

DEPARTMENT OF INDUSTRY, SCIENCE, ENERGY AND RESOURCES

MS22-000773

To: Minister for Industry and Science (for information)

CRITICAL TECHNOLOGY VISA SCREENING: IMPACT ON AUSTRALIAN INDUSTRY

Recommendation:			
1. That you note that the Minister for Home Affairs may seek your views on new critical technology visa screening regulations and steps to manage the potential impacts on Australian industry.			
			Noted / Please Discuss
Minister:		Date:	
Comments:			
Clearing Officer: Sent: 30/6/2022	s22(1)(a)(ii)	General Manager, Emerging Technology and Adoption, Technology and National Security Division	Mob: s22(1)(a)(ii)
Contact Officer:	s22(1)(a)(ii)	Manager, Critical Technology Policy	Mob: s22(1)(a)(ii)

Key Points:

1. The *Migration Amendment (Protecting Australia's Critical Technology) Regulations 2022* were passed by Federal Executive Council (ExCo) in March 2022.
 - a. The instrument creates a new criteria that enables the Department of Home Affairs to refuse or cancel qualifying visas if there is an unreasonable risk of unwanted transfer of critical technology
 - b. The regulations apply to student visas from 1 July 2022 and a range of skilled and temporary activity visas on 3 October 2022. The list of impacted visas is at [Attachment A](#) and a public factsheet at [Attachment B](#)
2. The Department of Home Affairs undertook limited consultation with the university sector in May 2022, with feedback largely being negative.
 - a. Universities were concerned about the broad scope of the regulation (the number of students and list of critical technologies that the regulation would apply to), the potential administrative burden on universities and students, and the potential to damage Australia's reputation as a destination of choice for students.
3. We understand that the Hon Clare O'Neil MP, Minister for Home Affairs, has now agreed to delay the commencement of the regulations to allow the Department of Home Affairs to undertake further consultation with industry and government.

4. We also understand that Minister O'Neill has already discussed the impact on universities with The Hon Jason Clare MP, Minister for Education. If the Minister raises this issue, you may wish to note the importance of:
 - a. Positioning Australia to attract world talent and retain our national competitive edge in critical technology, while ensuring risks to national security are well managed
 - b. Consulting closely with industry to ensure: the list of critical technologies is targeted; the administrative burden on industry is proportionate
 - c. Ensuring that visa processing times for skilled workers remain as fast as practicable.
5. You can advise Minister O'Neill that we are working closely with her department to support a constructive discussion with industry.
 - a. We supported Home Affairs officials to provide an initial briefing on visa screening to large Australian and multinational technology companies on Tuesday 28 June 2022
 - b. Home Affairs officials committed to consulting industry on the list of critical technologies and how the regulation would practically be implemented for visa applicants and companies.
6. We'll update you if any additional impacts on industry are identified and warrant your engagement.

Consultation: YES

7. Critical Technology Policy Coordination Office (CTPCO), Department of the Prime Minister and Cabinet; Department of Home Affairs.

Attachments

- A:** List of impacted visas
B: Critical technology visa screening fact sheet

List of visa subclasses that the critical technology visa screening will apply to [*from October 2022*]:

- Student visa (subclass 500) [*from 1 July 2022*]
- Training visa (subclass 407)
- Temporary Activity visa (subclass 408)
- Temporary Work (Short Stay Specialist) visa (subclass 400)
- Temporary Skill Shortage visa (subclass 482)
- Permanent Residence (Skilled Regional) visa (subclass 191)
- Skilled Employer Sponsored Regional (Provisional) visa (subclass 494)
- Recognised Skill Graduate visa (subclass 476) (for engineering students)
- Global Talent Independent Program Applicants:
 - Employer Nomination Scheme (permanent) (subclass 186) visa
 - Regional Sponsored Migration Scheme (permanent) (subclass 187) visa
 - Skilled Independent (permanent) (subclass 189) visa
 - Distinguished Talent (permanent) (subclass 858) visa

Critical technology visa screening fact sheet



Australian Government
Department of Home Affairs

Critical technology visa screening

The *Migration Amendment (Protecting Australia's Critical Technology) Regulations 2022* was made by the Governor-General on 31 March 2022 and will commence, in part, on 1 July 2022. The new regulations:

- create a Public Interest Criterion (PIC) by which the Minister can refuse to grant certain visas if there is an unreasonable risk of unwanted transfer of critical technology by the visa applicant;
- create new conditions for Subclass 500 (Student) visa holders studying, or intending to undertake studies, that they must not change their course of study, unless approved by the Minister; and
- provide for the cancellation of a visa where the Minister is satisfied that there is an unreasonable risk of unwanted transfer of critical technology by the visa holder.

These measures correlate generally with the PIC, student visa condition, and cancellation grounds that aim to prevent the proliferation of Weapons of Mass Destruction (WMD).

Why is this measure needed?

Australia's university and research sectors are key to our future economic success and our national security through their development of critical technologies. Where Australia has strong native research and development capability, critical technology can provide a strategic advantage over competitors. Accordingly, the Government is taking actions to mitigate unacceptable risks with appropriate frameworks and policy levers that are flexible and resilient enough to respond to the changing nature of the threats to critical technology. These changes will help ensure that Australia remains a destination and partner of choice for legitimate international research and collaboration activities, while safeguarding of our research, science, ideas, information and capabilities.

When will these changes take effect?

As set out in Schedule 1 of the regulations, from 1 July 2022 the new PIC applies to postgraduate research student visas only.

- From 1 July 2022, new visa conditions require Subclass 500 (student) visa holders undertaking higher education study not to change their course of study unless the Minister gives approval.
- The application of the PIC to other visa applicants, and the operation of the new cancellation ground, will commence at a later date.

The application of the PIC to other visa holders, and the operation of the new cancellation ground, will commence not later than October 2022.

Who will be affected?

People wishing to come to Australia to pursue higher degree research (post-graduate study) in Australia's critical technology-related fields may be screened for possible linkages with unwanted transfer of critical technology knowledge. The new condition will not be applied to current student visa holders.

'Critical technology' will be defined by legislative instrument made by the Minister, informed by the Government's *List of Critical Technologies in the National Interest*. Over the coming months, ahead of 1 July, the Department of Home Affairs will engage with Government and industry stakeholders on the 'critical technology' definition, and provide further guidance around the operationalisation of these changes.

The Government regularly reviews visa screening settings, and this process will be subject to periodic reviews.