default	8
3.8. Subclass 500 - Schedule 1 application validity requirements	8
3.8.1. Item 1222 - Overview	8
3.8.2. Lodgement arrangements	9
3.8.3. Visa application charge	11
3.8.4. Location of applicant when making an application	14
3.8.5. Evidence of enrolment	14
3.8.6. Welfare of minors	17
3.8.7. Combined applications	18
3.8.8. Applications made in Australia – Visa status	19
3.9. Subclass 500 - Schedule 2 criteria	19
3.9.1. Overview of the primary and secondary criteria	19
3.9.2. The country and provider evidence framework	20
3.10. Primary criteria for visa grant	21
3.10.1. Evidence of enrolment etc.	21
3.10.2. Genuine applicant for entry and stay as a student	24
3.10.3. English language proficiency	34
3.10.4. Financial capacity evidence	37
3.10.5. Health insurance	47
3.10.6. Age requirements for school students	51
3.10.7. Public interest criteria	51
3.10.8. Special return criteria	57
3.11. Secondary criteria for visa grant	59
3.11.1. Overview - Family members	59
3.11.2. Genuine applicant for entry and stay as a family member	60

OFFICIAL

3.11.3.	Financial requirement for family members	62
3.11.4.	Health insurance for accompanying family members	64
3.11.5.	Education of school-age dependants	64
3.11.6.	Family members of Foreign Affairs/Defence students	66
3.11.7.	Public interest criteria	66
3.11.8.	Special return criteria (SRC)	67
3.12.	Visa grant – location, visa period and conditions	67
3.12.1.	Overview – legislative provisions	67
3.12.2.	Visa grant period – policy arrangements	68
3.12.3.	Subclass 500 visa conditions	71
4.	Accountabilities and Responsibilities	89
5.	Version Control	89
	Attachment A – Definitions	90
	Attachment B – Assurance and Control Matrix	94
1.1	Powers and Obligations	94
1.2	Controls and Assurance	94
	Attachment C – Consultation	97
1.1	Internal Consultation	97
1.2	External Consultation	97

1. Purpose

The purpose of this procedural instruction (PI) is to identify the legal requirements and related policy and procedures that apply to the Subclass 500 (Student) visa (the Subclass 500 visa).

Officers are required to understand and apply the relevant law as set out in the *Migration Act 1958* (the Act) and the *Migration Regulations 1994* (the Regulations). Many of the requirements in the Act are expressed in objective terms and do not allow any discretion for officers. To the extent that the Act and Regulations allow for discretion, officers are to consider the approved policy and procedures of the Department of Home Affairs (the Department) where relevant and appropriate in decision-making. This ensures that decision-making is consistent to the extent that it is appropriate.

However, policy and procedures do not have the force of law. When exercising powers or making decisions under legislation, officers must give policy documents due weight but they should not apply policy inflexibly and instead consider the merits of each individual case. In order to make a fair, reasonable and lawful decision, it may be necessary to depart from the approved policy and procedures, depending on the facts of the particular case. Before departing from approved policy and procedure, officers must first discuss with their immediate manager, and escalate to the instruction owner only when required. In all cases a note of the reasons for doing so must be added to the client record in Integrated Client Service Environment (ICSE).

2. Scope

This PI covers decision-making in relation to the Subclass 500 visa. This PI applies to all officers as defined in subsection 5(1) of the Act and in particular, officers who are Subclass 500 visa decision makers, exercising powers delegated to them under the Act. Other persons reading this PI should keep in mind that they are not the primary audience and therefore should not utilise contact channels specified for departmental staff only.

This PI does **not** apply to:

- Fulbright scholars – refer instead to: Temporary Work (International Relations) (Subclass 403) – PI (VM-3174);
- students covered by a Special Program- for example, students entering under GAP arrangements – refer instead to: Temporary Activity (Subclass 408) Visa – PI (VM-1140);
- occupational trainees or professional development applicants – refer instead to: Subclass 407 (Training) visa – PI (VM-1138);
- Subclass 590 (Student Guardian) visa (a subclass of the Student (Temporary) (Class TU) Class of visa) - refer to Subclass 590 (Student Guardian) visa – PI (VM-3681).

3. Procedural Instruction

3.1. Latest Changes

Legislative

This PI includes guidance that reflects the legislation as in effect on 28 July 2023.

Procedural guidance

Updated guidance includes:

- 3.10.1. – Evidence of enrolment etc - Education Services for Overseas Students (Exempt Courses) Instrument
- 3.10.2. – Genuine applicant for entry and stay as a student
- 3.10.7. – Public Interest Criteria - PIC 4012A – student welfare
- 3.12.2. – Visa grant period – policy arrangements

3.2. Strategic context

International education is vital to the Australian economy. It is Australia's largest services export and our third largest export overall, contributing \$40.3 billion to the Australian economy in 2019. In addition to significant economic benefits, Australia's international education sector enriches our social, cultural and intellectual life.

The Australian Strategy for International Education 2021-2030 sets the Australian Government's priorities for the international education sector. The Subclass 500 visa program is an important component of this strategy.

3.3. Objectives of the Subclass 500 visa program

The role of the Subclass 500 visa program is to facilitate the lawful entry and temporary stay of genuine international students. Subclass 500 visa settings are designed to ensure that Australian education remains internationally competitive, while preserving high levels of immigration integrity, with the primary purpose of the visa program being to enable overseas students to gain a quality education.

3.4. Stakeholder roles and responsibilities

In administering the Subclass 500 visa program, the Department works closely with other relevant Commonwealth agencies, particularly regulatory bodies and the Department of Education.

3.4.1. Role of the Department of Education

The Department of Education is the lead agency for the Australian Strategy for International Education 2021-2030 and is responsible for administering the *Education Services for Overseas Students Act 2000*.

The ESOS Act established the *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students*.

The purpose of the National Code is to provide nationally consistent standards for education providers registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS).

Under the ESOS Act, only education providers registered on CRICOS are permitted to offer education or training services to overseas students. The Department of Education is responsible for maintaining CRICOS and the Provider Registration and International Student Management System (PRISMS).

3.4.2. Role of the Department of Foreign Affairs and Trade and the Department of Defence

Department of Foreign Affairs and Trade (DFAT) and the Department of Defence sponsor students to study and/or train in Australia. DFAT is responsible for managing the Australian Government's overseas aid program (formerly AusAID), which includes offering training programs in Australia. Defence sponsors international students to undertake military and vocational training as well as scholarships to study university courses in Australia.

These programs are important in strengthening Australia's bilateral relationships and promoting development efforts in other countries.

Australia's aid program – defining Foreign Affairs students

The term **Foreign Affairs student visa** is defined in subregulation 1.04A(1). The intention is to help DFAT continue to meet Australia's aid program objectives by ensuring that, as a general rule, Foreign Affairs students return to their home country to put their skills and knowledge gained through education and training programs in Australia to use in the further development of their home country by working there for two years.

The definitions **Foreign Affairs recipient** and **Foreign Affairs student** in regulation 1.03 refer to subregulations 1.04A(2) and (3).

The Schedule 2 Part 500 criteria apply to current **and** former AusAID or Foreign Affairs students.

3.5. Overview to this instruction

3.5.1. Simplified Student Visa Framework (SSVF)

The SSVF came into operation on 1 July 2016 and established a single immigration risk framework and simplified Student visa legislation, reducing the number of Student visa subclasses from eight to two (Subclass 500 visa for students and Subclass 590 visa for student guardians).

3.5.2. Country and education provider evidence framework

The Country and education provider framework operates in policy to guide officers, rather than being formally legislated. Under the framework, the combined immigration risk outcomes of the student's education provider and country of citizenship **guide** the level of financial and English language documentation that the student needs to provide with their visa application.

Subclass 500 visa applicants can access the Subclass 500 visa **Document Checklist Tool** on the Department's website to find out which documents need to be attached to their application.

3.6. The Subclass 500 visa

3.6.1. About the Subclass 500 visa

Overseas students who wish to study in Australia may apply for the Subclass 500 visa to undertake study in one of the seven education sectors:

- Independent English Language Intensive Courses for Overseas Students (ELICOS) sector
- Schools sector
- Vocational Education and Training (VET) sector
- Higher Education sector
- Postgraduate Research sector
- Non Award sector
- Foreign Affairs or Defence sector.

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To satisfy the criteria for grant of a Subclass 500 visa, applicants must, among other things, demonstrate that they are seeking to enter Australia for the primary purpose of study and that they will abide by the conditions of their visa.

3.6.2. Study on other visas

Generally, people (who are not an Australian resident or citizen) wishing to study in Australia must obtain a Subclass 500 visa before commencing a course of study in Australia. However, certain people may study without the need to hold a Subclass 500 visa, for example:

- New Zealand citizens who satisfy criteria for a Subclass 444 (Special Category) visa
- Persons who hold a visitor visa or Electronic Travel Authority (who may study for up to three months).

Note: New Zealand citizens who satisfy the criteria relevant to the grant of the Subclass 444 (Special Category) are generally granted a visa when they enter Australia. Subclass 444 visas have no conditions. Refer to Subclass 444 (Special Category) visa – PI (VM-3184).

3.7. Education providers

3.7.1. Definition of education provider

Education provider is defined in regulation 1.03. To enrol overseas students an education provider must be registered on CRICOS. Exceptions are institutions offering courses to Foreign Affairs or Defence sponsored students or to students undertaking approved secondary exchange programs.

3.7.2. CRICOS registration codes – National registration

Education providers with more than one location across States/Territories are registered under a single national code. Education providers intending to offer courses in more than one state must register each course in each state where it will be offered.

Formerly, education providers operating in more than one jurisdiction had separate CRICOS codes for each of the States/Territories in which they operate.

If a CRICOS code is consolidated, the confirmation of enrolment (CoE) will still link to the provider's old CRICOS code. If a particular course CRICOS code is changed, a link to the old course CRICOS code will be on the CoE.

3.7.3. Monitoring education providers

It is a government objective to protect the reputation of the overseas education industry and ensure its integrity by monitoring compliance of education providers with obligations under the ESOS Act and of students' obligations under the Act.

The ESOS Act established the National Code by which all providers of education services to overseas students must abide. The Department of Education, the Tertiary Education Quality and Standards Agency (TEQSA), the Australian Skills Quality Authority (ASQA) and the various state accreditation agencies have prime responsibility for monitoring education providers.

For further information on the regulatory jurisdiction of these agencies, refer to the Department of Education website's ESOS agencies page.

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3.7.4. Dealing with complaints and referrals

The Department may receive complaints, allegations or concerns about the service, standards or ethics of an education provider from a student, another provider or a non-student member of the public.

Generally, complainants should be asked to submit their complaint with either TEQSA (for higher education providers) or ASQA (for vocation educational and training providers).

3.7.5. Provider default

Education provider default occurs when a registered education provider fails to provide or ceases to provide a course to a Subclass 500 visa holder. This may occur due to economic reasons (e.g. low enrolments), or because the provider's registration has been cancelled following an audit by Commonwealth/State/Territory education authority.

Such closure has a negative impact on international students. The ESOS Act provides that students affected by education provider default may be placed in a suitable alternative course with a new education provider, or may obtain a refund of their course fees.

Students may be assisted to secure enrolment in an alternative course by either the defaulting provider or the Tuition Protection Service (TPS). For more information about the TPS, refer to the Tuition Protection Service website.

Unless the student is changing to a lower Australian Qualification Framework (AQF) level course, the student will be able to undertake their alternative course on their existing Subclass 500 visa. However, the time taken to place students in alternative courses can vary and some providers may not award full credit for studies the student has already undertaken. In such situations, students may need to apply for a new Subclass 500 visa to continue with their studies as their new course may be of a longer duration than their current visa.

For a list of provider defaults and affected students, refer to Content Manager: [s. 22\(1\)\(a\)\(ii\)](#) (Education provider defaults for the purposes of visa application charge (VAC) refunds and 'nil' VAC provisions).

Refer also to: 3.8.3. – Visa application charge - Education provider default and 'nil' VAC [eligibility](#).

3.8. Subclass 500 - Schedule 1 application validity requirements

3.8.1. Item 1222 - Overview

Item 1222 of the Regulations sets out the requirements for making a valid application for Subclass 500 visa.

Table: Elements of a valid application for a Subclass 500 visa

Subitem 1222(1)	application form
Subitem 1222(2)	visa application charge
Paragraph 1222(3)(a)	where and how application must be made
Paragraph 1222(3)(b)	applicant may be in or outside Australia when making an application, but not in immigration clearance
Paragraph 1222(3)(c)	evidence of intended course of study (for the primary applicant)
Paragraph 1222(3)(d)	evidence of intended arrangements (accommodation, support and general welfare) if the primary applicant is under 18 years of age

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Paragraph 1222(3)(e)	ability to make a combined application
Subitem 1222(4)	applicant in Australia must hold a certain substantive temporary visa (as specified in paragraph 1222(5)(c), or satisfy paragraphs 1222(4)(b-d)

For general policy and procedure on valid application requirements, refer to

GenGuideA - All visas - Visa application procedures - PI (LS-1849)

3.8.2. Lodgement arrangements

Application forms and manner of lodgement

An application for a Subclass 500 visa must be made (lodged) using the approved form/s specified by the Minister in a legislative instrument. *Migration (LIN 20/102: Arrangements for Student (Temporary)(Class TU) visa applications) Instrument 2020* (LIN 20/102) is the current legislative instrument that specifies the approved forms, place and manner of lodgement to make a Subclass 500 visa application. The specified forms are form 157A (internet), form 157A (non-internet) in certain circumstances and form 157N (in certain circumstances).

Note: LIN 20/102 also specifies non-internet form 1543 (in certain circumstances). This form was created specifically to allow certain students whose Subclass 500 visas were cancelled at the beginning of the COVID-19 pandemic in 2019 to lodge another application. The circumstances no longer exist for using this form.

Via ImmiAccount

An applicant for a Subclass 500 visa must make their application online using form 157A (internet) unless an authorised officer approves an alternative manner of making an application.

An applicant who is under 18 years of age at the time of application and intends to reside with a parent, a person who has custody of the applicant, or a suitable relative, must include form 157N (Student guardianship arrangements) when lodging their application. See: 3.8.6. - Welfare of minors

Applicants and agents can access online services by creating an account in ImmiAccount. For further information regarding ImmiAccount, refer to the Department's website ImmiAccount page.

Alternative manner of making an application

If a person cannot make an online application for a Subclass 500 visa using form 157A (internet) and they have been authorised through an email from an authorised officer in the Subclass 500 Program Management or Program Delivery teams in the Department then they may make an application using non-internet form 157A.

Under policy, authorisation to do this is generally limited in circumstances where the applicant encounters a systems error, high profile applicants or sensitive cases who are outside Australia, persons whose passports have expired, and decisions by the Tribunal to set aside and substitute the cancellation decision.

Authorising an application to be made outside of ImmiAccount

A person can contact the relevant processing centre and ask to make their application outside of ImmiAccount.

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Table summary: Authorising form 157A lodgement outside of ImmiAccount

Circumstance	If the person has been unable to lodge their application online in the following circumstance:
System error	▪ electronic lodgement is prevented by the Department's systems; and ▪ the problem has been identified by the Department; and ▪ the expected time for the problem to be rectified will fall outside of the Department's business hours; and ▪ the person will become an unlawful non-citizen before the Department's next business day commences.
System error (likely to be a data matching error)	▪ electronic lodgement is prevented by the Department's systems; and ▪ electronic lodgement of the application is not prevented by the Act or the Regulations; and ▪ the problem is unable to be rectified by the Department.
High profile/sensitive case	▪ the application is to be made by a high profile person or is a sensitive case; and ▪ they cannot (or will not) lodge in ImmiAccount; and ▪ not accepting the application could significantly compromise diplomatic or commercial relations.
Other	▪ expired passport ▪ within 28 days of a decision by the Tribunal to set aside a visa cancellation or the Minister's decision not to revoke the cancellation (the cancellation has the effect of preventing e-lodgement).

System error

A person who encounters a system error when attempting to make a Subclass 500 visa application may need to submit a technical support enquiry form to eService Support seeking assistance on how to make a Subclass 500 visa application.

If the person appears to satisfy the requirements in item 1222, Student Visa Program Management or Program Delivery teams will send an authorisation email to the person.

The authorisation email will include a copy of non-internet form 157A (in PDF) and directions as to how the person can make their Subclass 500 visa application.

The authorised application must:

- be made according to the directions in the authorising email;
- attach a copy of the authorising email to the application; and
- be submitted before midnight (AEST or AEDST when applicable) on the day following the date on which the authorising email was sent).

Note: A Subclass 500 visa application made using non-internet form 157A is invalid if it is not made in accordance with all of the above requirements. Where the authorisation email has been sent to an applicant outside Australia, non-internet form 157A can also be lodged at a diplomatic, consular or migration office maintained by or on behalf of the Commonwealth, outside Australia.

High profile or sensitive cases requiring authorisation

If the person appears to satisfy the validity requirements in item 1222, an authorised officer in the Student Visa Program Management or Program Delivery teams will send an authorisation email to the person. The authorisation email will include a copy of non-internet form 157A (in PDF) and directions as to how the person can make their Subclass 500 visa application. Principal Migration Officers may also authorise the use

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of the alternative form of application. If the person is outside Australia, the authorised application may be made at a diplomatic, consular or migration office maintained by or on behalf of the Commonwealth outside Australia.

The authorisation email template and visa application forms are in Content Manager s. 22(1)(a)(ii). If the template is not accessible, email s. 22(1)(a)(ii)@homeaffairs.gov.au for assistance.

3.8.3. Visa application charge

Overview

A Subclass 500 visa application is not valid until (among other things) the relevant visa application charge (VAC) set out in subparagraph 1222(2)(a)(ii) is paid, unless the applicant falls within an exempt category specified by the legislative instrument made under paragraph 1222(5)(a). No 'additional non-internet application charge' applies to Subclass 500 visa applications.

The **subsequent temporary application charge** (STAC) applies to some Subclass 500 visa applications.

For policy and procedure on the VAC, refer to:

Div 2.2A of the Migration Regulations 1994 – Visa Application Charge – PI (VM-6647).

Subsequent entrant secondary applicants

Where a subsequent entrant application is made by the partner of the primary visa holder/applicant and combined with that of a child or children, the base application charge will apply to the partner. The additional application charge will apply to each child (member of the family unit) included in the application.

Where siblings apply as subsequent entrants (and the application is not combined with a parent), they must make separate Subclass 500 visa applications (and pay the base application charge) to join their parent/s as they are not members of each other's family unit. Where siblings apply as subsequent entrants together and one pays the base application charge and the other child (or children) pays the additional applicant charge, the application is only valid for the sibling who pays the base application charge (and the other child applicant/s must be deemed invalid). The other child or children may apply again and pay the base application charge.

VAC exemptions

The legislative instrument made under paragraph 1222(5)(a), *Migration (LIN 20/158: Class of Persons for Student (Temporary) (Class TU) Visa applications) Instrument 2020* (LIN 20/158) specifies the class of persons exempt from paying the VAC – namely:

- Foreign Affairs student applicants or Defence student applicants and applicants claiming to be their family members (includes family members making a combined application as well as those applying as a subsequent entrant).
 - applicants must provide a letter from the relevant agency (DFAT or Defence), which sets out details of the support.
- Applicants who have been granted approval under a student training scheme approved by the Commonwealth to study in Australia and applicants claiming to be their family members who make a combined application (family members applying as subsequent entrants are liable to pay the prescribed VAC).
 - Applicants must provide evidence of the scholarship they have been granted and show that this is funded by the Australian Government. Proof of Australian Government/Commonwealth funding is generally contained in either the student's CoE (notes) or in a separate letter from their education provider or sponsor. For example, a common type of scholarship is the Research Training Program (RTP).

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Note: If an applicant receives partial funding under a training scheme approved by the Commonwealth they will be eligible for a VAC exemption. Partial funding may apply under any of the following circumstances:

- not all of the courses are being funded
- the student is being funded for only a certain period of time
- a certain percentage of the student's course, living or other costs are being funded.

An applicant who states they are a Commonwealth funded student in the Subclass 500 visa application form without sufficient evidence will not be eligible for a VAC exemption.

Subclass 500 visa applications made after 1 July 2017 that have been granted as Commonwealth funded without the appropriate evidence will not be eligible to have their CoE reinstated. The student will be required to apply for a new Subclass 500 visa and pay the VAC.

- Secondary exchange students.
 - Applicants must provide an Acceptance Advice for Secondary Exchange Students (AASES) form issued by the relevant State/Territory government agency.
- Certain students affected by education provider default and their family members who make a combined application (family members applying as subsequent entrants are liable to pay the prescribed VAC).
 - Refer to Education provider default and 'nil' VAC [eligibility](#).
- Family members of students enrolled in postgraduate research courses who make a combined application, and family members of a subsequent entrant secondary applicant spouse / defacto partner who make a combined application with that person.
 - Family applicants must provide a CoE indicating that the student is enrolled in a postgraduate research course.
- Applicants whose Subclass 500 visa was cancelled under paragraph 116(1)(e) of the Act as a result of the risk, in relation to a relevant Public Health Emergency of International Concern (PHEIC), to the health, safety or good order of the Australian community, or a segment of the Australian community, who are reapplying for a Subclass 500 visa within three months after the cancellation of the applicant's Subclass 500 visa.
- Applicants who hold, or held a Subclass 500 visa at any time occurring on or after 1 February 2020 who are or were unable to complete their course of study on that Subclass 500 visa because of COVID-19, and applicants claiming to be their family members who make a combined application.

Note: PHEIC means Public Health Emergency of International Concern designated by the World Health Organisation.

Education provider default and 'nil' VAC eligibility

Education **provider default**, as defined in LIN 20/158, means the occurrence of one of the following three events because of a sanction has been imposed on the education provider:

- the course does not start on the agreed starting day; or
- the course ceases to be provided at any time after it starts, but before it is completed; or
- the course not being provided in full to a student.

The legislative instrument requires that officers be satisfied that there is 'satisfactory evidence' that the applicant was enrolled in the registered course on the provider default day. This includes visa applicants who were studying with the provider, as well as visa applicants who had been granted a Subclass 500 visa but who had not yet commenced their studies with the provider at the time of the default.

Visa applicants:

- who had enrolment approved by the provider; and
- whose Subclass 500 visa application had been made but not decided at the time of the default

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should secure alternative enrolment with another provider before a decision is made on their visa application. These visa applicants are not entitled to a 'nil' VAC for their visa application that is not finally determined.

To be eligible for a 'nil' VAC, at the time they make their application, the applicant must:

- not have been able to complete a registered course due to provider default
- have been enrolled in that course of the provider default day
- hold a Subclass 500 visa, or their last substantive visa was a Subclass 500 visa
- require a further Subclass 500 visa to complete their studies
- apply for a further Subclass 500 visa no later than 12 months after the provider default day; and
- have not made a previous application for not being able to complete these studies because of the same provider default.

An example of satisfactory evidence of enrolment is a CoE that was in effect on the provider default day. Details of a student's enrolment will generally be available in PRISMS, for which officers can register to access via the PRISMS registration webpage.

Officers can also refer to the Content Manager lists of affected students (s. 22(1)(a)(ii) - Education provider defaults for the purposes of VAC refunds and 'nil' VAC provisions).

If an education provider has only recently defaulted and/or a student is not listed in either PRISMS or the Content Manager documents, officers may email s. 22(1)(a)(ii) @homeaffairs.gov.au for advice before making a decision on the 'nil' VAC. However, if evidence of enrolment is not available, officers may be satisfied that the visa applicant was enrolled with the education provider on the provider default day on the basis of other evidence, such as written verification from:

- the defaulting education provider
- the TPS or
- The Department of Education.

Provider default day

If a student has commenced their studies with the provider, the default day is the day on which the course officially ceased to be provided by the education provider. For a list of provider defaults and default days, refer to the most recent version of the "List of Education providers and Students affected by provider default" in Content Manager (s. 22(1)(a)(ii)).

If a student had been granted a visa, but the course does not start on the **agreed starting day** as defined in LIN 20/158, the provider default day is the 'agreed starting day' of the course. Officers may refer to the student's CoE for details of the agreed starting day.

COVID-19 affected applicants

Subclass 500 visa applicants who hold, or held a Subclass 500 visa at any time occurring on or after 1 February 2020, who are or were unable to complete their course of study on that Subclass 500 visa because of COVID-19, are exempt from the VAC.

This includes students who:

- deferred study as they were unable to enter Australia because of travel restrictions
- were forced to reduce to a part-time study load by their education provider
- were unable to complete their work-based training or placements.

Note: This measure is not intended for students who are applying for a new Subclass 500 visa because of ordinary reasons (including failing a course or a unit of study, deferring for personal reasons or voluntarily reducing study load).

Credit card chargebacks

A credit card chargeback is reversal of the fees paid for the visa application (initiated by the issuing financial institution).

When a chargeback occurs the application becomes invalid. As a matter of policy, if a visa application appears to be invalid, officers may give the applicant an opportunity to rectify the validity issue if there is a special circumstance that might warrant it, as below:

- Where it is clear that the visa applicant will soon no longer be able to meet a validity requirement (for example an age requirement).
- Where the substantive visa of a visa applicant in Australia is due to cease within a week, which may affect the applicant's eligibility in Australia for a further substantive visa.
- Where a visa applicant outside Australia plans to travel to Australia within a week using the visa that they believe they have applied for.

Where there is no special circumstance, the application may be invalidated immediately.

Where officers decide to make contact to resolve a validity issue, GenGuideA - All visas - Visa application procedures - PI (LS-1849) recommends an officer attempt to contact an applicant by phone at least twice over a two-day period. If an applicant will be responding by mail, a response period of 7 days should be specified.

3.8.4. Location of applicant when making an application

Paragraph 1222(3)(b) provides that an applicant may be in or outside Australia, but not in immigration clearance.

3.8.5. Evidence of enrolment

Under paragraph 1222(3)(c), applicants seeking to satisfy primary criteria for a Subclass 500 visa are required to provide evidence of enrolment for each of the applicant's intended courses of study, or activities related to study in Australia, when they make their visa application. Refer to *Evidence of Intended Course of Study 2017/ 013*.

Applicants in Australia

Applicants in Australia must provide one of the following with their visa application:

- a CoE number in the application (verification through PRISMS) for each intended course of study; or
- if the applicant has not been issued a CoE, a letter of offer (that has not been cancelled or revoked) from their education provider for each intended course of study; or
- an AASES form; or
- a letter of support from DFAT or Defence, containing details of the intended course of study; or
- a letter from their education provider requiring the applicant to remain in Australia for the marking of their postgraduate thesis.

Applicants outside Australia

Applicants outside Australia must provide one of the following with their visa application:

- a CoE number in the application (verification through PRISMS, preferable by student passport search) for each intended course of study; or

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- an AASES form; or
- a letter of support from DFAT or Defence containing details of the intended course(s) of study.

Applicants outside Australia are not able to use a letter of offer. The intention of the requirement to lodge with a CoE number/other form of acceptable enrolment for **each** intended course of study is:

- to ensure the lodgement of complete and decision ready applications; and
- to remove the ability of education providers to manage their risk by waiting for a request from Departmental officers before issuing a CoE.

Commonwealth sponsored students

Students funded or partially funded under Commonwealth or State/Territory scholarships are required to provide a CoE as evidence of their enrolment in a course of study in Australia. This is because in practice CoEs are used to manage the relevant Department of Education administered scholarship or fellowship scheme.

Although the Regulations require students sponsored under a Commonwealth scholarship to provide a CoE, these students are not included under the provisions of the ESOS Act. This means that under the ESOS Act, they do not require a CoE and their CoEs will be cancelled in PRISMS after visa grant. This will not affect the validity of their visa.

The above applies to students studying under Commonwealth Schemes such as the Research Training Program (previously the International Postgraduate Research Scholarship Scheme) and the Endeavour Award program.

Identifying if a student is Commonwealth sponsored

There are various ways officers can identify who is funding a scholarship, such as:

- the applicant may attach a letter about their scholarship which specifically states it is Australian Government funded / Commonwealth sponsored, or
- this information could be included in the comments section of the CoE.

A common type of scholarship is the Australian Government Research Training Program (RTP). The RTP provides block grants, on a calendar year basis, to higher education providers to support both domestic and overseas students undertaking research doctorate and research masters degrees, known as higher degrees by research (HDRs).

If officers are in doubt as to whether a student is Commonwealth sponsored, they may locate the relevant scholarship on the university's website. This information should assist in determining whether the scholarship is funded by the Australian Government. If still in doubt, officers are to request the student to provide further evidence.

For further information, refer to Scholarships to study in Australia (studyaustralia.gov.au).

Foreign Affairs/Defence students

A CoE is not required from Foreign Affairs/Defence students. Instead, to satisfy the evidentiary requirements of enrolment in a course of study, or activities related to study, Foreign Affairs/Defence students must provide a letter of support from DFAT or Defence with their Subclass 500 visa application.

If approached by DFAT/Defence or a host government about how to make an application for a Subclass 500 visa, refer to the Department's website - Applying online in ImmiAccount.

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Secondary exchange students

Only students who provide an AASES form can be regarded as secondary exchange students for the purposes of Subclass 500 visa lodgement and grant. The AASES form is the official document generated by relevant state/territory authorities and issued to each exchange student through their Overseas Secondary Student Exchange Organisation.

Secondary exchange arrangements apply only to students travelling to Australia to participate in a formally-registered secondary exchange program. The period of exchange may vary from a minimum of one month to a maximum of one year.

It is important that secondary exchange students be asked to apply for a Subclass 500 visa rather than a visitor visa even if the intended duration of the exchange program is less than three months. This ensures that registered exchange organisations are compliant with reciprocity conditions, which are monitored by each State/Territory government to maintain the balance of inbound and outbound students.

Informal arrangements may use the term “secondary exchange” but if these students do not provide AASES forms, they cannot be processed as students.

If an applicant is not part of a formal exchange program and intends to take part in an informal exchange arrangement for no more than three months, they may be invited to apply for a visitor visa.

CoE status

To meet the validity requirements, any CoE provided as evidence of ‘intended course of study’ must have a status of ‘approved’ or ‘studying’.

Expired CoEs

ICSE automatically updates a CoE issued to a student outside Australia to be considered as ‘expired’ 60 days after the course start date if the student has not been granted a Subclass 500 visa for the CoE.

This does not mean that the CoE has been cancelled. A Subclass 500 visa applicant in Australia may therefore hold an ‘expired’ CoE if they were issued the CoE while outside Australia, and have arrived and commenced study on a visa other than a Subclass 500 visa. To apply for a Subclass 500 visa such students may use their letter/letters of offer or obtain a new CoE from their education provider.

If an ‘expired’ CoE is submitted with an application, officers should check the CoE Event History in PRISMS to determine if the CoE status was ‘approved’ or ‘studying’ at time of lodgement.

Cancelled CoEs

The Department of Education will cancel a CoE if a course is suspended or cancelled from CRICOS. Providers can also cancel CoEs that they have issued, for example, if they have terminated a student’s enrolment. A cancelled CoE cannot be used for any visa-related purpose.

Impact of visa refusal on CoE validity

Refusal to grant a visa does not affect the validity of a CoE. If an applicant is refused a visa they can re-use the same CoE for the purposes of another Subclass 500 visa application.

Applying more than seven months prior to course commencement

If a visa applicant seeks to make an application more than seven months before their course commences they will receive a warning in ImmiAccount. The warning alerts them that the Department will not prioritise their application and encourages them to apply three months prior to course commencement.

Released by the Department of Home Affairs
under the Freedom of Information Act 1982

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The visa applicant is able to proceed with lodgement, however, the application will have a follow-up in ICSE. The follow-up provides that it is open to officers:

- to **not** prioritise the application until closer to the course commencement date; or
- to process the application with closer scrutiny against the genuine temporary entrant (GTE) provisions. Consider why the applicant is making an application early, when they intend to enter Australia and what they will be doing in Australia prior to the course commencement, noting that they cannot work and will require Overseas Student Health Cover (OSHC) to cover the entire period they are in Australia.

3.8.6. Welfare of minors

Evidence of welfare arrangements required at time of lodgement

Under paragraph 1222(3)(d), applicants seeking to satisfy the primary criteria for a Subclass 500 visa who will be under 18 any time while in Australia are required to provide evidence of intended arrangements for their accommodation, support and general welfare for the stay period in Australia. This requirement applies whether the Subclass 500 visa applicant is in or outside Australia, and includes Foreign Affairs/Defence sector students.

If the student will turn 18 before the intended arrival date

Students who will turn 18 after they apply but before they enter Australia must submit Form 157N with questions 1-8 completed and signed by the parent or legal guardian. No welfare arrangements are required.

If the student will turn 18 after arrival but before their course commences

Students who will turn 18 between entering Australia and starting their course are still required to include evidence of their intended welfare arrangements by means of Form 157N.

For Schedule 1 purposes, there is no requirement to assess whether the parent, legal guardian or suitable relative would meet the requirements of PIC 4012A, because this is a time of decision criterion.

Types of evidence required for each welfare type

The types of evidence required for each welfare type are as follows:

For parent, custodian or relative:

- The inclusion of a properly completed form 157N (Nomination of student guardian) as required by the legislative instrument made under subitem 1222(1) and paragraph 1222(3)(a).

Welfare arrangements approved by education provider:

- A CAAW (Confirmation of Appropriate Accommodation and Welfare) letter.
- Officers should confirm that a CAAW letter has been issued in PRISMS.

Defence/Foreign Affairs students

- Letter from DFAT/Defence stating that arrangements have been made for the student's welfare.

Secondary exchange students

- An AASES form.

3.8.7. Combined applications

Combined applicants / subsequent entrants

Paragraph 1222(3)(e) provides that an application by a person claiming to be a *member of the family unit* of a person who is a Subclass 500 visa applicant may be made at the same time and place as, and combined with, the application by that person. In other words, the primary applicant's spouse or de facto partner and eligible dependants may be included in the same application at the time of making the application.

Members of the family unit may also apply as a subsequent applicant.

Subsequent entrants may make a combined Subclass 500 visa application where one person is a member of the family unit of another person (e.g. mother and child).

Where subsequent entrants are siblings (two or more children with no parent), they must make separate Subclass 500 visa applications to join their parents as they are not members of each other's family unit for the purposes of a Subclass 500 visa application.

If sibling subsequent entrants are included in the same application, and there is no parent included in that application, then the application is valid only for the applicant who pays the base application charge (and the other child applicant/s must be deemed invalid).

With online lodgement, the primary and secondary applicants may be in different locations, in or outside Australia, yet still able to make a combined application.

Adding family members to an application after it is made

Newborn children

The only category of family unit member that can be added to a Subclass 500 visa application that has not been determined is a child born after the application was made but before it is decided.

Under regulation 2.08, a child born to an applicant after a Subclass 500 visa application is made but before it is decided is taken to have applied at birth for that visa and that application is combined with the parent's application. For more information, refer to:

GenGuideA - All visas - Visa application procedures - PI (LS-1849).

Depending on their visa status (refer to 3.8.8. - Applications made in Australia – Visa status), if the primary applicant fails to include a family member in their application they may choose to:

- continue with their application, and if a visa is granted, make an application (as a subsequent entrant secondary applicant) for any new family members; or
- make a new application including all family members and withdraw their current application.

In either situation, the applicant will be responsible for the VAC, including any STAC that applies for additional temporary visa applications made in Australia.

Student must inform the Department of any new family members

Subregulation 2.07AF(4) requires that Subclass 500 visa primary applicants inform the Department in writing if a person becomes a member of their family unit after the application is made and before it is decided. For example, if a Subclass 500 visa primary applicant marries after applying for their visa and before a decision is made, they must inform the Department.

A [form 1022](#) can be used to notify the Department of the changes of circumstances.

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Officers are to ensure that details of the new family member (for example, a spouse/de facto partner) are recorded by adding the spouse/de facto partner to the application as a **non-accompanying** family member to the application. The new family member cannot be considered for grant of a Subclass 500 visa in the current application, but may be able to apply later as a subsequent entrant dependant if the primary applicant is granted a visa.

3.8.8. Applications made in Australia – Visa status

Eligible visa holders

Subitem 1222(4) requires an applicant who is in Australia to hold a substantive temporary visa **other than** the visas specified in the legislative instrument made under paragraph 1222(5)(c) - namely:

- Subclass 426 (Domestic Worker (Temporary)) visa
- Subclass 403 (Temporary Work (International Relations)) visa in the Domestic Worker (Diplomatic or consular) stream only
- Subclass 995 (Diplomatic) visa granted to an applicant who satisfied the primary criteria (that is, only family members holding the Diplomatic visa can validly apply for a Subclass 500 visa)
- Subclass 771 (Transit) visa or
- Subclass 600 (Visitor) visa in the Sponsored Family stream or Approved Destination Status stream.

OR

If not a substantive visa holder

The applicant must satisfy paragraphs 1222(4)(b), 1222(4)(c) and 1222(4)(d); namely:

- the last substantive visa held must be a Student visa, or a Special Purpose visa, or a Subclass 995 Diplomatic visa granted on the basis of the person being a spouse/de facto partner or a dependent relative of the diplomatic/consular representative;
- the Subclass 500 visa application must be made within 28 days after the day when the last substantive visa ceased to be in effect, or if that last substantive visa was cancelled, and the Tribunal set aside and substituted the cancellation decision or the Minister decision not to revoke the cancellation – the later of:
 - the day when that last substantive visa ceased to be in effect and the day when the applicant is taken, under section 368D and section 379C of the Act, to have been notified of the Tribunal's decision;
- the applicant must not have previously been granted a visa on the basis of an application made when the applicant did not hold a substantive visa.

3.9. Subclass 500 - Schedule 2 criteria

3.9.1. Overview of the primary and secondary criteria

Division 500.2 sets out the Subclass 500 primary criteria. The primary criteria must be satisfied at the time a decision is made on the application by at least one member of a family unit (referred to as the 'primary applicant').

Division 500.3 sets out the Subclass 500 secondary criteria and must be satisfied at the time a decision is made on the application. The secondary criteria are for applicants who are members of the family unit of a person who satisfies the primary criteria. Applicants seeking to satisfy the secondary criteria are referred to as 'secondary applicants'.

3.9.2. The country and provider evidence framework

The combined evidence level of the student's education provider and country of citizenship is used to guide the level of financial and English language evidence that a student needs to provide with their Subclass 500 visa application.

Students associated with lower (that is, less) evidence levels are generally able to meet financial capacity requirements via declaration and English language proficiency requirements by satisfying their education provider – referred to as **streamlined evidentiary requirements**.

Students associated with higher (that is, greater) evidence levels are required to provide additional documentary evidence of their financial and English language capacity with their visa application – referred to as **regular evidentiary requirements**.

A student can determine their likely financial capacity and English language proficiency requirements by entering their intended education provider and country of citizenship into the **Document Checklist Tool** on the Department's website.

The country and provider evidence framework operates in policy. This enables the model to be responsive to changes in client or education provider behaviour, and positive or negative changes to evidence levels. The country and provider evidence framework is intended to guide officers as to when formal evidence is required of a student's financial capacity and English language proficiency.

Officers have the discretion to require evidence of financial capacity and English language proficiency from applicants with 'streamlined evidentiary requirements'. However, officers are to not diverge from the outcomes of the student's combined country and provider evidence framework rating unless particular circumstances exist, as discussed in:

- 3.10.3. - English language proficiency
- 3.10.4. - Financial capacity evidence – Requesting evidence of financial capacity from streamlined evidentiary applicants.

Disclosure of evidence levels

Under the country and provider evidence framework, the evidence levels for education providers and countries **are not publicly disclosed**. However, individual education providers will have access via an online reporting portal to data pertaining to their **individual** evidence levels.

Under no circumstances are officers to publicly disclose the evidence levels for a particular education provider or country - for example, "education provider x has an evidence level rating of 'two'".

This approach seeks to:

- mitigate risks associated with non-genuine students targeting particular education providers
- avoid the potential for evidence levels to be misinterpreted as relating to the education quality of a provider
- reduce the potential for reputational and/or diplomatic sensitivities if evidence levels are increased.

Updates to country and provider evidence levels

Country and provider evidence levels are generally updated approximately every six months, with updates intended to take place at the end of March and September each year.

Visa applications must be assessed on the basis of the evidence level at the time the application was made.

Internal risk framework

The country and provider evidence framework guides the level of evidentiary requirements for an application based on the applicant's country of citizenship and intended education provider. Each application is also assessed against the Department's internal risk framework to determine the level of risk associated with an application, based on the individual characteristics of the application and applicants.

Internal risk ratings for individual applications are displayed in the Permission Request in ICSE/ICUE and details are accessible through the Risk Resume.

The rating given to an application by the internal risk systems guides officers as to the level of rigour that should be applied to an application.

For information on the internal risk framework and systems, refer to: Visa and Citizenship Risk Systems – PI (VM-958).

Students with more than one citizenship

Students with more than one citizenship can choose which passport they wish to use for the purpose of the visa application. The visa is to be recorded against this passport in ICSE/ICUE.

Although the student can choose which passport the visa grant should be recorded against, the Department's internal risk systems will take into account the risk associated with **all** citizenships declared by the applicant, and apply a risk level accordingly.

Processing of certain Subclass 500 visa applications

Foreign Affairs/Defence students

Foreign Affairs and Defence students are identified and treated as **regular** students under the evidence framework. However, these students are exempt from English language proficiency requirements and are able to meet the financial requirement based on their letter of support from DFAT or Defence.

Secondary exchange students

Secondary exchange students are identified and treated as **streamlined** students under the evidence framework. The AASES form provides evidence to meet financial capacity and English language proficiency requirements.

Postgraduate thesis marking students

Postgraduate research thesis marking students are identified and treated as **streamlined** students under the evidence framework. As such, these students generally will not be required to provide evidence of their financial capacity. Being postgraduate research students, they are also exempt from providing evidence of English language proficiency. In limited circumstances, officers may request evidence of financial capacity to cover the living and course (tuition) fees in Australia.

3.10. Primary criteria for visa grant

The primary criteria are contained in clauses 500.211, 500.212, 500.213, 500.214, 500.215, 500.216, 500.217 and 500.218.

3.10.1. Evidence of enrolment etc.

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To satisfy clause 500.211, the applicant must:

- be enrolled in a course of study; or
- be required to remain in Australia during the marking of their postgraduate thesis; or
- if a Foreign Affairs or Defence student, have the support of DFAT/Defence for the grant of the visa.

Course of study is defined in clause 500.111 as:

- in relation to a **secondary exchange student** (defined in regulation 1.03) – a full-time course of study under a secondary school student exchange program administered by a State/Territory education authority
- in relation to a **Foreign Affairs student** or **Defence student** (both defined in regulation 1.03) - either a full-time course of study or training under a scholarship scheme or training program approved by the Foreign Minister or the Defence Minister; or
- in any other case, a full-time **registered course** (defined in regulation 1.03).

Education Services for Overseas Students (Exempt Courses) Instrument

The *Education Services for Overseas Students (Exempt Courses) Instrument 2021*, which came into effect on 29 June 2021, exempts certain supplementary courses from the ESOS Act. In other words, they are not a course of study for the purposes of paragraph 500.211(a). Overseas students will not be able to apply for a Subclass 500 visa, or satisfy the primary criteria for the grant of a Subclass 500 visa, based on the basis of enrolment in an exempt course alone.

Note: The policy intent of this instrument is to allow overseas students easier access to a range of supplementary courses, such as hobby and recreational courses, and other short courses which may be required for employment (for example, first aid and responsible service of alcohol) whilst living in Australia.

Evidence of enrolment etc

Acceptable evidence for clause 500.211 purposes is:

- a current CoE for each course of study with a status of 'approved' or 'studying'; or
- for secondary exchange students, an **AASES form** (defined in regulation 1.03); or
- for Foreign Affairs and Defence students, a letter of support from DFAT/Defence containing details of the intended course of study or training; or
- for postgraduate students required to remain in Australia for the marking of their thesis, a letter for postgraduate thesis marking issued by the relevant Australian education provider.

The onus is on the applicant to provide all information necessary to the Department. Officers must consider any CoE that has been provided with the application when determining the visa period. This includes any new CoEs attached to the application before the application is decided. Officers are not required to request further information (except if a natural justice obligation arises under section 57 of the Act) or check PRISMS for further CoEs that are not provided with the application. However, if officers view PRISMS and become aware of a CoE relating to the applicant that has not been provided with the application, officers must take this information into account when determining the visa period. It is a matter for officers how much weight they give to that information.

Significant changes in course type, discipline or sector after making an application, but before decision, should be considered in relation to GTE provisions. Refer to:

3.10.2. - Genuine applicant for entry and stay as a student.

Changes would not be considered significant where:

- a student provides new CoEs for the same Diploma and Advanced Diploma program, but with new start and end dates because they have missed or deferred their start date

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- a student provides new CoEs for a different Diploma and Advanced Diploma because their original provider is in default.

Applicants in Australia – Relying on a letter of offer

Applicants in Australia who, at time of making an application, provide a letter of offer must, prior to decision, be given the opportunity to obtain CoEs for courses.

Packaged courses

Packages and principal courses

Applicants can apply to undertake two or more courses on the one visa; this is known as “packaging” courses. It provides flexibility for students to apply for one visa for several courses where there is a progression from one course to another, without added visa processing times and costs.

The **principal course** in a package is the course with the highest AQF level and is the course that is used to determine whether an application should be guided by streamlined or regular financial and English evidentiary requirements.

There is no limit to the number of courses in a package. Officers should consider:

- the policy guidance in - **Error! Reference source not found.**
- the visa grant period – refer to 3.12.2. - Visa grant period - policy arrangements.

If an applicant has CoEs for courses included in a package that have not transferred into ICSE, officers must ensure all CoEs are recorded.

Assessing ‘acceptable’ course packages

For officers to consider granting a Subclass 500 visa for the length of the packaged course, packaged courses should be related and show reasonable course progression.

Applications with packages of unrelated courses, with limited or no progression should be considered against GTE provisions.

Assessing CoE and expected visa length

For a Subclass 500 visa to be granted for the full duration of the packaged course, a CoE for each course is required. It is for the education provider to determine whether and when to issue a CoE for the second or subsequent courses. If CoEs are provided for a package of courses, a visa to cover the package may be granted provided the visa period does not exceed six years and the applicant satisfies all other relevant criteria. Refer to:

3.12.2. - Visa grant period – policy arrangements - Maximum grant period – General **arrangements**

If an applicant has a CoE only for the preliminary course and not their proposed principal course, they are to be assessed for and granted a visa only for the duration of the preliminary course. If the student completes the preliminary course and then obtains a CoE for the next course, the student can apply for a further Subclass 500 visa in Australia to undertake the principal course, provided they now satisfy the criteria applicable to their proposed principal course, including financial capacity and English language proficiency.

Acceptable gaps between courses in a package

An acceptable gap between courses in a package is no more than two calendar months during the standard teaching year and no more than four months outside of the standard academic year (i.e. Christmas break). A standard academic year generally ends in October/November and starts again in February/March of the following year.

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Officers will need to assess those cases that go beyond these timeframes on a case-by-case basis. In deciding such cases and whether the visa period should include the break, officers are to consider factors such as whether the student has a good academic record demonstrated by satisfactory course attendance and progress, or if it would be unreasonable to expect them to enrol in another course during the gap.

If a student has finished their studies and has applied for a further Subclass 500 visa, officers are to be flexible in applying the course gap policy when the gap is between visas. For example, students who have either finished their course part way through the academic year (June) or at the end of the academic year will respectively be granted visas which are valid for two months after their course end date or to 15 March in the following year. In this situation, the student is entitled to remain in Australia for this period and will have up until the visa end date in which to apply for a further visa. Therefore, they may legitimately be in a situation where the gap between courses may be more than two months.

3.10.2. Genuine applicant for entry and stay as a student

Overview

Clause 500.212 provides that the primary applicant is a genuine applicant for entry and stay as a student. Three distinct considerations feed into an officer's evaluation of whether this requirement is satisfied:

- The intention concerning the length of stay, that is, there is a genuine intention to stay in Australia temporarily – refer to: Genuine temporary entrant (GTE) – paragraph 500.212(a);
- That there is an intention to comply with any visa conditions – refer to:
- Intention to comply with visa **conditions** – paragraph 500.212(b);
- Any other matter relevant to the subject matter, scope and purpose of clause 500.212 – refer to: **Error! Reference source not found.** – paragraph 500.212(c).

All applications must be considered on their own merits taking into account all relevant information and supporting documentation provided by the applicant. If officers make a finding that the applicant is not a genuine applicant for entry and stay as a student, the decision record must clearly show the officer's thinking and how they formed their view based on the information and evidence before them.

Genuine temporary entrant (GTE) - paragraph 500.212(a)

Overview

The first consideration is whether the applicant intends genuinely to stay in Australia temporarily.

An intention to stay in Australia temporarily may include an intention to seek a further visa after completion of studies that will nonetheless lead to nothing more than further temporary residence. For example, a Subclass 500 visa applicant may legitimately hold an intention to apply for the Subclass 485 (Temporary Graduate) visa after they complete their studies. The Subclass 485 visa permits international students who have recently graduated with an eligible qualification to live, work and study in Australia temporarily.

Note: Further GTE scrutiny may be required if an applicant indicates their intention to apply for another visa after they complete their studies - officers may need to consider options available to students if a further visa is not granted.

For information on the GTE and long-term/permanent residence pathways refer to - Complex cases - GTE and long-term/permanent residence pathways.

In assessing whether an applicant intends genuinely to stay in Australia temporarily, the following matters identified in subparagraphs (i) to (iv) of paragraph 500.212(a) are mandatory considerations:

- the applicant's circumstances; and
- the applicant's immigration history; and

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- if the applicant is a minor—the intentions of a parent, legal guardian or spouse of the applicant; and
- any other relevant matter.

Note: the following applicants are also subject to the GTE requirement:

- Secondary applicants for a Subclass 500 visa. Refer to: 3.11.2. - Genuine applicant for entry and stay as a family member.
- Primary (but not secondary) applicants for a Subclass 590 (Student Guardian) visa. Refer to: Subclass 590 (Student Guardian) Visa – PI (VM-3681).

Direction Number 69

Ministerial direction *Direction No. 69 - Assessing the genuine temporary entrant criterion for student visa and student guardian visa applications*, which is made under section 499 of the Act, provides guidance on factors that must be considered in applying the above matters*. Although all factors in the direction should be considered, they are not to be used as a checklist. Officers must use their judgement in weighing the four matters mentioned above to make a determination as to whether the applicant is a genuine temporary entrant.

Officers are bound by the direction and must refer to it when assessing whether an applicant genuinely intends to stay in Australia temporarily.

Note*: The applicant's circumstances consist of:

- the applicant's circumstances in their home country;
- the applicant's potential circumstances in Australia; and
- the value of the course to the applicant's future.

Impact of streamlined and regular evidentiary requirements on the assessment of GTE

Streamlined and regular evidentiary requirements under the country and provider evidence framework refer only to a student's likely financial capacity and English language proficiency requirements. These factors are separate to the assessment of GTE.

Circumstances in which further scrutiny of an application may be required

If further scrutiny of the applicant's circumstances is considered appropriate, officers may request the applicant to provide additional information and/or further evidence to demonstrate that they are a genuine temporary entrant (refer to paragraph 3 of Direction No. 69) under s56 of the Act.

Refer to:

- GenGuideA - All visas - Visa application procedures - PI (LS-1849) – in particular, Communication of Minister with applicant
- Notification requirements – PI (LS-1818)
- Biometrics for offshore visa processing – PI (IIB-1486).

In accordance with paragraph 4 of Direction No. 69, four circumstances in which further scrutiny may be appropriate are:

- information in statistical, intelligence and analysis reports on migration fraud and immigration compliance compiled by the Department indicates that further scrutiny is required
- the applicant or a relative of the applicant has an immigration history of concern
- the applicant intends to study in an unrelated field to their previous studies or employment and

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- inconsistencies in information provided by the applicant in their application.

Note: The mere fact that an applicant matches the characteristics of information in statistical, intelligence and analysis reports or that a relative of the applicant has an immigration history of concern is **not** grounds for visa refusal. These situations merely alert officers to the need for additional scrutiny to assess whether the applicant is a GTE; they are not a legislative basis for refusing a visa.

Interviewing and requesting additional information to assess GTE

Officers are to consider:

- what types of evidence they require
- whether information can be obtained at interview
- whether they require documentary evidence to satisfy themselves that the applicant is a genuine temporary entrant and
- whether a referral or further investigation is necessary.

Additional documentary evidence may be requested to assist in assessing whether the applicant is a genuine temporary entrant or not, five examples being:

- evidence of the applicant's financial situation, which may include evidence of employment for at least the previous 12 months, evidence of an offer of employment on their return home, tax returns or financial statements
- evidence of financial and personal ties to their home country, such as evidence of assets in that country consistent with their family background, family or social ties that would provide sufficient inducement for them to return to their home country at the end of their visit
- evidence of claimed previous study
- letter from their current employer or statement from the applicant attesting to a need by the applicant for (improved) skills for the purposes of their employment or career prospects
- evidence of a range of professional or academic outcomes supporting the applicant's need for a new career direction.

Note: the above examples do not constitute an exhaustive list.

In requesting additional documentary evidence from applicants, officers are to keep in mind that students at undergraduate level or below may not have been in employment, nor will they usually hold many assets.

GTE - The applicant's circumstances in their home country

'The applicant's circumstances in their home country' examines reasons for not undertaking studies in their home country or region if a similar course is available there and whether the applicant's personal ties, economic circumstances or military service commitments in the home country would present as a significant incentive for the applicant to return / not return to their home country. It also considers whether there is any political or civil unrest in the home country that may induce the applicant to apply for a Subclass 500 visa as a means of obtaining entry to Australia for the purpose of remaining indefinitely.

Five examples of circumstances in which further scrutiny and consideration of the factors in Direction No. 69 may be required are:

- Similar courses available within the applicant's home country or region – for more information refer below to: **If the course is available in their home country or region.**
- The income earned in the home country is far below the cost of living in Australia or there are high unemployment levels in the home country. These factors also go to the value of the applicant's course
- There are military service commitments that have an adverse impact on the applicant's right or willingness to return to their home country. This may lead to the applicant remaining in Australia indefinitely.

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- The political or geographical circumstances (such as political/civil unrest) in a student's home country would indicate they might not want to return. Officers must consider the applicant's own circumstances when looking at this factor - for example, unrest or upheaval might not affect certain areas of a country or certain social groups. Officers need to be aware of the changing circumstances in the applicant's home country and the influence these may have on an applicant's motivation for applying for a Subclass 500 visa.
- The applicant has no employment, community or family ties in their home country.

These situations could present as an incentive for the applicant to remain in Australia indefinitely, however, the applicant's circumstances in total must be considered.

GTE - The applicant's potential circumstances in Australia

'The applicant's potential circumstances in Australia' examines family and other ties in Australia that may act as an incentive for the applicant to remain in Australia. Other factors examined include evidence that the Subclass 500 visa is being used to circumvent the intentions of the migration program, whether the applicant is using the Subclass 500 visa to maintain ongoing residence, whether the applicant has entered into a contrived relationship, and the applicant's knowledge of living in Australia.

Officers are to keep in mind that strong community or family links in Australia do not necessarily indicate that the applicant is not a genuine temporary entrant and will not depart at the end of the authorised temporary stay in Australia. In fact, family connections to Australia may be a positive factor and could have legitimately influenced the student's decision to choose Australia for their study.

If there are family members with adverse immigration histories, closer examination may be required. As noted in 'Circumstances in which further scrutiny of an application may be required', officers must keep in mind that the mere existence of such a factor is not a basis for refusal. It is the individual (and all their circumstances) that must be assessed against the requirement.

When considering whether the Subclass 500 visa is being used to maintain ongoing residency in Australia, the applicant's immigration history (refer to GTE - The applicant's immigration history) and study history are relevant. Officers are to scrutinise cases where students:

- have spent long periods inside Australia
- did not complete courses
- are studying unrelated topics
- have changed educational sector and field of study.

When considering the applicant's knowledge of living in Australia and their proposed study, officers must carefully weigh up all circumstances of the applicant, including previous study and qualifications. Officers are to consider what level of knowledge an applicant could be expected to have about their course of study, education provider and standard of living in Australia is realistic to their age, culture and other circumstances. This may also involve consideration of the level of research the applicant has undertaken into their proposed course of study, as well as living arrangements.

GTE - The value of the course to the applicant's future

'The value of the course to the applicant's future' examines whether the course that the applicant seeks to study is consistent with their current level of education and relevant to their past or future employment in either their home country or a third country (that is, another country outside Australia).

It is expected that, in the normal course of events, the proposed study represents a clear progression in the applicant's past education or employment. For example, there is a clear progression from high school to a bachelor or vocational sector course. It may, of course, also be appropriate in many situations for an applicant to undertake a vocational training course after completing a higher education qualification, in order to enhance specific skills or knowledge relevant to employment or the prospect of employment.

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Further scrutiny of the applicant's individual circumstances is required where the applicant is seeking to undertake a course that is inconsistent with their educational and employment background. Officers are, however, to keep in mind that reasonable changes to career or study plans are acceptable and should not negatively impact on the GTE assessment – officers are to consider the student's motivation behind the choice of course.

'The value of the course to the applicant's future' also examines whether the course will assist the applicant to obtain employment or improve the applicant's employment prospects in their home country and the remuneration the applicant could expect to receive in their home country, or a third country, compared to Australia, using the qualifications to be gained from the proposed course of study.

If an applicant is seeking to undertake a course that does not progress towards improving employment prospects, this may require a closer examination (note: some applicants may wish to undertake courses as a hobby or out of interest; this may be legitimate but would require closer examination).

As with all factors, officers must weigh up the value of the course to the applicant's future against any other relevant factor set out in Direction No. 69, including any other relevant matters, to make an overarching assessment of whether the applicant's circumstances support a genuine intention to stay in Australia temporarily.

GTE - The applicant's immigration history

'The applicant's immigration history' examines whether there is anything in the applicant's immigration (visa and travel) history that would not support that the applicant intends a temporary stay. An indication of this could include:

- a person applies for a Subclass 500 visa in Australia after arriving on a Visitor visa;
- an applicant was previously refused a visa in Australia (or has exhausted their own immigration pathways as a primary visa holder) and now seeks to prolong their stay by entering into a relationship with a Subclass 500 visa holder primarily to extend their stay in Australia;
- an applicant's compliance with previous visa conditions*;
- an applicant undertaking a series of short, inexpensive courses designed to prolong a person's stay in Australia - for example, if a course is structured to include only short term periods of study and the maximum allowed break in between study periods;
- a Subclass 500 visa holder who has been in Australia for extensive periods of time either without having successfully completed a qualification, or who has moved education providers on numerous occasions and has failed to finish a course of study (officers may request academic transcripts and reasons from the applicant as to their failure to complete courses);
- an applicant who has maintained ongoing residence in Australia on a range of short term temporary visas;
- an applicant who has a history of visa refusal, or non-compliance with immigration requirements in another country.

The applicant's immigration history must be weighed up against the other factors relevant to the applicant, which are set out in Direction No. 69.

Note*: If an applicant was non-compliant with the conditions of a visa or visas previously held, officers may consider that paragraph 500.212(b) – the applicant intends to comply with any conditions subject to which the visa is granted – is not met. Refer to: Intention to comply with visa conditions – paragraph 500.212(b).

Officers must first consider the seriousness of the applicant's non-compliance, how recently the non-compliance occurred and whether there were any circumstances beyond the applicant's control. Officers must also comply with section 57 of the Act requirements. Refer to **Procedural fairness**.

GTE and other relevant matters

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Officers must consider whether there are any other matters that are relevant to the applicant's intentions for a temporary stay in Australia. The decision record must show that there was consideration as to whether there are other relevant matters, this includes information that may be either beneficial or unfavourable to the applicant.

Note: Paragraph 500.212(c) may be the grounds for refusal if the evidence does not support a finding that the applicant intends to stay indefinitely, that is, not temporarily, in Australia, but nevertheless indicates the applicant is not a genuine student. Refer to Any other relevant matter – paragraph 500.212(c).

GTE as basis for visa refusal

An applicant who does not satisfy officers that they are a genuine temporary entrant cannot satisfy paragraph 500.212(a) and the visa must be refused.

Dual intent

A settled intention to remain in Australia permanently at the time of application is not consistent with the GTE requirement. However, it does not automatically mean that the applicant does not meet this criterion. There is nothing in the Act or the Regulations that necessarily negates any capacity of officers to find that an applicant who intends to seek a permanent visa genuinely intends to remain in Australia temporarily, if that visa is not granted. The decision depends on the officer's assessment of the applicant's intent.

The ultimate issue for decision under clause 500.212 is whether the applicant is a genuine applicant for entry and stay as a student. In assessing this, officers must also consider paragraphs 500.212(b) and (c).

Paragraph 500.212(c) requires that officers consider any other relevant matter when determining whether the applicant is a genuine applicant for entry and stay as a student (refer in this instruction to Any other relevant matter – paragraph 500.212(c)). An example of a relevant matter may be where an applicant is seeking to gain high-value skills which are in high demand in Australia, such as a medical officer or nurse.

Officers are to take a balanced approach when considering the weight to be given to this consideration.

Officers are to raise any questions regarding this matter with their supervisors/managers in the first instance. Internal enquiries should be forwarded to [s. 22\(1\)\(a\)\(ii\)@homeaffairs.gov.au](mailto:s.22(1)(a)(ii)@homeaffairs.gov.au).

Note: If there is clear evidence up front that the applicant intends to reside in Australia temporarily, but, for example, they are not a genuine student wishing to attend an education course, officers may find that the applicant is not a genuine applicant for entry and stay in Australia under one of the non-GTE paragraphs in clause 500.212, namely, paragraph 500.212(b) or paragraph 500.212(c). Refer to:

Intention to comply with visa conditions – paragraph 500.212(b).

Complex cases

GTE and long term/permanent residence pathways

Although some overseas students make a decision to apply for a permanent visa or a temporary work visa upon completing their studies, this is a separate process and there is no guarantee that, on the basis of having held a Subclass 500 visa, a person will meet the requirements to be granted a permanent visa or a further temporary visa.

The Subclass 500 visa is primarily intended for persons who wish to study a CRICOS-registered course in Australia and to gain an education. If it appears that an applicant's primary purpose for applying for a Subclass 500 visa is to obtain a permanent migration outcome or to maintain ongoing residence, and not to obtain an education, consideration may be given to refusing the applicant a visa under this criterion. However, an intention to apply for another visa after completing studies is not, by itself, sufficient to determine that the student does not meet the GTE requirement. This circumstance would warrant further scrutiny; for example, officers may need to consider options available to students if a further visa is not granted.

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Similarly, the fact that a person has applied for a permanent visa (whether in or outside Australia) does not in itself mean that the same person applying for a Subclass 500 visa does not intend to leave Australia at the end of any authorised period of temporary stay.

Visitor to Subclass 500 visa pathway

In deciding whether a Subclass 500 visa applicant is a genuine applicant for entry and stay as a student, officers are to consider whether the applicant is attempting to circumvent proper migration channels by using the Visitor visa program to enter and maintain ongoing residence in Australia.

Officers should check the claimed intentions of a Visitor visa applicant and purpose of the Visitor visa program with those of the Subclass 500 visa and compare the timeframe in which those claims are made. For example, if a Subclass 600 visa applicant stated they were coming for a holiday and arrives in Australia on that visa then one week later applies for a Subclass 500 visa, this may reveal misrepresentation of intentions. Officers should also compare family composition in both applications.

The likelihood that an applicant intended to use a Visitor visa to, in effect, live in Australia rather than visit is a relevant consideration when considering the applicant's immigration history. However, the focus should be on the applicant's current intention, that is, whether the intention to study is credible, reasonable and justified.

If it appears that, at the time of decision, an applicant's primary purpose for applying for a Subclass 500 visa is to obtain a permanent migration outcome or to maintain ongoing residence, and not to obtain an education, consideration may be given to refusing the applicant a visa under this criterion.

Applicant has applied for protection

If an applicant has made a protection visa application that is either currently under consideration or was refused, this may demonstrate that there are significant incentives for the applicant not to return to their home country. Officers are to have regard to the applicant's previous claims for protection and consider whether these claims no longer reflect the applicant's current or future circumstances. If the applicant's circumstances have not changed, they may not be intending to reside in Australia temporarily.

If the course is available in their home country or region

If a similar course is available in the applicant's home country, officers are to consider whether the applicant has sound reasons for not undertaking the study in their home country. For example, applicants intending to study an English language course may legitimately want to study in an English speaking country regardless of whether there are cheaper courses available in their home country. A GTE refusal must not be based solely on the availability of the course. Officers may ask the applicant to identify the advantages of studying in Australia.

Minors

In assessing the genuine temporary entrant criterion for minors, officers must consider the intentions of a parent, legal guardian or spouse/de facto partner (refer to subparagraph 500.212(a)(iii)). This is because a minor might not have the maturity to be capable of making decisions, including forming intentions in relation to immigration matters.

If an interview is to be conducted to seek further information or clarification for the assessment of the intentions of a parent, legal guardian or spouse/de facto partner, it is the parent, legal guardian or spouse/de facto partner who is to be interviewed. The exception to this is when necessary information can be obtained only by interviewing the minor. In this circumstance, the parent, legal guardian or spouse/de facto partner should be present for the interview, and care is to be taken with questions directed at the minor.

Primary school students

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Further GTE scrutiny of primary school student and guardian applications will occur based on internal risk analytics.

Generally, a student seeking to reside and study in Australia for 12 years, for example, commencing primary school in Year 1 and seeking to continue into Year 12 senior secondary school studies and beyond would not meet the GTE requirement. Consideration is to be given to the likelihood of a child reintegrating into their home country in the absence of substantial education in their own language during their formative years. Consideration may also be given to the intentions of a parent or custodian in sending a child to study in Australia if they intend to accompany the child. This is to ensure that the integrity of the program is maintained and to prevent the facilitation of long-term temporary residency of child as a pathway to permanent residence.

For further information, refer to:

3.12.2. Visa grant period - policy arrangements -

Visa grant period for primary school **students**.

Applicants studying at a lower level

Although an applicant enrolled to study at a lower level than previous studies undertaken in their home country could be an indicator of need for further scrutiny, consideration is also to be given to the fact that:

- it can be quite common in some regions/countries for a student to hold a qualification that has been taught through a less rigid educational system than Australia and therefore a lower level of study in Australia is more suitable
- the applicant is accepted only for a lower level course in Australia and/or
- a lower AQF level course in Australia may be more specific than their previous studies at a higher level.

Independent ELICOS applicants with no previous English studies

ELICOS students might not have undertaken English studies prior to seeking to travel to Australia for a short period (12 months) to study English. The ELICOS industry in Australia is world class and offers overseas students the opportunity to enhance their English language skills. While often packaged with other courses, some students choose to study ELICOS in isolation or need to improve their English before enrolling in other courses.

Studying English in an English speaking environment is beneficial for students. Officers are to keep this in mind when considering the motivation for applicants intending to study English in Australia.

The GTE criterion looks at the applicant's circumstances as a whole, which may also include consideration of whether the course has been structured to minimise study periods and maximise breaks.

Lengthy standalone or packaged ELICOS courses

Although there is no legislative limit as to how much ELICOS study may be undertaken, further GTE scrutiny would generally be applied to applicants who enrol in:

- standalone ELICOS for more than 12 months
- heavily packaged courses that include more than 12 months of ELICOS prior to their main course of study.

Mature applicants who are near retirement age

It is open for applicants to re-educate themselves and gain additional skills and knowledge.

If an applicant is nearing retirement age, the qualification might not provide any significant benefit to their future employment prospects. However, in these cases it is important that the circumstances of the applicant

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including their reasons for study, are considered. The relevant question in any GTE assessment is whether the circumstances of the applicant indicate that they intend to stay in Australia temporarily.

Extended study breaks or poor educational outcomes in home country

If an applicant has a history of extended study gaps and/or poor educational outcomes in their home country, this would likely raise concerns about their reasons for wanting to undertake study in Australia. Further scrutiny should be given to such cases.

Intention to comply with visa conditions – paragraph 500.212(b)

The second consideration that feeds into an evaluation of whether an applicant is a genuine applicant for entry and stay as a student is whether the applicant intends to comply with any conditions subject to which the visa is granted. In evaluating this criterion, officers must have regard to the applicant's:

- record of compliance with conditions of a visa or visas previously held*;
- stated intention to comply with conditions for which the visa is granted

Note*: this includes not changing courses to a lower AQF level (other than from AQF level 10 to 9) or a non-AQF course. Refer to: 3.12.3. – Subclass 500 visa conditions - Condition 8202 – Enrolment/course change.

This includes an assessment of whether the applicant intends to continue to be a person who would satisfy the primary criteria for the grant of the visa (condition 8516), primarily that they are a genuine applicant for entry and stay as a student.

An example of a scenario which may be closely scrutinised against paragraph 500.212(b) is where an officer reasonably suspects that the applicant is seeking a Subclass 500 visa for the primary purpose of accessing the work provision and is unlikely to continue to satisfy course requirements (condition 8202).

If an applicant was non-compliant with the conditions of a visa or visas previously held, officers are to consider the seriousness of the applicant's non-compliance, how recently the non-compliance occurred and whether there were any circumstances beyond the applicant's control. It is open to officers to require a additional proof from an applicant who is considered not to have complied substantially with the conditions to which their last-held visa was subject.

Applicants who have been reported for a lack of course progress on their last course or at any time during the period they held their last Subclass 500 visa should be closely scrutinised and, if considered to be non-compliant with their visa conditions, an officer may determine paragraph 500.212(b) is not met. Officers must comply with section 57 of the Act requirements. Refer to **Procedural fairness**.

Subclass 500 visa conditions are designed to ensure that international students act in a manner that is consistent with the purpose for which their visa granted, for example maintaining enrolment in a registered course of study. Refer to: 3.12.3. – Subclass 500 visa conditions.

Any other relevant matter – paragraph 500.212(c)

The third consideration that feeds into an evaluation of whether an applicant is a genuine applicant for entry and stay as a student are any other matters relevant to the subject matter, scope and purpose of this requirement.

Paragraph 500.212(c) is broader in scope than the 'any other relevant matter' GTE consideration in subparagraph 500.212(a)(iv), which is concerned only with how long the applicant intends to stay in Australia. It is expected that paragraph 500.212(c) will be the grounds for refusal if the evidence does not support a finding that the applicant does not intend to stay in Australia temporarily, but, nevertheless, supports a finding that the applicant is not a genuine applicant for entry and stay as a student.

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Scenario 1:

A person arrives in Australia on a Subclass 600 (Visitor) visa and soon after applies for a Subclass 500 visa. The applicant sets out in their GTE statement their reasons for proposing to study an English language course, namely, that it will assist in their business back home. They also state that they have an 18 year old child who is about to start medical studies in Australia and they would like to be with them for a few months to help them adjust to a new environment. Their child has a solid offer of employment in a major hospital in their home country when they complete their studies in six years.

The applicant is granted a Subclass 500 visa, completes their English language course and then applies for and is granted a series of subsequent Subclass 500 visas over a three year period.

The officer assessing the latest application observes that there appears to be no logical relationship, and little or no progression, between the courses being selected. The pattern of behaviour indicates the applicant has been identifying further courses to remain in Australia, at least while their child is in Australia.

If the officer makes a finding that the applicant intends to stay indefinitely in Australia, then it is likely that the applicant does not genuinely intend to stay in Australia temporarily. However, if the finding is not that the applicant intends to stay indefinitely, but for a defined period to be with their child, the officer will have to deal with other considerations beyond the intended length of stay. In this circumstance, the officer may find that the applicant is not a genuine applicant for entry and stay as a student. This finding can be made under paragraph 500.212(c) – ‘of any other relevant matter’.

Scenario 2:

Study plan for a school student (under 16 years old) is inappropriate

- generally, a school student would be considered to have an inappropriate study plan if they were seeking to undertake studies not related to school studies while of an age at which school education is compulsory in Australia
- a Subclass 500 visa application may be refused under paragraph 500.212(c) ‘any other relevant matter’ if, for example, a student under 16 years old seeks to undertake studies outside of the school sector (for example, ELICOS, non-award course) and no evidence has been provided that they intend to go on to school studies in Australia.

Paragraph 500.212(c) may also be considered the grounds for refusal if the evidence supports a finding that the applicant is not a genuine student; for example, where the applicant’s educational and / or career background are not consistent with the course they have enrolled in.

When considering whether to refuse to grant a Subclass 500 visa under this criterion, officers must show that they have taken into account all of the information provided in the application.

General information

Contrived relationships

There are two key issues in relation to secondary applicants relating to contrived spouse or de facto partner relationships:

- the applicants might be in a non-genuine relationship - an assessment of the genuineness of the relationship is to be undertaken if there are any concerns about the relationship

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- the relationship might be genuine but the applicants have non-genuine intentions - for example, if:
 - the primary and secondary applicants alternate between being the primary and secondary applicant to extend their period of stay in Australia
 - an applicant who had previously unsuccessfully sought to satisfy the primary criteria now seeks to satisfy the secondary criteria.

Note: If relationships are assessed as genuine but the persons' intentions in Australia are not, these applicants may be considered for refusal under paragraphs 500.212(a)-(c).

If the applicants are found to be in a non-genuine relationship, the secondary applicant would not meet the clause 500.311 requirements to be a **member of the family unit** as a spouse or de facto partner.

Risk profiles

Information in statistical, intelligence and analysis reports on migration fraud and immigration compliance compiled by the Department, even if the client would otherwise be a strong candidate as a genuine student, must be considered as part of the GTE assessment.

Although the information is not in itself grounds for a visa refusal, the applicant will need to demonstrate that their circumstances support that they intend to stay temporarily in Australia and must be considered against the various factors set out in the Direction No. 69. For example, the applicant may be required to provide additional evidence of incentives to return to the home country, such as evidence of financial, personal and community ties.

Refer to **Error! Reference source not found.** for policy and procedure on the information that needs to be put to the applicant.

Procedural fairness

Section 57 of the Act details a delegate's obligation to provide applicants with relevant information that would be the reason or part of the reason to refuse a visa, where that information is specifically about the applicant or another person and was not given by the applicant for the purposes of the application, and to give the applicant the opportunity to comment on it. Refer to:

- GenGuideA - All visas -Visa application procedures - PI (LS-1849) - in particular, Adverse information
- Notification requirements – PI (LS-1818)
- Bogus Documents – Detection, Seizure and Retention – PI (IIB-1540)
- Controversial visitors – PI (VM-989).

3.10.3. English language proficiency

Evidence of English language proficiency

If required, applicants seeking to satisfy the primary criteria for grant of a Subclass 500 visa must provide evidence of English language proficiency in a form specified in the legislative instrument made under subclause 500.213(3), *Migration (IMMI 18/015: English Language Tests and Evidence Exemptions for Subclass 500 (Student) Visa Instrument 2018* (IMMI 18/015). The maximum time periods in which an English test must be taken is either two years immediately before the date the application is made or, if evidence of the test is not provided at the time the application is made - two years immediately before a decision is made on the application.

Exemptions from providing evidence of English language proficiency

For the purposes of subclause 500.213(3), IMMI 18/015 also specifies the classes of applicants to which clause 500.213(1) does not apply. Such applicants are exempt from providing evidence of English language

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proficiency. If a Subclass 500 visa applicant falls under an exempt category they cannot be required to undertake an English language test, regardless of whether they fall under streamlined or regular evidentiary requirements.

English language tuition can be undertaken in the VET sector, Non-Award sector or the ELICOS sector. The Department's system currently identifies those VET or non-award courses that are registered as ELICOS. Officers must consider these courses ELICOS courses for the purpose of the English language requirement assessment, regardless of how the sector appears to be recorded in the PRISMS record.

If the course is standalone, the sector will be displayed on the front page of the permission request. To check the course sector for packages, officers can open the CoE through 'additional info' and look at the 'PRISMS course sector'. If the 'PRISMS course sector' says ELICOS, officers are to treat it as an ELICOS course even though the 'course level' or 'course name' might indicate: non-award, foundation, certificate III and so on. If the PRISMS course sector does not say ELICOS, the course is not considered to be in that sector.

Non-exempt applicants with regular evidentiary requirements are required to provide evidence of achieving the minimum relevant score with a test provider specified in the instrument. Such applicants who do not provide evidence of meeting this requirement can be refused a visa, without officers requesting the required documents under section 56 of the Act (although officers may choose to request the required documents from the applicant).

Non-exempt applicants with streamlined evidentiary requirements do not need to satisfy the requirements in subclause 500.213(1) unless officers invoke this requirement and request the applicant to provide evidence.

Officers are to refer to the legislative instrument made under subclause 500.213(3) for details of the acceptable English language tests*, the minimum English language test scores (including those for courses packaged with ELICOS) and the acceptable timeframes.

Note: The minimum test score for the Occupational English Test (OET) is listed as Pass. The OET results actually include a mark between A and E. An A or B is considered a pass.

Note*: Acceptable English language tests

The Department only accepts English language test scores for visa purposes taken on-computer or on-paper at a secure test centre. Remote-proctored ('at-home') English language tests are not accepted as evidence to satisfy English language requirements. Further information on acceptable tests, test providers, and how to tell whether a test has been remote-proctored is available at:

A4 Factsheet Portrait (bcz.gov.au)

Requesting evidence of English language proficiency from streamlined students

Officers are to request evidence of English language proficiency from streamlined Subclass 500 visa applicants in limited circumstances only. Three circumstances in which officers may consider requesting evidence are:

- specific intelligence exists which raises concerns about the applicant's English language proficiency
- during an interview with the Department the applicant is not able to understand basic questions or provide basic information in English
- the applicant has indicated on their application form that they have English test results lower than the specified levels.

If officers request evidence of English language proficiency from Subclass 500 visa applicants who are subject to streamlined evidentiary requirements, the English language test must be taken within the time period specified by officers after the evidence is requested. Sufficient time must be allowed for the student to book and sit for a specified English language test, if required. Some applicants may be in a position to more readily provide officers with evidence of English language proficiency, especially if the test scores were required by the education provider as part of the course enrolment process.

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Assessing completion of previous studies for English language exemption

Successful completion of a substantial component of a course in Australia

Applicants who, in the two years before applying for a Subclass 500 visa, have successfully completed a substantial component of a course leading to a qualification from the Australian Qualifications Framework at the Certificate IV level or higher that was conducted in Australia and in English, while the applicant was holding a Student visa are exempt from providing evidence of English language proficiency.

Note: For information on other classes of applicants who are exempt from providing evidence of English language proficiency, refer to IMMI 18/015.

To determine whether an applicant has, at time of application, successfully completed a 'substantial component' of the course, officers should make a qualitative assessment of the course and the requirements for completing it. They should then consider whether the study the applicant has already undertaken corresponds to a 'substantial component' of that course.

Officers must not use fixed mathematical formulas to determine what equates to a 'substantial component' of a course. For example, they must not consider that a substantial component of a course has been completed merely because the applicant has completed 50 per cent of the course duration (for example, one year out of a two year course).

Two examples of where a student might be taken to have successfully completed a substantial component of their course could be:

- they have completed a Certificate III qualification that was packaged with a corresponding Certificate IV qualification, and the Certificate III significantly contributes as credited learning towards the completion of the Certificate IV
- the first two years of a three year course contain most of the assessments that must be completed before progressing to the final year, and the applicant has successfully completed those assessments.

An example of where a student might not be taken to have completed a substantial component of their course could be:

- the applicant has completed the first two years of a three year course but the first two years comprised mainly preparation for work experience in their final year, which is the only component of the course that will be graded.

Nested qualifications

Some education providers offer study programs that include one or more "nested" qualifications in the one course (that is, where completion of stages within a course may lead to eligibility for one or more AQF qualifications). An example would be students undertaking a two-year masters program may be eligible for a graduate diploma on completion of the first year of study.

Nested qualifications may be taken into consideration when deciding whether an applicant meets the 'substantial component' requirement. To meet the requirement on this basis, students must provide evidence from their education provider to support their claim as to the course structure and their eligibility for a nested qualification.

Credits for previous study

If the previous study has been undertaken in Australia in a CRICOS registered course taught in English, those credits can be taken into account when determining whether the applicant has successfully completed a substantial component of their course in Australia in English. **Not** acceptable for this purpose are:

- courses undertaken outside Australia
- non-registered courses
- courses taught in a language other than English.

Duration

The duration of study does not in itself establish successful completion of a substantial component of the course. Only subjects that have been passed can be considered to be successfully completed. Similarly, if a student has been studying for longer than the normal duration, this does not need to be taken into account.

“Clubbed” scores not permitted for English Tests

“Clubbing” is the combining of the highest scores (from each English test component) across multiple tests to provide a composite score (or superscore).

Subclass 500 visa applicants sometimes present multiple test results to the Department with an expectation that the results may be clubbed. For example, a candidate may complete all four test components (listening, reading, writing and speaking) and be issued with a test result. One month later, the applicant may undertake a new test, complete all four test components, and then present both test results to the Department for assessment.

The Department does not accept clubbed scores (or superscores) for any of the acceptable English language tests specified in IMMI 18/015. Where multiple test results are provided, at least one test must meet the requirements specified in the instrument, including that the test was taken within the stipulated validity period.

Note: Clubbing does not refer to the taking of test components across one test on different days.

For further information on English testing, refer to: English proficiency and assessment – PI (VM-3100).

3.10.4. Financial capacity evidence

Overview

Clause 500.214 provides that Subclass 500 visa applicants must have genuine access to sufficient funds to cover costs and expenses for themselves and any accompanying family applicants for the duration of the intended stay in Australia.

All applicants must declare on the application form that they have sufficient funds available for the duration of the entire stay in Australia.

If required, the applicant must provide additional evidence of their financial capacity as specified in the *Evidence of financial capacity* legislative instrument made under subclauses 500.214(4), 500.313(4) and 590.216(4). This instrument specifies the amount of funds required, and the types of evidence that are acceptable. If the applicant has provided evidence of finances that are not sufficient the application may be refused without requesting further information, provided the applicant is subject to regular evidence requirements. The application cannot be refused if the applicant is subject to streamlined evidence requirements unless a request for further information has been made under section 56 of the Act.

Note: Where an applicant has declared on the application form that they do not have access to sufficient funds and has not attached evidence to the contrary, officers may refuse the application without making a request for further information. If an applicant declares that they do not have access to sufficient funds, but attaches sufficient evidence, the visa may be granted without routinely requesting other information if all remaining criteria are satisfied. This applies to applications subject to streamlined and regular evidence requirements as all applicants must have genuine access to sufficient funds.

This section of the PI also gives financial requirements guidance on combined applications including family member applicants; refer to:

Amount of funds to demonstrate

For financial requirements guidance on applications by family members only, refer to:

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3.11.3. – Financial requirements for family members - **Error! Reference source not found. - Error! Reference source not found.** – Application by subsequent entrant family members.

The *Evidence of financial capacity* legislative instrument specifies the types of evidence that applicants can provide to demonstrate evidence of their financial capacity:

- evidence that their spouse/de facto partner or parents have a specified annual income or
- evidence of sufficient funds to cover travel costs, the first 12 months' living costs, and the first annual course fee for themselves and school fees for each family applicant who is a child of school-age or
- evidence of sufficient funds to cover travel costs, course /school fees, and living costs on a pro rata basis for themselves and each family applicant where the period of stay is less than 12 months or
- a completed AASES form (for secondary exchange students) or
- a letter of support from DFAT or Defence.

Arrangements for Foreign Affairs and Defence students fall under the financial support from a government organisation – refer to:

3.10.4. – Financial capacity evidence - Financial support from a government, education provider or international organisation.

Source of funds

Officers need to consider the background and circumstances of the applicant in terms of whether they would reasonably have access to the funds, and whether the funds are acquired through lawful means and consistent with the applicant's background. For onshore Subclass 500 visa applicants, this includes whether any regular income received is consistent with the visa that the applicant has held. For further information refer to Genuine access to funds in this section.

Annual income

The option to meet the financial requirement through evidence of annual income is expected to be available to small numbers of Subclass 500 visa applicants. This is because in countries where income is under-reported to government taxation authorities or where income is primarily taxed through businesses, applicants would not be able to demonstrate the requisite income level. For applicants unable to provide the specified evidence of income, evidence of funds for travel costs and the first 12 months' living costs, course fees and school fees, this is an alternative way to demonstrate financial capacity.

The income demonstrated must be the personal income of the Subclass 500 visa primary applicant's:

- spouse or de facto partner or
- parents – this can include the combined income of both parents. It does not include the income of parents-in-law (that is, the parents of the student's spouse or de facto partner).

The annual income amount to demonstrate is specified in the *Evidence of financial capacity* legislative instrument. The income specified in the instrument is gross (that is, before tax). The instrument specifies that evidence must be in the form of official government documentation, such as a tax assessment (or country equivalent). To ensure the claimed income is recent, the documentation must have been issued in the 12 months immediately before the application is made.

Annual income provided by the applicant's spouse/de facto

If the primary Subclass 500 visa applicant's spouse/de facto has provided evidence of their income to satisfy the financial requirement, and will accompany the primary Subclass 500 visa applicant to Australia, officers are to consider whether the applicant will meet the requirement to have 'genuine access' to funds during their intended stay. If the spouse/de facto is leaving their employment to accompany the applicant to Australia, they may no longer have the requisite income. If officers are not satisfied that the applicant will have access to funds from the spouse/de facto's employment, they must consider if the applicant has

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sufficient funds available to cover travel costs, course /school fees, and living costs for themselves and each family applicant.

Refer below to: Sufficient funds for travel, living, course (tuition) and school fees.

Sufficient funds for travel, living, course (tuition) and school fees

Amount of funds to demonstrate

Application by student only

The amount of funds an applicant must demonstrate can be calculated by adding the living cost amount specified in the *Evidence of financial capacity* legislative instrument for a student for the first 12 months, the first annual course fee and travel costs for the student. If the period of stay is less than 12 months, then the living costs are calculated on a pro rata basis.

Combined applications including family member applicants

The amount of funds an applicant must demonstrate if family member applicants are included in the application can be calculated by adding:

- the living cost amount specified in the *Evidence of financial capacity* legislative instrument for a student and the accompanying family members for the first 12 months or pro rata amount
- the student's first annual course fee
- the school fees for all school-age dependants for the first 12 months or pro rata amount and
- travel costs for the student and all family members.

The applicants, together, must demonstrate the specified total amount to meet the requirement.

Sibling students and student guardians

If an applicant:

- has a sibling who is a Subclass 500 visa applicant or Subclass 500 visa holder or
- has nominated a student guardian to accompany them to Australia

officers are to assess whether the evidence of financial capacity provided by the applicant is the same as that provided for their sibling or guardian.

If the same evidence is provided, officers are to assess if the evidence is sufficient to cover the costs of both students/applicants or whether additional evidence of funds is required. The 12 month period is calculated in relation to the proposed entry date of the student guardian. Refer to:

Subclass 590 (Student Guardian) visa – PI (VM-3681) – in particular, 3.6.7. – Financial capacity - The first 12 Months.

The first 12 months

The *Evidence of financial capacity* legislative instrument requires the applicant to give evidence of funds for the first 12 months of stay.

The first 12 months means the period that:

- begins:
 - if the application is made outside Australia – on the day of the applicant's expected arrival in Australia or
 - if the application is made in Australia – on the day that the Subclass 500 visa is expected to be granted to the applicant and
- ends on the earlier of:

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- the day 12 months after the beginning of the period
- the last day of the applicant's proposed stay in Australia.

Courses of less than 12 months

If the intended stay period is less than 12 months, the applicant must provide evidence on a pro rata basis of funds that they will use for the intended period of stay.

'Living costs'

Living costs for each applicant are specified in the *Evidence of financial capacity* legislative instrument. Officers must refer to the instrument in place at the time the application is made to determine the relevant living costs amounts. Airfares and health cover are not included in living costs.

Prepaid boarding or prepaid homestay fees

Students who will be accommodated in formal boarding or homestay arrangements with their education provider may prepay a portion of these fees prior to the issue of a CoE.

Formal boarding or homestay arrangements do not include privately arranged boarding or homestay arrangements, or private rent arrangements.

If a student provides evidence of prepayment of formal boarding or homestay fees, this amount can be deducted from the amount the student needs to show against the living costs component of the financial requirements.

Acceptable evidence may be in the form of a contract or an authorised receipt of payment from the education provider.

Course fees

Overview

Tuition and/or education fees are indicated by the education provider on the CoE and/or "Offer of Place" letter.

When calculating course fees, the total course length is found by using the course start date and course end date on the CoE/s. Course fees are not based on the applicant's stay in Australia. For example, a course from 1 March 2023 to 31 October 2024 will have a course length of 20 months.

For students with formal boarding arrangements the costs of boarding should have been separated from the course fees by the education provider. If officers are concerned that the boarding fees have been rolled in with the course fees on the CoE they can check the letter of offer to ascertain if the course and boarding components have been separated out on that document.

Prepaid course fees

If an applicant provides one or more CoEs with their visa application, any amount that the provider records on the CoE as prepaid may be deducted from the total course fees payable when calculating the amount of funds to cover course fees.

School fees for school-age dependants

Overview

The costs of schooling must be included in any financial capacity calculations if **school-age dependants** are included in the Subclass 500 visa application (either by making a combined application with the student, or by applying as a subsequent entrant). The costs of schooling for family members who do not apply for a Subclass 500 visa must not be included in the calculation.

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For the purpose of assessing the financial capacity to meet the schooling costs of school-age dependants the cost is predetermined (refer *Evidence of financial capacity* legislative instrument) unless school fees are exempted.

If not yet of school age

If at time of visa decision, the child in question is not a school-age dependant (that is, is under five years old) but will become so during the **first 12 months** of the intended stay period, the cost of schooling must be included in any financial capacity calculations from the time they do become a school-age dependant until the end of the **first 12 months**.

This cost is to be calculated on a pro-rata basis for the number of days out of 365 the child will be a school-age dependant.

Exemptions for school fees

Dependent children of PhD students are not required to demonstrate capacity to meet school costs if they provide evidence of enrolment in an Australian government school because Australian government schools exempt children of PhD students from paying school fees.

Dependent children of Australian Commonwealth Government scholarship recipients, including children of Foreign Affairs and Defence students, are not required to demonstrate this amount if they provide evidence of enrolment in a government school and commonwealth scholarship. Australian government schools exempt children of Commonwealth scholarship recipients from paying school fees.

Travel costs

Travel costs should be consistent across the program and communicated externally so applicants are aware of the funds required to include in the calculation of funds. As a matter of policy, travel costs are set at AUD\$2000 for applicants applying outside Australia and AUD\$1000 if applying inside Australia. There may be exceptions for some countries (for example countries in Africa) where travel costs are significantly higher. Any exceptions must be made public.

If family members make a combined application with the student, total travel costs must include the travel costs for each member of the family unit included in the visa application.

Exchange rate

The exchange rate used to determine financial capacity is the rate applicable at the time of application. However, as Schedule 2 criteria are to be satisfied at the time of decision, if there has been a variation of more than 10 per cent, the current exchange rate may be used instead.

Types of acceptable evidence of funds

Overview

The *Evidence of financial capacity* legislative instrument specifies the types of evidence a Subclass 500 visa applicant can provide to satisfy the financial requirements. The types of evidence that are permitted are:

- money deposit(s) with a financial institution
- loan with a financial institution
- government loan
- scholarship or financial support.

The value of an item of property is **not** a permitted type of evidence for clause 500.214 purposes.

It is not open to officers to request evidence of additional funds above and beyond that prescribed.

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The relationship of the individual/organisation providing the funds to the applicant must be considered under the 'genuine access' component of the financial requirement.

Financial institutions

Financial institution is defined in regulation 1.03, as a body corporate that, as part of its normal activities, takes money on deposit and makes advances of money:

- under a regulatory regime
 - governed by the central bank (or its equivalent) of the country in which the body corporate operates and
 - that officers are satisfied provides effective prudential assurance and
- in a way that officers are satisfied complies with effective prudential assurance requirements.

Only financial institutions that fall within this definition are accepted.

Prudential assurance refers to the prudent management of capital and other assets of the relevant bank or financial institution to enable it to meet its financial obligations as and when they become due.

The specific criteria used to measure effective prudential assurance will differ based on the circumstances relevant to the regulatory regime in each country but may include a consideration of whether the:

- financial institution has implemented appropriate credit risk management strategies
- financial institution is approved by the central bank (or equivalent) of the country and is appropriately licensed
- financial institution receives an official high credit rating from an independent body
- documents from the financial institution have previously been assessed by the Department and found not to represent legitimate funds available to a client
- financial institution has been implicated in any unacceptable behaviour such as systematic fraud or bribery.

Some posts may maintain a list of acceptable financial institutions. The list should be created on the basis of the relative financial standing of an institution, its credit rating and integrity. For a list of acceptable Australian financial institutions, refer to the [Australian Prudential Regulation Authority \(APRA\)](#) website.

- For information about acceptable financial institutions for India, Nepal, Bhutan and Bangladesh, officers may refer to Case Integrity Referral Support Tool (CIRST).

Some students may choose to move funds from a non-acceptable institution to an acceptable one. The funds could then be used to meet the financial requirement. However, officers must consider whether the student would have access to those funds. For example, a student may have savings in a post office account. A post office is not an acceptable financial institution as it does not give loans. The student may withdraw their funds and deposit them into an acceptable financial institution. Other common scenarios include when students draw on provident funds or take out a loan with an institution that does not take money on deposit. On their own, neither of these forms would be acceptable. However, if the student deposits the funds in an acceptable financial institution or even borrows against the funds (loan from an acceptable institution) then the funds can be used to meet the financial requirement.

Money deposit

Evidence of money deposits may be in the form of bank statements. Term deposits or fixed deposits may also be used to meet this criteria if officers are satisfied that the money will be released and the student will have genuine access to the funds for use during the period the visa is held.

Monies in provident fund accounts with an entity managing a provident fund do not qualify as 'money deposits with a financial institution' as the entity does not satisfy the definition of 'financial institution'. Monies held in savings or other accounts with commercial banks under schemes such as the Public Provident Fund (Amendment) Scheme operated by the Government of India, may satisfy the definition of 'money deposits

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with a financial institution'. However, there are likely to be legal restrictions in regard to the amount and timing of withdrawal of funds from such accounts.

Applicants reliant on funds in provident fund accounts/ accounts maintained under government schemes may arrange to have sufficient funds transferred into an account with an acceptable financial institution, to which the applicant has unrestricted access. Bank statements relating to the accounts into which funds were transferred, may be submitted as evidence of financial capacity.

Loan

In accordance with the judgement in *Patel v Minister for Immigration and Citizenship* [2013] FCA 97, a loan:

- encompasses a legally enforceable agreement by which a financial institution promises to advance funds to a borrower on the condition that the funds advanced be repaid; and
- is not dependent upon any or all of the funds that have been agreed to be lent coming into the possession of the borrower, and nor is it contingent upon there being a repayment schedule.

Therefore, other forms of borrowing, such as a credit card or a line of credit, where there is a pre-approved limit that may be drawn upon when required and which the borrower needs to make payments only on the funds that are withdrawn, can be considered loans.

Financial support from a government, education provider or international organisation

An applicant who claims financial support from the government, education provider or international organisation is expected to provide supporting documentation from the relevant organisation confirming and describing scholarship or financial support.

Officers are to refer to the scholarship/funding letters to check the level of funding included. For example, because DFAT does not normally provide sufficient funding to cover living costs of family members, Foreign Affairs students must demonstrate additional funds to support family member applicants. The Department of Defence usually includes funding to cover family members and additional evidence of funds is not required.

Evidence of finances for secondary exchange students

The AASES form issued to secondary exchange students is sufficient evidence of financial capacity for secondary exchange students. This is because secondary exchange programs involve paying a fee to an exchange organisation, which includes homestay accommodation (full board) and course fees.

Requesting evidence of financial capacity from streamlined evidentiary applicants

Requesting formal evidence of financial capacity from students subject to streamlined evidentiary requirements is to be undertaken in limited circumstances only. Circumstances where officers may consider requesting specified evidence are:

- Specific intelligence exists that raises concerns about the particular student's financial capacity;
- If the applicant has been granted a visa previously, any information that the Department has in relation to their ability to meet their financial requirements while they were in Australia.
- If the applicant has previously applied for a visa, any information that the Department has in relation to their ability to provide for their living costs while in Australia.

Genuine access to funds

Overview

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Subclause 500.214(1) requires officers to be satisfied that the applicant will have genuine access to funds of a kind mentioned in subclause 500.214(2). These funds must be available to be used for the purpose of financially supporting the applicant (and family members if any) while in Australia.

Officers may consider the circumstances of the applicant/person providing the funds to determine whether the applicant(s) would genuinely have access to the funds.

Examples of circumstances that may be considered are:

- the employment history of the applicant/person providing the funds
- the income and assets of the applicant/person providing the funds
- the source of the income used to meet the financial requirements (for example, if the applicant is relying upon funds from a third party (for example, a family friend), and the nature of the relationship between the applicant and the person providing the funds
- if the person providing the source of income has provided financial support for another Subclass 500 visa applicant
- if the applicant has previously been granted a visa, any information which the Department has in relation to their ability to meet their financial requirements while they were in Australia
- if the applicant has previously applied for a visa, any information which the Department has in relation to their ability to provide for their living costs while in Australia
- the immigration activities in Australia of other nationals from the applicant's home country are such that further investigation into the genuine intentions of the student should be undertaken
- relevant intelligence and analysis reports on illegal immigration and malpractice (if relevant to the individual's circumstances).

Genuine access – Annual income

Applicants who have demonstrated sufficient funds by providing evidence of the annual income of their spouse/de facto partner or parent would need to show that they would genuinely have access to the funds generated from the income. Because the annual income requirement is restricted to the applicant's spouse/de facto partner or parents, there is generally no need to further scrutinise 'genuine access' based on the relationship to the applicant.

However, in order to meet the 'genuine access' component of the financial requirement, the applicant may need to provide evidence of the relationship to the applicant of the person providing the funds. Officers may also seek evidence of the currency of employment/asset ownership generating the personal income, particularly if there are concerns with the age of the records, or information available to officers indicates there may have been a change in circumstances (for example significant economic downturn in a country, or specific intelligence about an applicant). Additional scrutiny may also be appropriate if the amount of personal income demonstrated is equal to the amount required, suggesting that the funds have been generated specifically to meet visa requirements.

Genuine access – Money deposit

Money deposits held by the applicant, the applicant's spouse/de facto partner or the applicant's parents would generally satisfy the genuine access requirement.

Funds that are not committed to the applicant are less likely to be available to the applicant for the purpose of financially supporting the applicant in Australia. For example, if several family members and/or third parties are contributing to the applicant's stay in Australia, the money is less likely to be available to the applicant in Australia than if the money is in the applicant's own name (or the name of their spouse/de facto partner /parent, as relevant).

An example of a situation in which an applicant would reasonably be expected to have access to funds in Australia in circumstances where the money deposit is in another person's name, is where the applicant will live with a relative in Australia and the relative will provide for all (or some) costs and expenses while in

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Australia. For example, the relative will provide for all living costs, but the student's parents will fund, for example, course fees.

Consideration should be given to the following factors:

- whether the account is held in the applicant's name
- the relationship of third parties to the applicant and the account holder (for example, are they a relative)
- whether the money is a lump sum payment in an account (even if held by the applicant or their spouse/de facto partner /parent) or is there a savings history to accumulate the funds (this should include where third party 'donations' or 'loans' have come from)
- whether the regular income of the person/s providing funds is sufficient to have accumulated the level of funding
- how long the money has been in the account
- where the account is held (for example, held in Australia, or whether held in a country from which large money deposits cannot be transferred internationally)
- if the money deposit is held outside Australia, whether there is evidence that the exchange control regulations of the country permit the remittance of funds for study and where necessary whether evidence of requisite approval is available
- the applicant's age
- the family's individual circumstances.

If a business account is presented as evidence of financial capacity, officers must be satisfied that those funds will be for the use of the student while the student is in Australia.

Note: If financial support is being provided by a business, it is the business, (and not the individuals within the business) that provides the support. Unless the persons who have the authority to commit the business are identified and appropriate documentation is obtained, genuine access to the funds cannot be established.

In these circumstances, the business should be able to transfer the funds that it wishes to commit towards the student into an account (current, savings or term deposit) in the name of the student or the person providing the financial support. The applicant may be asked to provide evidence that the source of funds was the business.

Where funds have been transferred into an acceptable financial institution but have come from another source, it is expected supporting documents show that the student has genuine access to these funds. For example:

- evidence of income or transfers from another institution/account, with further scrutiny where the record of transfer from the other institution or account is not generally reliable.
- when the money in provident funds is deposited into an account with an acceptable financial institution and the applicant has unrestricted access, evidence of the provident fund terms, withdrawal and amendment to fund account.
- similarly, funds transferred from an account at an institution that is the usual bank of the student or sponsor (such as a post office account) to a financial institution on the approved list can be supported by the account history. Where this shows that a wage has been credited into the account, this can be supported by evidence of employment.

Genuine access – Loans (including credit cards)

Loans should be in the name of the student or other individual providing financial support to the student.

Officers may wish to seek additional information to be satisfied that the loan is for the support of the student and is not a loan that has been committed to other purposes. This may occur, but is not limited to, if:

- the loan is for a considerable amount more than required
- the loan was taken out a significant period before the visa application was made
- the loan was provided as support for another student

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Loans in the name of the applicant, the applicant's spouse/de facto partner or the applicant's parents would generally meet the genuine access requirement unless there is evidence indicating that the funds from the loan may not genuinely be available to the Subclass 500 visa applicants.

If the loan is jointly held in another person's name, consideration is to be given to the relationship between the Subclass 500 visa applicant and the loan holders to establish whether the funds will genuinely be available to the applicant in Australia.

If a loan was obtained against collateral, consideration is to be given to who the collateral for the loan is owned by and that individual's relationship to the applicant.

Another consideration may be the amount of time before the application that the loan was obtained. If the loan was drawn down many months before the application was made, the applicant should be able to demonstrate either that the funds are in an account (current or savings) in the name of the student or the individual providing financial support or have been used to pay expenses such as course fees and airfares.

To be satisfied the funds will be available to the applicant, officers may consider four factors:

- whether the funds have been disbursed and if yes, in whose account the funds have been deposited
- what the collateral for the loan was (property, money deposit) and who owns that asset
- if the collateral was a money deposit, how the funds in the money deposit were accumulated and for how long the deposit has been held
- evidence that the exchange control regulations of the country permit the remittance of funds for study and where necessary evidence that requisite approval.

Evidence of disbursement is a good way to satisfy the Department that the student will have genuine access to these funds:

- where the education loan relates to course fees that will be paid directly to the education provider, disbursement according to the agreement with the education provider, financial institution and student should be provided. For example, this may be for the first semester's course fees. Information about the terms of the loan, including any conditions around disbursement, should also be attached to the application.
- if the education loan includes living expenses, agents should consider showing that the first 12 months of these funds have been disbursed. Alternatively, they could consider showing that the student is relying on another source of funds to cover the first year of living costs.

In the case of applications made in Australia by Subclass 500 visa holders, if the evidence of funds relates to the proceeds of an overseas loan or money deposit held overseas, the applicant may be requested to arrange for the transfer of funds for the first 12 months into an account with a bank in Australia. Evidence of genuine access would be bank statements of the Australian account showing the deposit and a trail to show that the funds are proceeds from the overseas loan or deposit previously identified.

Genuine access –scholarships/financial support

A Subclass 500 visa applicant would generally satisfy the genuine access requirements if the student is to be funded by one of the following six entities through a scholarship or other formal funding arrangement:

- the student's education provider in Australia (refer below to Education provider scholarship)
- the Australian Commonwealth Government
- the government of a State or Territory in Australia
- the national government of a foreign country
- a provincial or state government of a foreign country that has the written support of the national government of that foreign country
- an international organisation that operates across several countries (for example an agency of the United Nations).

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If there are concerns based on the circumstances of the entity providing the funds, officers may request further information to verify funds will be available and genuinely accessible by the applicant. Four examples of situations in which further information may be required are:

- there is publicly available information that an organisation has a limited life span
- there is limited public information about the organisation
- there are doubts that the organisation is actively and lawfully operating in Australia or overseas
- there are doubts whether the organisation has funds or an income sufficient to provide the financial support.

Education provider scholarship

For the purposes of a Subclass 500 visa application, scholarships that meet the following four policy requirements generally meet the genuine access requirement:

- awarded to the student by the student's education provider or proposed education provider
- awarded on the basis of merit and an open selection process
- awarded to the student as a student who is enrolled in a course leading to the award of a Certificate IV or higher qualification
- awarded to no more than 10 per cent of overseas students in a course intake or no more than three overseas students in an intake (whichever is the greater).

A Subclass 500 visa applicant who claims financial support from their education provider or proposed education provider is expected to provide supporting documentation from the education provider. Documentation from the provider is expected to address each of the four factors above. Further evidence should be requested only if officers have concerns that the scholarship does not comply with these factors.

Corporate sponsorship

Corporate sponsorship would satisfy the genuine access requirements if either:

- the proposed course of study is consistent with their background and role within the corporation; or
- there is a demonstrated need within the corporation for the student to be trained or retrained

In either case the applicant should be an employee of the company.

3.10.5. Health insurance

Overview

A Subclass 500 visa applicant must provide evidence of adequate arrangements for health insurance during their period of intended stay in Australia (clause 500.215).

'Adequate' is not defined in migration legislation. However, as a matter of policy, officers should consider this requirement met if:

- the applicant (or if applicable, family unit member) provides evidence of payment of Overseas Student Health Cover (OSHC) for the proposed duration of their stay – refer below to -
- About OSHC

or

- the applicant is an Endeavour Award holder, and presents a letter from the Department of Education stating that health insurance will be organised for the duration of their stay – refer below to:
Endeavour Award holders

or

the applicant is sponsored by DFAT, which arranges OSHC on their behalf – refer below to:

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Foreign Affairs **students**

or

- the applicant and their accompanying family members are sponsored by Defence – refer below to:

Defence-sponsored **students**

or

- the applicant is an exempt citizen from Belgium, Norway or Sweden – refer below to:

Exempt citizens covered by other arrangements

This approach ensures that international students can meet the cost of the medical and hospital care they may need in Australia.

About OSHC

OSHC is private health insurance. OSHC is the result of arrangements between the Australian Government and certain registered health insurers for the provision of in-hospital medical treatment, public and private hospital accommodation costs, some out of hospital services (including GP consults), ambulance cover, and limited pharmaceuticals for Subclass 500 visa holders and their family members (for example, spouse/de facto partners and children under 18).

Health insurers registered in Australia under the *Private Health Insurance Act 2007* are eligible to provide OSHC to overseas students if they have been approved by the Department of Health to do so through a Deed of Agreement. For more information about OSHC, refer to:

the Department of Health's webpage: Overseas Student Health Cover (OSHC) Fact Sheet.

Evidence of OSHC

Overseas students may supplement their OSHC with overseas health or travel insurance, however overseas insurance is not evidence of 'adequate' arrangements for the grant of a Subclass 500 visa.

Private health insurers offering OSHC in Australia are subject to regulatory requirements set by the Australian Prudential Regulation Authority (APRA). This is because the Australian Government wants to be able to monitor and regulate insurers who are covering people studying temporarily in Australia. The Government is not able to protect the interests of people insured by overseas insurance companies in the same way.

Subclass 500 visa applicants must provide evidence of cover for themselves and any accompanying dependants for the proposed duration of their Subclass 500 visa in order to be granted a visa. Students applying for further stay on a Subclass 500 visa must also show evidence of cover for the proposed duration of the subsequent visa before it can be granted.

Please note that evidence of cover for couples or families does not need to be combined and each applicant can take out cover separately. For example, couples can take out cover separately as two single premiums.

For a list of current approved OSHC providers, refer to the Department of Health's webpage:

Overseas Student Health Cover (OSHC) Fact Sheet.

Methods of obtaining OSHC

Two of the current procedures for obtaining OSHC are:

Released by the Department of Home Affairs
under the Freedom of Information Act 1982

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- education providers can collect and pay OSHC premiums direct to the approved OSHC provider of their choice, or:
- applicants pay the OSHC premium direct to the approved OSHC provider of their choice.

Assessing OSHC requirements

Overview

- To ensure a consistent approach across the network, when assessing OSHC officers should consider the following advice regarding
- Start **dates** and End dates.

The online form asks for:

- a declaration that OSHC has been obtained or other health insurance (applicable to an exempt citizen from Belgium, Norway or Sweden – refer to to Exempt citizens covered by other arrangements
- the start and end dates
- a declaration that identifies if the cover has been arranged by the education provider.

If the student declares OSHC was arranged by the education provider, the student needs to provide the OSHC commencement and end dates only.

Unless there are OSHC follow-ups, officers may accept the information provided in the visa application as meeting the requirements.

Applicants who declare they have no OSHC on their application form may be refused upfront, provided no evidence has been attached to the application or is present in their CoEs.

Applicants who provide a non-OSHC product (where there is no applicable exception) also may be refused upfront.

Note: Judgement and sensitivity is required if a non-OSHC product is provided by an embassy or other government agency. In these circumstances, officers may request additional documentation.

Start dates

Officers are to check the start date for a student's OSHC prior to visa grant. A common mistake is for applicants to nominate the date of the commencement of their course as the start date for their OSHC, rather than the date they intend to enter Australia.

In these circumstances:

- for applications made outside Australia, the applicant may be asked to obtain additional cover that commences at least a week before the date their course commences
- for applications made in Australia in circumstances where the applicant does not currently hold a Subclass 500 visa, the applicant should be advised to obtain additional cover that commences on or before the date of visa grant.

Subclass 500 visa holders must not enter Australia without OSHC or they will be in breach of visa condition 8501 and their visa could be subject to cancellation. If a student plans to arrive before their original OSHC commencement date, they will need to purchase additional cover prior to arrival.

End dates

Subclass 500 visa applicants are encouraged to obtain OSHC for their full visa eligibility period so that they can attend their graduation ceremony, prepare for departure or apply for a further visa type.

In the event a visa applicant has OSHC coverage for the full study period (that is, to the end of all combined courses) but less than the maximum period they would have otherwise been eligible for (refer to 3.12.2. –

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Visa grant period – policy arrangements - The Subclass 500 visa end date) officers should grant the visa to the end date of the OSHC coverage.

If an offshore visa applicant does not provide evidence of OSHC coverage for the full study period, officers may refuse the application.

Onshore visa applicants can be granted a visa to the end date of OSHC, noting they may be required to make a further Subclass 500 visa application if their OSHC does not cover the full study period.

Exempt citizens covered by other arrangements

The following students do not have to take out OSHC:

- Belgian students (covered by a reciprocal health care agreement between Australia and Belgium)
- Norwegian students – they are provided with adequate health insurance by the Norwegian government (National Insurance Scheme)
- Swedish students who take out health insurance with Kammarkollegiet (the Swedish Legal, Financial and Administration Agency). Officers must keep in mind that Kammarkollegiet cover is not universal. The applicant must present a card or other evidence of cover before the visa can be granted. Swedish students not covered by Kammarkollegiet must take out OSHC.

Previously, students from Sweden were also able to take out health insurance with CSN International (the Swedish National Board of Student Aid). However, this option is no longer available. Students currently in Australia with an existing CSN International policy will continue to be covered by CSN, however no new policies will be issued.

Endeavour Award holders

For Endeavour Award holders, the Department of Education organises health insurance (OSHC) for the duration of the student's stay. A letter from the Department of Education to Endeavour students referring to this may be accepted as evidence that adequate arrangements for health insurance have been made.

Reciprocal health care agreements

At time of publishing this PI, the Australian Government maintains Reciprocal Health Care Agreements (RHCAs) with eleven countries, which includes the United Kingdom, Sweden, Belgium, Finland, Italy, Malta, the Netherlands, New Zealand, Norway, Slovenia and the Republic of Ireland. New RHCAs may be negotiated at any time. For the latest list of countries, officers are to refer to:

Services Australia Reciprocal Health Care Agreements webpage.

The provisions of RHCAs vary, and may entitle certain residents of these countries to obtain a RHCA-specific Medicare card and receive access to limited subsidised health services for medically necessary treatment while visiting Australia. Simply being a national of a country that has an RHCA with Australia may not necessarily entitle a person to access Medicare while in Australia. Services Australia is responsible for determining a person's eligibility to enrol in Medicare under a RHCA.

With the exception of students from Belgium, students who are covered by a RHCA:

- are still required to maintain adequate arrangements for health insurance in Australia (by showing evidence of OSHC) to be granted a Subclass 500 visa
- must maintain OSHC as a condition of their visa.

Any cover provided under a RHCA will be in addition to their OSHC.

Students who have temporary Medicare access must still maintain OSHC while they hold a Subclass 500 visa. This includes students whose home country has a RHCA with Australia, and students who have applied in Australia for a permanent visa.

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OSHC provides more comprehensive benefits to overseas students and their dependants than those provided under the RHCAs, including ambulance services, benefits for expenses exceeding the equivalent of the current Pharmaceutical Benefits Scheme, private hospital/registered day hospital facilities and surgically implanted prostheses. OSHC also provides prudential protection for overseas students and their dependants, which may not necessarily be extended to a policy holder obtaining health coverage from a non-registered insurance provider.

Foreign Affairs students

DFAT pays OSHC on behalf of the student but not their accompanying family members. Officers may accept the DFAT letter of offer as acceptable evidence of coverage for the student.

If an applicant's family members apply for a visa to accompany the student they will need to independently organise and submit evidence that they have OSHC as part of their application.

Defence-sponsored students

Defence students and their accompanying family unit members are not required to produce evidence of OSHC if they are sponsored by Defence.

The Letter of Support provided by Defence (the "Confirmation of Defence Student Sponsorship" letter) is considered acceptable evidence of adequate arrangements for health insurance for the grant of a visa.

Defence organises OSHC on behalf of Defence Cooperation Program (DCP) students while a Fee For Service (FFS) student's home country is responsible for their health insurance costs. In some cases, a FFS student may hold an adequate level of health insurance as provided by a foreign Ministry of Defence.

3.10.6. Age requirements for school students

Subclass 500 visa applicants who are school students (other than a school student participating in a secondary exchange program) must be of an appropriate age to the entry level for their school course. The age requirement applies to all school sector students, regardless of their country of citizenship.

The appropriate age for entry to different school levels are specified in clause 500.216 as follows:

- at least six years old at time of application
- less than 17 when commencing Year 9
- less than 18 when commencing Year 10
- less than 19 when commencing Year 11
- less than 20 when commencing Year 12.

A child under six years old is able to study for up to three months on a Visitor visa.

An applicant would meet this criterion if they apply for a further visa to complete their studies where they have passed the stipulated age only if they:

- have commenced studies prior to reaching the stipulated age, and
- require an additional visa to complete the studies, and
- meet all other criteria for grant of the visa such as GTE.

For example, where a student's visa will cease part of the way through Year 12 and they commenced Year 12 at age 19, they may be granted a further visa to complete Year 12 even though they have turned 20 by the time they apply for the further visa.

3.10.7. Public interest criteria

Overview

Subclause 500.217(1) provides that the primary applicant must satisfy public interest criteria (PIC) 4001, 4002, 4003, 4004, 4010, 4013, 4014, 4020 and 4021.

If the applicant has not turned 18 at the time of application the applicant must also satisfy PIC 4012A, 4017 and 4018 – see subclause 500.217(2).

If the applicant has turned 18 at the time of application the applicant must also satisfy PIC 4019 – see subclause 500.217(3).

If the applicant is not a Foreign Affairs student or a Defence Student the applicant must also satisfy PIC 4005 – see subclause 500.217(4).

If the applicant is a Foreign Affairs student or a Defence Student the applicant must satisfy PIC 4007 – see subclause 500.217(5).

If the applicant's course of study or intended course of study is a postgraduate research course, the applicant must satisfy PIC 4003B – see subclause 500.217(6).

PIC 4001 – Character

For policy and procedure, refer to:

- Penal Checking Handbook – PI (VM-1002);
- Regulation 2.03AA – Criteria applicable to character tests and security assessments - PI (VM-995);
- Section 501: The character test, visa refusal and visa cancellation - PI (VM-1001).

PIC 4002 – Security requirement

Assessing PIC 4002 (“the security requirement”) involves security checking the visa applicant in strict accordance with the procedures set out in the Security Checking Handbook (SCH) – refer to:

- Security Checking Handbook – Visa and Citizenship - White Pages - PI (BE-1716).

PIC 4003- Foreign Minister requirements

PIC 4003 requires that the applicant's presence in Australia is not determined to be contrary to Australia's foreign policy interests, or associated with the proliferation of weapons of mass destruction, and either:

- is not declared under paragraph 6(1)(b) or (2)(b) of the *Autonomous Sanctions Regulations 2011* for the purpose of preventing the person from travelling to, entering or remaining in Australia; or
- if the applicant is declared — officers have waived the operation of the declaration in accordance with regulation 19 of the *Autonomous Sanctions Regulations 2011*.

For paragraph 4003(a) - Foreign policy interests, refer to:

- Foreign policy travel sanctions and autonomous travel sanctions - PI (VM-994).

For paragraph 4003(b) – Proliferation of weapons of mass destruction, refer to:

- Proliferation of Weapons of Mass Destruction – White Pages – PI (BE-1723)

For paragraph 4003(c) - Autonomous sanctions, refer to:

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- Foreign policy travel sanctions and autonomous travel sanctions - PI (VM-994).

If the systems message <refer to competent authorities> appears when processing a Subclass 500 visa application, refer to:

- Proliferation of Weapons of Mass Destruction – White Pages – PI (BE-1723)
- Form 1221 (Additional personal particulars information).

PIC 4003B – Unwanted transfer of critical technology

PIC 4003B requires that the Minister has not determined that there is an unreasonable risk of unwanted transfer of critical technology by the applicant.

PIC 4004 - Debts to the Commonwealth

PIC 4004 requires that an applicant not have outstanding debts to the Commonwealth unless the Minister is satisfied that appropriate arrangements have been made for payment.

As a matter of policy, in most circumstances it is expected that the debt be paid in full before the visa is granted. The process for requesting and verifying payment is set out in Sch4/4004 - Debts to the Commonwealth - PI (FM-1237).

If an applicant has a debt to the Commonwealth, officers can be satisfied that appropriate arrangements have been made if certain elements are met, as outlined in Sch4/4004 - Debts to the Commonwealth - PI (FM-1237).

PIC 4005/4007 - Health requirement

All primary and secondary Subclass 500 visa applicants are required to meet certain health requirements.

Australia's health requirements are designed to:

- minimise public health risks to the Australian community
- contain public expenditure on health and community services
- ensure that Australian residents have access to health and other community services.

Foreign affairs students, defence students and their accompanying family members must be assessed against PIC 4007. All other Subclass 500 visa applicants and their accompanying family members must be assessed against PIC 4005.

For more information on meeting the health requirements refer to:

Sch4/4005-4007 – The Health Requirement - PI (VM-1027).

PIC 4010 – The settlement requirement

PIC 4010 requires that if an applicant seeks to remain in Australia permanently, or temporarily for longer than 12 months, the applicant is likely to become established in Australia without undue personal difficulty and without imposing undue difficulties or costs on the Australian community.

It is expected that failure to satisfy the settlement requirement would rarely be the sole reason for a Subclass 500 visa refusal. If such cases arise, a detailed assessment of an applicant's settlement prospects is required.

For policy and procedural guidance on the settlement requirement, refer to:

Sch4 Public interest criteria - SM (LS-1855) - Sch4/4010 - The settlement requirement.

PIC 4012A - student welfare

Overview

An applicant seeking to satisfy the primary criteria for a Subclass 500 visa, who has not turned 18 years old, must satisfy PIC 4012A(a), or PIC 4012A(b) or PIC 4012A(c) of Schedule 4 to the Regulations.

PIC 4012A(a)

PIC 4012A(a) requires that the applicant's application expresses a genuine intention to reside in Australia with a parent or legal custodian, or a relative (as defined in regulation 1.03, see 'Relative' definition below) who is at least 21 years old, who has been nominated by the student's parent or legal custodian and who is of good character.

As a matter of policy officers may be satisfied that the applicant's application expresses a genuine intention to reside in Australia with a person who:

- is an Australian citizen;
- holds a permanent visa; or
- holds a Subclass 590 visa or other substantive temporary visa permitting them to remain in Australia for the duration of the student's study and stay, or until the student turns 18 (whichever is the lesser period).

This may be demonstrated by evidence provided in form 157N (refer 3.8.6. – Welfare of minors – Evidence of welfare arrangements required at time of lodgement).

Officers may also consider whether the student guardian has provided a residential address in Australia in form 157N. If only a business address is provided, officers may not be satisfied that the student has expressed a genuine intention to reside with the relative. In such circumstances, officers may request that a home address be provided, or that the parent or legal custodian name another relative or obtain an accommodation/welfare undertaking from the education provider.

Note: An application for a Subclass 590 visa may be made and considered at the same time as the student's visa application.

PIC 4012A(b)

PIC 4012A(b) requires that the student's education provider gives a signed statement confirming appropriate arrangements for the student's accommodation, support and general welfare have been made for at least the minimum period of enrolment stated on the applicant's CoE or AASES form plus seven days after the end of that period.

PIC 4012A(c)

PIC 4012A(c) requires that if the applicant is a Foreign Affairs student or Defence student, appropriate welfare arrangements for the student's accommodation, support and general welfare have been approved by the Foreign Minister (for a Foreign Affairs students) or Defence Minister (for Defence students).

'Parent' definition

A reference to a parent includes a step-parent – regulation 1.14A.

'Relative' definition

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Nominated relatives must be a 'relative' of the Subclass 500 visa applicant as set out in paragraph (b) of the regulation 1.03 definition of **relative**.

Under this definition, only spouse/de facto partner, child, adopted child, a parent, brother, sister or step equivalent, a grandparent, grandchild, aunt, uncle, niece or nephew, or a step-grandparent, step-grandchild, step-aunt, step-uncle, step-niece or step-nephew can be nominated relatives for PIC 4012A purposes. Cousins or relatives with a different family relationship to the Subclass 500 visa applicant than those stated above do not meet requirements to be nominated as a student guardian.

Officers are to keep in mind that titles such as "auntie" often have a cultural connotation in some countries, which may not meet the required legislative definition of relative.

Character test

The nominated relative must be of good character. For guidelines on character checking, first refer to Section 501: The character test, visa refusal and visa cancellation - PI (VM-1001).

Standard penal checking applies (that is, for each country where the relative has, since turning 16, resided for one year or more in the last 10 years). If a relative resides or has resided in Australia during the relevant period, they must provide a National Police Certificate (NPC) issued by the Australian Federal Police which covers the full period of their residency in Australia. The correct certificate will have "**Complete Disclosure**" in the heading. Refer to :

Penal Checking Handbook – PI (VM-1002).

This penal check/s should in most circumstances be sufficient to establish if a nominated relative is of good character. If officers have other information or evidence that raises serious concern about the person's conduct towards minors, it is also open to them to email the details to Law Enforcement Liaison mailbox for additional checking. Note: These checks can be made only if the relative is residing in Australia.

This checking is in addition to normal penal checking procedures only in exceptional cases.

For assistance with checking, contact [s. 22\(1\)\(a\)\(ii\)](#) [@homeaffairs.gov.au](mailto:_____@homeaffairs.gov.au).

PIC 4012A(b) - Evidence that the education provider approves welfare arrangements

The standard letter, Confirmation of Appropriate Accommodation and Welfare (CAAW) must be issued by the education provider in PRISMS for applicants other than secondary exchange students.

Secondary exchange students' welfare arrangements are detailed in their AASES form.

The relevant data on the CAAW, including the start and end dates of the nominated welfare period is sent to ICSE via PRISMS.

Assessing PIC 4012A(b) if education provider makes welfare arrangements and the visa applicant is enrolled in two or more courses with different providers

Applicants under 18 who are enrolled in two or more courses with different providers may need to provide evidence that PIC 4012A is satisfied in relation to each course. That is, if the applicant is not staying with a parent/custodian or relative, they should provide a statement from each provider they are enrolled with while under 18 confirming that adequate welfare arrangements have been made.

Officers are also to ensure that there are no gaps between the welfare periods nominated by each provider. If there is a gap between the welfare periods and the providers will not extend their nominated welfare periods to cover the gap, the visa is to be granted only for the period for which there are continuous approved welfare arrangements.

Secondary exchange students

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For secondary exchange students a CAAW is not required as the AASES form contains details of the approved welfare arrangements.

Assessing PIC 4012A if student seeks more than one type of welfare arrangement

Students who are under 18 who seek to put in place more than one type of welfare arrangement can be considered provided there are no gaps.

For example, a student can nominate a parent to accompany them to Australia (either as a guardian on an appropriate visa or as a Subclass 590 (Student Guardian) visa holder for a specified period of time and then move into welfare arrangements made by their education provider and evidenced in a CAAW.

PIC 4012A – Evidence that Foreign Minister or Defence Minister approves welfare arrangements

PIC 4012A(c) requires Foreign Affairs students and Defence students to have arrangements for their accommodation, support and general welfare to be approved by the Foreign Minister (for Foreign Affairs students) or the Defence Minister (for Defence students).

This requirement is taken to be satisfied through the issue and presentation of the support letter from the Foreign Minister or the Defence Minister.

Students who will turn 18 after visa grant but prior to arriving in Australia

PIC 4012A is applicable to all students who have not turned 18 at the time of decision. This includes cases where a student will turn 18 prior to their arrival in Australia.

Condition 8532 applies to all applicants who satisfy the primary criteria for grant of a Subclass 500 visa, and requires that if under 18 the visa holder must have adequate welfare arrangements if they are in Australia. If a minor chooses to enter Australia prior to turning 18 they must therefore stay in Australia with an appropriate relative, or have CAAW issued by their education provider, or their visa is liable for cancellation.

Refer to: 3.12.3. Subclass 500 visa conditions – Condition 8532 - Maintain welfare arrangements for minors.

Students who will turn 18 after they apply but before they enter Australia must submit Form 157N with questions 1-8 completed and signed by the parent or legal guardian. No welfare arrangements are required.

PIC 4013 – Exclusion period after visa cancellation

A person affected by a PIC 4013 risk factor can be granted a visa only if:

- the visa application is made more than three years after the cancellation of the visa; or
 - officers are satisfied that, in the particular case:
 - compelling circumstances that affect the interests of Australia or
 - compassionate or compelling circumstances that affect the interests of an Australian citizen or an Australian permanent resident or an eligible New Zealand citizen exist.
- justify the granting of the visa within the 3 years after the cancellation.

- refer to Schedule 4 of the Regulations - PIC 4013(1).

For policy and procedural guidance on risk factors and exclusion periods, see:

Exclusion Periods - PI (VM-990).

PIC 4014 – Exclusion period relating to immigration status at time of previous departure from Australia

A person affected by a PIC 4014 risk factor can be granted a visa only if:

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- the visa application is made more than three years after the departure of the person from Australia; or
- officers are satisfied that, in the particular case that:
 1. compelling circumstances that affect the interests of Australia exist or
 2. compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen exist.justify the granting of the visa within the 3 years after the departure.

- refer to Schedule 4 of the Regulations - PIC 4014(1).

For policy and procedural guidance on risk factors and exclusion periods, see:

Exclusion Periods - PI (VM-990).

PIC 4017- Custody (parental responsibility) and PIC 4018 – ‘Best interests of child’

PIC 4017 operates to preclude the grant of a visa to an applicant who is a minor if there are unresolved custody/residence issues concerning the applicant. This is to ensure that the visa grant and travel of the child to Australia does not conflict with parental rights/responsibilities that a person (for example a non-custodial parent) may have under the laws of the minor's home country, including local court orders.

Refer to s5G – Relationships and family members – Custody (parental responsibility) for minor children – PI (VM-3066).

PIC 4018 operates to preclude the grant of a visa to a minor if officers are satisfied it would not be in the best interests of the minor.

Refer to s5G – Relationships and family members – Best interests of minor children – PI (VM-3057).

PIC 4019 – Values Statement

For guidance on the values statement, refer to Public Interest Criterion (PIC) 4019 – The Values Statement (SM-6287).

PIC 4020 - Fraud

For policy and procedure on PIC 4020, refer to Sch4/4020 – The Integrity PIC – PI (VM-974).

PIC 4021 – Passport requirement

In deciding whether the applicant satisfies PIC 4021, officers must be satisfied that the applicant holds a valid passport, unless it would be unreasonable to require the applicant to hold a passport. This is commonly called waiving the passport criterion.

For guidance on when it may be appropriate to waive the PIC 4021 passport requirement, refer to:

Travel documents – PI (BC-537).

3.10.8. Special return criteria

Clause 500.218 provides that the primary applicant must satisfy special return criteria (SRC) 5001, 5002 and 5010.

SRC provide exclusion periods for certain visa holders or former visa holders. Refer to:

Exclusion Periods - PI (VM-990).

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SRC 5010

SRC 5010 applies specifically to certain holders or former holders of Student visas.

Foreign Affairs students

Foreign Affairs sponsored students (and any family member applicants) are expected to leave Australia and return to their home country to use their skills and knowledge gained in Australia for two years before they may apply for a further temporary or permanent visa for entry to Australia. This does not apply, under SRC 5010(3)(c), if the course or training was 12 months or less (for example, Fellowship recipients in the DFAT Australia Award program).

Supporting this aspect of Subclass 500 visa policy, SRC 5010 requires former Foreign Affairs students (and any family member applicants) wishing to return to Australia within two years of ceasing or completing their course generally to have the support of DFAT before the visa can be granted.

If a person is granted a subsequent visa but has not spent a full two years outside Australia since ceasing their course, the two year "exclusion period" remains in force for any further visa applications.

Support for grant of the visa

Under SRC 5010(5)(a), DFAT support or the support of the government of the foreign country that provided financial support to the applicant is required.

If DFAT has not already provided their comments as to whether a visa grant is supported, procedurally it is the Department's responsibility (not the visa applicant's) to email the Scholarship Management Section, DFAT (s. 22(1)(a)(ii) @dfat.gov.au) seeking DFAT's comments as to whether the visa grant is supported.

DFAT must be given reasonable opportunity to support (or not to support) the visa being granted. If DFAT either does not support visa grant or does not respond within a reasonable time, officers must consider whether to invoke the waiver provision under SRC 5010(5)(b).

Certain foreign government sponsored students

All Iranian government sponsored Iranian students must provide a letter of support from the Iranian Government to meet SRC 5010.

All Iraqi Government sponsored Iraqi students (including the Kurdistan Regional Government) must provide a letter of support from the Iraqi government to meet SRC 5010.

Schedule 5 waiver provision

SRC 5010(5)(b) allows the requirement for DFAT/foreign government to support a visa grant to be waived if justified by:

- compelling circumstances affecting Australia's interest; or
- compassionate or compelling circumstances affecting the interests of an Australian citizen, eligible New Zealand citizen or Australian permanent resident.

For further information on these circumstances, refer to: Exclusion Periods - PI (VM-990).

Delegations

As a matter of policy, officers at the Executive Level 1 (or higher) may decide whether an applicant satisfies the relevant criteria and decide such applications. Officers are to prepare a submission providing details of the applicant, supporting information from the applicant, the response from DFAT and information on any

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other circumstances that are relevant. The submission is then to be referred to the Executive Level 1 officer for a decision on the waiver specifically and, on the visa application as a whole.

Test the waiver

If DFAT indicates that visa grant is not supported, the visa application must be tested against the waiver provision. Officers must at least consider waiving the criterion even though the power to exercise the waiver is non-compellable. They are not compelled to exercise the waiver, however, even if the case meets the strict 'compelling/compassionate' requirements of the waiver provision.

Policy considerations

It is critical that officers give full weight to the importance of this Schedule 5 criterion in supporting Government policy and its aid program objectives. In particular, officers must keep in mind that exercising the waiver and granting a temporary visa (whether in or outside Australia) potentially allows the visa holder to apply for a range of onshore visas that are not otherwise available to former Foreign Affairs students and that do not require the applicant to have DFAT support for their application.

Documenting decisions

Officers who are inclined to favourably consider waiving this Schedule 5 criterion must fully document (on both the case file and data base) the arguments for waiver, taking into account, for example:

- any information from DFAT
- the Government policy objective underlying this criterion – refer to:
3.4.2. - Role of the Department of Foreign Affairs and Trade and the Department of Defence.

Notifying DFAT

Officers are to inform DFAT of all cases where the waiver is exercised, that is, cases where a visa is granted even though DFAT did not support visa grant. However, for privacy reasons, officers are not permitted to inform DFAT as to which subclass of visa was granted.

Officers who are not inclined to favourably consider waiving the Schedule 5 criterion must, in accordance with the Code of Procedure, first give the applicant an opportunity to comment - refer to:

Notification requirements – PI (LS-1818).

Reasons for not waiving must be fully documented (on both the case file and data base).

3.11. Secondary criteria for visa grant

3.11.1. Overview - Family members

The secondary criteria are contained in clauses 500.311, 500.312, 500.313, 500.314, 500.315, 500.316, 500.317 and 500.318.

Eligibility

Any person claiming to be the member of the family unit of a person who satisfied the primary criteria for the grant of a Subclass 500 visa may be assessed against the secondary criteria. If officers find that the applicant cannot satisfy the secondary criteria because the applicant is not a **member of the family unit** of a person who has satisfied the primary criteria, the applicant must be assessed against the primary criteria before their application can be refused. If the applicant satisfies the primary criteria, officers must grant a visa on this basis.

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A visa application by a family unit member cannot be granted on the basis of satisfying the secondary criteria if the primary applicant has not been granted a Subclass 500 visa.

Member of the family unit

As per regulation 1.12, a person is a **member of the family unit** of an applicant for or holder of a Subclass 500 visa if the person is:

- a **spouse** or **de facto partner** of the applicant, and at least 18 years old or
- an unmarried **dependent child** under 18 years.

For further information refer to:

- Act defined terms - s5F – Spouse
- Act – defined terms – s5CB – De facto partner
- for policy and procedure on establishing these familial relationships - s5G - Relationships and family members - Dependent family members - PI (VM-3067).

Members of the family unit must be declared

Regulation 2.07AF requirements

The family member/s must either be included in the student's initial application to come to Australia or, in limited circumstances, after the student has been granted a Subclass 500 visa.

Subregulation 2.07AF(3) requires all existing family unit members to be declared on the initial Subclass 500 visa application, regardless of whether or not they intend to join the student in Australia at a later stage. Declaring family members upfront is important for assessing the genuineness of the application, including the GTE criterion.

An exception applies to those who became a member of the family unit after the primary applicant was granted a visa.

Family members must provide certain information to demonstrate the relationship to the primary Subclass 500 visa applicant in accordance with subregulation 2.07AF(3) at time of application. Subregulation 2.07AF(4), however, requires a primary applicant to notify the Department in writing if a person becomes a member of their family unit between the time the primary applicant applies for a visa and the time of decision. For further details, refer to:

3.8.7. – Combined applications; in particular - Adding family members to an application after it is made.

Schedule 2 criteria

Under clause 500.311, a member of the family unit who was not declared on the student's visa application is not eligible to be granted a subsequent visa as a dependant of a Subclass 500 visa holder, unless they became a member of the family unit of the primary applicant after the grant of the Subclass 500 visa to the primary applicant (for example, by marriage or birth) and before the subsequent application was made. Satisfactory evidence is required such as officially issued birth or marriage certificates.

Claims that Subclass 500 visa holders “forgot” to include family unit members in their initial application should prompt officers to investigate whether the claimed family member is in fact a member of the family unit as defined for Subclass 500 visa purposes in regulation 1.12. It is open to the primary applicant to apply for another Subclass 500 visa and include their previously undeclared family member(s) in the new application. However, these cases need to be treated cautiously when considering the overall genuineness of the applicants.

3.11.2. Genuine applicant for entry and stay as a family member

Overview

Clause 500.312 provides that the applicant is a genuine applicant for entry and stay as a member of the family unit of a person who holds a Subclass 500 visa, having satisfied the primary criteria for that visa. Three distinct considerations feed into an officer's evaluation of whether this requirement is met:

- The intention concerning the length of stay, that is, there is a genuine intention to stay temporarily (refer to: GTE for family member applicants – paragraph 500.312(a);
- That there is an intention to comply with any visa conditions (refer to:
- Intention to comply with visa **conditions** – family member applicants – paragraph 500.312(b);
- Any other relevant matter (refer to: **Error! Reference source not found.**matter – family member applicants – paragraph 500.312(c)).

GTE for family member applicants – paragraph 500.312(a)

Overview

The first consideration that feeds into an evaluation of whether an applicant is a genuine applicant for entry and stay as a member of the family unit of a Subclass 500 visa holder is whether the applicant intends genuinely to stay in Australia temporarily.

Direction No. 69 - Assessing the genuine temporary entrant criterion for student visa and student guardian visa applications (the GTE s499 direction) provides officers with guidance (for secondary applicants) on five factors that must be taken into account when assessing the GTE criterion for Subclass 500 visa applications:

- the applicant's circumstances in their home country
- the applicant's potential circumstances in Australia
- the applicant's immigration history
- if the applicant is a minor - the intentions of a parent, legal guardian or spouse/de facto partner of the applicant
- other relevant matters.

Note: For secondary applicants, the value of the course to the applicant's future is not a relevant consideration.

Officers are bound by the GTE s499 direction and must refer to it in assessing a Subclass 500 visa application.

Complex cases

Overview

Situations in which a member of the family unit might not be a genuine temporary entrant and further scrutiny may be required are:

- the applicant is applying for a Subclass 500 visa as the member of the family unit, one to two months prior to the cessation of their own Student visa and may be using the visa primarily to maintain ongoing residence
- the relationship does not follow cultural norms, for example adding a de facto partner to the visa application in circumstances where this type of relationship hardly ever exists in that culture
- relationship (and/or marriage) commences soon after visa grant
- limited information is provided with the application to substantiate the relationship
- either the student or the subsequent dependant have been previously married
- the student has a poor study record in Australia.

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If any of the above circumstances appear to apply to an applicant, officers will need to examine the applicant's individual circumstances as a whole to determine whether the genuine temporary entrant criterion is satisfied.

In the case of relationships that are suspected to be contrived for visa purposes, officers must also consider whether the relationship is genuine for the purposes of the applicant being a **member of the family unit** (as defined) for the purposes of clause 500.311.

Minors

When assessing the genuine temporary entrant criterion for minors, officers must also have regard to the intentions of a parent or legal guardian, or the minor's spouse/de facto partner (if both minor and spouse/de facto partner are at least 16 years old). This is because a minor might not have the maturity to be capable of making decisions, including forming intentions in relation to immigration matters.

If an interview is to be conducted to seek further information or clarification for the assessment of the intentions of a parent or legal guardian, or the minor's spouse/de facto partner (if both the minor and spouse/de facto partner are at least 16 years old), it is the parent, legal guardian or spouse/de facto partner who is to be interviewed. If necessary information can be obtained only by interviewing the minor, the parent, legal guardian or spouse/de facto partner must be present for the interview, and care must be taken with questions directed at the minor.

Subsequent entrants

The situation may arise where a subsequent entrant applicant is found not to be a genuine temporary entrant even though the Subclass 500 visa holder who satisfied the primary criteria had earlier satisfied the genuine temporary entrant criterion. An example is where the secondary applicant entered into a contrived marriage with a Subclass 500 visa holder so that the secondary applicant could enter and remain in Australia on the basis of being the visa holder's family member.

Depending on the circumstances of the case, the Subclass 500 visa holder may need to be referred to Compliance for possible visa cancellation. Refer to:

General visa cancellation powers (s109, s116, s128, s134B and s140) - PI (VM-991) - in particular, Cancellation of visas on specified grounds.

For further information, refer to the corresponding guidance in Primary criteria for visa grant:

3.10.2. Genuine applicant for entry and stay as a student, in particular, Genuine temporary entrant (GTE) – paragraph 500.212(a)).

Intention to comply with visa conditions – family member applicants – paragraph 500.312(b)

The second consideration that feeds into an evaluation of whether an applicant is a genuine applicant for entry and stay as a member of the family unit of a Subclass 500 visa holder is whether the applicant intends to comply with any conditions to which the visa subject to which the visa is granted.

Refer to the corresponding guidance in Primary criteria for visa grant:

3.10.2. - Genuine applicant for entry and stay as a student–

Intention to comply with visa **conditions**.

Any other matter – family member applicants – paragraph 500.312(c)

The third consideration is "any other relevant matter" (paragraph 500.312(c)). As outlined in the guidance provided for primary applicants at **Error! Reference source not found.**, paragraph 500.312(c) is broader in

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scope than the other 'any other relevant matter' GTE consideration (in subparagraph 500.312(a)(iv)), which is concerned only with how long the applicant intends to stay in Australia.

A decision to refuse to grant a Subclass 500 visa may be made against this criterion if the applicant satisfies all other Schedule 2 criteria, but there are other relevant factors that indicate the applicant is not a genuine applicant for entry and stay as a member of a family of a person who holds a Subclass 500 visa. It is expected that in most cases there will not be any 'any other matters' that are relevant to the applicant's specific circumstances.

3.11.3. Financial requirement for family members

Clause 500.313 provides that all secondary applicants for a Subclass 500 visa must have genuine access to sufficient funds to cover costs and expenses for themselves and any family applicants for the duration of the intended stay in Australia. The funds must be accessible and be available to financially support the applicant/s in Australia.

Guidance on financial requirements for combined applications including family member applicants is covered under Primary criteria for visa grant - refer to:

3.10.4. - Financial capacity evidence – in particular, Sufficient funds for travel, living, course (tuition) and school fees - Amount of funds to demonstrate.

This is because the evidence must cover all applicants included in the application and can be used to meet secondary criteria as well as the primary criteria.

Guidance on financial requirements for subsequent entrant applicants is covered below.

Financial requirements for subsequent entrant applicants

Overview

All subsequent entrant applicants must declare in their application that they have access to sufficient funds to support themselves for the duration of the entire stay in Australia.

The subsequent entrant applicant must provide additional evidence of their financial capacity.

The *Evidence of financial capacity* legislative instrument made under subclauses 500.214(4), 500.313(4) and 590.216(4) specifies that family member applicants whose application is not combined with the primary student have to provide either:

- evidence that the primary applicant's spouse/de facto partner or parents have a specified annual income; or
- evidence of sufficient funds to cover travel costs, and the first 12 months' living costs (or pro rata equivalent of annual living costs if applicants intend to stay in Australia for less than 12 months) and course fees for themselves and each family applicant, including those family members who already hold a Subclass 500 visa.

Amount of funds to demonstrate

Application by subsequent entrant family members

The amount of funds an applicant must demonstrate can be identified by adding the following amounts (refer to the *Evidence of financial capacity* legislative instrument):

- living cost amount for the student and all accompanying family members for the **first 12 months** (or pro rata equivalent of annual living costs if applicants intend to stay in Australia for less than 12 months)
- student's course fees for the **first 12 months** that the secondary applicant is in Australia, minus any amount already paid
- school fees for all **school-age dependants** for the **first 12 months** (or pro rata equivalent of annual school costs if the school-age dependant intends to stay in Australia for less than 12 months)

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- travel costs for the student and all family members.

'The first 12 months' (subsequent entrant applicants)

When assessing the financial requirement for subsequent entrant applicants, the 12 month period is calculated in relation to the subsequent entrant applicant(s) proposed entry to Australia. This is especially relevant if the primary applicant has already been studying in Australia for some time.

Foreign Affairs and Defence subsequent entrants

Arrangements for Foreign Affairs and Defence students fall under the financial support from a government organisation – refer to:

3.10.4. – Financial capacity evidence - Financial support from a government, education provider or international organisation.

If the primary student visa holder is a Foreign Affairs or Defence student and has provided a letter of support, then evidence of financial capacity is the letter of support, if the letter of support indicates that the Department of Foreign Affairs and Trade / Department of Defence will meet the living costs and expenses of each secondary applicant.

If the letter of support does not indicate that the relevant department will meet the living costs and expenses of each secondary applicant, then evidence of financial capacity is required that demonstrates that sufficient funds are available to meet the costs and expenses of each secondary applicant including travel expenses.

3.11.4. Health insurance for accompanying family members

Clause 500.314 provides that secondary applicants must give evidence of adequate arrangements in Australia for health insurance. This approach ensures that the family members of students can meet the cost of the medical and hospital care during their period of stay in Australia.

Family unit members applying outside Australia to join a student already in Australia should provide details of their policy with their application.

Arrangements for family members of Defence students and Foreign Affairs students are covered under their own headings in 3.10.5. - 'Health Insurance'

Health insurance must be taken out for the entire proposed visa period.

For more information, refer to:

- 3.10.5. - Health insurance
- 3.12.3. – Subclass 500 visa conditions - Condition 8501 – Maintain health insurance
- Sch4/4005-4007 – The Health Requirement - PI (VM-1027).

3.11.5. Education of school-age dependants

Overview

Clause 500.315 provides the applicant must give evidence of adequate arrangements for the education of any **school-age dependants** if the intended duration of stay is more than three months.

'School-age dependant' is defined in regulation 1.03 as a member of the family unit who has turned 5, but has not turned 18.

A Subclass 500 visa holder is considered to be maintaining adequate arrangements for a school-age dependant's education if they satisfy the relevant legislation for education in the State/Territory in which they

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are residing. In all States/Territories, children must commence their education, at the latest, in the year the child turns six. The age students are permitted to leave school varies by jurisdiction, however, in all States/Territories students must remain in education, either at school or through some combination of training and employment, until the age of 17.

Conditions 8517 and 8518 require that adequate education arrangements be maintained while the visa is held. For more information, refer to:

3.12.3. – Subclass 500 visa conditions - Conditions 8517 and 8518 - Maintain education of school-age dependants

If outside the State/Territory compulsory education age at the time of visa decision

If the child is a school-age dependant at the time of visa decision, but has not yet reached the compulsory age for education in the State/Territory in which they reside, the primary applicant will be required to demonstrate that adequate arrangements have been made for the child to commence school once the child reaches the compulsory age for education.

If the child is under 5 at the time of visa decision, the primary applicant is not required (for grant of the visa) to demonstrate adequate arrangements for the child's education. However, to comply with visa conditions 8517 and 8518, the child must commence schooling once they reach the compulsory age for education.

If a dependant is 17 (and so still falls within the **school-age dependant** definition because they have not turned 18) but is no longer under the age of compulsory education in their State/Territory of residence, evidence of enrolment is not required to demonstrate adequate arrangements for their education.

Enrolment requirements for school-age dependants

Evidence of enrolment in an Australian (government or non-government) school at the time of visa decision is typically considered adequate. Generally, therefore:

- students should enrol and pay any school fees required for each school-age dependant proposing to stay in Australia for more than three months (official CoE for students attending government schools is issued through the relevant State/Territory education department).

and

- the school-age dependant should produce evidence of enrolment (for example, preferably an original letter from a provider or the relevant State/Territory education department giving enrolment details and fees paid) before the requirements of clause 500.315 visa may be considered met.

In some instances schools will not issue a CoE until the student has been granted the visa and arrived in Australia. In these circumstances a letter of offer for a placement in a school that is conditional on the applicant arriving in Australia would also be considered adequate.

Situations in which schools will not issue a CoE, or at minimum, a letter of offer, until the applicant takes residence in their catchment area should be considered on a case by case basis. In these situations, officers should be satisfied the applicant:

- has done everything reasonably in their power to secure enrolment for the child in a school in their intended area of residence in Australia and
- understands the need to enrol the child as soon as possible after arriving in Australia and
- intends to comply with the conditions of their visa.

Defence students are not required to provide evidence of enrolment for school-age dependants at the time of visa decision. This is because Defence arranges the applicant's placement and accommodation in Australia and the applicant may not be aware which school their dependant will attend before they arrive in Australia. Officers can be confident that Defence will impose this requirement on their students and that school-age dependants will be enrolled in school once they arrive in Australia.

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Other arrangements

If unusual educational arrangements proposed on, for example, grounds of location, religious or cultural requirements do not appear to meet the 'adequate arrangements' test, the proposed arrangements are to be brought to the attention of officers' supervisors/managers for consideration. For further assistance, email s. 22(1)(a)(ii) @homeaffairs.gov.au.

An example of well-recognised and strong cultural requirements is dependent female spouses under 18 in circumstances where it is not culturally appropriate for them to attend classes in a western country unchaperoned.

The 'adequate arrangements' test could include enrolment in a registered school or home-school arrangements approved by the local State/Territory authority. Generally, for parents proposing to home-school their children in Australia, arrangements may be considered as adequate only if the parents can demonstrate that they have registered with their local State/Territory education authority to provide home-schooling. This option is only available to visa applicants already in Australia. This is because State/Territory authorities require proof of residence in the local area at the time an application is made for home education registration.

The national charging policy

About the national charging policy

State/Territory governments operate a national charging policy, in cooperation with the Australian Government, for the education at government schools of school-age dependants accompanying international students to Australia.

Most State/Territory government schools and private schools also charge substantial school fees and/or apply various enrolment restrictions on school-age dependants. Applicants who wish to bring school-age dependants to Australia should seek information about these matters from their intended education provider prior to enrolment.

Exemptions

Certain students (and, it follows, their family unit members) may be exempted from the national charging policy. If this is the case, the sponsorship leading to their exemption from the national charging policy is considered sufficient for the applicant to satisfy criteria relating to school fees.

Depending on State/Territory education department policy, exemptions from the national charging policy may include:

- Australian Government sponsored students (including Foreign Affairs/ Defence students and RTP/IPRS holders)
- students with sponsorship or scholarship from certain Australian non-government organisations. (Approval of non-government scholarships is a State/Territory responsibility; details of such scholarships are available from the relevant State/Territory education authority.)

Despite being exempted from the national charging policy, such students are still required to supply evidence of enrolment of school-age dependants – refer to visa conditions 8516, 8517 and 8518.

Proof of exemption

Students exempt from the charging policy can be identified by their providing a letter identifying them as the holder of a scholarship of a kind that may exempt them from the charging policy. State/Territory governments are, however, increasingly moving to impose charges of various amounts on all family unit members. Students should be made aware of the likelihood of fees and encouraged to check with the State/Territory authorities before finalising visa arrangements.

Released by the Department of Home Affairs
under the Freedom of Information Act 1982

3.11.6. Family members of Foreign Affairs/Defence students

Family members of Foreign Affairs/Defence students require the support of the relevant Minister for grant of Subclass 500 visa (clause 500.316).

3.11.7. Public interest criteria

Subclause 500.317(1) provides that the secondary applicant must satisfy public interest criteria (PIC) 4001, 4002, 4003, 4004, 4010, 4013, 4014, 4020 and 4021.

If the applicant has not turned 18 at the time of application the applicant must also satisfy PIC 4017 and 4018 – see subclause 500.317(2).

If the applicant has turned 18 at the time of application the applicant must also satisfy PIC 4019 – see subclause 500.317(3).

If the applicant is not a member of the family unit of a Foreign Affairs student or a Defence Student the applicant must also satisfy PIC 4005 – see subclause 500.317(4).

If the applicant is a member of the family unit of Foreign Affairs student or a Defence Student the applicant must satisfy PIC 4007 – see subclause 500.317(5).

If the applicant is a member of the family unit of a person who holds a Subclass 500 visa, having satisfied the primary criteria, and that person's course of study or intended course of study is a postgraduate research course, the applicant must also satisfy PIC 4003B – see subclause 500.317(6).

For commentary on PICs, refer to the corresponding guidance in Primary criteria for visa grant:

3.10.7. – Public interest criteria

3.11.8. Special return criteria (SRC)

Clause 500.318 provides that the secondary applicant must satisfy special return criteria (SRC) 5001, 5002 and 5010.

SRC provide exclusion periods for certain visa holders or former visa holders. Refer to:

Exclusion Periods - PI (VM-990).

For commentary on SRC, refer to primary criteria for visa grant:

3.10.8. – Special return criteria

3.12. Visa grant – location, visa period and conditions

3.12.1. Overview – legislative provisions

The circumstances in which a Subclass 500 visa can be granted are set out at clause 500.411. The applicant may be in or outside Australia, but must not be in immigration clearance.

Clause 500.511 permits the Subclass 500 visa holder to travel to, enter and remain in Australia until a date specified by the Minister. Refer to:

3.12.2. – Visa grant period – policy arrangements.

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Subclass 500 visas are granted subject to several conditions intended to govern the stay in Australia of students and their families. Division 500.6 specifies:

- the Schedule 8 conditions that are 'mandatory' (that is, the conditions that must be imposed), or are 'discretionary' (that is, may be imposed at officers' discretion) and
- the circumstances in which the mandatory and discretionary conditions apply.

Refer to 3.12.3. – Subclass 500 visa conditions.

Note: the conditions attached to visas granted to family unit members are not necessarily the same as those attached to visas granted to primary visa holders.

Grant of a Subclass 500 visa will cease the substantive visa held by the applicant

Subsection 82(2) of the Act provides that a substantive visa ceases to be in effect if another substantive visa (other than a Special Purpose visa) comes into effect for that person.

Officers must establish whether an applicant holds another substantive visa (or there are multiple applications by the one applicant) immediately prior to the grant of a Subclass 500 visa. Officers may need to contact the applicant to inform them that the grant of the Subclass 500 visa will automatically cease the substantive visa they hold. The option to withdraw the Subclass 500 visa application may also be presented to clients in this situation who may not be aware of their current visa status.

Note: there is a warning alert in ICSE at point of grant if the Subclass 500 visa applicant holds a permanent / provisional visa, which says:

'The visa applicant currently holds a permanent / provisional visa. Do you wish to proceed with the granting of this temporary visa?'

If there are multiple visa applications by the one applicant and the grant of more than one visa is appropriate, officers must ensure that the most advantageous visa is granted last.

For further information about the effect of granting a visa when a person holds another visa, refer to:

GenGuideA - All visas -Visa application procedures - PI (LS-1849).

If the visa grant occurs after course start date

If the visa grant will occur after the start date of the CoE, officers can request the student provide confirmation that it is acceptable to commence the course late.

3.12.2. Visa grant period – policy arrangements

Maximum grant period – General arrangements

Under policy, the maximum grant period for a Subclass 500 visa is six years.

Visa grant period for tertiary students

Tertiary students may be granted a Subclass 500 visa for up to five years. However, if a tertiary student is packaging two or more courses together and demonstrates reasonable, logical and clear course progression, the visa may be granted to the end of the last course up to six years.

Excessive or unusual course progression - for example, if a package spans several qualifications and sectors - would not support a visa grant of up to six years.

This policy does not prevent students from applying for a further Subclass 500 visa to allow them to remain in Australia further to undertake additional study, for example, if a student has held a Subclass 500 visa for four years (Bachelor) and applies for a further Subclass 500 visa to study a PhD, or if a student has held a

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Subclass 500 visa for three years to undertake a Masters course and applies for a further Subclass 500 visa for four years to pursue a PhD.

Examples of visa grant periods for packaged courses

Officers may grant visas for up to six years if there is reasonable course progression where each course is a pre-requisite or foundation for the next course in the package - for example:

- Not acceptable – ELICOS (to) Bachelor (to) Bachelor (no course progression)
- Acceptable – ELICOS (to) Diploma (to) double Bachelor degree (taking four years, or specialised undergraduate degree taking four or more years full time, such as Architecture, Medicine) – Diploma of Health Science followed by Bachelor of Physiotherapy.

Visa grant period for primary school students

To help manage increased welfare and immigration risks associated with the younger and more vulnerable students, a reduced visa grant period covering three years of school studies should generally be applied to primary school students. If a student enrolls mid-year, the visa grant period may be extended for a period to cover three and a half years, to align with the end of the Australian school year, 31 December.

In very limited cases, officers can use their discretion to extend the visa grant period beyond three years. These circumstances are limited to cases where there are no integrity concerns and it is reasonable to do so - for example, a seven year old has applied for a Subclass 500 visa to study Years 1 to 4 (four years) because a parent has been deployed with the army (for the four years) to a country that is not suitable for the student to attend school.

Visa grant period for high school students

High school students may be granted a Subclass 500 visa for up to six years as this is the duration of high school across Australia (years 7-12).

Visa grant period for students seeking to study across primary and high school

Students seeking to study across primary and high school may be granted a Subclass 500 visa for up to six years provided the primary component does not exceed three years. For example, a visa grant period of six years would be permitted to enable a student to progress from year 5 in primary school to year 10 in high school. In this circumstance the student would then need to apply for a further Subclass 500 visa to complete their high school years (years 11 and 12).

The Subclass 500 visa end date

For students

The visa is to be granted in accordance with the expiry date of the OSHC and if relevant, welfare arrangements, up to the maximum period as outlined above:

- students undertaking a course or package of courses that are 10 months or more duration finishing in November-December are to be granted a visa that ceases 15 March of the year following course completion
- students undertaking a course or package of courses that are 10 months or more duration finishing in January to October are to be granted a visa that ceases two calendar months after the expected date of course completion (as stated on the CoE)
- students undertaking a course or package of courses of less than 10 months' duration are to be granted a visa that ceases one calendar month after the expected date of course completion. This excludes certain foreign government-sponsored Non-Award university students who are to be granted a visa that ceases 15 March of the year following course completion. Refer to:

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For foreign government sponsored university **students**.

Students who apply with a new COE to complete a course they have already commenced are to be granted a visa based on the new COE only. The period of grant will depend on the length of that COE and the date of expected completion based on the three principles above. For example, if the COE covers a study period of 11 months and the course end date is 30 November, the visa should be granted that ceases 15 March of the following year.

For primary school students

For primary school students the visa end date is to align with the end of the Australian school year, generally 31 December. Refer to:

Visa grant period for primary school students.

For high school students

If a student will turn 18 years before completing year 12, or welfare is provided by a guardian, the visa can be granted to 15 March the following year if sufficient OSHC has been provided to cover the full eligibility period.

If a CAAW has been provided the visa can be granted to seven days after the CoE end date, or if the student has turned 18 years to 15 March the following year.

For postgraduate research students

All initial Postgraduate Research visa applicants are to be granted an additional six months on the length of their visa on top of what is normally granted for other Subclass 500 visa sectors. This additional time allows these students to remain in Australia during the interactive marking of their thesis. Applicants who:

- are undertaking a course of more than 10 months duration finishing in November-December are to be granted a visa that ceases 15 September (an additional six months from 15 March) of the year following course completion or
- are undertaking a course of more than 10 months duration finishing in January to October are to be granted a visa that ceases eight calendar months (two months that would have been granted under general circumstances and an additional six months for interactive thesis marking) after the expected date of course completion.

A Subclass 500 visa applicant may request that the additional six months not be granted (for example, if they do not intend to write a thesis or do not intend to stay in Australia for the marking period). Also, another party (such as a foreign government providing funding for a government scholarship over a defined period of time) may also request that the visa be granted without the additional six months.

Postgraduate Research visa holders (and other students) who are in Australia and require additional time to complete their interactive marking process for a postgraduate thesis, may be granted a further Subclass 500 visa for this purpose only for a maximum period of six months. If visa holders require extra time at the end of this period, they may be granted further consecutive visas, though never for a period exceeding six months at a time.

These visa holders must provide appropriate supporting evidence (that is, a letter from their education provider) that they are required to remain for this purpose. The visa is to be granted in accordance with the end date nominated by the provider in the letter (as long as this period does not exceed six months at a time). If there is no end date nominated by the education provider the visa may be granted for six months from the date of the education provider's letter.

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For foreign government sponsored university students

Students undertaking a course of less than 10 months duration and finishing in November-December should be granted a visa that ceases 15 March of the year following course completion if the following circumstances are met:

- the student is sponsored by their national government (for example, the Brazilian “Science Without Borders” students).

For Foreign Affairs students

DFAT award scholarships (long term) and fellowships (short term – less than 12 months).

For Fellows, the visa should be granted to seven days after the fellowship end date in the Letter of Support (letter of offer).

For Scholars, the visa should be granted to one month after the course end date in the Letter of Support (Schedule 1 of the Acceptance of Offer letter).

For Defence students

The Letter of Support provided by Defence will include the required visa period. Officers are to refer to the visa end date in this document.

For secondary exchange students

Approved secondary exchange students are to be granted a visa corresponding to the period of exchange, as per the end date (generally the end of December) shown on the AASES form, unless the student will still be under 18 at the completion of the exchange program, in which case they are to be granted a visa according to the nominated welfare dates on the AASES form.

For family members

Family unit members accompanying or joining the student are to be granted visas corresponding to the end date of the student's visa, unless that family member turns 18 during the period of the student's study.

If a student's dependent child will turn 18 before the student completes their course, unless specified by a sponsoring government, the dependent child's visa is to be granted:

- if the dependent child's birthday falls between 1 January and 30 June - until 31 July in the year the dependant turns 18
- if the dependent child's birthday falls between 1 July and 31 December - until 31 December in the year the dependant turns 18.

This allows the dependent child to complete their current semester of study if enrolled. This will also avoid a situation of a dependent child who is about to complete their course of study needing to apply for a further Subclass 500 visa as a primary applicant for only a very short period.

If the **student's** visa ceases before their dependent child turns 18, the dependent child's visa is to be granted with the same cease date as the student. If the dependent child requires a further visa beyond this period to complete their course, they should apply for their own Subclass 500 visa in accordance with the sector of education specified for their course.

3.12.3. Subclass 500 visa conditions

About visa conditions

Subclass 500 visa holders must comply with the conditions of their visa.

OFFICIAL

Subclass 500 visa conditions are designed to ensure that international students act in a manner that is consistent with the purpose for which their visa is granted, for example, maintaining enrolment in a registered course of study.

Condition 8104/8105 – Limited work (students and family members)

About 8104 and 8105

Conditions 8104 is mandatory for all Subclass 500 visas granted to **secondary** applicants. Condition 8105 is mandatory for all Subclass 500 visas granted to **primary** applicants.

Condition 8104 work limitation (family members)

Overview

Condition 8104 provides that family members of Subclass 500 visa holders must not engage in work in Australia (voluntary work may be permitted in certain circumstances) for more than 48 hours a fortnight*. Condition 8104 also provides that family members of Subclass 500 visa holders must not engage in work before the primary Subclass 500 visa holder has commenced a course of study, unless one of following applies:

- at the time of applying for the Subclass 500 visa, the family member held a substantive visa or a bridging visa (the previous visa) and were permitted to work while they held the previous visa;
- at the time of applying for the Subclass 500 visa, the primary Subclass 500 visa holder held a substantive visa or a bridging visa (the previous visa) and was permitted to work while they held that visa.

Note*: If the course of study mentioned above is for the award of a masters or doctoral degree, then the holder may engage in work for more than 48 hours a fortnight while they are in Australia.

If the student has commenced a preliminary course only (for example an ELICOS course), their dependants are restricted to 48 hours a fortnight of work until the student has commenced their masters or doctorate course. After which, they are permitted to work unlimited hours.

Children under school leaving age - State/Territory law prevails

All States/Territories prohibit by law the employment of children under the school leaving age (in most instances, 17 years old) during school hours. Although a child might, in terms of Subclass 500 visa conditions be permitted to work a limited number of hours, they must still comply with State/Territory laws at all times.

Condition 8105 work limitation (primary visa holders)

About 8105

Condition 8105 provides that students must not engage in work in Australia before their course commences unless at the time of applying for the Subclass 500 visa, they held a substantive visa or a bridging visa (the previous visa) and were permitted to work in Australia during the period that the previous visa was in effect.

Students must not engage in work in Australia for more than 48 hours a fortnight while their course is in session. The 48-hour requirement does not apply if:

- the work was specified as a requirement of the student's course when the course particulars were entered in the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS); or

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- their Subclass 500 visa was granted in relation to a masters degree by research or doctoral degree and they have commenced the masters degree or doctoral degree.

When their course is not in session they may work unlimited hours.

Note: If a student completes their course early, but that course of study is still 'in session', they can only work 48 hours per fortnight. For more information on completing a course early, refer in this section to:

Condition 8202 – Enrolment/Course change - Completing a course early.

Defining 'in session' and "out of session"

A course is considered to be 'in session':

- for the duration of the advertised semesters (including periods when exams are being held);
- if a student is undertaking another course during a break from their main course and the points will be credited towards their main course.

A course is considered to be 'out of session':

- during scheduled course breaks
- if the course has been deferred or suspended in line with Standard 9 of the National Code of Practice for Providers of Education and Training to Overseas Students
- if a student has completed their course as scheduled (as per dates listed on their CoE) and still holds a valid Subclass 500 visa
- if a student's enrolment has been cancelled due to the default of their education provider, until they secure alternative enrolment and commence the course.

Definition of 'work'

Work is defined in regulation 1.03 as an activity that, in Australia, normally attracts remuneration.

Determining what is included as work

A Subclass 500 visa holder can be considered to have engaged in work if they:

- have attended a place of work for a period by a roster or timesheet (but not during unpaid breaks)
- have been "clocked on" to an electronic system that records a work activity
- have received remuneration for work, as indicated in a payslip provided to the visa holder (unless documentary evidence is provided that they were not working during this time).

The following are examples of how the definition of work may be used in context:

- A person who undertakes a shift at a restaurant as part of a roster is engaged in work, but not during their rostered unpaid meal break.
- A taxi driver who has signed in and is ready to receive passengers is considered to be working, until such time as they sign out for a break or when their shift has ended.
- A person has a payslip indicating they were paid for 25 hours work in one fortnight, but can provide a medical certificate that they were at home unwell for 15 of these 25 hours, meaning that they only worked for 10 of those hours.

Volunteer work

Work, as defined in regulation 1.03, means an activity that, in Australia, normally attracts remuneration.

Subclass 500 visa holders, and their dependants, who are subject to condition 8104 or 8105, may undertake volunteer work outside of the 48 hour work limitation if:

OFFICIAL

- the activities associated with the particular kind of volunteer work are activities that, in Australia, normally do not attract remuneration.

Unpaid work that does not conform to the description of volunteer work above must be undertaken within the work limitation.

Definition of 'fortnight'

Fortnight is defined in conditions 8104 and 8105 as the period of 14 days commencing on a Monday. Therefore, the end of any fortnight would be at the end of the second following Sunday. The 48 hours a fortnight:

- relates to each fortnight during which the course of study or training is in session
- cannot be averaged out over the duration of the course.

The following scenario illustrates how the fortnight in condition 8104/8105 is intended to work:

A Subclass 500 visa holder (primary or secondary visa holder) works the following numbers of hours over a four week period after the primary Subclass 500 visa holder's course has commenced:

- week 1: 15 hours work
- week 2: 30 hours work
- week 3: 30 hours work
- week 4: 10 hours work.

The Subclass 500 visa holder would not have breached their work conditions in the fortnight comprising the 14 days of weeks 1 and 2 (45 hours worked) or in the fortnight comprising the 14 days of weeks 3 and 4 (40 hours). However, the visa holder would have breached their work conditions in the fortnight comprising the 14 days of weeks 2 and 3 (60 hours worked).

Eligibility to continue working between courses and Subclass 500 visas

Students who have been granted or have applied for a Subclass 500 visa (including those on a bridging visa associated with their Subclass 500 visa application, which is subject to condition 8105) to enable them to complete a course for which an initial Subclass 500 visa was granted, such as where the initial CoE is extended, may continue to work.

Students who have completed a course of study and have been granted or have applied for a Subclass 500 visa (including those on a bridging visa associated with their visa application, which is subject to condition 8105), to undertake a different course of study, may continue to work before the new course commences.

Students on a visa associated with a package of courses may continue working between courses.

For policy and procedure on the effect of conditions on bridging visas granted in relation to visas that are not Subclass 500 visas, refer to:

Bridging visas – Visa application and related procedures – PI (VM-3142).

Condition 8201 – three month study limitation

About 8201

Condition 8201, which attaches (by law or under policy) to various temporary visas, relates to study. The condition generally requires that the visa holder not engage in any studies or training for more than three months while in Australia.

As condition 8201 applies to each new visa granted, the three-month period starts again if the person is, for example, granted a further visa while in Australia. The three-month period does not start again by leaving and re-entering Australia on the same visa.

OFFICIAL

Students – family members

Condition 8201 (study limitation) is mandatory for all Subclass 500 visas granted to secondary applicants who are 18 or older at time of visa grant.

Adult family members are subject to visa condition 8201, which provides that, while in Australia, they cannot engage in any studies or training for more than three months. Adult family members who wish to study for more than three months must apply for a Subclass 500 visa and satisfy the primary criteria.

There are no limitations on dependants of Subclass 500 visa holders under 18 undertaking study or training, because they are not subject to condition 8201.

Exemptions

Condition 8201(2) lists specific situations in which the holder of a visa to which 8201 is attached is in effect “exempt” from the “study limitation” condition as set out in 8201(1). No exemptions apply to Subclass 500 visas to which 8201 is attached.

The three month study limitation applies in all other situations:

Study or training

Three months study is equivalent to 13 weeks of studying, excluding holiday, vacations and orientation periods, but including:

- weekends
- public holidays
- study vacation periods prior to start of exam periods and
- exam periods (up until the student's last examination day). As exam timetables are not usually published till later in a semester, realistically students need to allow for the whole exam period when considering their visa options.

More than three months study or training

For those non-Subclass 500 visa applicants to whom condition 8201 applies, because the length of proposed study is relevant in assessing any Schedule 2 “genuine intention” criteria, it is generally not appropriate for such persons to be granted non-Subclass 500 visas in order to undertake more than three months study.

Persons seeking longer-term stay in Australia for study should be advised to apply upfront for a Subclass 500 visa. Among other reasons, this is because, if they enter Australia holding other than a Subclass 500 visa there may be - in the form of specific Schedule 2 criteria - restrictions on their being granted a further visa in Australia to study.

Distance learning

In regard to distance learning, policy is as follows:

- Minors accompanying their parents on an extended holiday in Australia and whose education needs are being met by distance learning or home-based schooling are not, for condition 8201(1) purposes, regarded as engaging in studies
- Adults continuing with online study at an institution located outside Australia are not regarded as engaging in studies
- Adults continuing with online study at an institution in Australia in other than a registered course (and therefore ineligible for a Subclass 500 visa) are not regarded as engaging in study
- Adults enrolled in distance education with an institution in Australia are regarded as studying (and should be on a Subclass 500 visa) if they are undertaking a registered course of three months or more

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Young children attending school

If officers consider it appropriate, non-Subclass 500 visa applicants to whom condition 8201 will apply are to give full details of any intention to attend kindergarten, pre-school, primary or secondary school in Australia, so that officers may establish whether the applicant:

- intends to comply with condition 8201 and, it follows
- satisfies any relevant “genuine intention” criterion (for the Subclass 600 Visitor visa, refer to: Subclass 600 (Visitor) visa– PI (VM-3190).

Provided officers are satisfied that attendance at a school in Australia would not be in breach of condition 8201, the applicant may be considered as satisfying any “genuineness” criterion. An applicant who intends to attend primary or secondary school for more than three months, however, may be considered not to satisfy that criterion and be advised to apply for a more appropriate visa.

There are no limits on dependants undertaking pre-compulsory schooling, such as pre-school (or kindergarten in some states), as this does not constitute ‘study’.

“Rights of the child”

Australia is a signatory to the UN Convention on the Rights of Children, one of which is the right to an education. The Department's policy requirement that minors wishing to study in Australia apply for a Subclass 500 visa **does not** contravene Australia's obligations under the UN Convention; there is no obligation on Australia giving minors visiting Australia an entitlement to attend school during their stay. The minor is not being denied an education, they are merely being required to apply for the appropriate visa if they wish to study in Australia.

The onus is solely on the minor's parent(s) (or legal guardian(s)) to enrol the minor at school while visiting Australia. It is not the Department's responsibility to ensure that minors visiting Australia are enrolled in an educational institution. However, if the minor is of school age and has spent excessive amounts of time in Australia without studying, officers should carefully assess, for both the minor and their parent(s), any requests for further visas in the context of GTE.

Condition 8202- Enrolment/course change

About 8202

Condition 8202 (attendance and course progress) is mandatory for all cases where the applicant satisfies the primary criteria for the grant of Subclass 500 visa.

Condition 8202 and non-ESOS students

Three categories of student must be enrolled in a full-time course of study or training:

- secondary exchange students
- students approved under a scholarship or an exchange scheme
- Foreign Affairs/ Defence students

Condition 8202 and ESOS students

In general terms, condition 8202 requires students to:

- be enrolled in a full time, registered course;
- achieve satisfactory course progress;
- achieve satisfactory course attendance; and
- maintain enrolment in a course at the same level or higher AQF level for which they obtained the visa: change from AQF 10 to 9 is permitted but change from an AQF course to a non-AQF course is **not** permitted.

Breach of condition 8202 under ESOS

On 1 July 2012, section 19 of the ESOS Act was amended to require registered education providers to give particulars of any breach by an accepted student of a prescribed condition of a Student visa as soon as practicable after the breach occurs, even if the student has ceased to be an accepted student of the provider (the condition prescribed in the *Education Services for Overseas Students Regulations 2001* is condition 8202).

From that date, if an education provider certifies a Student visa holder in accordance with section 19 of the ESOS Act as having failed to achieve satisfactory course progress or attendance, the student will be in breach of condition 8202 even if they have ceased to be an accepted student of the education provider prior to the certification.

Satisfying course requirements

If a student does not maintain studies during the academic year their visa may be subject to cancellation.

If the student falls ill

Students who fall ill during semesters should apply to their education provider for permission to take leave from their course. If the student's leave is not approved and they are absent for more than 20 per cent of the scheduled hours for their course they may be subject to visa cancellation procedures.

Students deferring or suspending their course

Under Standard 9 of the National Code, registered education providers may only enable students to defer or temporarily suspend their studies, including granting a leave of absence, during the course through formal agreement in certain limited circumstances. Students who fall ill and are expected to require leave from their studies for a significant period should apply to their education provider to defer their studies. If during this period of deferral the student continues to remain enrolled, they remain compliant with condition 8202.

As specified in subregulations 2.43(1C) and 2.43(1D), an officer in deciding whether a visa may be subject to visa cancellation under paragraph 116(1)(fa) of the Act may have regard to whether the education provider has deferred/suspended the student's study for any of the following four reasons:

- the conduct of the student
- the student deferred or suspended their studies for reasons other than compassionate or compelling circumstances
- the compassionate or compelling circumstances which warranted the deferral/suspension of studies have ceased to exist
- the deferral/suspension was based on fraudulent evidence or document/s given to the education provider.

For policy and procedures, refer to:

General visa cancellation powers (s109, s116, s128, s134B and s140) - PI (VM-991) - in particular, Cancellation of visas on specified grounds.

If the student needs to leave Australia for compassionate reasons

Students who need to leave Australia for compassionate reasons during semesters should apply to their education provider for leave from their course.

If the deferral/suspension is approved, the education provider reports this approval via PRISMS to the Department. If during this period of deferral the student continues to remain enrolled, they remain compliant with condition 8202.

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Family members of students deferring or suspending studies for up to six months are permitted to stay in Australia during this period (once the deferral/suspension has been approved).

Research/study outside Australia

Approved research/fieldwork outside Australia as part of a course is permissible, provided the primary applicant remains enrolled for the duration of the fieldwork/research.

Family unit members of the primary applicant can remain in Australia while the primary applicant is conducting research/fieldwork outside Australia.

Students on exchange programs in a third country

Subclass 500 visa holders in Australia are allowed to participate in an international exchange program provided:

- the study or training to be undertaken is an assessable part of the student's full-time course in Australia and has been approved as part of the registration process for the course; and
- the exchange is for no more than 12 months; and
- family members who are in Australia accompany the student if the exchange is for more than six months.

While on exchange, the student must maintain full-time study and comply with conditions imposed on their visa.

Attendance requirements under the National Code

Condition 8202 requires that students maintain satisfactory attendance. Under Standard 8 of the National Code, education providers are required to monitor students' attendance where relevant:

Higher Education students' attendance is not required to be monitored.

ELICOS and Schools students are reported if their attendance falls below 80 per cent, unless the provider determines that:

- the student's lack of attendance is due to compelling and compassionate circumstances and
- the student is attending at least 70 per cent of the course

and this is set out in the provider's policies and procedures.

VET and non-award students are reported if their attendance falls below 80 per cent, unless the provider has determined that:

- the student is maintaining satisfactory academic progress
- the student is attending at least 70 per cent of their course

and this is set out in the provider's policies and procedures.

VET education institutions that implement the approved course progress policy are exempt from monitoring attendance.

Students may be taken to have satisfied the attendance requirements of condition 8202 if they have not been reported by their education provider for a breach of attendance requirements. The presence of student course variation 8 (SCV 8) on a student's PRISMS record is evidence of being in breach of attendance requirements. For the breach of condition 8202 to be relevant to assessing substantial non-compliance, the breach of attendance would have to have occurred during the validity period of the last Student visa held.

Displaced students (that is, students who are no longer enrolled in a course because the institution at which they were enrolled has ceased operations) are not required to provide evidence of attendance.

Course progress

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Condition 8202 requires that students achieve course progress that is certified by their education provider to be at least satisfactory. The absence of student course variation 10 (SCV 10) advice means the Subclass 500 visa holder is taken to be compliant with this condition.

The presence of SCV 10 on a student's PRISMS record is evidence of being in breach of attendance requirements. For the breach of condition 8202 to be relevant to assessing substantial non-compliance, the breach of attendance must have occurred during the visa period of the last Student visa held.

Students applying for a further visa are not ordinarily required to provide transcripts of their academic results.

When assessing whether condition 8202 has been complied with, officers are not to make their own judgements about a student's academic record or course progress.

Subclass 500 visa holders in Australia and permanent visa applications

If a Subclass 500 visa holder completes their course of study and applies in Australia for a permanent visa while they still hold their Subclass 500 visa, they are likely to be granted a Bridging A visa (BVA) in association with the application. The BVA, however, would not come into effect until the Subclass 500 visa ceases. Therefore, the applicant would remain subject to Subclass 500 visa conditions until such a time as their Subclass 500 visa ceases, or they are granted the permanent visa.

The following guidelines are for officers dealing with students who remain on a Subclass 500 visa while awaiting an outcome of a migration application. The general principle is that:

- students who complete the full course of study for which they were granted a Subclass 500 visa will remain on a Subclass 500 visa
- visa cancellation and subsequent bridging visa applications may be considered for students who do not complete the full course of studies for which they were granted the visa.

The following two scenarios illustrate the policy approach:

Scenario 1: If the student finishes the principal course for which they were granted the visa as scheduled, or earlier than planned, and applies for a permanent visa:

- the student is to be allowed to remain on a Subclass 500 visa, even if not intending to undertake any further studies
- if an SCV is issued for early completion, the visa should not be cancelled.

Scenario 2: If the student does not attempt the principal course, but applies for a permanent visa after only completing a preliminary course, once the SCV brings the student to notice:

- if the student intends continuing studies, they can be allowed to remain on their Subclass 500 visa but if the student does **not** continue studies, the Subclass 500 visa may be cancelled because the student no longer continues to be a person who would satisfy the criteria for grant of a Subclass 500 visa (condition 8516) Refer to General visa cancellation powers (s109, s116, s128, s134B and s140) - PI (VM-991) - in particular, Cancellation of visas on specified grounds.
- In this instance, the student and dependants may be eligible for the grant of a Bridging E visa (BVE). For policy and procedure on granting work rights to BVE holders in such cases, refer to Compliance and Case Resolution – Program visas - Bridging E visas – PI (VM-1036).

Changing courses - transferring to a lower AQF level or non-AQF course

Students must maintain enrolment in a course at the same level or higher AQF level for which they were granted the visa. Transferring to a lower AQF level course would result in a breach of condition 8202. However, a change from an AQF 10 to 9 course is permitted.

Note:

- For a list of AQF qualification types, refer to the Australian Qualifications Framework website.
- Although Years 11 and 12 do not have an AQF Level as such, they have a qualification type of Senior Secondary Certificate of Education.

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If a student changes from an AQF course to a non-AQF course, this would also result in a breach of condition 8202.

A breach of condition 8202 may result in the student's visa being considered for cancellation.

If students intend to transfer to a lower AQF level course, they must apply for another Subclass 500 visa and must not commence the lower level course until they have been granted a new Subclass 500 visa.

Examples

1. If a student transfers from a Bachelor degree (AQF level 7) to Certificate III (AQF level 3) course, this would result in a breach of condition 8202 and the student's visa may be considered for cancellation.
2. If a student transfers **from** Year 12 studies (recognised in the AQF as a Senior Secondary Certificate of Education qualification type) **to** a non-AQF course, such as a Foundation course, this would breach condition 8202 and the visa may be considered for cancellation.
3. Conversely, transferring from a non-AQF course to an AQF course would not result in a breach of condition 8202. For example, a non-award university student on a study abroad program would be permitted to transfer to a Bachelor's degree.
4. Changing from an AQF 10 to 9 is permitted – for example, transferring from a higher AQF 10 (Doctoral Degree) to the lower AQF 9 (Masters Degree).

For more information about AQF levels, refer to the Australian Qualifications Framework website.

Changing course - varying a package or transferring to a package of courses

If a student wants to amend the courses in their package of courses or wants to change to a package of courses without applying for a new Subclass 500 visa they must:

- have commenced studying in Australia; and
- remain enrolled in their principal course; and
- will commence their principal course before their visa expires; and
- continue to meet the requirements of condition 8202.

If the student has an extended course gap that may lead to their visa being cancelled, the student may choose to enrol in a short course to fill the gap. The course can be in any sector, for example, ELICOS or vocational education and training, or higher education.

Changing courses – transfer at same AQF level course

If a Subclass 500 visa holder transfers between providers to a course at the same AQF level, this would not breach condition 8202. Limitation on transferring between CRICOS-registered providers apply however and is governed by Standard 7 of the National Code.

Completing a course early – course change

As a general rule, students are granted a Subclass 500 visa for the duration of the course for which they have enrolled (plus some extra time for stay after completing their principal course in the allocated time*). If a student subsequently changes their course at the same level but of a shorter duration than that for which the visa was granted, the student may be counselled that:

- although they do not have to make a new visa application, when they have completed the shorter course they must, within 28 days, either:
 - leave Australia or
 - if they wish to stay in Australia longer than 28 days, apply for another visa; and
- if they do neither, the Department may commence visa cancellation action.

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Note: * refer to 3.12.2. – Visa grant period – policy arrangements, in particular, The Subclass 500 visa end date.

Completing course (for which the visa was granted) early

Subclass 500 visa holders who complete their principal course (for which the visa was granted) earlier than the date listed on the CoE will be in breach of visa condition 8202. The CoE will cease in PRISMS and the Subclass 500 visa holder will be unenrolled.

However, the Department generally allows Subclass 500 visa holders who complete their principal course (for which the visa was granted) earlier than the date listed on the CoE up to three months stay past course completion (i.e., the Department generally would not consider visa cancellation for breaching condition 8202 within this period). This is similar (i.e., generally no more – no less) to the extra time granted to students to stay after completing their principal course in the allocated time*. This is designed so that students who comply with their visa conditions are not penalised for finishing their course early, for reasons such as undertaking summer courses or Recognition of Prior Learning, while ensuring the Subclass 500 visa is not being used to circumvent the migration program with the primary purpose of working. If a student plans to stay in Australia longer than three months, they must apply for a new visa.

Note: * refer to 3.12.2. – Visa grant period – policy arrangements, in particular, The Subclass 500 visa end date

Condition 8203 and 8204 - Iranian students and family members

Applicants to whom condition 8203 applies

Condition 8203 is attached to all Iranian citizens granted a Subclass 500 visa on the basis of satisfying the primary criteria who intend to undertake a higher education or postgraduate research course.

Condition 8203 requires that the holder must not change his or her course of study, or thesis or research topic, unless **approval** is given by the Minister after the Minister has obtained an **assessment** from the competent Australian authorities that the holder is not likely to be directly or indirectly a risk to Australian national security'.

Applicants to whom condition 8204 applies

Condition 8204 is attached to the visas of:

- all Iranian citizens granted a Subclass 500 visa on the basis of satisfying the primary criteria who intend to undertake a course other than a higher education or postgraduate research course; and
- all family unit members who are Iranian citizens (irrespective of the citizenship of the student, or the type of course they are studying).

Condition 8204 requires that the holder must not undertake or change a course of study or research, or thesis or research topic for a graduate certificate, a graduate diploma, a masters degree or a doctorate; or any bridging course required as a prerequisite to a course of study or research for a masters degree or a doctorate; unless **approval** is given by the Minister after an **assessment** from the competent Australian authorities that the holder is not likely to be directly or indirectly a risk to Australian national security.

How to request to change course if condition 8203/8204 applies

A request by a student for approval to undertake or change a course of study, thesis or research topic in accordance with condition 8203/8204 requirements may be made either:

- as part of a new Subclass 500 visa application or
- by completing and submitting a [form 1221](#) (Additional personal particulars information).

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The student is not required to apply for a new visa if the proposed course is of the same duration as (or shorter than) the current course, unless the student is required to apply for a new visa to comply with condition 8202.

If the student does not require a new Subclass 500 visa application, they must:

- complete a form 1221

For instructions on how to submit a change of course request refer to condition [8203/8204](#) on the Department's website.

The student must **not** change the course until approval is granted.

Manual recording of 8203 and 8204 conditions

Officers must ensure that either condition 8203 or 8204 is recorded for all visas that are subject to those conditions. ICSE will not automatically record the condition, but it will be attached by operation of law. It is essential that the condition is recorded in ICSE so that visa holders are aware (by notification, or checking VEVO) that condition 8203 or 8204 applies to them.

Condition 8208 – Must not undertake study related to critical technology without written approval

Condition 8208 is mandatory for all cases where the applicant satisfies the primary criteria or the secondary criteria for the grant of a Subclass 500 visa, where the visa application is made on or after 1 July 2022.

Condition 8208 requires that Subclass 500 visa holders must not undertake critical technology-related study without the written approval of the Minister.

Condition 8208 applies to Subclass 500 visa holders seeking to undertake critical technology-related study by changing their course of study or in the case of secondary visa holders, commencing a new course. It does not apply in relation to the intended course or studies, or activities related to study in Australia that was evidenced in the student's visa application. Approval can only be given if the condition 8208 delegate is satisfied that there is not an unreasonable risk of unwanted transfer of critical technology by the Subclass 500 visa holder.

Critical technology-related study includes:

- a postgraduate research course that relates to critical technology – leading to either a Masters degree (research) or doctoral degree;
- a thesis or research topic that relates to critical technology (in a course at Masters degree (research) or doctoral degree level); or
- a bridging course that is a prerequisite to a Masters degree (research) course or doctoral degree course that relates to critical technology.

Condition 8303- Not become involved in disruptive or violent activities

Condition 8303 (must not become involved in disruptive activities) is discretionary for all cases where the applicant satisfies the primary criteria or the secondary criteria for the grant of Subclass 500 visa. For guidance, refer to:

Controversial visitors – PI (VM-989).

Condition 8501 – Maintain health insurance

About 8501

Condition 8501 (maintain health insurance) is mandatory for all cases where the applicant satisfies the primary criteria or the secondary criteria for the grant of Subclass 500 visa.

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Students and family unit members must maintain adequate arrangements for health insurance during their period of intended stay in Australia by payment of the Overseas Student Health Cover (OSHC).

For more information on other acceptable health arrangements for Subclass 500 visa holders, refer to:

3.10.5. - Health insurance.

For details on condition 8501, refer to Visa Condition 8501 - Maintain Health Insurance - PI (VM-1016).

Subclass 500 visa holders who have applied for a permanent visa in Australia

Subclass 500 visa holders who have applied for a permanent visa in Australia are issued with a Medicare card that is valid until a final decision is made on their application. If the applicant remains on a Subclass 500 visa while their permanent visa application is being processed they must continue to comply with the visa conditions attached to their Subclass 500 visa. This includes maintaining adequate arrangements for health insurance.

Condition 8516 - Continue to satisfy criteria for visa grant

About condition 8516

Condition 8516 (continue to satisfy the primary or secondary criteria) is mandatory for all Subclass 500 visa grants.

Condition 8516 requires the visa holder to continue to satisfy the primary or secondary criteria (as applicable) that permitted visa grant. It ensures that the Subclass 500 visa applicant does not provide evidence to meet requirements at initial visa grant, only to change these arrangements after arrival in order to avoid visa requirements.

Non-compliance with condition 8516

A Subclass 500 visa holder may be assessed as not complying with this condition if there is evidence to support the person's inability to continue to satisfy criteria. This may be due to a significant change in circumstances, which may or may not be outside the control of the student and may include relationship breakdown, inability to access funds, or changes in enrolment shortly after arrival to avoid the requirement to provide English language requirements.

Conditions 8517 and 8518 - Maintain education of school-age dependants

About conditions 8517 and 8518

Visa conditions 8517 and 8518 require that adequate arrangements for education be maintained.

Condition 8517 (maintain adequate arrangements for education of school-age dependants) is mandatory for all Subclass 500 visas granted to primary applicants. It states that the holder must maintain adequate arrangements for the education of their school-age dependants who are in Australia for more than three months as holder of a Subclass 500 visa.

Condition 8518 (adequate arrangements for education are maintained) is mandatory for all Subclass 500 visas granted to secondary applicants who are under 18 at time of visa grant. It states that adequate arrangements must be maintained for the education of the holder while they are in Australia.

Compliance with conditions 8517/8518

'**School-age dependant**' is defined in regulation 1.03 as a member of the family unit who has turned five, but has not turned 18.

A Subclass 500 visa holder is considered to be maintaining adequate arrangements for a child's education if they satisfy the relevant legislation for education in the State/Territory in which the child is residing. In all

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States/Territories, children must commence their education, at the latest, in the year the child turns six. The age students are permitted to leave school varies by jurisdiction. However, in all States/Territories students must remain in education, either at school or through some combination of training and employment, until they turn 17. The onus is on the applicant to provide evidence that the arrangements satisfy the State/Territory requirements.

If the child is under five when the visa was granted, to comply with visa conditions 8517 and 8518, the child must commence schooling once they reach the compulsory age for education.

Enrolment in a school does not require enrolment in a CRICOS-registered school. If a family member is of school-leaving age, they may be enrolled with an education provider other than a school, such as a TAFE or private VET provider. ELICOS does not meet State/Territory requirements for education of school-age children.

Condition 8532 - Maintain welfare arrangements for minors (primary visa holders)

About condition 8532

Condition 8532 provides that, if the visa holder is under 18 years and is neither a **Foreign Affairs student** nor a **Defence student** the visa holder must stay in Australia with a person who is:

- a parent of the student, or
- a person who has custody of the student, or
- a relative of the student who:
 - is nominated by a parent of (or by a person who has custody of) the student, and
 - is at least 21 years old and
 - is of good character, or
- the arrangements for the student minor's accommodation, support and general welfare must be approved by the **education provider** (defined in regulation 1.03) for the course to which the student's visa relates, and the student minor must not enter Australia before the day nominated by the education provider as the day on which those arrangements are to commence

Condition 8532(c) and (d) state that:

- if the visa holder is a Defence or Foreign Affairs student under 18, appropriate arrangements approved by the Defence Minister or the Foreign Minister, as relevant, for the visa holder's accommodation, support and general welfare are in place and
- the visa holder must not enter Australia before the day on which those arrangements are to commence

Changes to welfare arrangements

Nominated Guardian approved welfare arrangements

If the student's welfare is provided by a student guardian, the guardian must reside in Australia with the student at all times. If the guardian leaves Australia without the student they must first give the Minister evidence that:

- there are compelling and compassionate circumstances for doing so; and
- the holder has made alternative welfare arrangements for the Subclass 500 visa holder; and
- if the nominating student has not turned 18, the alternative arrangements are approved by the education provider for the course to which the nominating student's visa relates

Alternative welfare arrangements can be made by either:

- Nominating a new student guardian by lodging Form 157N (Nomination of a student guardian). All changes to welfare arrangements must comply with condition 8532.

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- Requesting a CAAW from the student's education provider which will state the start and end dates for approval of the welfare arrangements.

Subclass 500 visa processing areas in Australia will review the request to change welfare arrangements and advise the student guardian in writing whether it has been approved.

Education provider approved welfare arrangements

If the student wishes to change arrangements previously approved by an education provider, they must seek prior approval from their education provider. Education providers can report updates and changes to welfare arrangements through PRISMS.

Students must lodge a form 157N (Nomination of a student guardian) if they wish to change their arrangements to:

- a parent/custodian or
- a relative (who must be at least 21 years old) who has been nominated by a parent/custodian who holds a Student Guardian visa or
- a relative (who must be at least 21 years old) residing in Australia as the holder of a permanent or temporary visa.

If a student's welfare arrangements are approved by their education provider and the provider reports through PRISMS that they no longer approve the welfare arrangements, the student has breached condition 8532 and their visa may be subject to cancellation.

Education provider responsibilities under the ESOS Act

The National Code provides that, if (as provided for by Schedule 4 public interest criterion 4012A), a registered education provider has taken responsibility for approving the accommodation, support and general welfare arrangements for a student who is under 18 years of age, the education provider must nominate the dates for which the education provider accepts such responsibility.

The Code also requires registered education providers who have approved the welfare arrangements to ensure the arrangements made to protect the personal safety and social well-being of those student minors are appropriate.

Under the Code:

- A registered education provider who has taken responsibility for approving the accommodation, support and general welfare arrangements for a student minor is required to advise the Department within 24 hours (using the Department's pro form letter available through PRISMS) if the registered education provider is no longer able to approve of those arrangements.
- If the registered provider is no longer able to approve the welfare arrangements of a student, the Code requires the registered education provider to make all reasonable efforts to ensure that the student's parents or legal guardians are notified immediately. If the registered provider is unable to contact a student and has concerns for the student's welfare, the registered provider must make all reasonable efforts to locate the student, including notifying the police and any other relevant Commonwealth, state or territory agencies as soon as practicable.

If enrolment suspended or cancelled

Under Standard 5.6 of "the National Code", if a registered education provider suspends or cancels the enrolment of a student minor, the registered education provider must continue to approve the welfare arrangements for that student until:

- the student has alternative welfare arrangements approved by another registered education provider or
- care of the student by a parent or nominated relative is approved by the Department or
- the student leaves Australia or

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- the registered education provider has notified the Department under Standard 5.3.6 of the National Code that it is no longer able to approve the student's welfare arrangements under Standard 5.5 and that it has taken the required action after not being able to contact the student.

Breach of Condition 8532

Subclass 500 visa holders under the age of 18 in Australia may be in breach of condition 8532 if:

- The student minor travels to Australia prior to their welfare arrangements commencing.
- The student minor stays in Australia with a person other than a parent/custodian.
- The arrangements for the student minor's accommodation, support and general welfare referred to in condition 8532(b) are no longer approved.
- The person described in condition 8532(a) (that is, the person with whom the student minor has to stay in Australia) has left Australia without making appropriate accommodation, support and general welfare arrangements for the student minor.

Officers are to contact s. 22(1)(a)(ii) @homeaffairs.gov.au if they become aware/suspect that an education provider has reported the student as a disciplinary measure and has not tried to help the student find other suitable accommodation as the education provider is required to do under the National Code.

At risk minors

If officers identify a student minor who no longer has welfare arrangements in place and who is at serious risk of harm, they need to follow case escalation protocols.

Related provision -

Refer to: Subclass 590 (Student Guardian) visa – PI (VM-3681), in particular, Condition 8537 (Remain with the nominating student).

Condition 8533 - Notify education provider of changes

About 8533

Condition 8533 (inform education provider of address) is mandatory for all cases where the applicant satisfies the primary criteria for the grant of Subclass 500 visa.

Condition 8533 requires students:

- who were outside Australia when their visa was granted, to notify their education provider within seven days of arrival in Australia of their residential address in Australia
- in all cases, to notify that provider of any change of residential address within seven days after the change occurs; and
- in all cases, to notify their current losing provider of a change of education provider within seven days of receiving a CoE from their new provider; or
- in all cases, if no CoE is required to be sent or transmission failure prevents the provider from sending a CoE – evidence that the student has been enrolled by a new provider.

ESOS Act requirements for condition 8533

The ESOS Act requires registered education providers to keep records of a Subclass 500 visa holder's residential address (section 21(2) of the ESOS Act). Failure to do so is an offence under that Act (section 21(5) of the ESOS Act) and the provider may be subject to administrative or even criminal penalties (Part 6 Division 3 'Offences' of the ESOS Act).

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Condition 8534 - No further application

About 8534

Condition 8534 is discretionary for all cases where the applicant satisfies the primary criteria or the secondary criteria for the grant of Subclass 500 visa. Condition 8534 provides that the holder will not, while they remain in Australia, be entitled to be granted:

- a substantive visa other than a protection visa; or
- a Subclass 485 (Temporary Graduate) visa; or a Subclass 590 (Student Guardian) visa.

In all other circumstances, the condition will prevent the visa holder from making a valid visa application in Australia unless the condition has been waived under regulation 2.05(4) or 2.05(5A).

Applying 8534 on a discretionary basis

Condition 8534 is not to be seen as a tool that can be used by officers to help ensure the intention of the Subclass 500 visa program (to provide a temporary stay for genuine students and members of their family unit) is maintained. Any concerns officers have in relation to an applicant's status as a genuine temporary entrant, based on objective evidence, is to be addressed through an assessment of the applicant against the GTE criterion.

Imposition of condition 8534 is not intended to be widespread. This would undermine the Subclass 500 visa program as it limits the ability of genuine students to undertake further studies or training at the end of their course. It is generally not to be imposed on applicants outside Australia with no previous travel history to Australia. If officers impose condition 8534, clear reasoning for the imposition must be provided.

As a matter of policy, condition 8534 is to be attached to visas of family members of Foreign Affairs students, Defence students, or government-funded students subject to condition 8535, only where specifically requested by DFAT/Defence or a foreign government. This is because there is no provision in condition 8534 for members of the family unit of Foreign Affairs students, Defence students, or government-funded students subject to condition 8535, to be granted a further Subclass 500 visa. Whereas, primary visa holders subject to condition 8535 but not condition 8534 may be granted a further Subclass 500 visa if they have support from the Commonwealth government or a foreign government.

Condition 8535 - No further application (Foreign Affairs/ Defence)

About condition 8535

Condition 8535 is mandatory for visas granted to primary applicants who are Foreign Affairs and Defence students and is discretionary for applicants provided with financial assistance by the Commonwealth or the government of a foreign country. In this latter circumstance, condition 8535 is (as a matter of policy) to be attached only where specifically requested by the Commonwealth or a foreign government. Officers are to email [s.22\(1\)\(a\)\(ii\)@homeaffairs.gov.au](mailto:s.22(1)(a)(ii)@homeaffairs.gov.au) if they believe that circumstances in a particular case justify not imposing this condition.

There is no provision to impose condition 8535 where the applicant satisfies the secondary criteria for the grant of Subclass 500 visa.

If condition 8535 applies

Condition 8535 provides that the holder will not, while they are in Australia, be entitled to the grant of a substantive visa other than a protection visa or a Student (Temporary)(Class TU) visa that is granted to an applicant on the basis of support from the Commonwealth government or a foreign government.

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Conditions 8534 and 8535 - Effect of waiver on no further application

Overview

Subject to the provisions outlined in:

-
- Condition 8534 - No **further application**
- Condition 8535 - No further application (Foreign Affairs/ **Defence**)

for obtaining a substantive visa, the visa holder is prevented from making a valid visa application in Australia unless the condition has been waived.

If the condition is waived, the visa holder can apply for any class of substantive visa (subject to them satisfying all relevant Schedule 1 criteria for that visa*), because the waiver overcomes the bar on making a valid application.

Being able to apply for the visa does not, of course, make the applicant automatically eligible to be granted that visa. Applicants must still satisfy the relevant criteria for the visa applied for. For applicants who were previously sponsored by a foreign government or the Australian Government this may include special return criteria (that is, SRC 5010).

Note*: Whilst condition 8535 may be waived under subregulation 2.05(4) for a person granted a Subclass 500 visa on the basis of financial assistance from the Commonwealth or a foreign government, a Foreign Affairs student or Defence student applicant seeking to satisfy the primary criteria for the grant of a Subclass 485 visa would not be able to meet the requirements of subitem 1229(4). This is because they would not have held an eligible Student visa as they are a Foreign Affairs student or Defence student.

Reg. 2.05 provisions for waivers

For visas to which condition 8534 or 8535 has been attached, section 41(2A) of the Act enables the condition to be “waived” in the circumstances prescribed as applicable, in regulation 2.05(4) or 2.05(5A).

For policy and procedure on the waiver provisions, refer to Div2.1/reg2.05 - Conditions of applicable visas - Waiver of “no further application” conditions - PI (VM-3197).

The Department seeks to maximise voluntary compliance with visa conditions through prevention and deterrence activities. Awareness campaigns, education/information dissemination and engagement with community and cultural groups encourage visa holders to comply with their visa. Activity is escalated to enforcement measures for acts of deliberate or serious non-compliance, resulting in possible visa cancellation and/or removal from Australia.

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4. Accountabilities and Responsibilities

Role	Description
Document author	Student and Graduate Visas Section is responsible for providing advice, monitoring, reviewing and updating this PI.
Enactors of PI	Student Visa Program Network
Development and evaluation of Temporary Graduate visa program	Tourism and International Education Policy Section
Document owner	Assistant Secretary, Temporary Visas

5. Version Control

Version number	Date of issue	Author(s)	Brief description of change
1.0	1 July 2017	Student and Graduate Visas Section	Update content to reflect changes in legislation, clarify policy settings, review for currency and to move to new PPCF format.
2.0	18 March 2018	Student and Graduate Visas Section	Update content to clarify policy settings and review for currency.
3.0	28 July 2023	Student and Graduate Visas Section	Full review.

Attachment A – Definitions

Term	Acronym (if applicable)	Definition
Acceptance Advice for Secondary Exchange Students	AASES	The AASES form is the official document generated by relevant state/territory authorities and issued to each exchange student through their Overseas Secondary Student Exchange Organisation.
Australian Skills Quality Authority	ASQA	ASQA is the national regulator for Australia's vocational education and training (VET) sector.
Australian Qualifications Framework	AQF	The AQF is the policy for regulated qualifications in the Australian education and training system.
Case Integrity Referral Support Tool	CIRST	CIRST is an environmental support tool that decision makers can use to assist them in making informed decisions regarding whether or not to refer an application for Stream 2 (in office) or Stream 2c (site visit outside Australia) checks.
Commonwealth Register of Institutions and Courses for Overseas Students	CRICOS	CRICOS lists all Australian education providers that are approved to teach overseas students and the courses that they offer.
Confirmation of Enrolment	CoE	Issued by Education Providers as evidence that a Subclass 500 visa applicant is enrolled in a course of study – paragraph 500.211(a).
Content Manager		Content Manager (formerly known as TRIM) is the Department of Home Affairs' Electronic Document and Record Management System that provides the framework to capture, manage and share critical business information.
Defence student		Regulation 1.04B A person is a Defence student if: (a) the person has been approved by the Defence Minister to undertake a full-time course of study or training under a scholarship scheme or training program approved by the Defence Minister; and (b) the person is: (i) the holder of a student visa granted in circumstances where the person intended to undertake the course of study or training; or (ii) an applicant for a student visa whose application shows an intention to undertake the course of study or training; and

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Term	Acronym (if applicable)	Definition
		(c) in the case of a person mentioned in subparagraph (b)(i) — the person has not ceased, completed, withdrawn from, or been excluded from: (i) the course of study or training to which the visa relates; or (ii) another course approved by the Defence Minister in substitution for that course.
Department of Foreign Affairs and Trade	DFAT	DFAT is responsible for managing the Australian Government's overseas aid program (formerly AusAID), which includes offering training programs in Australia.
Education provider		Regulation 1.03 Education provider, for a registered course in a location, means each institution, body or person that is a registered provider of the course in that location, for the <i>Education Services for Overseas Students Act 2000</i>.
<i>Educations Services for Overseas Students Act 2000</i>	ESOS Act	The ESOS Act sets out the legal framework governing delivery of education to international students in Australia on a student visa.
Foreign Affairs student		Subregulation 1.04A(3) A person is a Foreign Affairs student if: (a) the person has been approved by the Foreign Minister or AusAID Minister to undertake a full-time course of study or training under a scholarship scheme or training program approved by the Foreign Minister or AusAID Minister; and (b) the person is: (i) the holder of a Foreign Affairs student visa granted in circumstances where the person intended to undertake the full-time course of study or training; or (ii) an applicant for a student visa whose application shows an intention to undertake a full-time course of study or training; and (c) in the case of a person mentioned in subparagraph (b)(i) the person has not ceased: (i) the full-time course of study or training to which the visa relates; or (ii) another course approved by the Foreign Minister or AusAID Minister in substitution for that course.
Higher education course		Clause 500.111 a course of study leading to the award of any of the following: (a) a diploma (higher education);

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Term	Acronym (if applicable)	Definition
		(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).
Parent		Regulation 1.14A A reference to a parent includes a step-parent.
Public Health Emergency of International Concern	PHEIC	PHEIC means Public Health Emergency of International Concern designated by the World Health Organisation.
Postgraduate research course		Clause 500.111 means a course of study leading to the award of: (a) a masters degree (research); or (b) a doctoral degree.
Provider Registration and International Student Management System.	PRISMS	An electronic resource used by Education Providers to issue COEs, but also report information to the Department of Education / the Department regarding student progress & attendance, variation in study pattern (eg. deferral or early completion).
Registered course		Regulation 1.03 means a course of education or training provided by an institution, body or person that is registered, under Division 3 of Part 2 of the <i>Education Services for Overseas Students Act 2000</i> , to provide the course to overseas students. A current list of registered courses appears in the Commonwealth Register of Institutions and Courses for Overseas Students kept under section 10 of the ESOS Act.
School-age dependant		Regulation 1.03 means a member of the family unit of the person who has turned 5, but has not turned 18.
School student		Clause 500.111 A student who is enrolled in, or intends to enrol in, a course of study at a primary or secondary school.

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Term	Acronym (if applicable)	Definition
Secondary exchange student		Regulation 1.03 Means an overseas secondary school student participating in a secondary school student exchange program approved by the State or Territory education authority that administers the program.
Tertiary Education Quality and Standards Agency	TEQSA	The independent national quality assurance and regulatory agency for higher education.
Tuition Protection Service	TPS	TPS helps international and domestic students if their education provider closes, stops offering their course, fails to start their course or discontinues units of study they are enrolled in.

Attachment B – Assurance and Control Matrix

1.1 Powers and Obligations

Please Note: Staff exercising any powers, delegations or authorisations outlined in this PI (listed here) must check the latest delegation advice on the Intranet or the relevant instrument in LEGEND to ensure they currently hold the applicable power, delegation or authorisation.

Legislative Provision			Is this power delegated?	If delegated, list the relevant instruments of delegation
Legislation	Reference (e.g. section)	Section heading/provision description		
<i>Migration Act 1958</i>	s65	Decision to grant or refuse to grant visa	Yes	<i>Home Affairs Legislation (Minister – Operational powers for Immigration and Settlement Services Group and Social Cohesion and Citizenship Group) Delegation and Authorisation 2021 (ADMIN 21/051)</i>

1.2 Controls and Assurance

Related Policy	Nil
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Procedures / Supporting Materials

GenGuideA - All visas - Visa application procedures - PI (LS-1849)

Notification requirements – PI (LS-1818)

Travel documents – PI (BC-537)

s5G – Relationships and family members – Custody (parental responsibility) for minor children – PI (VM-3066)

s5G – Relationships and family members – Best interests of minor children – PI (VM-3057)

s5G - Relationships and family members - Dependent family members - PI (VM-3067)

Visa Condition 8501 – Maintain health insurance - PI (VM-1016)

Sch4 Public interest criteria - SM (LS-1855)

Penal Checking Handbook – PI (VM-1002)

Security Checking Handbook – Visa and Citizenship – White Pages -PI (BE-1716)

Proliferation of Weapons of Mass Destruction – White Pages – PI (BE-1723)

Sch4/4004 – Debts to the Commonwealth – PI (FM-1237)

Sch4/4005-4007 – The Health Requirement - PI (VM-1027)

Public Interest Criterion (PIC) 4019 – The Values Statement (SM-6287)

Sch4/4020 – The Integrity PIC – PI (VM-974)

English proficiency and assessment - PI (VM-3100)

Div2.1/reg2.05 - Conditions of applicable visas - Waiver of “no further application” conditions - PI (VM-3197)

Div 2.2A of the Migration Regulations 1994 – Visa Application Charge – PI (VM-6647)

Temporary Work (International Relations) (Subclass 403) – PI (VM-3174)

Temporary Activity (Subclass 408) Visa – PI (VM-1140)

Subclass 407 (Training) visa – PI (VM-1138)

Subclass 590 (Student Guardian) visa – PI (VM-3681)

Visa and Citizenship Risk Systems – PI (VM-958)

Controversial visitors – PI (VM-989)

Bogus Documents – Detection, Seizure and Retention – PI (IIB-1540)

Regulation 2.03AA – Criteria applicable to character tests and security assessments - PI (VM-995)

Section 501: The character test, visa refusal and visa cancellation - PI (VM-1001)

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	Exclusion Periods - PI (VM-990) Bridging visas – Visa application and related procedures – PI (VM-3142) Subclass 600 (Visitor) visa – PI (VM-3190) Compliance and Case Resolution – Program visas - Bridging E visas – PI (VM-1036) Subclass 444 (Special Category) visa – PI (VM-3184) Biometrics for offshore visa processing – PI (IIB-1486) General visa cancellation powers (s109, s116, s128, s134B and s140) - PI (VM-991)
Training/Certification or Accreditation	Visa and Citizenship Vocational Training Foundation Program
Other required job role requirements	Nil
Other support mechanisms (e.g. who can provide further assistance in relation to any aspects of this instruction)	Officers should raise any questions with their supervisors/managers in the first instance. Internal enquiries should be forwarded to s. 22(1)(a)(ii) _____@homeaffairs.gov.au
Escalation arrangements	If required, escalation should be to the Director, Student and Graduate Visas section.
Recordkeeping (e.g. system based facilities to record decisions)	Integrated Client Service Environment (ICSE), Content Manager, Evidence of Quality in Performance (EQUIP)
Program or Framework (i.e. overarching Policy Framework or Business Program)	Student Visa Program
Job Vocational Framework Role	Visa Processing, Program Management and Policy Officers

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Attachment C – Consultation

1.1 Internal Consultation

The following internal stakeholders were consulted in the development of this Procedural Instruction:

- SA Student Visa Processing Centre
- WA Student Visa Processing Centre
- Tourism and International Education Policy Section
- Language Policy Section
- Critical & Emerging Technology Security Policy Section
- Legal Group

1.2 External Consultation

- Department of Health