EXPLANATORY STATEMENT

Issued by the Minister for Home Affairs

Migration Act 1958

Migration Amendment (Preventing Further Stay for Visitor Visas) Regulations 2026

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

Subsection 41(1) of the Migration Act provides that visas, or visas of a specified class, are subject to specified conditions.

Paragraph 41(2)(a) of the Migration Act provides that, without limiting subsection 41(1), the regulations may provide that a visa, or visas of a specified class, are subject to a condition that, despite anything else in this Act, the holder of the visa will not, after entering Australia, be entitled to be granted a substantive visa (other than a protection visa or a temporary visa of a specified kind) while he or she remains in Australia.

Clause 8503 of Schedule 8 to the *Migration Regulations 1994* (the Migration Regulations) establishes a condition that would prevent a person in the migration zone, who since last entering Australia has held a visa subject to the condition, from making a valid application for a substantive visa (except for a protection visa) in accordance with subsection 46(1A) of the Migration Act unless the Minister has provided a waiver (condition 8503).

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

The *Migration Amendment (Prevent Further Stay for Visitor Visas) Regulations 2026* (the Amendment Regulations) amend the *Migration Regulations 1994* (the Migration Regulations) to provide that condition 8503 (no further stay) is a mandatory condition for the following visas:

- Subclass 600 (Visitor) visa, for all streams of the visa;
- Subclass 601 (Electronic Travel Authority) visa; and
- Subclass 651 (eVisitor) visa.

Before these amendments, condition 8503 (no further stay) was a mandatory condition for all visa holders in the Sponsored Family, Approved Destination Status, and Frequent Traveller streams of the Subclass 600 (Visitor) visa but could only be applied at the Minister's discretion for the Business Visitor stream or for most persons in the Tourist stream, and could not be applied on the Subclass 601 (Electronic Travel Authority) or Subclass 651 (eVisitor) visas.

Applying condition 8503 as a mandatory condition for these visas prevents a non-citizen from making a valid onshore application for a further substantive visa (other than a protection visa) after entering Australia on one of those visas in accordance with subsection 46(1A) of

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the Migration Act. This is consistent with the intended purpose of a visitor visa, to enable non-citizens to engage in short-term temporary visits to Australia.

The Amendment Regulations limit onshore pathways for remaining in Australia for holders of these visas. They form part of a series of measures that are intended to place downwards pressure on Net Overseas Migration (NOM), including recent changes to the student visa program and reforms to prevent temporary visa holders remaining onshore by applying for multiple temporary visas.

These amendments do not affect the Minister's ability to exercise their discretion to waive condition 8503 (no further stay) in the relevant circumstances set out under subregulation 2.05 of the Migration Regulations.

A Statement of Compatibility with Human Rights (the Statement) has been completed in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The overall assessment is that the Amendment Regulations are compatible with human rights and seek to pursue the legitimate objective of ensuring that the visitor visa program is used to support genuine temporary visitors coming to Australia for a short-term temporary visit.

The Statement is at Attachment A.

Section 17 of the *Legislation Act 2003* (the Legislation Act) provides that the rule maker must be satisfied that consultation has been undertaken that is appropriate and reasonably practicable before making a legislative instrument.

The amendments would give effect to a decision of Government. Commonwealth agencies, including the Treasury, Department of Finance, Department of the Prime Minister and Cabinet, and the Attorney-General's Department were consulted as part of Government's decision in relation to the amendments.

Consultation with non-government stakeholders, including with civil society organisations, was not undertaken, as the proposed amendments form part of broader reforms to strengthen the integrity of the visa system and are not expected to have a material impact on genuine tourists. In line with usual Department of Home Affairs (the Department) practice, advice in relation to the proposed changes will be provided for clients and other stakeholders on the Department's website and through other communication channels.

The Amendment Regulations commence on 28 November 2026. These amendments apply in relation to an application for a visa made on or after commencement.

Further details of the Amendment Regulations are set out in Attachment B.

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

- is unnecessary as the Migration Regulations are regularly amended numerous times each year to update policy settings for immigration programs;
- would require complex and difficult to administer transitional provisions to ensure, amongst other things, the position of the many people who hold Australian visas, and

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similarly, there would likely be a significant impact on undecided visa and sponsorship applications; and

- would demand complicated and costly systems, training and operational changes that would impose significant strain on Government resources and the Australian public for insignificant gain, while not advancing the aims of the Legislation Act.

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

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

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

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ATTACHMENT A

Statement of Compatibility with Human Rights

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

Migration Amendment (Preventing Further Stay for Visitor Visas) Regulations 2026

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

Overview of the Disallowable Legislative Instrument

The purpose of the *Migration Amendment (Preventing Further Stay for Visitor Visas) Regulations 2026* (the Amendment Regulations) is to amend the *Migration Regulations 1994* (the Migration Regulations) to update the provisions that specify which conditions must be applied to the Visitor (subclass 600) visa (Class FA), Electronic Travel Authority (ETA) (subclass 601) (Class UD) and eVisitor (subclass 651) (Class TV).

The *Migration Regulations 1994* (the Regulations) dictate who can enter, stay, and work in Australia. They outline specific visa criteria, application charges, and conditions. Condition 8503 provides that the holder will not, after entering Australia, be entitled to be granted a substantive visa, other than a protection visa, while the holder remains in Australia. Subregulation 2.05(4) sets out the circumstances where the Minister may waive the condition. Requests to waive the condition can be made at no cost, and there is no limit on the number of waiver requests that can be made.

The Amendment Regulation makes condition 8503 mandatory for all streams of Visitor (subclass 600) visa, the ETA (subclass 601) and eVisitor (subclass 651). Condition 8503 in Schedule 8 to the Regulations provides that the holder will not, after entering Australia, be entitled to be granted a substantive visa, other than a protection visa, while the holder remains in Australia.

The Amendment Regulations amend Division 600.6, and Divisions 601.6 and 651.6 of Schedule 2 to the Regulations to provide that condition 8503 must be imposed on Subclass 600 Visitor visas in the Tourist and Business Visitor streams, Subclass 601 Electronic Travel Authority visas, and Subclass 651 eVisitor visas.

The Amendment Regulations gives effect to agreed visitor visa measures refocusing on settings to facilitate short-term visits and limit onshore visa hopping and pathways that facilitate extended onshore residence. The amendments will tighten visitor visa settings to reduce potential exploitation by supporting only genuine temporary stays. Alongside other targeted measures, this allows for better management of migration levels and net overseas migration.

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Human rights implications

This Disallowable Legislative Instrument may engage the following rights:

- the right to equality and non-discrimination in Articles 2 and 26 of the *International Covenant on Civil and Political Rights* (ICCPR); and

- the right to family unity, under Articles 17 and 23 of the ICCPR and Article 16 of the *Convention on the Rights of the Child* (CRC).

Equality and non-discrimination rights

Article 2(1) of the ICCPR states:

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

Article 26 of the ICCPR states:

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

In its General Comment 18, the UN Human Rights Committee (UNHRC) stated that:

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

The ICCPR does not give a right for non-citizens to enter or remain in Australia for the purposes of seeking residence or employment. The UNHRC, in its General Comment 15 on the position of aliens under the ICCPR, stated that:

> *The [ICCPR] does not recognize the right of aliens to enter or reside in the territory of a State party. It is in principle a matter for the State to decide who it will admit to its territory. However, in certain circumstances an alien may enjoy the protection of the [ICCPR] even in relation to entry or residence, for example, when considerations of non-discrimination, prohibition of inhuman treatment and respect for family life arise.*
>
> *Consent for entry may be given subject to conditions relating, for example, to movement, residence and employment. A State may also impose general conditions upon an alien who is in transit. However, once aliens are allowed to enter the territory of a State party they are entitled to the rights set out in the [ICCPR].*

The Amendment Regulations make Condition 8503 mandatory for all streams of Visitor (subclass 600) visa, the ETA (subclass 601) and eVisitor (subclass 651) visas, such that all holders of these visas will be subject to this condition, regardless of their nationality or any

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other grounds. Australia is able to set requirements for the entry and stay of non-citizen in its territory, and non-citizens do not have an automatic right to enter or stay in Australia. Instead, they must meet conditions set out in Australian migration laws, such as visa grant requirements, including health checks, character requirements, and financial or sponsorship criteria.

It is also open to the Government to change visa settings for new applicants to meet its policy priorities for a well-managed migration program, consistently with its international obligations, that is intended to benefit the Australian community as a whole.

By applying to all Visitor and e-Visitor visas, as well as ETAs, the Amendment Regulations do not differentiate between non-citizen applicants on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Consequently, it is consistent with the rights to equality before the law and non-discrimination provided for in the ICCPR.

Family unity and children's rights

Article 17 of the ICCPR states:

1. *No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.*

2. *Everyone has the right to the protection of the law against such interference or attacks.*

Article 23(1) of the ICCPR states:

> *The family is the natural and fundamental group unit of society and is entitled to protection by society and the State*

Article 16 of the CRC states:

1. *No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.*
2. *The child has the right to the protection of the law against such interference or attacks.*

The Amendment Regulations may engage family unity and children's rights by creating an additional barrier to non-citizens applying for a further substantive visa to remain in Australia after the expiry of a Visitor visa, e-Visitor visa or ETA. Where a visa holder with family members in Australia cannot apply for a substantive visa while in Australia, they would be required to depart from Australia. In such circumstances, the family may be required to make a choice between departing together, or separating with some family members remaining in Australia.

Family unity rights in Articles 17 and 23 of the ICCPR do not amount to a right to enter and remain in Australia where there is no other right to do so. Genuine applicants for other substantiative visas who will no longer be able to apply for a visa while in Australia can continue to apply for visas offshore (subject to meeting the eligibility criteria), including

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subsequent Visitor visas, e-Visitor visas and ETAs. They can also continue apply for Protection visas onshore. Further, the Amendment Regulations do not change established provisions in subregulation 2.05 of the Regulations, where a visa holder can request the Minister to waive the condition, for example, in compelling and compassionate circumstances. It would be open to the Minister to consider the circumstances of family members when deciding whether or not to waive Condition 8503 on the basis that, since the person was granted the visa that was subject to the condition, compelling and compassionate circumstances have developed.

The Amendment Regulations support the legitimate objective of ensuring that the visitor visa program is used to support genuine temporary visitors coming to Australia for a short-term temporary visit, instead of by applicants seeking to enter Australia for the purpose of an extended stay. It operates to discourage misuse of the visitor visa program by helping to curb 'visa hopping' by non-genuine applicants, through closing pathways to apply for successive temporary visas in Australia, after entering Australia on a Visitor visa, e-Visitor visa or ETA.

To the extent that the Amendment Regulations may engage family unity and children's rights, this engagement is aimed at achieving the legitimate objective of ensuring that the visitor visa program is used to support genuine temporary visitors coming to Australia for a short-term temporary visit.

Conclusion

The Amendment Regulations are compatible with human rights and seeks to pursue the legitimate objective of ensuring that the visitor visa program is used to support genuine temporary visitors coming to Australia for a short-term temporary visit.

The Hon Tony Burke MP

Minister for Home Affairs

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ATTACHMENT B

Details of the *Migration Amendment (Preventing Further Stay for Visitor Visas) Regulations 2026*

Section 1 – Name of Regulations

This section provides that the title of the Regulations is the *Migration Amendment (Preventing Further Stay for Visitor Visas) Regulations 2026* (Amendment Regulations).

Section 2 – Commencement

This section provides for the commencement of the provisions of this instrument.

Subsection 2(1) provides that each provision of the instrument 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.

Table item 1 provides that the whole of this instrument commences on 28 November 2026.

The note clarifies that this table relates only to the provisions of this instrument as originally enacted, and that it will not be amended to deal with any later amendments of this instrument.

Subsection 2(2) provides that any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

Section 3 – Authority

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

Section 4 – Schedules

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

Schedule 1 – Amendments

Migration Regulations 1994

Item [1] – Paragraph 600.611(3)(a) of Schedule 2

Subsection 41(1) of the Migration Act provides that visas, or visas of a specified class, are subject to specified conditions.

Subregulation 2.05(1) of the *Migration Regulations 1994* (the Migration Regulations) relevantly provides that, for subsection 41(1) of the Migration Act, a visa is subject to any conditions specified for that Subclass of visa in Schedule 2.

Paragraph 41(2)(a) of the Migration Act provides that, without limiting subsection 41(1), the regulations may provide that a visa, or visas of a specified class, are subject to a condition

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that, despite anything else in this Act, the holder of the visa will not, after entering Australia, be entitled to be granted a substantive visa (other than a protection visa or a temporary visa of a specified kind) while he or she remains in Australia.

Clause 8503 of Schedule 8 to the Migration Regulations establishes a condition that would prevent a person in the migration zone, who last since entering Australia has held a visa subject to the condition, from making a valid application for a substantive visa (except for a protection visa) in accordance with subsection 46(1A) of the Migration Act unless the Minister has provided a waiver.

Clause 600.611 of Schedule 2 to the Migration Regulations provides for the conditions on a Subclass 600 (Visitor) visa in the Tourist stream.

Before these amendments whether condition 8503 is imposed on a visa in this stream depends on whether the applicant has been sponsored in accordance with clause 600.224, which provides for requirements relating to an applicant who intends to visit or remain in Australia to visit an Australian citizen, or Australian permanent resident, who is a parent, spouse, de facto partner, child, brother or sister of the applicant:

- if the sponsorship described in clause 600.224 has been approved by the Minister, condition 8503 must be imposed (subclause 600.611(2));

- if the applicant was not sponsored in accordance with clause 600.224, condition 8503 may be imposed (paragraph 600.611(3)(b))

This item amends paragraph 600.611(3)(a) of Schedule 2 to the Migration Regulations to provide that condition 8503 must be imposed on an applicant who was not sponsored in accordance with clause 600.224, and where subclause 600.611(4) does not apply.

The effect of this amendment is to provide that condition 8503 (no further stay) is, for the purposes of subregulation 2.05(1) of the Migration Regulations, mandatory on a Subclass 600 visa in the Tourist stream for an applicant in this cohort of persons.

Item [2] – Paragraph 600.611(3)(b) of Schedule 2

This item omits the reference to clause 8503 in paragraph 600.611(3)(b) of Schedule 2 to the Migration Regulations.

This is a technical and consequential amendment that required to support the amendment in item [1], which ensures that clause 8503 is now mandatory for a Subclass 600 visa in the Tourist stream for an applicant who was not sponsored in accordance with clause 600.224, where subclause 600.611(4) does not apply.

Item [3] – Subclause 600.611(4) of Schedule 2

Subclause 600.611(4) of Schedule 2 to the Migration Regulations currently provides that condition 8503 may be imposed on a Subclass 600 visa in the Tourist stream where:

(a) the applicant is suffering financial hardship as a result of changes in the applicant's circumstances after entering Australia; and

(b) the applicant, or a member of the applicant's family is likely to become a charge on the Commonwealth, a State, a Territory or a public authority in Australia; and

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(c) for reasons beyond the applicant's control, the applicant, or a member of the applicant's immediate family, cannot leave Australia; and

(d) the applicant has compelling personal reasons to work in Australia.

This item amends subclause 600.611(4) of Schedule 2 to the Migration Regulations to provide that condition 8503 must be imposed on a Subclass 600 visa in the Tourist stream for an applicant in this cohort of persons.

The combined effect of the amendments in items [1] to [3] is to provide that condition 8503 (no further stay) is, for the purposes of subregulation 2.05(1) of the Migration Regulations, mandatory on a Subclass 600 visa in the Tourist stream.

Item [4] – Clause 600.613 of Schedule 2

Clause 600.613 of Schedule 2 to the Migration Regulations for the conditions on a Subclass 600 (Visitor) visa in the Business Visitor stream and relevantly provides that condition 8503 may be imposed.

This item repeals and replaces clause 600.613 of Schedule 2 to the Migration Regulations to provide that conditions 8115, 8201 and 8503 must be imposed on a Subclass 600 visa in the Business Visitor stream.

The effect of this amendment is to provide that condition 8503 (no further stay) is, for the purposes of subregulation 2.05(1) of the Migration Regulations, mandatory on a Subclass 600 visa in the Business Visitor stream. The amendment does not otherwise affect the operation of clause 600.613 of Schedule 2 to the Migration Regulations, including with respect to conditions 8115 (business visitor activities) and 8201 (maximum 3 months study).

Item [5] – Clauses 601.611 and 651.611 of Schedule 2

Clause 601.611 of Schedule 2 to the Migration Regulations provides for the conditions on a Subclass 601 (Electronic Travel Authority) visa and currently does not enable condition 8503 (no further stay) to be imposed.

Clause 651.661 of Schedule 2 to the Migration Regulations provides for the conditions on a Subclass 651 (eVisitor) visa and currently does not enable condition 8503 (no further stay) to be imposed.

This item amends clauses 601.611 and 651.611 of Schedule 2 to the Migration Regulations to provide that condition 8503 must be imposed on the Subclass 601 and Subclass 651 visas.

The combined effect of the amendments in items [1] to [5] is to provide that condition 8503 (no further stay) is for the purposes of subregulation 2.05(1) of the Migration Regulations, mandatory on the following visas:

- Subclass 600 (Visitor) visa, for all streams of the visa;
- Subclass 601 (Electronic Travel Authority) visa;
- Subclass 651 (eVisitor) visa

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Applying condition 8503 (no further stay) as a mandatory condition is intended to have the effect of refocussing visitor visa settings to facilitate short-term visits and limit onshore visa hopping and pathways that facilitate extended onshore residence. The intention is to put downward pressure on Net Overseas Migration (NOM) and discourage misuse of visitor visas and non-genuine applications.

These amendments do not affect the Minister's ability to exercise their discretion to waive condition 8503 (no further stay) in the relevant circumstances set out under subregulation 2.05 of the Migration Regulations.

Item [6] – In the appropriate position in Schedule 13

This item provides for the application of the amendments made by the Amendment Regulations by inserting Part 171 (Amendments made by the *Migration Amendment (Preventing Further Stay for Visitor Visas) Regulations 2026*) into Schedule 13 of the Migration Regulations.

Item 17101 provides that the amendments made by Schedule 1 to the Amendment Regulations apply in relation to an application for a visa made on or after the commencement of that Schedule. This makes it clear that the amendments do not operate retrospectively with respect to non-citizens who currently hold these visas.

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