



**Australian Government**  
**Department of Home Affairs**



# **Department of Home Affairs submission to the 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**

Legal and Constitutional Affairs Legislation Committee

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# 1. Migration framework

## 1.1. Aims of Australia's Migration Program

1. Immigration is central to Australia's national story and identity. Australia's immigration programs include skilled, family and humanitarian programs and balance a range of economic, social and demographic objectives. A well targeted and equitable migration system not only supports our economic prosperity, but also supports family reunification, builds stronger families and communities, provides protection to refugees, responds to global humanitarian need, and supports community safety and national security.
2. Since the late 1990s, skilled migration has accounted for around 70 per cent of the annual permanent migration planning levels. Family migration, accounting for around 25 percent of the annual migration planning levels. Australia has a generous Humanitarian Program that operates flexibly to respond to evolving humanitarian situations and global resettlement needs. Temporary skilled migration has also played an important role in meeting the skills needs of the economy, where the shortage cannot be filled by Australian workers.<sup>1</sup>
3. Australia also has visa arrangements that reflect the important relationship that we have with certain countries, strengthening people-to-people links. The trans-Tasman agreement between Australia and New Zealand, for example, provides for the free movement of people between the two countries and reflects our close economic, political and cultural ties. New Zealanders of all backgrounds are free to travel, live and work in Australia.
4. The establishment of the Pacific Engagement Visa similarly recognises the special relationship we have with our Pacific neighbours and Timor-Leste. It reflects our commitment to boost Pacific permanent migration, grow the Pacific and Timor-Leste diaspora in Australia and address the under-representation of some of our closest neighbours in Australia's permanent migration program.

## 1.2. Pacific Migration to Australia

5. Pacific migration has made a significant contribution to our country, including through supporting Australian industry. The Pacific Australia Labour Mobility (PALM) scheme, for example, is one of Australia's key temporary migration programs that addresses workforce shortages in rural and regional Australia. As at February 2023, there were 36,374 PALM workers in Australia. The PALM scheme has grown by 35 per cent on average each year since 2012 and continues its strong overall growth, including in agriculture and food processing industries.<sup>2</sup>
6. Notwithstanding the significant economic contribution made by our Pacific family, as well as our geographical proximity, there is still limited permanent migration from this region. Despite a combined population of over 12 million people in Pacific island countries and Timor-Leste, in 2021-22 less than a thousand permanent migrants from these countries permanently settled in Australia. Although Pacific Islander and Timor-Leste nationals have access to Australia's permanent and temporary visa programs, migration from this region accounts for only 0.7 per cent of the current permanent migration outcomes in this period.<sup>3</sup>

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<sup>1</sup> APH statistics, [Migration to Australia: a quick guide to the statistics – Parliament of Australia \(aph.gov.au\)](https://aph.gov.au)

<sup>2</sup> Department of Employment and Workplace Relations, PALM scheme figures, 28 February 2023

<sup>3</sup> Department of Home Affairs, *Permanent Migration Program* outcomes, 30 June 2022

7. The Australian Bureau of Statistics 2021 Census recorded that there were only around 152,000 Pacific island and Timor-Leste born individuals over the age of 15 years living in Australia. While the total number of Pacific and Timor-Leste individuals living in Australia is relatively low, these communities show strong signs of full participation in Australian life with around 92 percent reported as having a strong command of the English language – laying a solid foundation for growth of these communities through the Pacific Engagement Visa.<sup>4</sup>
8. A dedicated and equitable permanent migration pathway enabled by a pre-application ballot process for the region through the Pacific Engagement Visa assists will remedying this imbalance of migration to Australia from our Pacific neighbours.
9. The primary and immediate purpose of the Bills is to support the Government's policy objectives in relation to engagement with Pacific nations and Timor-Leste. An increase in permanent migration through the new Pacific Engagement Visa program will boost Australia's people to people links across the Pacific family, enrich Australian communities, provide greater opportunities for skills exchange and contribute to Pacific economies through stable, long-term remittances and investments and demonstrate the value we place on our relationship and cultural ties with the region. It will also support wider mobility within the region to Australia, using a ballot process that promotes fairness by providing equal opportunity for all ballot participants and minimises the risk of 'brain drain' from the region.

### 1.3. Pre-application ballot process

10. The use of a ballot is an accepted part of immigration systems around the world, including in New Zealand (Pacific Access Category (PAC) Residence Visa), Canada (2021 Parents and Grandparents Program) and United States (Diversity Immigrant Visa Program). In these programs, a ballot has been used to provide prospective applicants with equal opportunity to access highly subscribed permanent visa programs, where the primary purpose of the program is not economic migration. In the Canadian Parents and Grandparents Program, a ballot is used as an objective and independent means of selecting prospective applicants as eligibility for the program is not dependent on an individual's level of education, skills or other criteria once a family relationship is determined.
11. The Pacific Engagement Visa is modelled broadly on the successful New Zealand's (PAC) Residence Visa that facilitates access to the visa obtained through a ballot (or lottery) to create a streamlined pathway for Pacific migrants to settle in Australia. The amendments in these Bills to introduce a ballot process will ensure that the Pacific Engagement Visa program will not discriminate amongst eligible nationals of Pacific Island countries and Timor-Leste and provide an equitable, streamlined, and transparent means of selecting visa applicants.
12. The United States Diversity Immigrant Visa Program makes up to 50,000 immigrant visas available annually, drawn from random selection among all entries to individuals who are from countries with low rates of immigration to the United States.
13. Similar to the United States, Canadian and New Zealand ballot driven migration programs, the Pacific Engagement Visa is focussed on supporting and building communities, rather than on the single premise of economic contribution. As Australia does not currently have the legislative framework to support a visa pre-application process based on a ballot, the Migration Amendment (Australia's Engagement in the Pacific and Other Measures) Bill 2023 (the Bill) amends the *Migration Act 1958* (the Migration Act) to allow the Minister to implement a visa pre-application process, involving random selection of eligible persons who will then be permitted to apply for a relevant visa.

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<sup>4</sup> Australian Bureau of Statistics 2021 Census

## **1.4. Promotion of equal opportunity and access**

14. The Pacific Engagement Visa pre-application ballot process will provide eligible individuals from the Pacific Island countries equal access to the visa by randomly selecting ballot participants who can apply with their immediate family (partner/spouse and dependent children) for the visa. The amendments in these Bills will ensure that the Pacific Engagement Visa program will not discriminate amongst eligible nationals of Pacific Island countries and Timor-Leste, including differentiation based on skill level, gender or by countries that have better government facilitated sending arrangements for Pacific labour mobility programs.
15. A ballot process will also provide equal access for both Pacific workers in Australia and Pacific Island and Timor-Leste nationals in their home countries who may otherwise have limited opportunity to migrate to Australia. This ensures equal access to the visa for all participating countries, including those underrepresented in temporary visa programs, such as the PALM scheme, and reflects our values of equal opportunity and access for all individuals within Australia's immigration programs.

## **1.5. Management of program oversubscription**

16. The Australian migration framework has limited ways to manage oversubscribed visa programs. The pre-application ballot process has potential for use in Australian visa programs where the number of eligible applicants greatly exceeds the number of places available under the visa program. Under the existing framework, these programs are subject to lengthy wait times and managed through queues due to the limited number of places in the migration program. For capped visa programs without queuing arrangements, any visa applications in excess of the cap would generally need to be refused.
17. While a charge may be required to enter the ballot, it is only a marginal amount compared to the current process where visa applicants are required to pay a non-refundable Visa Application Charge to apply for an over-subscribed visa program with only limited places available. The Charge Bill establishes a ceiling for the maximum amount of charge (\$100) that may be prescribed under the regulations for a particular ballot. After this time, a new registration will need to be submitted for participants to enter the draw. It is intended that registration in the Pacific Engagement Visa ballot will be set at \$25, and registrations will be valid for a year.
18. Whether the ballot process is used in relation to any visa will be a matter for the Government of the day and subject to Parliamentary scrutiny and disallowance.

# **2. Pre-application ballot considerations**

## **2.1. Planned permanent migration outcomes**

19. Economic priorities have shaped Australian migration policies since the 1980s. On the introduction of the Bills, concerns were raised that economic and regional migration under Australia's annual migration program will be impacted or undermined by the introduction of a ballot to support the delivery of the Pacific Engagement visa.
20. To encourage permanent migration from the Pacific, without jeopardising Australia's existing permanent visa pathways, the annual allocation of 3,000 places for the Pacific Engagement visa program is in addition to Australia's overall annual permanent migration program intake, with a focus on building Australia's Pacific diaspora and strengthening country to country ties.



21. There will be country-specific quotas within the overall allocation of 3,000 places a year, determined on several factors, including population size, diaspora in Australia, existing permanent migration pathways and expected demand. These considerations will also be subject to extensive consultation with the relevant Pacific countries and Timor-Leste.
22. Pacific Engagement Visa holders will be permanent residents. Like other permanent residents in Australia, these visa holders can live, work, and study anywhere in Australia, as well as have access to government support services and benefits. This includes immediate access to the Higher Education Loan Program, VET Student Loans, Austudy and Youth Allowance (students and apprentices), as well as access to Family Tax Benefit. To encourage participants to engage in the workforce and connect with the Australian community, the four-year Newly Arrived Resident's Waiting Period will apply before Pacific Engagement Visa holders can access the JobSeeker payment.
23. Both permanent Pacific Engagement Visa holders selected at random through a ballot and other permanent residents, including those chosen by a points-tested or employer sponsored skilled process, come to Australia to work for a better life for themselves and their family. As mentioned above, Pacific Island and Timor-Leste communities in Australia are relatively small and are well placed to succeed and grow in Australia; this success will be supported by access to settlement programs and government services to ease the financial burden of raising a family, education and training. Stronger Pacific and Timor-Leste migration in Australia will drive opportunities for economic mobility in the region.

## **2.2. Integrity of a pre- application ballot**

24. The pre-visa application ballot is an electronic random selection process, with selected entrants, and their immediate family members, able to apply for a Pacific Engagement Visa. To participate in the ballot, individuals will need to meet some objective eligibility requirements, including being of a certain age, a citizen of a participating country, complete an online registration form and pay a registration fee. To be eligible for the Pacific Engagement Visa, following selection in the ballot applicants must be aged between 18 and 45 years, have a formal job offer in Australia, and meet other visa requirements, including a level of English language proficiency, character and health checks.
25. The Department is mindful of concerns regarding the use of the automated computer system in the ballot registration and selection process and the integrity of such a system. The proposed automation is limited to acceptance of a person's registration in a ballot and the random selection of registered entrants. There is minimal risk of legal error in this process, for example incorrectly blocking an attempted registration, as the eligibility requirements are minimal and objective, for example age and passport held. It is not proposed that officers of the Department will assess any of these matters in the ballot process. There would be no incentive for persons to manipulate the ballot by including false information, as the ultimate result will either be an invalid visa application or a valid visa application that must be refused, as the ballot eligibility requirements in addition to other criteria such as identity, health and character, will be legislated in the specified visa requirements.
26. The process of random selection will involve a simple algorithm. The use of an automated process to conduct the random selection and send out notification is itself an assurance of transparency and integrity, in that it eliminates any manual intervention in the process and removes any perception of bias in the selection process.
27. The operation of the computer system will be subject to standard quality assurance processes within the Department of Home Affairs and the Department's operations are subject to review by the Australian National Audit Office.

## **2.3. Administrative impact**

28. The proposed Bills prescribes the conduct of a ballot through a computer process, with the Department currently developing a system to administer and automate the ballot. The automated process will also include basic checks on the registrant's passport to limit the number of registrations in the ballot to eligible participating countries and to ensure one entry per person. There will be limited intervention and action required from departmental personnel in the process. The only manual process within the ballot includes the administrative process of commencing and closing a ballot in a registration platform.
29. The Department additionally intends to limit ballot entries to individuals who can meet objective requirements for the relevant program. For the Pacific Engagement Visa ballot the number of entries will be limited by eligible citizens holding a valid passport, age (18-45) and payment of the registration fee.
30. All registrations entered in the Pacific Engagement Visa ballot will automatically expire on selection in the ballot or at the end of the program year, removing any administrative burden in managing the ballots. Persons who are unsuccessful in a ballot may register for future ballots for which they are eligible, continuing to provide access to those who still meet the eligibility criteria and genuinely seek opportunities to live, work and study in Australia.