



## Fraud Public Interest Criterion

On 2 April 2011, the department introduced a new Fraud Public Interest Criterion (PIC) to the suite of Skilled Migration visas. From 5 November 2011, all visas in the Business Skills and the Student Visa Programs will be included. The affected visa subclasses are as follows:

Subclass	Type of Visa	Visa Title
175	GSM	Skilled – Independent (Migrant)
176	GSM	Skilled – Sponsored (Migrant)
475	GSM	Skilled – Regional Sponsored (Provisional)
476	GSM	Skilled – Skilled – Recognised Graduate (Temporary)
485	GSM	Skilled – Graduate (Temporary)
487	GSM	Skilled – Regional Sponsored (Provisional)
495*	GSM	Skilled – Independent Regional (Provisional)
496*	GSM	Skilled – Designated Area-sponsored (Provisional)
880*	GSM	Skilled – Independent – Overseas Student
881*	GSM	Skilled – Australian-sponsored Overseas Student
882*	GSM	Skilled – Designated Area-sponsored Overseas Student
883*	GSM	Skilled – Designated Area-sponsored (Residence)
885	GSM	Skilled – Independent (Residence)
886	GSM	Skilled – Sponsored (Residence)
887	GSM	Skilled – Regional (Residence)
457	TES	Business (Long Stay)
119	PES	Regional Sponsored Migration Scheme
121	PES	Employer Nomination Scheme
856	PES	Employer Nomination Scheme
857	PES	Regional Sponsored Migration Scheme
132	Business Skills	Business Talent
160	Business Skills	Business Owner (Provisional)
161	Business Skills	Senior Executive (Provisional)
162	Business Skills	Investor (Provisional)
163	Business Skills	State/Territory Sponsored Business Owner (Provisional)
164	Business Skills	State/Territory Sponsored Senior Executive (Provisional)
165	Business Skills	State/Territory Sponsored Investor (Provisional)
845	Business Skills	Established Business in Australia
846	Business Skills	State/Territory Sponsored Regional Established Business in Australia
890	Business Skills	Business Owner
891	Business Skills	Investor
892	Business Skills	State/Territory Sponsored Business Owner
893	Business Skills	State/Territory Sponsored Investor (Residence)
570	Student	Independent ELICOS Sector
571	Student	Schools Sector
572	Student	Vocational Education and Training Sector
573	Student	Higher Education Sector
574	Student	Postgraduate Research Sector
575	Student	Non-Award Sector
576	Student	AusAID/Defence Sector
580	Student	Student Guardian

GSM – General Skilled Migration

PES – Permanent Employer Sponsored visas

TES – Temporary Employer Sponsored visas

**Note:** \* GSM visas closed to new applications on 1 September 2007 however pending applications remain.

## Transitional Arrangements

Your application will be subject to assessment under the Fraud PIC if you have lodged an application for a visa listed above.

**Note:** The Fraud PIC applies retrospectively to applications lodged prior to its introduction, which have not yet been finalised. This includes un-finalised decisions under review.

**Exception:** Student visas.

## Student visas

For Student visas, the Fraud PIC will be applied only to applications lodged on or after 5 November 2011. The Fraud PIC is not applied retrospectively to Student visa applications on hand and not yet finalised before 5 November 2011.

# Frequently Asked Questions

## 1. What is the purpose of the Fraud PIC?

The introduction of the Fraud PIC is aimed to minimise the level of fraud present in visa applications by providing a strong disincentive to those considering submitting false or misleading information in relation to an application (including review).

The Fraud PIC will additionally strengthen the department's ability to refuse applications where applicants have provided any false or misleading information.

## 2. How does the department assess an application against the Fraud PIC?

The Fraud PIC is comprised of three primary questions:

- a) Have you provided bogus documents or information that is false or misleading during the course of the current application?
- b) Have you previously provided bogus documents or information that is false or misleading in relation to a visa that you held in the 12 months before current application was made?
- c) Have you had a visa refused for failing to meet the Fraud PIC in the three year period immediately before both time of application and decision?

These criteria allow the department to lawfully assess whether or not your application for a visa subclass that is subject to assessment against the Fraud PIC contains bogus documents or information that is false or misleading.

## 3. If the department suspects an application contains fraudulent information, will I be provided with the opportunity to comment on my application?

Yes. Where the department suspects an application contains fraudulent information, we are required by law, to invite you to comment on the suspected genuineness of the documentation submitted with your application.

This invitation also provides you with the opportunity to demonstrate compelling and/or compassionate reasons as to why the visa should be granted. You will be provided with 28 days to reply. Failure to provide a response to the department within the prescribed timeframe is likely to result in your application being refused.

#### 4. What are considered to be compelling and/or compassionate circumstances?

Compelling and/or compassionate circumstances are limited to either of the following:

- compelling circumstances that affect the interests of Australia
- compelling or compassionate circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.

Where you fail to demonstrate that you meet one of the above criteria, your application may be subject to refusal.

#### 5. What action can the department take if bogus documents or information that is false or misleading is found in a visa application subject to assessment against the Fraud PIC?

Where you are found to have supplied bogus documents or provided information that is false or misleading to the department, your application will be refused and you will be subject to a three year bar which may prevent the grant of a further visa that is subject to assessment under the Fraud PIC.

**Important:** The three year bar applies only to visas that are subject to assessment against the Fraud PIC.

#### 6. Where an application is refused against the Fraud PIC, are migrating family members included the application also subject to a three year bar?

Yes. The Fraud PIC is a 'one fails, all fail' criterion. This means that where an application is refused against the Fraud PIC, all persons included in that application will be refused. This also includes dependent (secondary) applicants who were under 18 years of age at time of application.

**Note:** If the dependent applicant is now 18 years of age, they can lodge a new application, however, they will need to provide evidence to the department demonstrating compelling and/or compassionate reasons detailing why the department should waive the bar and facilitate the grant of a visa application.

##### **Case Scenario**

*Applicant A lodges an application with Applicant B. Applicant A or Applicant B provided fraudulent information, and the application is refused on 01/05/2011.*

*On 01/05/2012, Applicant B lodges new application as the primary applicant, with Applicant C as the secondary applicant. As Applicant B is subject to a three year bar due to their previous refusal (on the grounds of the provision of fraudulent information), all included applicants are refused (the PIC is 'one fails, all fail').*

*Applicant B continues to be subject to the bar until 01/05/2014.*

*Applicant C is **not** subject to a bar.*

*This is because the bar is only imposed when an application is refused due to the provision of fraudulent information, not based on previous refusals due to applications during a bar period (this also prevents the bar period from being reset every time they lodge an application prior to the expiry of the bar period).*

#### 7. What about non-migrating family members that were listed in the refused application. Will any future application they make be affected by the refusal of this visa?

No. As the non-migrating family member did not make a combined application with you, any future visa application they want to lodge, under a program, where the Fraud PIC is an assessable criterion, is permissible.

## **8. Will review rights be afforded where an application has been refused against the Fraud PIC?**

Yes. For applications lodged in Australia, you can apply for review where review rights currently exist.

Applications lodged outside Australia, will not have access to review rights.

**Note:** In some cases, review rights may lie with a sponsor.

Where an application is refused, a decision record will be provided to you with information regarding your review rights.

### **Lodging a further application**

If you are currently:

- in Australia and are the holder of a substantive visa at time of application refusal, you may be eligible to lodge an application for a visa where the Fraud PIC is not an assessable criterion.
- outside Australia at time of application refusal and are not the holder of a substantive visa, you are eligible to lodge an application for a visa where the Fraud PIC is not an assessable criterion.

To establish whether eligibility exists to facilitate lodgement of a further application, refer to form 1026i – Limitations on applications in Australia.

**See:** [www.immi.gov.au/allforms/pdf/1026i.pdf](http://www.immi.gov.au/allforms/pdf/1026i.pdf)

### **Contacting the department**

You can contact us with a general enquiry by email, telephone or in person.

**See:** [www.immi.gov.au/contacts/](http://www.immi.gov.au/contacts/)