

Inquiry into the Migration Amendment (Australia's Engagement in the Pacific and Other Measures) Bill 2023 and the Migration (Visa Pre-application Process) Charge Bill 2023

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1. Introduction

Although the legislation under consideration does not restrict the use of a lottery for migration purposes to the Pacific, it is intended, as the title of the Migration Amendment Bill suggests, to enable the Pacific Engagement Visa or PEV, a new, lottery-based visa to be introduced. Specific regulations will need to be introduced, if and when this legislation is passed, to authorise the PEV. These regulations would themselves have to be approved by Parliament (or not disallowed). In both the United States and New Zealand, where random ballots are conducted, there has not been any expansion of migration lotteries beyond their original purpose. If the lottery were to be extended beyond the Pacific, which seems highly unlikely, the required regulations would have to be approved by Parliament.

Given this, we write our submission on the assumption that the lottery proposed in the new legislation and the accompanying charges are to be applied, and only to be applied, to enable the introduction of Pacific Engagement Visa.

This submission starts with the rationale for the PEV (Section 1). Its main focus is on the use of a lottery to implement the PEV (Section 2). It also briefly considers whether there should be a lottery charge (Section 3).

2. Pacific Engagement Visa rationale

The Pacific Engagement Visa (PEV) is a welcome and important change to Australia's permanent migration system to encourage settlement from the Pacific and Timor-Leste. It is justified for several reasons: the strategic importance of the Pacific; Australia's long-standing ties to the region; the underrepresentation of our near neighbours in our migration program; the need to support the Pacific

through remittances;¹ the undesirability of allowing New Zealand migration policy to determine Australian migration outcomes; climate justice for vulnerable low-lying countries; and, perhaps most importantly, the legacy of the Pacific Island Labourers Act and the White Australia policy more broadly.

The rationale for the PEV has been widely accepted both in Australia and by the region. Clearly Labor support it, as the introduction of the PEV was one of their election commitments.² The Liberals, while opposing the use of a lottery, have said they support the PEV in principle, with Shadow Immigration Minister Dan Tehan stating in Parliament “We support the concept of a Pacific Engagement Visa, but we do not support this being done by a lottery or a ballot.”³ Despite this, a Liberal-chaired parliamentary committee last year recommended in favour of a visa ‘based on the New Zealand model,’ aka via a ballot.⁴

In the region, the PEV has been warmly welcomed, with Foreign Minister Wong noting that “there’s been a positive response” to the PEV in the Pacific.⁵ When asked recently in Canberra about labour mobility, the Samoan Prime Minister called for unlimited migration across the Pacific.⁶ From this perspective, the only thing wrong with the PEV is that it does not go far enough: an uncapped PEV is what the Samoan PM is calling for. Another indicator of how popular the PEV will be is the fact that the equivalent New Zealand scheme (discussed further below) is oversubscribed on average by 40:1.

Given the warm reception of the PEV in the region, it would be extremely counter-productive and diplomatically damaging if Australia were not to go ahead with the visa. In the remainder of the submission, we assume that the PEV will go ahead, and focus on the use of a lottery to implement the PEV, since this has been its one controversial aspect.

3. The advantages of a lottery

This section enumerates the various advantages of a migration lottery, namely: (a) that it allows the use of country quotas and so enables the PEV to be targeted strategically; (b) that a lottery is an minimises risks of and concerns about brain drain; (c) a lottery would be accepted and seen as fair by Pacific countries; (d) linking the PEV to the Pacific Australia Labour Mobility (PALM) Scheme, as some has argued would be damaging to both schemes; and (e) international experience is supportive of a lottery. Overall, we argue that using the lottery is not only effective, but positive from a diplomatic point of view. Not using a lottery but instead some other selection method (such as a skills-based system or via linkage to the PALM scheme) would both be less effective and have serious and negative diplomatic consequences.

(a) A lottery allows the use of country quotas and so enables the PEV to be targeted strategically

¹ Total and per capita remittances have grown over the last two decades in both per capita and total terms. See <https://devpolicy.org/the-pacific-remittances-boom-its-for-real-20201105/>

² <https://devpolicy.org/labor-promises-to-inaugurate-new-era-of-pacific-labour-mobility-20220428/>

³

https://parlinfo.aph.gov.au/parlInfo/download/chamber/hansardr/26426/toc_pdf/House%20of%20Representatives_2023_03_07.pdf;fileType=application%2Fpdf, p.6

⁴

https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/PacificRelationships/Report

⁵ <https://devpolicy.org/pacific-engagement-visa-quotas-need-to-be-set-strategically-20220722/>

⁶ <https://www.lowyinstitute.org/publications/2023-fdc-pacific-lecture-hon-fiame-naomi-mataafa>

One of the advantages of the lottery is that it can (and will) be implemented with country-specific quotas. This means that it can be directed to those countries who need it the most, as against employer-sponsor schemes which benefit those countries which employers prefer to recruit from.

How the PEV will be targeted will be at the discretion of the Minister, though regulations will be disallowable by Parliament. The Government has already indicated that visa allocations between countries will be allocated based on “population size, diaspora in Australia, existing migration opportunities and expected demand.”⁷ These are fair and reasonable categories through which to determine how visas are allocated between countries.⁸

The Pasifika share in Australia’s total population is only 1.3%.⁹ Within this small percentage, access to Australia is concentrated among a few high-mobility countries with low resident populations

Most Pacific Islanders in Australia are from Polynesian communities whose countries have either unrestricted (Cook Islands, Niue, Tokalau) or generous (Tonga, Samoa, Tuvalu) migration access to New Zealand. Polynesians have moved to New Zealand, become New Zealand citizens, and migrated to Australia, taking the advantage of the special arrangements between these countries that have allowed unrestricted, visa-free travel since 1973. For example, only 4% of Samoans who migrate to Australia come directly to Australia from Samoa. Nearly all the remaining 96% have migrated via New Zealand.¹⁰

Fiji is a special case: it both has access to New Zealand and has a more skilled workforce, many of whom are Indo-Fijians, and who have migrated directly to Australia following the first (1987) and subsequent coups.

The much larger Melanesian countries of PNG, Vanuatu and Solomon Islands as well as Timor-Leste have neither special migration arrangements nor a skilled workforce able to migrate to Australia through regular skill-based channels. Indeed, Melanesian states have among the lowest rates of emigration in the world: for example, 0.2% for Papua New Guinea, 0.3% for Solomon Islands, and 0.9% for Vanuatu.¹¹

Figure 1 illustrates some of the resulting imbalances. More of Australia’s population traces its heritage to tiny Niue (population 1,700) than to Solomon Islands (pop 700,000).¹² And more trace their heritage to Cook Islands (pop 15,000) than Papua New Guinea (pop 9 million). Given that PNG has a population 450 times as large as Cook Islands, is much closer to Australia, and is a former Australian colony, this latter result is particularly astonishing.

⁷ <https://www.dfat.gov.au/sites/default/files/pev-palm-faq.pdf>

⁸ <https://devpolicy.org/pacific-engagement-visa-quotas-need-to-be-set-strategically-20220722/>

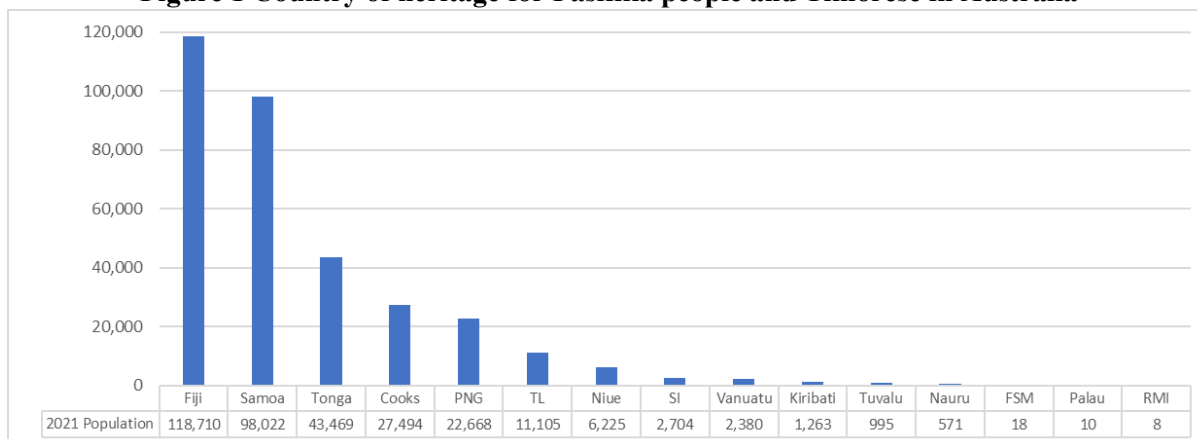
⁹ <https://devpolicy.org/pacific-islanders-in-australia-census-results-20230331/>

¹⁰ <https://devpolicy.org/the-nz-pathway-how-and-why-samoans-migrate-to-australia-part-one-20210201-1/>

¹¹ ANU-World Bank (2016) *Pacific Possible: labour mobility*

¹² <https://devpolicy.org/pacific-islanders-in-australia-census-results-20230331/>

Figure 1 Country of heritage for Pasifika people and Timorese in Australia



Source: Liu and Howes, “[Pacific Islanders in Australia: 2021 census results](#)”, Devpolicy Blog, 31 March 2023.

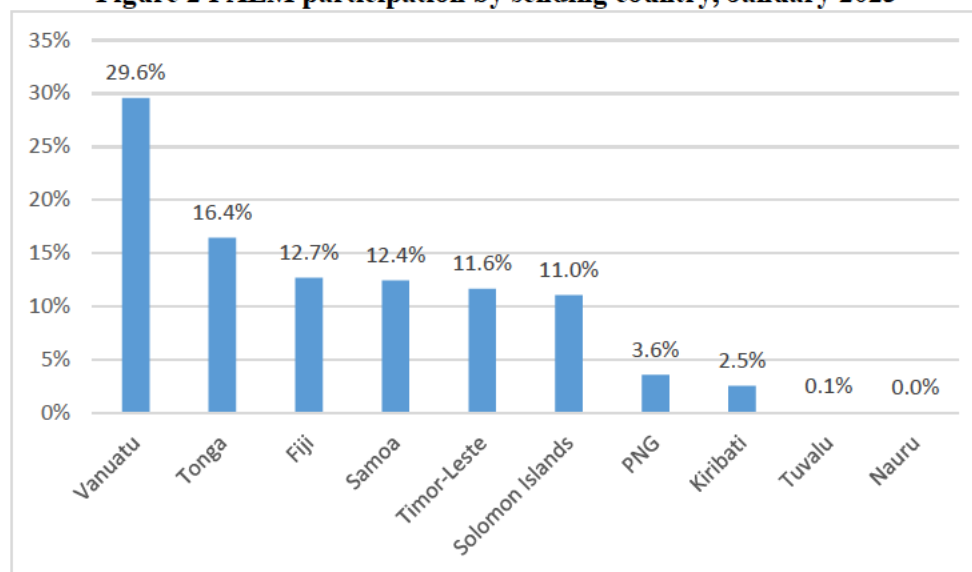
Another group of countries that needs special migration access are the small, low-lying atoll states in the Pacific. These countries have limited pathways to migrate overseas, especially Kiribati, which only has limited special access to New Zealand (75 visas a year, the same number as the much smaller Tuvalu) and none to Australia. By 2050, the UN projects that Kiribati’s population will have risen from 130,000 currently to 180,000. Countries like Kiribati are very vulnerable to climate change and require greater migration opportunities.¹³

The targeting advantages of the PEV are clear from a comparison with Australia’s temporary migration program for the Pacific, the Pacific Australia Labour Mobility (PALM) scheme. Country participation in PALM depends on employer preferences. There are no country quotas and, for a range of reasons, employers have much preferred hiring from some countries than others.¹⁴ The relative importance of the various PALM source countries is shown in Figure 2 which uses data from end of January 2023. While Vanuatu, the biggest PALM source country, is a relatively under-represented country in terms of its Australian diaspora, and so would be a focus of the PEV visa, Tonga, Fiji and Samoa are the second, third and fourth biggest PALM source countries respectively: none of them already have large diaspora in Australia. PNG provides only 3.6% of PALM workers, Solomon Islands 11.0%, Timor-Leste 11.6%, and Kiribati 2.5%. Yet these are the countries, which, along with Vanuatu, will, given the already-announced criteria for country quotas, be the focus of the PEV.

¹³ <https://devpolicy.org/climate-change-migration-kiribati-tuvalu-nauru-20190215/>

¹⁴ This is explored in Curtin and Howes (2020) [Governance of the Seasonal Worker Programme in Australia and sending countries](#)

Figure 2 PALM participation by sending country, January 2023



Source: [DEWR presentation](#)

(b) A lottery minimises risks of and concerns about brain drain

The Pacific Engagement Visa is likely to be very popular. For New Zealand's Pacific Access Category and Samoa Quota in 2019, the ratio of total applicants to visas was 75 in Fiji, 58 in Kiribati, 38 in Samoa, 31 in Tonga and 16 in Tuvalu.¹⁵

Given this massive excess demand, there has to be a way to ration places. An alternative to a lottery would be to allocate places using a skills-based points scheme, giving visas to the most skilled.

However, this would give rise to much greater risks of brain drain. Brain drain results when the stock of skilled workers falls as a result of migration. Brain drain is not an inevitable result of migration. In fact, migration may result in brain gain, as it enhances the incentives of sending-country residents to gain skills. That said, for the small island countries in the Pacific, brain drain is a real concern. For example, the Samoan PM recently said in a speech in Canberra that "Pacific countries with limited human resource capacities cannot sustain development efforts with regular brain drain."¹⁶ A skills-based approach to selection would trigger these fears of brain drain and give rise to the suspicion that Australia was introducing the PEV not to help the Pacific, but to help itself by "cream skimming."

(c) A lottery would be accepted as fair by sending countries

The New Zealand Pacific migration schemes (the Samoa Quota and the Pacific Access Category) are well known in the Pacific, and very popular. They are routinely presented as symbolizing the close link between New Zealand and the Pacific and as being deliberately designed to reduce brain drain risks. For example, according to one recent NZ news article:

The Pacific Access ballot recognises the special relationship between New Zealand and its Pacific neighbours. Rather than draining the region of its most skilled people by setting qualification criteria, this scheme works on chance: anyone between the ages of 18 and 45 can put their name in and hope they are drawn.¹⁷

¹⁵ <https://devpolicy.org/the-pacific-engagement-visa-is-going-to-be-incredibly-popular-20220818/>

¹⁶ <https://www.lowyinstitute.org/publications/2023-fdc-pacific-lecture-hon-fiame-naomi-mataafa>

¹⁷ <https://www.mz.co.nz/national/programmes/insight/audio/2018700392/the-pacific-ballot-ticket-to-a-new-life>

The NZ visas set a good and popular precedent for Australia to follow. If Australia institutes a similar lottery, sending countries will accept that the selection for a small number of places is being done in a fair and transparent way,¹⁸ and that the scheme is being implemented for the benefit of the Pacific rather than for Australia. On the other hand, if it deviates from the New Zealand precedent, Australia will be seen not as committed to the Pacific, and to be acting selfishly in our interests, rather than in the interests of the Pacific.

In other words, diplomatically the lottery would be a winner, whereas a skills-based scheme would be a loser. Given that the PEV is being introduced for strategic reasons, this consideration should be decisive.

(d) Linking PEV and PALM would be disadvantageous to both schemes

Allocating permanent places to current temporary migrants from the Pacific, as advocated for by the Opposition,¹⁹ is a superficially attractive proposal because PALM workers already have jobs, those jobs are in sectors that most Australians don't want to work in, and the workers have been living in Australia for some time. However, closer scrutiny shows that it would be unwise to link the two migration pathways explicitly, for five reasons.

First, making permanent migration the prize for PALM participation would increase the skills mismatch that PALM is already experiencing and that is worrying Pacific governments, with Vanuatu, Samoa and Tonga all having commissioned reviews in response to their concerns that skilled workers are leaving to take up unskilled PALM jobs. In her recent Canberra speech, the Samoa PM said in relation to PALM that Samoa is already experiencing brain drain.²⁰ Not only would linking the PEV and PALM heighten these concerns and be a diplomatic own-goal. But it would indeed be wasteful of skilled labour for Australia to encourage teachers, doctors and tradespersons to pick fruit or work in an abattoir for four years in order to get access to permanent residency in Australia.

Second, as discussed earlier and as is evident from Figure 2, linking PALM to PEV would skew selection in favour of countries that have been successful in PALM, rather than the ones that are underrepresented in Australia. Only 15% of PALM workers are from the two most populous sending countries that would be likely to have the largest PEV quotas: PNG and Timor Leste (Figure 2). In other words, it would not be possible to target PEV visas to where they are most needed if they were only available to PALM workers.

Third, linking PEV and PALM would not solve worker shortage problems. Upon receiving permanent residency, many current workers would quit their current jobs and move to better-paying jobs in the city.

Fourth, linking permanent migration to PALM would strengthen employer control over workers and discourage speaking out during instances of mistreatment for the fear of jeopardising a pathway to permanent residency, as is the case for other employer-sponsored visas.

Fifth, PALM has a strong gender bias in favour of men, who make up 80% of PALM workers. It would be discriminatory to give men a better chance than women of accessing a PEV visa, which would be the outcome if the two visas were linked. While successful primary applicants would be able to bring their family, women and men should have equal chances of being primary applicants.

¹⁸ ANU-World Bank (2016) *Pacific Possible: labour mobility*

¹⁹ <https://devpolicy.org/the-oppositions-opposition-to-the-pacific-engagement-visa-20230308/>

²⁰ <https://www.lowyinstitute.org/publications/2023-fdc-pacific-lecture-hon-fiame-naomi-mataafa>

Of course, PALM workers should be eligible to apply for the PEV visa. But they should not receive special access to it.

(e) International experience with migration ballots is positive.

The experience of both New Zealand and the United States with a migration lottery is positive.

Australia's PEV is most closely modelled on the two New Zealand schemes, the Samoa Quota came into existence in the 1960s, with the current quota of 1,100 visas a year set in 2002. The Pacific Access Category visa introduced in 2002. It provides 650 visas a year (250 to each of Fiji and Tonga; and 75 to each of Kiribati and Tuvalu). The total of 1,750 visas is 58% of the 3,000 PEV visas, even though New Zealand's population is only 20% of Australia's. Successful lottery applicants have a fixed period to find a job, and have to meet other basic (health and language) criteria. Slightly more applicants are chosen from the lottery than the number of visas in recognition that not everyone will be able to find a job.

The United States' Diversity Visa was introduced in 1990. It has a global rather than Pacific orientation, successful applicants do not need to find a job to migrate, and the visa has an element of first-come first-served to its post-lottery operation. Despite these differences, the lottery that is at the heart of the Diversity Visa as well as its aspiration to increase the representation in the US of under-represented nations makes it very similar to the PEV.

The Diversity Visa currently provides 50,000 visas a year to citizens of countries which are under-represented in the US, which is defined as those countries that have sent fewer than 50,000 immigrants to the US in the last five years. (50,000 is 17 times the number of PEV visas, though the US population is only 12 times that of Australia.) Applicants are required to have completed high-school or to meet a work-experience criterion. Almost 23 million apply each year, meaning 400 applicants for every one slot.²¹ "Those eligible for the lottery face few barriers with the initial application, which has no fee, is available in many languages and asks for limited personal information. If selected for a diversity visa, however, applicants must submit to detailed background and security checks, interviews and health screenings and pay \$330."²²

The distribution of visas between countries and regions is complex. "The diversity lottery makes 50,000 visas available annually to natives of countries from which immigrant admissions were lower than a total of 50,000 over the preceding five years. USCIS [U.S. Citizenship and Immigration Services] generates the formula for allocating visas according to the statutory specifications; visas are divided among six global geographic regions according to the relative populations of the regions, with their allocation weighted in favor of countries in regions that were under-represented among immigrant admissions to the United States during the past five years. The INA [Immigration and Nationality Act] limits each country to 7%, or 3,850, of the total and provides that Northern Ireland be treated as a separate foreign state."²³ In practice, many more successful applicants are chosen than visa places, so, after the lottery, a rule of first-come-first-served applies, subject of course to passing the various background checks. In recent years, about 40% of the visas have gone to Africa, 24% to Europe and 31% to Asia, with only 5% for the rest of the world (1% for Oceania, including Australia).²⁴

Both visas have become fixed features of the two country's migration program. The Diversity Visa has been controversial but has survived virtually unchanged despite various attempts to repeal it,

²¹ <https://www.pewresearch.org/fact-tank/2018/08/23/applications-for-u-s-visa-lottery-more-than-doubled-since-2007/>

²² <https://www.pewresearch.org/fact-tank/2018/08/23/applications-for-u-s-visa-lottery-more-than-doubled-since-2007/>

²³ https://www.everysreport.com/reports/R41747.html#_Toc289672226

²⁴ <https://www.everysreport.com/reports/R45102.html>

including under the Trump presidency.²⁵ The Samoa Quota and PAC schemes are regarded as recognising New Zealand's "historical relationship with the Pacific", in the words of that country's government.²⁶ A review of the two schemes was postponed due to COVID; it is expected to look at ways the schemes can be improved (e.g. through settlement support).

Both visas have been studied and evaluated. One study of long-term impacts of the PAC visa finds that "the lifetime benefit from migrating for the migrant and his or her accompanying spouse and children is enormous."²⁷ Another study of the Samoa Quota and Pacific Access Category visas found that 95% of immigrants under the two schemes were satisfied or very satisfied with New Zealand, and a similar share considered themselves well settled.²⁸ Studies on the costs and benefits to (extended) household members staying behind have delivered mixed results, depending on the scheme and the time period.²⁹

A 2021 book by Carly Goodman, *Dreamland: America's Immigration Lottery in an Age of Restriction* on the diversity visa found that it had major soft power benefits for the US, making the country appear "benevolent and open". The author writes in relation to the visa's reception in Africa:

The lottery also appeared to celebrate cultural difference, and it offered visas broadly, not just to the candidates with the most polished qualifications. As a result, the United States appeared uniquely dedicated to diversity, equality, and democracy... The luck factor made the lottery itself – but also the United States – seem more egalitarian than gatekeeping border regimes Africans were likely to encounter otherwise... The possibility of migrating legally to Europe or the United States was clearly highly limited. But stories about the diversity visa, about the individuals who'd gone to the United States through a legal channel reserved specifically for people from the African continent, reinforced the idea that the United States was more open than other destinations. ...

The visa lottery was meant to send a signal to the world that the United States would remain open to the immigration of independent strivers. It did, and the United States benefited – not only by attracting new Americans who would bring their talents and hard work, but also by enhancing its global reputation.³⁰

There is no doubt that the PEV can significantly enhance Australia's Pacific reputation, but *only* if it is implemented through a lottery.

4. Lottery charges

The Migration (Visa Pre-application Process) Charge Bill 2023 allows for a charge to be imposed on persons who register for a ballot. The charge is of up to \$100, and it will be indexed. The government has announced that the charge will be initially set at \$25.³¹ The stated reason for having a pre-application charge (i.e., a charge to enter the ballot) is to cover costs and deter non-genuine

²⁵ The quota was reduced in 2000 from 55,000 to 50,000, with the remaining 5,000 visas allocated instead to refugees. See <https://travel.state.gov/content/travel/en/us-visas/immigrate/diversity-visa-program-entry/dv-2018-selected-entrants.html>

²⁶ <https://www.mbie.govt.nz/dmsdocument/11521-evaluation-of-the-samoan-quota-and-pacific-access-category-settlement-information-pilot-final-report>

²⁷ Gibson et al (2015) "[The long-term impacts of international migration: evidence from a lottery](#)", IZA DP No, 9492.

²⁸ <https://www.motu.nz/assets/Documents/our-work/population-and-labour/individual-and-group-outcomes/Settlement-Experience-of-Pacific-Migrants-Executive-Summary.pdf> See also the 2016 ANU-World Bank *Pacific Possible: labour mobility* report for more on the two New Zealand lottery schemes. On the US Diversity Visa, see <https://theconversation.com/us-shouldnt-give-up-benefits-of-green-card-lottery-over-low-risk-of-terrorism-86745>.

²⁹ See these studies: <https://docs.iza.org/dp9492.pdf>, <https://www-jstor-org.virtual.anu.edu.au/stable/41349113>, and <https://www.sciencedirect.com/science/article/pii/S0305750X16303515>

³⁰ Quotes from Chapter 15 "Soft Power"; book published by the University of North Carolina Press.

³¹ <https://www.dfat.gov.au/sites/default/files/pev-palm-faq.pdf>

applicants. Introducing charges will reduce ballot participation as it will act as a deterrent, and many will lack the required online access. In addition, adding a payment for ballot entry creates opportunities for scams.

There is no cost for registering for the Diversity Visa lottery, and only those who are successful in the lottery are then required to pay visa fees.³²

In New Zealand, the Pacific Access Category appears to be completely free. Samoans pay a visa fee of T1400 (\$770) but only if they first win the lottery.³³ For the Pacific Access Category, the initial registration charge is 85 NZD with subsequent registrations being cheaper (\$NZ35).

Based on international experience, and on wider policy grounds, one can argue in favour of or against having a lottery charge. The legislation doesn't mandate a charge; it only authorises it, which appears reasonable. It should be ensured that the legislation is written in a way that allows for a lower charge for repeat applications. The reference to different amounts for difference classes suggests that it does, but this should be confirmed.

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³² <https://travel.state.gov/content/dam/visas/Diversity-Visa/DV-Instructions-Translations/DV-2024-Instructions-Translations/DV-2024-Instructions.pdf>

³³ <https://www.immigration.govt.nz/new-zealand-visas/preparing-a-visa-application/the-application-process/office-and-fees-finder>