



Social Services and Other Legislation Amendment (Australia's Engagement in the Pacific) Act 2023

No. 100, 2023

**An Act to deal with consequential matters in
connection with the creation of certain visas, and
for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

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Social Services and Other Legislation Amendment (Australia's Engagement in the Pacific) Act 2023

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**An Act to deal with consequential matters in
connection with the creation of certain visas, and
for related purposes**

[Assented to 27 November 2023]

The Parliament of Australia enacts:

No. 100, 2023

*Social Services and Other Legislation Amendment (Australia's
Engagement in the Pacific) Act 2023*

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1 Short title

This Act is the *Social Services and Other Legislation Amendment (Australia's Engagement in the Pacific) Act 2023*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information | | |
|---|--|---|
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day this Act receives the Royal Assent. | 27 November 2023 |
| 2. Schedule 1 | The later of: (a) the start of 1 February 2024; and (b) the commencement of the <i>Migration Amendment (Australia's Engagement in the Pacific and Other Measures) Act 2023</i> . However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur. | |
| 3. Schedule 2 | The later of: (a) 1 October 2023; and (b) the day after this Act receives the Royal Assent. | 28 November 2023 (paragraph (b) applies) |
| Note: | This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act. | |

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- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Pacific Engagement Visas

Part 1—Amendments

A New Tax System (Family Assistance) Act 1999

1 After subparagraph 61AA(2)(b)(ii)

Insert:

- (ia) a visa referred to in the regulations under the *Migration Act 1958* as a Subclass 192 (Pacific Engagement) visa;
or

Higher Education Support Act 2003

2 Subsection 90-5(1)

Repeal the subsection, substitute:

- (1) A student meets the citizenship or residency requirements under this section in relation to a unit of study if:
 - (a) the student is an Australian citizen; or
 - (b) the student:
 - (i) is a *permanent humanitarian visa holder, an *eligible former permanent humanitarian visa holder or a *Pacific engagement visa holder; and
 - (ii) will be resident in Australia for the duration of the unit.

3 Subsection 90-5(2)

Omit “paragraph (1)(b)”, substitute “subparagraph (1)(b)(ii)”.

4 Subsection 104-5(1)

Repeal the subsection, substitute:

- (1) A student meets the citizenship or residency requirements under this section in relation to a unit of study if:
 - (a) the student is an Australian citizen; or
 - (b) the student:

- (i) is a *permanent humanitarian visa holder, an *eligible former permanent humanitarian visa holder or a *Pacific engagement visa holder; and
- (ii) will be resident in Australia for the duration of the unit; or
- (c) in the case of a student who is undertaking, or is to undertake, the unit as part of a *bridging course for overseas-trained professionals—the student is a *permanent visa holder who will be resident in Australia for the duration of the unit.

5 Subsection 104-5(2)

Omit “paragraph (1)(b) or (c)”, substitute “subparagraph (1)(b)(ii) or paragraph (1)(c)”.

6 Paragraph 118-5(1)(b)

Omit “or an *eligible former permanent humanitarian visa holder”, substitute “, an *eligible former permanent humanitarian visa holder or a *Pacific engagement visa holder”.

7 Paragraph 126-5(1)(b)

Repeal the paragraph, substitute:

- (b) both:
 - (i) a *permanent humanitarian visa holder, an *eligible former permanent humanitarian visa holder or a *Pacific engagement visa holder; and
 - (ii) resident in Australia.

8 Subsection 128B-30(1)

Repeal the subsection, substitute:

- (1) A student meets the citizenship or residency requirements under this section in relation to an *accelerator program course if:
 - (a) the student is an Australian citizen; or
 - (b) the student:
 - (i) is a *permanent humanitarian visa holder, an *eligible former permanent humanitarian visa holder or a *Pacific engagement visa holder; and

- (ii) will be resident in Australia for the duration of the accelerator program course.

9 Subsection 128B-30(2)

Omit “paragraph (1)(b)”, substitute “subparagraph (1)(b)(ii)”.

10 Subclause 1(1) of Schedule 1

Insert:

Pacific engagement visa holder means the holder of:

- (a) a visa referred to in the regulations made under the *Migration Act 1958* as a Subclass 192 (Pacific Engagement) visa; or
- (b) a visa of a kind determined under subclause (4).

11 At the end of clause 1 of Schedule 1

Add:

- (4) The Minister may, by legislative instrument, determine a kind of visa for the purposes of paragraph (b) of the definition of ***Pacific engagement visa holder*** in subclause (1) if the Minister has been advised by the Minister administering the *Migration Act 1958* (the ***Immigration Minister***) that, in the opinion of the Immigration Minister:
- (a) the kind of visa has replaced or will replace:
 - (i) the kind of visa mentioned in paragraph (a) of that definition; or
 - (ii) a kind of visa previously determined under this subclause; and
 - (b) the replacement kind of visa is intended to give the same benefits as the replaced kind of visa.

Social Security Act 1991

12 Subsection 7(1)

Insert:

Pacific engagement visa means:

- (a) a visa referred to in the regulations made under the *Migration Act 1958* as a Subclass 192 (Pacific Engagement) visa; or
-

(b) a visa of a kind determined under subsection (4C).

13 After subsection 7(4B)

Insert:

(4C) The Minister may, by legislative instrument, determine a kind of visa for the purposes of paragraph (b) of the definition of *Pacific engagement visa* in subsection (1) if the Minister has been advised by the Minister administering the *Migration Act 1958* (the *Immigration Minister*) that, in the opinion of the Immigration Minister:

- (a) the kind of visa has replaced or will replace:
 - (i) the kind of visa mentioned in paragraph (a) of that definition; or
 - (ii) a kind of visa previously determined under this subsection; and
- (b) the replacement kind of visa is intended to give the same benefits as the replaced kind of visa.

14 Subsection 23(1)

Insert:

Pacific engagement visa: see subsection 7(1).

15 After paragraph 549D(7)(b)

Insert:

- (ba) the following apply:
 - (i) the person is undertaking full-time study or is a new apprentice;
 - (ii) the person is the holder of a Pacific engagement visa at the time the person made the claim for a youth allowance; or

16 After paragraph 575D(3)(b)

Insert:

- (ba) the person is the holder of a Pacific engagement visa at the time the person made the claim for an austudy payment; or

VET Student Loans Act 2016

17 Section 6

Insert:

Pacific engagement visa: see subsection 11(1B).

18 Section 6 (definition of *permanent humanitarian visa*)

Repeal the definition, substitute:

permanent humanitarian visa: see subsection 11(1A).

19 Paragraph 11(1)(b)

After “permanent humanitarian visa”, insert “, or a Pacific engagement visa,”.

20 After subsection 11(1)

Insert:

- (1A) ***Permanent humanitarian visa*** has the same meaning in this Act as in the *Migration Regulations 1994*.
- (1B) A ***Pacific engagement visa*** is:
- (a) a visa referred to in the *Migration Regulations 1994* as a Subclass 192 (Pacific Engagement) visa; or
 - (b) a visa of a kind determined under subsection (1C).
- (1C) The Minister may, by legislative instrument, determine a kind of visa for the purposes of paragraph (1B)(b) if the Minister has been advised by the Minister administering the *Migration Act 1958* (the ***Immigration Minister***) that, in the opinion of the Immigration Minister:
- (a) the kind of visa has replaced or will replace:
 - (i) the kind of visa mentioned in paragraph (1B)(a); or
 - (ii) a kind of visa previously determined under this subsection; and
 - (b) the replacement kind of visa is intended to give the same benefits as the replaced kind of visa.

Part 2—Application of amendments

21 Application of amendments

- (1) The amendment of section 61AA of the *A New Tax System (Family Assistance) Act 1999* made by this Schedule applies in relation to a claim made by a person on or after the commencement of that amendment, whether the person is granted a visa covered by subparagraph 61AA(2)(b)(ia) of that Act before, on or after that commencement.
- (2) The amendments of sections 90-5 and 104-5 of the *Higher Education Support Act 2003* made by this Schedule apply in relation to a unit of study with a census date that is on or after the commencement of those amendments, whether the student:
 - (a) becomes a Pacific engagement visa holder; or
 - (b) enrolls in the course of study;before, on or after that commencement.
- (3) The amendment of section 118-5 of the *Higher Education Support Act 2003* made by this Schedule applies in relation to an application for receipt of OS-HELP assistance made on or after the commencement of that amendment, whether the student:
 - (a) becomes a Pacific engagement visa holder; or
 - (b) enrolls in the course of study;before, on or after that commencement.
- (4) The amendment of section 126-5 of the *Higher Education Support Act 2003* made by this Schedule applies in relation to fees payable for periods that start on or after the commencement of that amendment, whether the student:
 - (a) becomes a Pacific engagement visa holder; or
 - (b) enrolls in the course of study or bridging course for overseas-trained professionals;before, on or after that commencement.
- (5) The amendments of section 128B-30 of the *Higher Education Support Act 2003* made by this Schedule apply in relation to an accelerator

Schedule 1 Pacific Engagement Visas
Part 2 Application of amendments

program course with a census date that is on or after the commencement of those amendments, whether the student:

- (a) becomes a Pacific engagement visa holder; or
- (b) enrolls in the accelerator program course;

before, on or after that commencement.

(6) The amendments of the *Social Security Act 1991* made by this Schedule apply in relation to a claim made by a person on or after the commencement of those amendments, whether the person is granted a Pacific engagement visa before, on or after that commencement.

(7) The amendments of the *VET Student Loans Act 2016* made by this Schedule apply in relation to an application for a VET student loan made by a student on or after the commencement of those amendments, whether:

- (a) a Pacific engagement visa is granted to the student; or
- (b) the student enrolls in the course of study;

before, on or after that commencement.

Schedule 2—Pacific Australia Labour Mobility scheme

Part 1—Amendments

A New Tax System (Family Assistance) Act 1999

1 Subparagraph 21(1)(b)(ii)

After “(1A)”, insert “or (1B)”.

2 Subsection 21(1A) (heading)

Repeal the heading, substitute:

Visa holders who may qualify for special benefit

3 After subsection 21(1A)

Insert:

Visa holders connected with the Pacific Australia Labour Mobility scheme

- (1B) An individual satisfies this subsection if:
- (a) the individual is the holder of:
 - (i) a visa referred to in the regulations under the *Migration Act 1958* as a Subclass 403 (Temporary Work (International Relations)) visa; or
 - (ii) a visa of a kind determined under subsection (1C) of this section for the purposes of this subparagraph; and
 - (b) either:
 - (i) the individual is a participant, as a worker, in the scheme known as the Pacific Australia Labour Mobility scheme; or
 - (ii) the visa is granted on the basis that the individual is a member of the family unit (within the meaning of the *Migration Act 1958*) of such a participant; and
 - (c) the individual is in a class determined under subsection (1C).
- (1C) The Minister may, by legislative instrument, determine:
-

- (a) kinds of visas for the purposes of subparagraph (1B)(a)(ii) (subject to subsection (1D)); and
- (b) classes of individuals for the purposes of paragraph (1B)(c).

(1D) The Minister must not determine a kind of visa under paragraph (1C)(a) unless the Minister has been advised by the Minister administering the *Migration Act 1958* (the **Immigration Minister**) that, in the opinion of the Immigration Minister:

- (a) the kind of visa has replaced or will replace:
 - (i) the kind of visa mentioned in subparagraph (1B)(a)(i); or
 - (ii) a kind of visa previously determined under paragraph (1C)(a); and
- (b) the replacement kind of visa is intended to give the same benefits as the replaced kind of visa.

(1E) Without limiting paragraph (1C)(b), a class of individuals may be determined under that paragraph by reference to the fact that an individual holds a visa of a specified kind.

Example: A visa of a kind referred to in a specified way in the regulations under the *Migration Act 1958* or that permits the holder to stay in Australia for at least a specified period.

4 At the end of subparagraph 61AA(2)(b)(iii)

Add “of this section”.

5 At the end of subsection 61AA(2)

Add:

- ; or (c) satisfies subsection 21(1B) of this Act (visa holders connected with the Pacific Australia Labour Mobility scheme).

6 Paragraph 61AA(3)(a)

After “waiting period”, insert “because of paragraph (2)(a) or (b)”.

7 Paragraph 61AA(3)(c)

Omit “subsection (4) does not”, substitute “subsections (4) and (4A) do not”.

8 Paragraph 61AA(4)(a)

After “waiting period”, insert “because of paragraph (2)(a) or (b)”.

9 After subsection 61AA(4)

Insert:

(4A) If:

- (a) an individual is subject to a newly arrived resident’s waiting period because of paragraph (2)(a) or (b); and
- (b) the individual has previously held one or more visas covered by paragraph 21(1B)(a) that are also of a kind determined under subsection (5B) of this section;

the waiting period:

- (c) starts on the day on which the individual became the holder of the first of those visas; and
- (d) ends when the individual has been in Australia for a period of, or periods totalling, 52 weeks after that day.

10 Paragraph 61AA(5)(a)

After “waiting period”, insert “because of paragraph (2)(a) or (b)”.

11 Paragraph 61AA(5)(b)

Omit “neither subsection (3) nor (4) applies”, substitute “subsections (3), (4) and (4A) do not apply”.

12 After subsection 61AA(5)

Insert:

(5A) If an individual is subject to a newly arrived resident’s waiting period because of paragraph (2)(c), the waiting period:

- (a) starts on the day on which the individual first became the holder of a visa covered by paragraph 21(1B)(a) that is also of a kind determined under subsection (5B) of this section; and
- (b) ends when the individual has been in Australia for a period of, or periods totalling, 52 weeks after that day.

(5B) The Minister may, by legislative instrument, determine kinds of visas for the purposes of paragraphs (4A)(b) and (5A)(a).

13 Paragraph 85BB(1)(c)

After “(2)”, insert “or (3)”.

14 Before subsection 85BB(2)

Insert:

Visa holders who may qualify for special benefit

15 At the end of section 85BB

Add:

Visa holders connected with the Pacific Australia Labour Mobility scheme

- (3) An individual or the individual’s partner satisfies this subsection if:
- (a) the individual or partner is the holder of:
 - (i) a visa referred to in the regulations under the *Migration Act 1958* as a Subclass 403 (Temporary Work (International Relations)) visa; or
 - (ii) a visa of a kind determined under subsection (4) of this section for the purposes of this subparagraph; and
 - (b) either:
 - (i) the individual or partner is a participant, as a worker, in the scheme known as the Pacific Australia Labour Mobility scheme; or
 - (ii) the visa is granted on the basis that the individual or partner is a member of the family unit (within the meaning of the *Migration Act 1958*) of such a participant; and
 - (c) the individual or partner is in a class of persons determined under subsection (4).
- (4) The Minister may, by legislative instrument, determine:
- (a) kinds of visas for the purposes of subparagraph (3)(a)(ii) (subject to subsection (5)); and
 - (b) classes of persons for the purposes of paragraph (3)(c).
- (5) The Minister must not determine a kind of visa under paragraph (4)(a) unless the Minister has been advised by the

Minister administering the *Migration Act 1958* (the **Immigration Minister**) that, in the opinion of the Immigration Minister:

- (a) the kind of visa has replaced or will replace:
 - (i) the kind of visa mentioned in subparagraph (3)(a)(i); or
 - (ii) a kind of visa previously determined under paragraph (4)(a); and
 - (b) the replacement kind of visa is intended to give the same benefits as the replaced kind of visa.
- (6) Without limiting paragraph (4)(b), a class of persons may be determined under that paragraph by reference to the fact that a person holds a visa of a specified kind.

Example: A visa of a kind referred to in a specified way in the regulations under the *Migration Act 1958* or that permits the holder to stay in Australia for at least a specified period.

Part 2—Application of amendments

16 Application of amendments

- (1) The amendments of section 21 of the *A New Tax System (Family Assistance) Act 1999* made by this Schedule apply in relation to a claim made on or after the commencement of those amendments, whether the individual starts to satisfy subsection 21(1B) of that Act before, on or after that commencement.
- (2) To avoid doubt, for the purposes of the application of subsection 61AA(4A) or (5A) of the *A New Tax System (Family Assistance) Act 1999*, as amended by this Schedule, in relation to an individual on or after the commencement of this item, a newly arrived resident's waiting period may:
 - (a) start before that commencement if the day referred to in paragraph 61AA(4A)(c) or (5A)(a) (as the case requires) of that Act occurs before that commencement; and
 - (b) end before that commencement if paragraph (a) of this subitem applies and the event referred to in paragraph 61AA(4A)(d) or (5A)(b) (as the case requires) of that Act occurs before that commencement.
- (3) The amendments of section 85BB of the *A New Tax System (Family Assistance) Act 1999* apply in relation to a session of care provided on or after the commencement of those amendments, whether the individual or partner starts to satisfy subsection 85BB(3) of that Act before, on or after that commencement.

[Minister's second reading speech made in—
House of Representatives on 10 August 2023
Senate on 6 September 2023]

(102/23)
