

**HOME AFFAIRS PORTFOLIO  
DEPARTMENT OF HOME AFFAIRS**

**PARLIAMENTARY INQUIRY WRITTEN QUESTION ON NOTICE**

Senate Standing Committee on Education and Employment Legislation

Education Services for Overseas Students Amendment (Quality and Integrity) Bill  
2024 [Provisions]

**2 October 2024**

**QoN Number: 20**

**Subject: Amendments to Ministerial Direction 107**

***Asked by:*** Sarah Henderson

***Question:***

In the public hearing of 2 October, the department referenced that Ministerial Direction 107 may be amended. Has any such amendment been drafted by the Department or Parliamentary Counsel and, if so, please provide a copy of this amendment.

***Answer:***

Ministerial Direction No. 107 has been revoked, and Ministerial Direction No. 111 (MD111) Order for considering and disposing of offshore Subclass 500 (Student) visa applications came into effect from 19 December 2024.

A copy of the direction is provided with this response.

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**Direction No. 111– Order for considering and disposing of offshore Subclass 500 (Student) visa applications**

I, JULIAN HILL Assistant Minister for Citizenship and Multicultural Affairs, give this Direction under section 499 of the *Migration Act 1958*.

Dated: 18 December 2024

JULIAN HILL

Assistant Minister for Citizenship and Multicultural Affairs

**Part 1 – Preliminary**

**1 Name of Direction**

This Direction is the *Direction 111 Order for considering and disposing of offshore Subclass 500 (Student) visa applications* and may be cited as Direction 111.

**2 Commencement**

This Direction commences on the day after the date of signature.

**3 Revocation**

Direction no. 107 Order for considering and disposing of Student Guardian applications and offshore Subclass 500 (Student) visa applications dated 14 December 2023, is revoked.

**4 Application**

- (1) This Direction applies to delegates of the Minister who consider and dispose of:
  - (a) an offshore Subclass 500 (Student) visa application:
    - (i) made on or after commencement;
    - (ii) made, but not finally determined, before commencement;
- (2) This Direction does not apply with respect to applications where it is readily apparent that the criteria for the grant of the visa would not be satisfied.
- (3) This Direction does not apply to the Administrative Review Tribunal.

**5 Preamble**

- (1) The Government is working to strengthen the integrity and sustainability of the international Student visa program and the international education sector.
- (2) This Direction provides an order of priorities for considering and disposing of offshore Subclass 500 (Student) visa applications in an orderly fashion that aligns with the national interest, recognising:
  - (a) The economic impact on individual education providers including; the importance of regional higher education providers and outer metropolitan suburban universities, and TAFE providers in their communities; transitional arrangements needed to support



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University mergers; and the overall economic benefit to Australia of skills development across education sectors in supporting Australia's skills needs;

- (b) There is a need to acknowledge operational flexibility in the allocation of processing resources within the order of priority below to manage surges or unexpected activity, which may relate to increases in integrity concerns. Decision-makers will act to support the integrity of the visa program, which may mean that some applications assigned to the **Priority 1 – High** category may take longer to finalise. That is to say, integrity issues will be acted upon regardless of the assigned priority; and
  - (c) As needed, within the allocated priorities, the Department of Home Affairs (the department) will balance overall priorities to ensure that visa application decisions are reached both efficiently and accurately, in accordance with the intent of this direction.
- (3) This Direction draws upon work developed by the Departments of Education and of Employment and Workplace Relations and their consultations across the sector throughout 2024.

Note 1: Subsection 51(1) of the Act provides that the Minister can consider and dispose of applications for visas in such order as he or she considers appropriate.

Note 2: Subsection 499(1) of the Act empowers the Minister to give to a person or body having functions or powers under the Act written directions not inconsistent with the Act or the Regulations, in accordance with which the person or body shall perform those functions and exercise those powers. The person or body must comply with the direction.

Note 3: Section 4(1) of the Act provides that the object of the Act is to regulate, in the national interest, the coming into, and presence in, Australia of non-citizens.

## 6 Interpretation

- (1) In this Direction:

*Act* means the *Migration Act 1958*.

*Defence student* has the meaning given in regulation 1.04B of the Regulations.

*dependent child* has the meaning given by the Regulations.

*Foreign Affairs student* has the meaning given in subregulation 1.04A(3) of the Regulations.

*higher education* course has the meaning given in clause 500.111 of Schedule 2 to the Regulations.

*indicative allocations* refers to 2025 indicative allocations of new overseas student commencements for providers under the *Education Services for Overseas Students Act 2000* developed by the Department of Education and the Department of Employment and Workplace Relations and which were the subject of consultations with providers during 2024.

*offshore Subclass 500 (Student) visa application* means a Subclass 500 (Student) visa application made by an applicant who is outside Australia at the time of application.

*New Overseas Student Commencement* is an overseas student who commences a higher education or vocational education and training course onshore in Australia in a particular calendar year, where the student was not previously enrolled in a higher education or vocational education and training course with the same provider in the calendar year or the previous calendar year, and the student does not meet the definition of any of the following: student enrolled in a postgraduate research course, Foreign Affairs students,



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Defence students, students sponsored by the Commonwealth, scholarship student, student enrolled in aviation pilot training courses, transnational education student, student from the Pacific or Timor-Leste.

**postgraduate research course** has the meaning given in clause 500.111 of Schedule 2 to the Regulations.

**Pilot training courses** means the Diploma of Aviation (Commercial Pilot Licence – Aeroplane), Diploma of Aviation (Commercial Pilot Licence - Helicopter), Diploma of Aviation (Instrument Rating), and Diploma of Aviation (Flight Instructor).

**primary applicant** means a visa applicant seeking to satisfy the primary criteria for the grant of the visa.

**primary visa holder** means a non-citizen who holds a visa on the basis of satisfying the primary criteria for the grant of the visa.

**prioritisation threshold** for providers in the higher education and vocational education and training sectors refers to 80 per cent of an individual provider's 2025 indicative allocations of new overseas student commencements, as measured by Confirmations of Enrolment and holding a relevant visa subclass (being a Subclass 500 (Student) visa or bridging visa associated with an application for a Subclass 500 (Student) visa), that meet the definition of a new overseas student commencement or would meet the definition once the student commences study.

**provider** means a provider registered under the *Education Services for Overseas Students Act 2000*.

**Provider Registration and International Student Management System (PRISMS)** - is a computer system established under section 109 of the *Education Services for Overseas Students Act 2000* for the purpose of receiving and storing information about accepted students and former accepted students, and which is owned and maintained by the Department of Education.

**Regulations** means the *Migration Regulations 1994*.

**secondary applicant** means a visa applicant seeking to satisfy the secondary criteria for the grant of the visa.

**Subsequent entrant** means a secondary applicant for a Subclass 500 (Student) visa who did not make a combined application with the primary applicant / primary visa holder.

**Students from the Pacific and Timor-Leste** means the passport holders and (where noted) residents of the following countries:

- Cook Islands (NZ passport holders resident in Cook Islands)
- Fiji
- French Polynesia (French passport holders who are resident in French Polynesia)
- Kiribati
- Marshall Islands
- Micronesia
- Nauru
- Niue (New Zealand passport holders who are resident in Niue)
- Palau
- Papua New Guinea
- Samoa
- Solomon Islands
- Timor-Leste
- Tonga
- Tuvalu
- Vanuatu



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- New Caledonia (French passport holders who are resident in New Caledonia)

**TAFE Provider** means a public vocational education and training provider which is a body established to provide vocational education or training under one of the following:

- a. the Technical and Further Education Commission Act 1990 (NSW);
- b. the Education and Training Reform Act 2006 (Vic.);
- c. the TAFE Queensland Act 2013 (Qld);
- d. the Vocational Education and Training Act 1996 (WA);
- e. the TAFE SA Act 2012 (SA);
- f. the Training and Workforce Development Act 2013 (Tas.);
- g. the Canberra Institute of Technology Act 1987 (ACT);
- h. the Charles Darwin University Act 2003 (NT) but only as it applies in relation to the part of the body delivering vocational education and training and not in relation to the part of the body delivering higher education

## Part 2 – Directions

### 7 Considering and disposing of applications

- (1) In determining the order for considering and disposing of offshore Subclass 500 (Student) visa applications under section 51 of the Act, delegates are to have regard to the order set out in section 8 first taking into account the circumstances of individuals' visa applications to see if section 8(1)(b) applies and then, if necessary, to see whether section 8(1)(a) applies and then, if necessary, to see whether section 8(2) applies.
- (2) The priority order set out below will operate in the offshore context only.
- (3) The Department of Home Affairs will accord **Priority 1 – High** to Student visa applications associated with providers in the higher education and vocational education and training sectors who have not yet reached their prioritisation threshold.
- (4) Visa applications associated with a provider will default to the **Priority 2 – Standard** level of prioritisation where the 'prioritisation threshold' for a particular provider has been reached, based on PRISMS information.
- (5) For the purposes of determining processing priority of the relevant student visa applications under sections 7(3) and (4) above, in accordance with section 495A(1)(c) of the Migration Act, delegates having functions in relation to establishing the order of considering and disposing of visa applications are directed to do the following:
  - a. **Priority 1 – High** processing is available because the 'prioritisation threshold' for a particular provider has not yet been reached, based on PRISMS information;
  - b. **Where Priority 1 - High** processing is available, based on PRISMS information, give **Priority 1 - High** processing to a visa application for a student associated with that provider;
  - c. Where **Priority 1 - High** processing is not available, based on PRISMS information revert to **Priority 2 – Standard** visa processing for visa applications associated with that provider.



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- (6) Certain visa applications are not subject to the arrangements in section 7(3) to 7(5) above and they are to be processed in either **Priority 1 – High** or **Priority 2 – Standard** as outlined in section 8.
- (7) The existence of prioritisation of the offshore visa caseload in line with the 2025 indicative allocations of new overseas student commencements is not to be taken as a limit to or cap upon the total number of visas that may be granted to any provider. It is a number used solely for the purposes of determining the number of visa applications that are able to be processed with **Priority 1 - High** processing, before standard processing procedures in accordance with **Priority 2 - Standard** becomes applicable.

### 8 Order for considering and disposing offshore Subclass 500 (Student) visa applications

- (1) Delegates will consider and dispose of applications with regard to the following priorities:

#### Priority 1 - High

- a) Offshore Student visa applications associated with a provider in the higher education and vocational education and training sectors (excluding applications identified in section 8(1)(b)) where new overseas student commencements constitute less than a provider's prioritisation threshold, as indicated in PRISMS:

*Note: Once the prioritisation threshold for a provider has been reached, applications made in relation to the above sectors which are not otherwise in an exempt category as outlined below will be considered and disposed of in line with **Priority 2 - Standard** processing.*

- b) Applications from:
  - School students;
  - Non-award sector students, including short term exchange students;
  - Standalone ELICOS students;
  - Students enrolled with a TAFE Provider;
  - Students enrolled in Pilot Training Courses.
  - Students in postgraduate research courses;
  - Foreign Affairs Students, Defence Students and students sponsored by the Commonwealth;
  - Students with foreign government, Australian Government and state and territory scholarships that meet the criteria published on the Department of Education website as at the date this Ministerial Direction was made;
  - Students from the Pacific and Timor-Leste;
  - Students enrolled in Transnational Education arrangements, according to criteria published at the date this instrument is made on the Department of Education website for higher education students and the Department of Employment and Workplace Relations for vocational education and training students;
  - Subsequent entrants where an applicant is a minor, as outlined at section 8(3) below.

#### Priority 2 – Standard

- (2) Applications:
  - (a) associated with providers in the higher education and vocational education training sectors identified in **Priority 1 - High**, once a provider's prioritisation threshold has been reached;
  - (b) made by subsequent entrants in association with a Student visa holder who are dependent on the visa holder, unless they fall in the category of minor per section 8(3) of this Direction;

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(c) For any other offshore Student visa.

**Minors**

(3) An offshore Subclass 500 (Student) visa application that is made by a subsequent entrant who is a minor, and an offshore Subclass 500 (Student) subsequent entry visa application of a non-citizen with whom a minor has made a combined application, will be accorded

**Priority 1 – High**, if the minor is:

(a) unmarried, and has not turned 18 at the time of application; and

(b) either:

(i) a dependent child of a primary applicant for, or primary visa holder of, a Subclass 500 (Student) visa; or

(ii) a dependent child of a spouse or de facto partner of a primary applicant for, or primary visa holder of, a Subclass 500 (Student) visa.