

# The Genuine Student Requirement in Australian Migration Law: A Legal Analysis

By Darshan Rajendren

## I. Introduction

The Genuine Student Requirement (GSR), introduced on 23 March 2024, marks a pivotal shift in Australia's student visa framework. Replacing the former Genuine Temporary Entrant (GTE) criterion, the GSR reflects a recalibrated policy objective: to balance the integrity of the student visa program with Australia's long-term skills and migration strategy. This article critically examines the legal foundations, policy rationale, and practical implications of the GSR, with reference to Ministerial Direction No 106 and relevant administrative law principles.

## II. Legislative and Policy Framework

The GSR is embedded within the *Migration Regulations 1994 (Cth)*, specifically under the criteria for the Student visa (subclass 500). The legislative instrument governing its application is Ministerial Direction No 106, which outlines the evidentiary and procedural expectations for assessing whether an applicant is a "genuine student." The GSR applies to all student visa applications lodged on or after 23 March 2024. Applications lodged prior to this date continue to be assessed under the GTE framework.<sup>1</sup>

The GSR is not codified in a standalone statutory provision but is implemented through policy guidance and administrative discretion exercised by visa decision-makers under the Migration Act 1958 (Cth). The shift from GTE to GSR reflects a broader migration strategy aimed at aligning international education with Australia's labour market and permanent migration pathways.<sup>2</sup>

---

<sup>1</sup> Department of Home Affairs, *Genuine Student Requirement* (23 March 2024) <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/student-500/genuine-student-requirement>.

<sup>2</sup> Study Australia, *The New Genuine Student Requirement* (21 March 2024) <https://www.studyaustralia.gov.au/en/tools-and-resources/news/new-genuine-student-requirement>.

### III. Key Elements of the Genuine Student Requirement

Under the GSR, applicants must demonstrate that they:

- Intend to stay in Australia primarily for the purpose of study;
- Have the capacity to complete the course;
- Understand the obligations of a student visa holder;
- Are not using the student visa as a means to circumvent migration controls.<sup>3</sup>

The Department of Home Affairs assesses these factors through a structured set of questions embedded in the online visa application form. These questions require applicants to provide:

- Details of their current circumstances, including family, community, employment, and economic ties;
- Reasons for choosing the course and education provider;
- Explanation of how the course aligns with their future career goals;
- Information about previous study in Australia (if applicable);
- Any other relevant information, including reasons for applying from a non-student visa.<sup>4</sup>

### IV. Evidentiary Burden and Supporting Documentation

The GSR imposes a positive evidentiary burden on applicants. Generic or unsupported statements are given little weight. Instead, applicants are expected to provide:

- Academic transcripts and certificates;
- Employment records and references;
- Evidence of financial capacity;
- Statements of purpose tailored to the course and provider;

---

<sup>3</sup> Migration Agents Perth, *How to Write a Genuine Student (GS) Statement* (5 May 2024) <https://migrationagentsperth.com.au/how-to-write-a-genuine-student-gs-statement/>.

<sup>4</sup> Migration Daily, *Understanding the Genuine Student Requirement for Australian Student Visas* (2024) <https://migrationdaily.com/understanding-the-genuine-student-requirement-for-australian-student-visas/>.

- Documentation of ties to home country (e.g., family, property, employment).<sup>5</sup>

Failure to substantiate claims with credible evidence may result in visa refusal under *s 65 of the Migration Act 1958 (Cth)*, which requires the decision-maker to be satisfied that the applicant meets all visa criteria.

## V. Comparison with the Genuine Temporary Entrant (GTE) Criterion

The GSR replaces the GTE requirement, which had been criticised for its ambiguity and inconsistent application. The GTE focused on whether the applicant intended to remain in Australia temporarily, often disadvantaging applicants who expressed interest in future permanent migration.

In contrast, the GSR acknowledges that students may develop skills that are in demand in Australia and may later apply for permanent residence. This shift aligns with the 2023 Migration Strategy, which emphasises a skills-based migration system and a more transparent pathway from student to skilled migrant.<sup>6</sup>

## VI. Administrative Law Considerations

Visa decisions under the GSR remain subject to judicial review and merits review by the Administrative Appeals Tribunal (AAT). Key administrative law principles relevant to GSR assessments include:

- **Natural justice:** Applicants must be given an opportunity to respond to adverse information;
- **Legal unreasonableness:** Decisions must not be arbitrary or capricious;
- **Relevant and irrelevant considerations:** Decision-makers must consider all relevant evidence and disregard irrelevant factors;

---

<sup>5</sup> University of Adelaide, *Genuine Student (GS) Requirement* (2024) [https://future.ask.adelaide.edu.au/app/answers/detail/a\\_id/2769/~/genuine-student-%28gs%29-requirement](https://future.ask.adelaide.edu.au/app/answers/detail/a_id/2769/~/genuine-student-%28gs%29-requirement).

<sup>6</sup> Australian Government, *Migration Strategy* (11 December 2023).

- **Procedural fairness:** Applicants must be informed of the criteria and given a fair chance to satisfy them.<sup>7</sup>

Given the discretionary nature of GSR assessments, migration lawyers must ensure that submissions are comprehensive, well-evidenced, and tailored to the applicant's circumstances.

## **VII. Implications for Migration Practitioners**

The introduction of the GSR requires a recalibration of legal practice in the student visa space. Practitioners must:

- Conduct detailed client interviews to elicit relevant personal and academic information;
- Assist in drafting compelling and truthful GSR statements;
- Collate and present supporting documents in a coherent and persuasive manner;
- Advise clients on the risks of non-compliance and the importance of maintaining visa conditions;
- Prepare for potential AAT review in the event of refusal.

Moreover, practitioners should monitor evolving policy guidance and case law interpreting the GSR, particularly as the Department of Home Affairs refines its approach to implementation.

## **VIII. Policy Critique and Recommendations**

While the GSR introduces greater clarity and aligns with Australia's skills agenda, it also raises concerns:

- The 150-word limit per question may constrain nuanced explanations;
- Applicants from developing countries may struggle to provide documentary evidence;

---

<sup>7</sup> Ministerial Direction No 106 (Cth), issued under s 499 of the *Migration Act 1958* (Cth).

- There is potential for inconsistent decision-making due to the subjective nature of “genuineness.”

To address these issues, the Department should consider:

- Publishing anonymised case summaries to guide applicants and agents;
- Providing training to decision-makers to ensure consistency;
- Allowing longer responses or supplementary statements where necessary;
- Enhancing transparency in refusal decisions to facilitate meaningful review.

## **IX. Conclusion**

The Genuine Student Requirement represents a significant evolution in Australia’s approach to international education and migration. While it offers a more realistic and skills-focused framework, its success will depend on consistent application, procedural fairness, and the ability of applicants and their representatives to present compelling, evidence-based cases. For migration lawyers, the GSR demands a strategic, client-centred approach grounded in legal rigour and policy insight.

## Bibliography

1. Department of Home Affairs, *Genuine Student Requirement* (23 March 2024) <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/student-500/genuine-student-requirement>.
2. Study Australia, *The New Genuine Student Requirement* (21 March 2024) <https://www.studyaustralia.gov.au/en/tools-and-resources/news/new-genuine-student-requirement>.
3. Migration Agents Perth, *How to Write a Genuine Student (GS) Statement* (5 May 2024) <https://migrationagentsperth.com.au/how-to-write-a-genuine-student-gs-statement/>.
4. Migration Daily, *Understanding the Genuine Student Requirement for Australian Student Visas* (2024) <https://migrationdaily.com/understanding-the-genuine-student-requirement-for-australian-student-visas/>.
5. University of Adelaide, *Genuine Student (GS) Requirement* (2024) [https://future.ask.adelaide.edu.au/app/answers/detail/a\\_id/2769/~/genuine-student-%28gs%29-requirement](https://future.ask.adelaide.edu.au/app/answers/detail/a_id/2769/~/genuine-student-%28gs%29-requirement).
6. Australian Government, *Migration Strategy* (11 December 2023).
7. Ministerial Direction No 106 (Cth), issued under s 499 of the *Migration Act 1958* (Cth).