

EXPLANATORY STATEMENT

Issued by the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

Migration Act 1958

Migration Amendment (Temporary Graduate Visas) Regulations 2020

The *Migration Act 1958* (the Migration Act) is an Act relating to the entry into, and presence in, Australia of aliens, and the departure or deportation from Australia of aliens and certain other persons.

Subsection 504(1) of the Migration Act provides that the Governor-General may make regulations, not inconsistent with the Migration Act, prescribing matters required or permitted to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Migration Act.

In addition, regulations may be made pursuant to the provisions listed in Attachment A.

The *Migration Amendment (Temporary Graduate Visas) Regulations 2020* (the Regulations) amend the *Migration Regulations 1994* (the Migration Regulations).

The purpose of the Regulations is to encourage international students to study in regional Australia on a student visa and to continue living in regional Australia on a temporary graduate visa.

In particular, the amendments to the Regulations:

- provide the Minister with a power to specify, in a legislative instrument, geographical areas in two categories – *designated city or major regional centre* and *regional centre or other regional area* – to facilitate incentives to live, study and work in regional Australia. The legislative instrument specifies the postcodes in each category. The term used to refer to all of the areas in both categories is *designated regional area*;
- provide access to a second Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream, valid for two years, for applicants who studied for their Australian qualification in a *regional centre or other regional area*, and who, while holding the first Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream, lived (and worked or studied, if relevant) only in a *regional centre or other regional area* for at least two years immediately before applying for the second visa. It is a condition of the second visa that the holder lives (and works or studies, if relevant) only in a *regional centre or other regional area*. This condition also applies to family members of the primary holder who are granted a Subclass 485 visa;
- provide that other eligible applicants in a *designated regional area* can be granted a second Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream, valid for one year. The practical effect is that applicants are eligible if they study anywhere other than Sydney, Melbourne and Brisbane for the Australian

qualification that leads to the grant of the first Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream and, while holding the first visa, they live (and work or study, if relevant) only in areas that are outside those cities for at least two years immediately before applying for the second visa. It is a condition of the second visa that the holder lives (and works or studies, if relevant) only in a *designated regional area*, which in practice means areas outside Sydney, Melbourne and Brisbane. This condition also applies to family members of the primary holder who are granted a Subclass 485 visa; and

- make technical amendments to clarify the operation of a concession inserted by the *Migration Amendment (COVID-19 Concessions) Regulations 2020* to allow applications for Subclass 485 (Temporary Graduate) visas to be made from outside Australia during the concession period associated with the COVID-19 pandemic.

The matters dealt with in the Regulations are appropriate for implementation in regulations rather than by Parliamentary enactment. It has been the consistent practice of the Government of the day to provide for detailed visa criteria and conditions in the Migration Regulations rather than in the Migration Act itself. The Migration Act expressly provides for these matters to be prescribed in regulations, as can be seen in the authorising provisions listed at [Attachment A](#). These include, for example, subsection 31(3), which provides that the regulations may prescribe criteria for a visa or visas of a specified class.

The current Migration Regulations have been in place since 1994, when they replaced regulations made in 1989 and 1993. Providing for these details to be in delegated legislation rather than primary legislation gives the Government the ability to respond quickly to emerging situations such as the COVID-19 pandemic.

A Statement of Compatibility with Human Rights (the Statement) has been completed in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The overall assessment is that the Regulations are compatible with human rights. A copy of the Statement is at [Attachment B](#).

The Office of Best Practice Regulation (the OBPR) has been consulted in relation to the amendments. No Regulation Impact Statement is required. The OBPR consultation reference number is 25049.

The Department of Home Affairs (the Department) consulted with the Department of Education, Skills and Employment in relation to the regional concessions made by Schedule 1 to the Regulations. These amendments give effect to the Government's population policy and to announcements made by the Prime Minister on 20 March 2019. The announced measures are intended to ease the pressure on Australia's big capital cities, while supporting the growth of smaller cities and regions.

In May 2019, the new measures were socialised by the Department at the Education Visa Consultative Committee (EVCC). The committee is managed by the Department and comprises other Government agencies and education peak bodies, including the Council of International Students Australia (CISA), the peak representative body for international students. The initiative was discussed at subsequent EVCC meetings on November 2019, March 2020, August 2020, November 2020 and March 2021.

A further announcement was made in October 2019 reiterating the Government's commitment to supporting regional Australia. The announcement provided an assurance to share in the job, business and cultural opportunities that come with international students. The announcement mentioned that international students who study in regional Australia rate their living and learning experience higher than students based in metropolitan centres.

There was no direct consultation with student visa holders, migration agents, lawyers, or education providers in relation to the changes. No such consultations were considered appropriate or reasonably practicable given the positive nature of the legislative change and its phased implementation:

- The initiative means that some Subclass 485 visa holders who have graduated from a regional educational institution and have lived in regional Australia on their first Subclass 485 visa are eligible for a second Subclass 485 visa of either one or two years. This does not adversely affect visa holders as it is an extension of already existing Subclass 485 visa arrangements.
- The initiative was also regularly discussed at EVCC in the period between the announcement on 20 March 2019 and its implementation (20 January 2021). Education peak bodies were therefore given adequate opportunities to raise concerns and to circulate information to their members and stakeholders, including education providers and international students.

No consultation was considered appropriate or reasonably practicable in relation to the technical amendments in Schedule 2 to the Regulations.

The consultation process described above accords with subsection 17(1) of the *Legislation Act 2003* (the Legislation Act).

The amendments in Schedule 1 to the Regulations commence on 20 January 2021. The amendments in Schedule 2 commence on the day after the Regulations are registered on the Federal Register of Legislation.

The Department follows standard practices to notify clients about the Regulations, including updating its website and notifying peak bodies.

Further details of the Regulations are set out in [Attachment C](#).

The Migration Act specifies no conditions that need to be satisfied before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the Legislation Act.

AUTHORISING PROVISIONS

Subsection 504(1) of the *Migration Act 1958* (the Migration Act) relevantly provides that the Governor-General may make regulations prescribing matters required or permitted to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Migration Act.

In addition, the following provisions of the Migration Act may also be relevant:

- subsection 31(1), which provides that the regulations may prescribe classes of visas;
- subsection 31(3), which provides that the regulations may prescribe criteria for a visa or visas of a specified class;
- subsection 31(4), which provides that the regulations may prescribe whether visas of a class are visas to travel to and enter Australia, or to remain in Australia, or both;
- subsection 31(5), which provides that the regulations may specify that a visa is a visa of a particular class;
- subsection 40(1), which provides that the regulations may provide that visas or visas of a specified class may only be granted in specified circumstances;
- subsection 41(1), which provides that the regulations may provide that visas, or visas of a specified class, are subject to specified conditions;
- subsection 45A, which provides that the regulations may prescribe that a non-citizen who makes an application for a visa is liable to pay a visa application charge if, assuming the charges were paid, the application would be a valid visa application;
- subsection 46(3), which provides that the regulations may prescribe criteria that must be satisfied for an application for a visa of a specified class to be a valid application;
- subsection 46(4), which provides that, without limiting subsection 46(3), the regulations may prescribe:
 - (a) the circumstances that must exist for an application for a visa of a specified class to be a valid application; and
 - (b) how an application for a visa of a specified class must be made; and
 - (c) where an application for a visa of a specified class must be made; and
 - (d) where an applicant must be when an application for a visa of a specified class is made; and
- subsection 504(2) which provides that section 14 of the *Legislation Act 2003* does not prevent, and has not prevented regulations whose operation depends on a country or other matter being specified or certified by the Minister in an instrument in writing made under the regulations after the regulations have taken effect.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011
Migration Amendment (Temporary Graduate Visas) Regulations 2020

The *Migration Amendment (Temporary Graduate Visas) Regulations 2020* (the Amendment Regulations) are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The Amendment Regulations amend the *Migration Regulations 1994* (the Migration Regulations) as follows.

Overview of the Disallowable Legislative Instrument

Schedule 1 - Regional concessions for temporary graduate visa holders

These amendments are set out in Schedule 1 to the Amendment Regulations, and commence on 20 January 2021.

The Subclass 485 (Temporary Graduate) visa (TGV) is a post-study visa, allowing up to four years stay in Australia. It provides recent international graduates with the opportunity to spend time in Australia following their studies, gaining practical work experience to build on their Australian qualification. They can work, study and travel, but they are not required to undertake any specific activity.

The TGV has two streams – the Graduate Work stream and the Post-Study Work (PSW) stream. The Amendment Regulations do not affect the Graduate Work stream. It is excluded from the regional concessions introduced by the Amendment Regulations because of the different profile of that program. For example, it caters to graduates from vocational training courses that may be less than 18 months in duration and allowing that cohort to extend their stay in Australia for a period longer than the period spent studying is not considered appropriate.

The first TGV is granted for a period specified by the Minister when the visa is granted. Under policy, the visa validity period on a first TGV in the Post-Study Work Stream depends on the qualification obtained by the applicant in Australia, as follows:

- Bachelor degree (including honours): 2 years
- Masters by Coursework: 2 years
- Masters by Research: 3 years
- Doctoral degree: 4 years

The Amendment Regulations provide an incentive for international students to study, live and work in regional Australia, by providing access to a second TGV in the Post-Study Work stream. The second visa is available to graduates from regional educational institutions who lived, studied and worked only in a regional area on their first TGV in the Post-Study Work stream, for at least the period of two years immediately before making the application for the second visa. This requires a continuous period of at least two years in which the applicant did not live, study or work outside the relevant regional areas, as explained below.

Applications for the second TGV in the Post-Study Work stream can be made from 20 January 2021, when the Amendment Regulations commence. From that date, any holder of a first TGV in the Post-Study Work stream can apply for, and be granted, a second visa if they meet the eligibility requirements. Eligibility can arise on the basis of where the applicant lived, studied and worked before and/or after the commencement of the Amendment Regulations.

The second TGV is granted with a visa condition that requires the holder to live (and work or study, if relevant) only in regional Australia. Different parts of regional Australia attract different grant periods, and different visa conditions, as explained below.

The objective is to attract more international students to study in regional Australia and remain to live and work following graduation, and to provide greater incentives to study, live and work in less developed areas.

The measure will provide international graduates with expanded opportunities, support registered regional education providers, and give regional employers increased access to skilled graduates to meet their business needs. An increase in the number of international graduates in regional Australia will provide both economic and social benefits to regional communities.

The period of grant for a second TGV will be determined based on where the student studied and where they lived (and worked or studied, if relevant) on their first TGV.

On 26 October 2019, the Government announced a policy framework for regional visa concessions, under which Australia would be divided into three categories:

- Category 1 – **Major Cities**, comprising Sydney, Melbourne and Brisbane;
- Category 2 – **Cities and Major Regional Centres**, comprising Perth, Adelaide, the Gold Coast, the Sunshine Coast, Newcastle/Lake Macquarie, Wollongong/Illawarra, Canberra, Geelong and Hobart; and
- Category 3 – **Regional Centres and Other Regional Areas**, including all other locations.

The Amendment Regulations incorporate these distinctions into the Migration Regulations, by providing the Minister with a power to specify, in a legislative instrument, geographical areas in two categories – *designated city or major regional centre* (category 2) and *regional centre or other regional area* (category 3) – to facilitate incentives to study, live and work in these areas, including more generous incentives in relation to category 3. The legislative instrument specifies the postcodes in each category.

In accordance with the above policy, the legislative instrument, which will commence immediately after the commencement of the Amendment Regulations on 20 January 2021, will have the following effect:

- A *designated city or major regional centre* means Perth, Adelaide, the Gold Coast, the Sunshine Coast, Newcastle/Lake Macquarie, Wollongong/Illawarra, Canberra, Geelong and Hobart; and
- A *regional centre or other regional area* means all other areas of regional Australia

The Amendment Regulations also use the term *designated regional area*, which is defined to mean all of the areas in the above two categories. The result is that a *designated regional area* means any area in Australia that is not in Sydney, Melbourne or Brisbane. There was no requirement to introduce a separate definition of ‘Major Cities’ to implement the geographical distinctions.

The geographical distinctions are used in the Amendment Regulations to allow access to a second TGV in the Post-Study Work stream, as follows:

- **Second TGV in the Post-Study Work stream valid for two years:** available to former international students who studied for their qualification at an educational institution in a *regional centre or other regional area*, and who, while holding the first TGV in the Post-Study Work stream, lived (and worked or studied, if relevant) only in a *regional centre or other regional area* for at least two years immediately before applying for the second visa. This requires a continuous period of at least two years in which the applicant did not live, study or work outside a *regional centre or other regional area*.
- It is a condition of the second visa that the holder lives (and works or studies, if relevant) only in a *regional centre or other regional area*. This visa condition also applies to family members of the primary holder who are granted a Subclass 485 visa; and
- **Second TGV in the Post-Study Work stream valid for one year:** available to former international students, who don’t qualify for the two year visa, and who studied for their qualification at an educational institution in a *designated regional area*, and who, while holding the first TGV in the Post-Study Work stream, lived (and worked or studied, if relevant) only in a *designated regional area* for at least two years immediately before applying for the second visa. This requires a continuous period of at least two years in which the applicant did not live, study or work outside a *designated regional area*.
- It is a condition of the second visa that the holder lives (and works or studies, if relevant) only in a *designated regional area*. This visa condition also applies to family members of the primary holder who are granted a Subclass 485 visa.

Schedule 2 – Applications for temporary graduate visas when applicant is outside Australia

These amendments are set out in Schedule 2 to the Amendment Regulations, and commence on the day after the Amendment Regulations are registered on the Federal Register of Legislation.

Schedule 2 makes technical amendments to clarify the operation of a concession inserted by the *Migration Amendment (COVID-19 Concessions) Regulations 2020* to allow applications for Subclass 485 visas to be made from outside Australia during the concession period associated with the COVID-19 pandemic. These technical amendments do not engage human rights.

Human rights implications

This Disallowable Legislative Instrument engages the following human rights:

- the right to equality and non-discrimination in Articles 2 and 26 of the *International Covenant on Civil and Political Rights* (ICCPR) and Article 2 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR)
- the right to work in Article 6 of the ICESCR
- the right to education in Article 13 of the ICESCR
- the right to freedom of movement in Article 12 of the ICCPR

Right to work

The amendments promote and engage the right to work in Article 6(1) of the ICESCR.

Article 6(1) of the ICESCR states:

The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

The amendments provide an extended period of stay for those on a PSW TGV who worked, studied or lived in regional Australia, thereby supporting their right to work and the economic development of Australia's regions.

The purpose of the amendments is to allow the primary visa holder and eligible family member/s to live and work or study in regional Australia. This is designed to support regional economic development and help those communities to grow. Regional Australia covers all parts of Australia other than Sydney, Melbourne and Brisbane, however greater incentives (a two year second visa rather than a one year visa) are provided to PSW TGV holders who worked, lived, and studied only in the rural parts of regional Australia defined as a *regional centre or other regional area*. As noted in the Overview above, the term *designated regional area* is used to describe all of regional Australia, meaning everywhere in Australia except Sydney, Melbourne and Brisbane.

The introduction of a second TGV promotes the right to work because it provides PSW TGV holders with further opportunities to seek or continue work in regional Australia. If PSW TGV holders are already engaged in employment, a second TGV provides them with the opportunity to continue this employment and further the development of their knowledge and skills. The amendments also allow PSW TGV holders to work remotely whilst living in a regional area.

To the extent that a second TGV is only available where the initial PSW TGV holder lived and worked or studied in regional Australia and will continue to live and work or study in a regional Australia, the right to work may be limited by the measures:

- if the second TGV is valid for two years, it is a condition of the visa that the visa holder must work only in a *regional centre or other regional area*. A TGV holder and their family member's right to live and work in other areas of Australia will be limited, in the sense that undertaking work outside a *regional centre or other regional area* may result in the second TGV being cancelled; and
- If the second TGV is valid for one year, it is a condition of the visa that the visa holder is only permitted to work in a *designated regional area*. A TGV holder and

their family member's right to live and work in Sydney, Melbourne or Brisbane will be limited in the sense that in the sense that undertaking work in any of those cities may result in the second TGV being cancelled.

The visa conditions would not prevent remote work, provided the visa holder was physically located in the relevant area. The physical location of the person's employer is not conclusive. For example, the employer could be based in a metropolitan area of Australia, or overseas, but be operating in regional Australia through a local office or branch. If the visa holder is working in the local office located in the relevant part of regional Australia, then they meet the work requirements of condition 8610. The condition would also allow occasional short term work outside the relevant area, e.g. attending a headquarters office in Sydney for meetings or training.

Any limitation of the right to work is for a legitimate objective as the measures are intended to create incentives for PSW TGV holders to live and work in those areas to support local economies. The amendments will supplement the labour pool, providing more options for regional employers by increasing the number of available employees, including skilled employees.

An additional objective is reducing congestion in major cities by providing incentives for temporary visa holders to live in regional Australia. Without an incentive to remain living or working in regional Australia post-study, many TGV holders and their families relocate to major cities, placing greater strain on resources and reducing the number of skilled employees available in regional Australia.

Furthermore, having regard to the policy objectives outlined above, the limitation on a PSW TGV holder's right to work is reasonable, necessary and proportionate. In particular, the limitations are reasonable because they are voluntarily undertaken by graduates from educational institutions in regional Australia who are already living in regional Australia and who have agreed to remain in regional Australia for a further short period (one year or two years as noted above). The TGV is one of a number of visa options that are available to non-citizens who wish to work in Australia. Depending on an individual's circumstances, other visa options could be pursued if the non-citizen intends to work in areas not covered by the second TGV.

In relation to the possibility that a second TGV could be cancelled, cancellation is discretionary and would take into account all of the individual circumstances. These may include the reason for the person moving out of the relevant area, the extent of compliance with other visa conditions, the degree of hardship that may be caused to a visa holder, whether there are extenuating circumstances, and other relevant matters.

Limiting the areas in which a PSW TGV holder must live or work in order to access a second TGV may engage the rights of equality and non-discrimination in Articles 2(1) and 26 of the ICCPR and Article 2(2) of the ICESCR on the basis of 'other status'.

Article 2(1) of the ICCPR states that:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the

present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 26 of the ICCPR states that:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 2(2) of the ICESCR states:

The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

To the extent that this measure discriminates against PSW TGV holders on the basis of ‘other status’, such discrimination is reasonable, necessary and proportionate, for the reasons outlined above.

The measure will promote the rights to work for PSW TGV holders and their family members and to the extent that the measure limits the right to work, or discriminates in the right to work, the limitations are reasonable, necessary and proportionate to achieving the legitimate objectives.

Right to education

In recognising the right of everyone to an education, Article 13(2) of the ICESCR provides that:

(c) higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular the progressive introduction of free education.

The United Nations Committee on Economic, Social and Cultural Rights in General Comment No. 13 specifies that the right to education includes that educational institutions be accessible to everyone without discrimination, physically accessible as well as economically accessible.

To the extent that a second TGV encourages PSW TGV holders to continue to study in a regional area, the right to education may be engaged. The measure promotes the right to education by providing PSW TGV holders with the opportunity to pursue further study once their initial study has been completed. This right will only be limited where the TGV holder wishes to study at an educational institution that is not in a *regional centre or other regional area* or a *designated regional area* (whichever is relevant to the second TGV that the particular applicant has been granted) and does not offer a remote study option. Where an educational institution does not have a campus in the relevant area, but offers a remote study option, the TGV holder is able to live in the relevant area, and study remotely.

If the holder of a first PSW TGV undertakes further study, then depending on the location of the educational institution, it may mean that the visa holder will not be eligible for a second PSW TGV, or will only be eligible for a one year visa rather than a two year visa. Similarly, once a second PSW TGV is granted, the holder can only study in the relevant area. That is, the visa holder must be physically in the relevant area, whether studying at a campus in the area or studying via distance education from an education provider located elsewhere.

These restrictions may engage the rights to non-discrimination and equality under Articles 2(1) and 26 of the ICCPR and Article 2(2) of the ICESCR. However, any discrimination on the grounds of ‘other status’ is reasonable, necessary and proportionate. As discussed above, it is reasonable and necessary to support regional economies by encouraging TGV holders to remain living (and studying) in regional Australia. This also helps support regional international education providers, especially during this critical COVID-19 recovery period. The amendments will support increased enrolments, resulting in more certainty for regional education providers, and their employees. It is also proportionate, as TGV holders can still access remote learning via distance education programs provided by educational institutions, including those located in major cities.

The amendments promote the right to an education and to the extent that they limit the right, or discriminate in the right to an education, this is reasonable, necessary and proportionate in achieving the legitimate objectives of encouraging international students to continue their studies in regional Australia, supporting the economies and educational institutions in these areas.

Right to freedom of movement

Article 12(1) of the ICCPR provides that:

Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

The United Nations Human Rights Committee (UNHRC) in General Comment 15 has stated that ‘consent for entry [of aliens] may be given subject to conditions relating, for example, to movement, residence and employment’.

Holders of a first TGV will be constrained by the visa criteria for the second TGV, relating to where they must live and work, if they wish to obtain a second TGV. Holders of a second TGV visa will then be subject to visa condition 8610, requiring the visa holder to live and work or study in the relevant area of regional Australia, as explained above. This visa condition will also apply to family members of the primary holder who have been granted a TGV. If, after grant, a visa holder chooses not to live in the relevant area, this may result in cancellation of their visa.

To the extent that the visa condition affects the right to freedom of movement, the limitations support a legitimate objective, and are reasonable, necessary and proportionate, for the reasons outlined above. In particular, there is no limitation on where a TGV holder may travel in Australia for the purpose of a holiday, to visit family, or for business.

To the extent that the visa condition affects the right to choose a place of residence, this is a constraint voluntarily entered into in return for the grant of the visa. As noted above, other visa options may be available if the TGV is not suitable.

To the extent that the measure limits the right to freedom of movement by requiring the PSW TGV holder to live in regional Australia, the measure is reasonable, necessary and proportionate to achieve the legitimate objective of supporting regional Australia by encouraging PSW TGV holders and their families to remain living and studying or working in regional Australia.

Conclusion

The *Migration Amendment (Temporary Graduate Visas) Regulations 2020* are compatible with human rights because, to the extent that the Regulations may limit human rights, those limitations are reasonable, necessary and proportionate.

The Hon Alex Hawke MP

Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

Details of the Migration Amendment (Temporary Graduate Visas) Regulations 2020

Section 1 - Name

This section provides that the name of the instrument is the *Migration Amendment (Temporary Graduate Visas) Regulations 2020*.

Section 2 - Commencement

This section provides for the commencement of the *Migration Amendment (Temporary Graduate Visas) Regulations 2020* (the Regulations).

As set out in the table, sections 1 to 4, and anything that is not covered by table items 2 and 3, commence the day after the instrument is registered.

The table (item 2) provides that Schedule 1 to the Regulations commences on 20 January 2021. This means that applications for a second Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream can be made from that date.

The table (item 3) provides that Schedule 2 to the Regulations commences on the day after the Regulations are registered on the Federal Register of Legislation.

Section 3 - Authority

This section provides that the Regulations are made under the *Migration Act 1958* (the Migration Act).

Section 4 - Schedules

This section provides for the operation of the amendments made by the Regulations. It provides that an instrument specified in a Schedule to the Regulations is amended or repealed as set out in the Schedule concerned, and any other item in a Schedule has effect according to its terms. In both Schedule 1 and Schedule 2 to the Regulations, the specified instrument is the *Migration Regulations 1994* (the Migration Regulations).

Schedule 1 – Regional concessions for temporary graduate visa holders

Migration Regulations 1994

Item 1 – Regulation 1.03

This item inserts a definition of ***designated city or major regional centre*** in regulation 1.03 of the Migration Regulations. The definition provides that ***designated city or major regional centre*** has the meaning given by subregulation 1.15M(1) (see item 4 below).

Item 2 – Regulation 1.03 (definition of *designated regional area*)

This item repeals the definition of ***designated regional area*** in regulation 1.03 of the Migration Regulations, and substitutes a new definition of that term. Previously, the definition provided that ***designated regional area*** means a part of Australia specified in an instrument under regulation 1.15M. The new definition provides that ***designated regional area*** means: (a) a designated city or major regional centre; or (b) a regional centre or other regional area. The change to the definition is consequential to the repeal and substitution of regulation 1.15M, which is explained at item 4 below.

Item 3 – Regulation 1.03

This item inserts a definition of ***regional centre or other regional area*** in regulation 1.03 of the Migration Regulations. The definition provides that ***regional centre or other regional area*** has the meaning given by subregulation 1.15M(2) (see item 4 below).

Item 4 – Regulation 1.15M

This item repeals and substitutes regulation 1.15M of the Migration Regulations. The previous definition allowed the Minister, by legislative instrument, to specify a part of Australia as a ***designated regional area***. The new definition allows the Minister to specify a part of Australia to be a ***designated city or major regional centre*** or a ***regional centre or other regional area***. A new definition of ***designated regional area*** (item 2 above) provides that it is the total area covered by these two new categories.

Regulation 1.15M was introduced by the *Migration Amendment (New Skilled Visas) Regulations 2019* with effect from 16 November 2019. The concept of designated regional area is used to determine eligibility for two regional visas: the Subclass 491 (Skilled Work Regional (Provisional)) visa and the Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa. The concept is also used in visa condition 8579 (in Schedule 8 to the Migration Regulations) to require holders of those visas to work, live and study only in a designated regional area. For example, subclause 8579(1) states: “*If the visa is a Subclass 491 (Skilled Work Regional (Provisional)) visa, the holder, while in Australia, must live, work and study only in a part of Australia that was a designated regional area at the time the visa was granted.*”

Under the repealed regulation 1.15M, all areas of Australia, other than Sydney, Melbourne and Brisbane, were designated regional areas. See the instrument made under repealed regulation 1.15M, which is the *Migration (LIN 19/217: Regional Areas) Instrument 2019*. There is no change to that policy. Subject to any future policy changes, a designated regional area will continue to be any part of Australia other than Sydney, Melbourne or Brisbane. The purpose of substituted regulation 1.15M is to facilitate the subdivision of the designated regional areas into two categories - ***designated city or major regional centre*** and ***regional centre or other regional area***. The purpose of this is to facilitate the targeting of incentives to study, live and work in regional Australia as the holder of a student visa followed by a Subclass 485 (Temporary Graduate) visa. This is explained below (see items 16 and 17).

The areas in the two new categories will be specified in a legislative instrument under the new regulation 1.15M. It is intended that the legislative instrument will commence at the same time as these Regulations (20 January 2021).

The legislative instrument will allocate areas to each category by listing postcodes. Subject to any changes in Government policy, the allocation of postcodes will be the same as the allocation shown in the *Migration (LIN 19/217: Regional Areas) Instrument 2019*. The distribution of postcodes in the two categories was included in that legislative instrument for illustrative purposes. Prior to these amendments, there has been no legal basis for the two categories and the distinction was not relevant to the grant of any visa. The distinction has been given legal effect for the purpose of the regional concessions, introduced by these Regulations, in the Subclass 485 (Temporary Graduate) visa. The distinction could also be used in future amendments to create regional incentives in other visa programs.

In accordance with the approach outlined above, it is intended that the new categories will be as follows:

- a *designated city or major regional centre* means Perth, Adelaide, the Gold Coast, the Sunshine Coast, Newcastle/Lake Macquarie, Wollongong/Illawarra, Canberra, Geelong and Hobart; and
- a *regional centre or other regional area* means all other areas of regional Australia, i.e. all areas of Australia other than Sydney, Melbourne, Brisbane, and the areas listed above.

Item 5 – Subregulation 2.72C(6) (note)

This item updates a note to reflect the changed definition of designated regional area.

Item 6 – Paragraph 1229(2)(a) of Schedule 1

This item repeals and substitutes paragraph 1229(2)(a) of Schedule 1 to the Migration Regulations. The purpose of paragraph 1229(2)(a) is to specify the visa application charge (VAC) that must be paid in order to make a valid application for a Subclass 485 (Temporary Graduate) visa. The effect of the amendment is to add new VACs for applicants who are applying for a second Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream, and for accompanying family members. Previously, only one Subclass 485 visa was allowed. To give effect to the regional concessions introduced by these Regulations, holders of Subclass 485 (Temporary Graduate) visas in the Post-Study Work stream, and accompanying family members, are allowed to apply for another Subclass 485 visa.

The VACs for a second application are set out in subparagraph 1229(2)(a)(i), and are as follows:

- base application charge (for the primary applicant) - \$650;
- additional applicant charge for an applicant who is at least 18 - \$325;
- additional applicant charge for an applicant who is less than 18 - \$165.

The VACs for other applicants are unchanged, and are reproduced at new subparagraph 1229(2)(a)(ii), as follows:

- base application charge (for the primary applicant) - \$1,650;
- additional applicant charge for an applicant who is at least 18 - \$825;
- additional applicant charge for an applicant who is less than 18 - \$415.

The VACs are a tax imposed under the *Migration (Visa Application) Charge Act 1997* and section 45A of the Migration Act. The level of the new VACs was determined by government as part of standard processes for considering new policy proposals in the budget context. The VACs are set at just under 40% of the VAC payable for the first Subclass 485 visa. The reduced VACs are consistent with the policy objective of attracting non-citizens to study, live and work in regional Australia.

Item 7 – Paragraphs 1229(3)(f) and (g) of Schedule 1

This item repeals and substitutes paragraphs 1229(3)(f) and (g) of Schedule 1 to the Migration Regulations. These paragraphs deal with the circumstances in which an applicant is permitted to apply for a Subclass 485 (Temporary Graduate) visa from outside Australia.

Visa applicants are generally required to be in Australia to apply for this visa, because it is catering to persons who have recently finished studying in Australia on a student visa. Prior to 19 September 2020, the only exception was for family members of a primary visa holder. A family member who is overseas can apply for a visa from overseas to join the primary visa holder in Australia. This remains the case following the amendment made by item 7.

From 19 September 2020, another exception to the requirement to be in Australia to apply was created by the *Migration Amendment (COVID-19 Concessions) Regulations 2020*. The amendment allowed all applicants to apply from outside Australia during the ‘concession period’ associated with the COVID-19 pandemic.

The effect of the amendment made by item 7 is that applicants applying for a second Subclass 485 visa in the Post-Study Work stream, and any family members who are making a combined application, must be in Australia to apply. That is, the concession allowing the application to be made from outside Australia during the COVID-19 pandemic does not apply. The reason for this is that primary applicants for a second Subclass 485 visa in the Post-Study Work stream must continue to hold the first Subclass 485 visa at time of application and must have lived (and worked or studied, if relevant) only in regional Australia for the period of two years immediately before making the application (see item 16 below). As a result of these requirements, and noting that applications can only be made from 20 January 2021 when these Regulations commence, it is very unlikely that anyone who is outside Australia as a result of COVID-19 travel restrictions would be eligible for the visa. It was therefore considered unnecessary to open this visa pathway to Subclass 485 holders and their family members who are not physically in Australia.

Item 8 – After paragraph 1229(3)(l) of Schedule 1

This item inserts paragraph 1229(3)(la) in Schedule 1 to the Migration Regulations. It provides that an applicant seeking to satisfy the primary criteria for the grant of a second Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream must hold a Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream.

The purpose of paragraph 1229(3)(la) is to require an applicant for the grant of a second Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream to make the application before the first visa ceases. This is because the second visa is catering for primary holders of the first visa who are living (and working or studying, if relevant) in regional Australia on the first visa, and who intend to continue to do so. There would usually be no

need to delay making the application for the second visa until the first visa is about to expire. The application for the second visa can be lodged as soon as the primary holder of the first visa can meet the two year live/work/study criterion at paragraphs 485.232(2)(b) and (c) or paragraphs 485.233(2)(b) and (c) (whichever is applicable – item 16 below). If the second visa is granted before the first visa expires, the time remaining on the first visa is added to the visa period of the second visa (item 17 below).

Item 9 – At the end of paragraph 1229(4)(a) of Schedule 1

This item inserts subparagraph 1229(4)(a)(v) in Schedule 1 to the Migration Regulations.

Subitem 1229(4) specifies requirements that, as stated in paragraph 1229(3)(m), must be met by applicants who are seeking to satisfy the primary criteria for the grant of a Subclass 485 (Temporary Graduate) visa. Previously, subitem 1229(4) listed four alternative criteria, and the applicant was required to meet one of the four criteria. Those criteria relate to an applicant who is applying for a first Subclass 485 visa. They are not appropriate for a person applying for a second Subclass 485 visa pursuant to the amendments made by these Regulations. Accordingly, to ensure that those applicants can satisfy paragraph 1229(3)(m) and paragraph 1229(4)(a), a fifth alternative has been provided, in subparagraph 1229(4)(a)(v), which is that the applicant holds a Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream and is applying for a second Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream.

Item 10 – Paragraph 485.211(b) of Schedule 2

This item repeals paragraph 485.211(b) in Part 485 of Schedule 2 to the Migration Regulations and inserts new paragraphs 485.211(b), (c) and (d).

Part 485 sets out the criteria for the grant of the Subclass 485 (Temporary Graduate) visa. The effect of repealed paragraph 485.211(b) was that a person could not be granted more than one Subclass 485 visa on the basis of satisfying the primary criteria. This reflects the role of the Subclass 485 visa as a visa for international students to extend their stay in Australia for a limited period after successfully completing their studies. The effect of the substituted paragraphs is to create an exception to the unavailability of a second visa, but only for applicants who have held a Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream and can satisfy the criteria for the grant of a second Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream (item 16 below).

In addition, paragraph 485.211(c) has the effect that no more than two Subclass 485 (Temporary Graduate) visas in the Post-Study Work stream may be held. This means that after holding the first and second visas, it is not possible to obtain a third visa.

Item 11 – Clause 485.212 of Schedule 2

This item makes a technical amendment.

Item 12 – At the end of clause 485.212 of Schedule 2

This item inserts subclause 485.212(2) in Schedule 2 to the Migration Regulations.

The effect of subclause 485.212(2) is that applicants for a second Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream are not required to provide evidence of English language proficiency. This evidence would have been provided with the application for the first Subclass 485 visa, and does not need to be provided again.

Item 13 – Clause 485.213 of Schedule 2

This item makes a technical amendment.

Item 14 – At the end of clause 485.213 of Schedule 2

This item inserts subclause 485.213(2) in Schedule 2 to the Migration Regulations.

The effect of subclause 485.213(2) is that applicants for a second Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream are not required to provide evidence of having applied for an Australian Federal Police check. This evidence would have been provided with the application for the first Subclass 485 visa, and does not need to be provided again.

Item 15 – Before subclause 485.231(1) of Schedule 2

This item inserts subclause 485.231(1A) in Schedule 2 to the Migration Regulations.

The effect of subclause 485.231(1A) is that the criteria for the grant of a first Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream, set out in clause 485.231, do not apply to an applicant who satisfies the criteria in clause 485.232 or clause 485.233 (see next item) for the grant of a second Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream.

Item 16 – At the end of Subdivision 485.23 of Schedule 2

This item inserts two clauses to specify alternative criteria for the grant of a second Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream:

- clause 485.232 specifies criteria for applicants who will be granted a two year visa (see clause 485.511, inserted by the next item); and
- clause 485.233 specifies criteria for applicants who will be granted a one year visa (see clause 485.512, inserted by the next item).

Clause 485.232 – criteria for the grant of a two year second Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream

The criteria for the grant of a second Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream that will be granted for two years are set out below. An applicant who cannot satisfy all of these criteria may, as an alternative, be eligible for a one year visa in accordance with the criteria at clause 485.233.

Applicant must hold the first visa when applying for the second visa (paragraph 485.232(1)(a))

The applicant must hold the first Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream when the application for the second visa is made. This mirrors the Schedule 1 requirement (see item 8 above).

The first Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream must have been granted as a result of study in a regional centre or other regional area at an educational institution located in that area (paragraph 485.232(1)(b) and paragraph 485.232(2)(a))

The applicant must have undertaken the study, for the qualification that led to the grant of the first Subclass 485 visa, while living in a *regional centre or other regional area*, and the study must have been undertaken at a campus located in a *regional centre or other regional area*. For example, this criterion could be satisfied by living in Armidale and studying at the University of New England. The intention is to maximise incentives for international students to live in a *regional centre or other regional area* and study at a campus located in that area. This could be a regional campus of an educational institution which has its headquarters elsewhere.

There are more than 80 campuses around Australia that are located in a regional centre or other regional area. These are often regional campuses of large educational institutions. Some examples are:

- University of Wollongong campus in Bega;
- Southern Cross University campus in Lismore;
- Flinders University campus in Darwin;
- La Trobe University campus in Mildura.

Applicant must declare in the application for the second Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream that the applicant, and any family member making a combined application with the applicant, intend to live only in a regional centre or other regional area and, if the applicant or family member also intends to work or study—to work or study only in a regional centre or other regional area (paragraph 485.232(1)(c)).

The purpose of the declaration on the application form is to reinforce the need for an ongoing commitment to live in a *regional centre or other regional area*. The declaration is also appropriate because it is a condition of the visa (items 18 and 19 below) that visa holders, including family members, must, while in Australia, live, work and study only in a *regional centre or other regional area*.

Applicant must have lived only in a regional centre or other regional area for a period of at least two years immediately before applying for the second visa (paragraph 485.232(2)(b))

If the applicant worked or studied during that two year period, all of that work or study must have occurred in a regional centre or other regional area (paragraph 485.232(2)(c))

These criteria require a demonstrated commitment to a *regional centre or other regional area*. As noted above, the applicant must have lived and studied at a campus in a *regional centre or other regional area*, prior to the grant of the first Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream. Typically, this would mean two or three years living in that area. The applicant for a second Subclass 485 visa in the Post-Study Work stream must have continued living in that area, or in some other area that is also a *regional centre or other regional area*, while holding the first Subclass 485 visa. A break in the continuity of residence is permissible after finishing study, provided that the Subclass 485 visa holder lived, worked and studied only in a *regional centre or other regional area* for at least the period of two years immediately before applying for the second visa. There is no obligation to work or study while holding the first Subclass 485 visa, but if the holder chooses to work or study during the two year period, the work or study must be undertaken in a *regional centre or other regional area*. This could include remote work for an employer located elsewhere and distance education provided by an educational institution located elsewhere.

At the time of decision on the application for the second Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream, the applicant must be living, and working or studying (if relevant), only in a regional centre or other regional area (subclause 485.232(3))

This criterion provides an additional level of assurance about the commitment of the applicant to continue living, and working or studying (if relevant), only in a *regional centre or other regional area* while holding the second Subclass 485 visa in the Post-Study Work stream. See also visa condition 8610 (items 18 and 19 below). As noted above, this could include remote work for an employer located elsewhere and distance education provided by an educational institution located elsewhere.

Clause 485.233 – criteria for the grant of a one year second Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream

The criteria for the grant of a second Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream that will be granted for one year are set out below.

Applicant must hold the first visa when applying for the second visa (paragraph 485.233(1)(a))

The applicant must hold the first Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream when the application for the second visa is made. This mirrors the Schedule 1 requirement (see item 8 above).

The first Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream must have been granted as a result of study in a designated regional area at an educational institution located in that area (paragraph 485.233(1)(b) and paragraph 485.233(2)(a))

The applicant must have undertaken the study, for the qualification that led to the grant of the first Subclass 485 visa, while living in a *designated regional area*, and the study must have been undertaken at a campus located in a *designated regional area*.

As noted above (items 2 and 4), the term *designated regional area*, is a reference to all of Australia other than Sydney, Melbourne or Brisbane. Accordingly, an applicant who studied in a *regional centre or other regional area*, as discussed above, has also studied in a *designated regional area*, because a *regional centre or other regional area* is a subset of *designated regional area*.

For example, educational institutions in Adelaide, Hobart, and Perth, are in a *designated regional area* that is not a *regional centre or other regional area*. The holder of a Subclass 485 visa in the Post-Study Work stream who was granted that visa on the basis of a qualification obtained from study at one of those institutions would be eligible for a second Subclass 485 visa in the Post-Study Work stream valid for one year, if the other applicable criteria are satisfied.

Applicant is not eligible for a two year visa (paragraph 485.233(1)(c))

The purpose of paragraph 485.233(1)(c) is to avoid any overlap arising from the fact that a person who meets the criteria for a two year visa would otherwise also automatically meet the criteria for a one year visa. The paragraph ensures if the person satisfies the criteria for the two year visa at clause 485.232, they are not eligible for a one year visa under clause 485.233.

Applicant must declare in the application for the second Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream that the applicant, and any family member making a combined application with the applicant, intend to live only in a designated regional area and, if the applicant or family member also intends to work or study—to work or study only in a designated regional area (subclause 485.232(4)).

The purpose of the declaration on the application form is to reinforce the need for an ongoing commitment to live in a *designated regional area*. The declaration is also appropriate because it is a condition of the visa (items 18 and 19 below) that holders, including family members who hold the visa, must, while in Australia, live, work and study only in a *designated regional area*. As noted above, this means anywhere in Australia other than Sydney, Melbourne or Brisbane. Remote work for an employer located elsewhere is permitted, as is distance education provided by an educational institution located elsewhere.

Applicant must have lived only in a designated regional area for a period of at least two years immediately before applying for the second visa (paragraph 485.233(2)(b))

If the applicant worked or studied during that two year period, all of that work or study must have occurred in a designated regional area (paragraph 485.233(2)(c))

These criteria require a demonstrated commitment to a *designated regional area*. As noted above, the applicant must have studied at a campus in a *designated regional area* prior to the grant of the first Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream. Typically, this would mean two or three years living in that area. The applicant for a second Subclass 485 visa in the Post-Study Work stream must then have continued living in that area, or in some other area that is also a *designated regional area*, while holding the first Subclass 485 visa. A break in the continuity of residence is permissible after finishing study, provided that the Subclass 485 visa holder lived, worked and studied only in a *designated regional area* for at least the period of two years immediately before applying for the second visa. There is no obligation to work or study as the holder of the first Subclass 485 visa, but if the holder chooses to work or study, the work or study must be undertaken in a *designated regional area*. Remote work for an employer located elsewhere is permitted, as is distance education provided by an educational institution located elsewhere.

At the time of decision on the application for the second Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream, the applicant must continue to be living, and working or studying (if relevant), only in a designated regional area (subclause 485.233(3))

This criterion provides an additional level of assurance about the commitment of the applicant to remain in a *designated regional area* while holding the second Subclass 485 visa in the Post-Study Work stream. See also visa condition 8610 (items 18 and 19 below).

Item 17 – Clause 485.511 of Schedule 2

This item repeals and substitutes clause 485.511 in Schedule 2 to the Migration Regulations, and also inserts new clauses 485.512 and 485.513. The purpose of the clauses is to state when a Subclass 485 visa is in effect.

Repealed clause 485.511 stated that the visa is a temporary visa permitting the holder to travel to, enter and remain in Australia until a date specified by the Minister. That remains the position, in new clause 485.513, for all visa holders except the holders of a second Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream, who are covered by clause 485.511 and clause 485.512.

New clause 485.511 provides that, for an applicant who is granted a second Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream on the basis of meeting the requirements in clause 485.232, the visa is a temporary visa permitting the holder to travel to, enter, and remain in Australia until the later of:

- the end of two years from the day the visa is granted; and
- the end of two years from the day that the first Subclass 485 visa in the Post-Study Work stream would have otherwise ceased to be in effect.

As noted above (item 8 and item 16), an applicant for a second Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream must hold the first visa when they apply. The first visa could cease during the time taken to process the application for the second visa, or it could still be in effect when the second visa is granted. In the first scenario, the second visa will be valid for two years from the day it is granted. In the second scenario, the second visa will be valid until two years after the day when the first visa would have otherwise ceased to be in effect. This formula reflects subsection 82(2) of the Migration Act, which provides that a substantive visa ceases to be in effect if another substantive visa comes into effect. Accordingly, the grant of the second Subclass 485 visa will immediately cease the first Subclass 485 visa. By expressing the visa period for the second visa as ending two years after the first visa would otherwise (i.e. if not for subsection 82(2) of the Migration Act) have ceased to be in effect, the provision ensures that applicants are not disadvantaged by the grant of the second visa before the first visa has expired.

New clause 485.512 provides that, for an applicant who is granted a second Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream on the basis of meeting the requirements in clause 485.233, the visa is a temporary visa permitting the holder to travel to, enter, and remain in Australia until the later of:

- the end of one year from the day the visa is granted; and
- the end of one year from the day that the first Subclass 485 visa in the Post-Study Work stream would have otherwise ceased to be in effect.

The rationale for this structure is the same as for clause 485.511, explained above.

For applicants who satisfy the secondary criteria as family members of a primary applicant who is granted a second Subclass 485 visa in the Post-Study Work stream, the end date of the visa will be aligned with the end date of the primary holder's visa. This will be implemented under clause 485.513.

Item 18 – At the end of Division 485.6 of Schedule 2

This item adds new clause 485.613 in Schedule 2 to the Migration Regulations. The clause requires new visa condition 8610 (see next item) to be imposed on holders of a second Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream, and also on their family members who hold a Subclass 485 visa on the basis of satisfying the secondary criteria.

Item 19 – At the end of Schedule 8

This item inserts new visa condition 8610. The purpose of the visa condition is to ensure that the holder of a second Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream, and their family members who hold a Subclass 485 visa, live, work and study only in areas that correspond to the visa criteria that were satisfied by the primary visa holder:

- if the primary visa holder satisfied the criteria at clause 485.232 – the primary holder and the family members who satisfied the secondary criteria must, while in Australia, live, work and study only in a part of Australia that was a *regional centre or other regional area* at the time the visa was granted; and

- if the primary visa holder satisfied the criteria at clause 485.233 – the primary holder and the family members who satisfied the secondary criteria must, while in Australia, live, work and study only in a part of Australia that was a *designated regional area* at the time the visa was granted.

There is no obligation to work or study while holding the second Subclass 485 visa, but if the holder chooses to work or study, the work or study must be undertaken in a permitted area. This could include remote work for an employer located elsewhere and distance education provided by an educational institution located elsewhere.

The purpose of the visa conditions is to ensure that visa holders follow through on the declaration made by the primary applicant when the application was made (paragraph 485.232(1)(c) and subclause 485.233(4) – item 16 above).

A visa may be cancelled under paragraph 116(1)(b) of the Migration Act if a visa holder does not comply with a condition of the visa. Cancellation under this power is discretionary and would take account of all the relevant circumstances, including any reasonable justification that a visa holder may have for not being able to live, work or study only in a *regional centre or other regional area* or in a *designated regional area* (whichever is relevant). Even if a visa is not cancelled, a failure to comply with the visa condition may affect eligibility for other visas that the visa holder may wish to apply for in the future.

Item 20 – At the end of Part 93 in Schedule 13

This item inserts clauses to provide for the operation of the amendments made by Schedule 1 to these Regulations, and also to make transitional arrangements.

Part 93 – Amendments made by the Migration Amendment (Temporary Graduate Visas) Regulations is inserted by item 3 in Schedule 2 to these Regulations. That item also inserts clause 9301. See the explanation below of item 3 in Schedule 2.

Item 20 inserts three clauses as follows:

9302 Operation of Schedule 1

Clause 9302 provides that the amendments of the Migration Regulations made by Schedule 1 of these Regulations apply in relation to visa applications made on or after the commencement of that Schedule. As provided for in section 2 of these Regulations, Schedule 1 commences on 20 January 2021. This means that applications for a second Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream can be made from that date.

9303 Living, working and studying in a regional centre or other regional area

Clause 9303 is a transitional arrangement relating to the new term *regional centre or other regional area*. The areas that are covered by that term will be specified in a legislative instrument made under new subregulation 1.15M(2) (item 4 above). The legislative instrument will take effect on 20 January 2021, which is the day that these Regulations commence. Holders of a first Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream will be able to apply for a second visa from that date.

The assessment of eligibility for grant of the visa will involve an assessment of where they lived, worked and studied during the period of two years immediately before the application is made, and where they studied for the qualification from an Australian educational institution that led to the grant of the first Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream.

The purpose of clause 9303 is to make it clear that the areas specified as a *regional centre or other regional area* on 20 January 2021, are also taken to be a *regional centre or other regional area* for all purposes relating to the assessment of where an applicant was living, working or studying before 20 January 2021.

The relevant areas have been listed on the Department's website since November 2019. As noted above (item 4), a *regional centre or other regional area* is anywhere in Australia except Sydney, Melbourne, Brisbane, Perth, Adelaide, Hobart, Canberra, Geelong, the Gold Coast, the Sunshine Coast, Newcastle/Lake Macquarie, and Wollongong/Illawarra.

9304 Living, working and studying in a designated regional area

Clause 9304 has a similar purpose to clause 9303. Clause 9304 is a transitional arrangement relating to the term *designated regional area*. The definition of that term has been repealed and substituted by these Regulations (item 2 above). The transitional provision ensures that, when assessing eligibility for a second Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream, under clause 485.233 (item 16 above), an area that was a designated regional area under the old definition continues to be a designated regional area under the new definition, for the purposes of assessing where the applicant lived, studied and worked before 20 January 2021. When assessing where an applicant lived, studied, or worked after 20 January 2021, the new definition and new legislative instrument under the new version of regulation 1.15M will be applicable.

As noted above (item 4), all of Australia except for Sydney, Melbourne and Brisbane was a designated regional area under the legislative instrument made under the repealed version of regulation 1.15M and this will continue to be the case, subject to any future changes in government policy, under the new definition of *designated regional area*.

Schedule 2 – Applications for temporary graduate visas when applicant is outside Australia

Migration Regulations 1994

Item 1 – Paragraph 1229(4)(a) of Schedule 1

Item 2 – After subparagraph 1229(4)(a)(i) of Schedule 1

These items clarify the operation of a concession introduced by the *Migration Amendment (COVID-19 Concessions) Regulations 2020*. The effect of the concession is that, during a concession period, applications for Subclass 485 (Temporary Graduate) visas can be made by applicants who are outside Australia (paragraph 1229(3)(g) of Schedule 1 to the Migration Regulations). Outside of a concession period, primary applicants, and their family members making a combined application, must be in Australia when they apply.

The *Migration Amendment (COVID-19 Concessions) Regulations 2020* also made a consequential amendment to subitem 1229(4) to remove the requirement for a primary applicant, who applies outside Australia during the concession period, to have held an eligible student visa within six months before applying. This requirement was removed because some former student visa holders had been outside Australia for more than six months after the student visa expired, as a result of the COVID-19 travel restrictions.

However, by removing this requirement, it created the possibility that a person who has never held a student visa could make a valid application for a Subclass 485 visa in the Graduate Work stream. This is inappropriate because, although it is possible that a person could study in Australia on a visa other than a student visa, and potentially satisfy the Australian Study Requirement (regulation 1.15F of the Migration Regulations) on that basis, the Subclass 485 (Temporary Graduate) visa is only intended to be available to applicants who have held an eligible student visa. The amendment reinstates the intended position.

Item 3 – In the appropriate position in Schedule 13

This item inserts a new Part 93 into Schedule 13 to the Migration Regulations to provide for the application of the amendments made by these Regulations and to make transitional arrangements.

Item 3 inserts clause 9301 to provide for the application of the amendments made by items 1 and 2 of Schedule 2 to these Regulations, set out above. The other clauses in new Part 93 relate to the amendments made by Schedule 1 to these Regulations, and are set out at item 20 of Schedule 1.

Clause 9301 Operation of Schedule 2

Clause 9301 provides that the amendments made by items 1 and 2 above apply in relation to visa applications made on or after the commencement of Schedule 2. As provided for in section 2 of these Regulations, Schedule 2 commences on the day after these Regulations are registered on the Federal Register of Legislation. There is no impact on any visa application made before that day.