

## **EXPLANATORY STATEMENT**

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

*Migration Act 1958*

*Migration Amendment (Extension of Temporary Graduate and Skilled Regional  
Provisional Visas) Regulations 2022*

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 (Extension of Temporary Graduate and Skilled Regional Provisional Visas) Regulations 2022* (the Regulations) amend the *Migration Regulations 1994* (the Migration Regulations) to extend previously granted temporary graduate and skilled regional provisional visas whose holders have been impacted by COVID-19 related international travel restrictions in place from 1 February 2020 to 14 December 2021 (the travel restriction period). The extensions provide additional time in Australia for visa holders. In particular:

### *Schedule 1 (Extension of Subclass 485 (Temporary Graduate) visas)*

The amendments made by Schedule 1 extend certain Subclass 485 visas to 30 September 2022 to provide time for a visa holder affected by COVID-19 related international travel restrictions to apply for a replacement Subclass 485 visa, which the Government announced on 25 November 2021 it intends to be available from mid-2022. Visas held by relevant family members are also extended.

### *Schedule 2 (Skilled regional provisional visas)*

The amendments made by Schedule 2 extend certain Subclass 489 (Skilled – Regional (Provisional)), Subclass 491 (Skilled Work Regional (Provisional)) and Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visas for three years, in addition to the four or five years for which the visa was originally granted, if the primary visa holder was outside Australia on any day during the travel restriction period while the visa was in effect. This extension allows eligible visa holders additional time, without disadvantage, to meet the requirements for grant of a permanent visa relating to living and working in regional Australia. Visas held by relevant family members are also extended.

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.

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. 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 references are:

- Schedule 1 – OBPR21-01256
- Schedule 2 – OBPR21-01251

Subsection 17(1) of the *Legislation Act 2003* (the Legislation Act) requires that appropriate and reasonably practicable consultation be undertaken prior to implementing changes to regulations.

In relation to Schedule 1, formal consultations were not considered necessary or appropriate as the amendments to extend certain Subclass 485 (Temporary Graduate) visas are entirely beneficial to visa holders, there is no disadvantageous impact on visa holders' rights, and no liabilities are imposed as a result of the visa extension. Representations by visa holders, the public and industry were considered in developing these settings. This accords with section 17 of the Legislation Act.

In relation to Schedule 2, consultations were undertaken with the Departments of Education Skills and Employment; Infrastructure, Transport, Regional Development and Communications; and the Treasury, and with key stakeholders including the Australian Chamber of Commerce and Industry, the Australian Hospitality Union, the Australian Worker's Union, Infrastructure Australia, the Migration Council Australia, the Regional Australia Institute, Regional Development Australia, and State and Territory and local governments. This consultation accords with subsection 17(1) of the Legislation Act.

Schedule 1 and Part 1 of Schedule 2 to the Regulations commence retrospectively on 31 January 2020. Those provisions extend certain Subclass 485 (Temporary Graduate) and Subclass 489 (Skilled – Regional (Provisional)) visas, respectively. Some of those visas may have ceased before the Regulations were made. Retrospective commencement of the amendments ensures that those visas are extended, as intended, despite the earlier cessation of the visa. The amendments are beneficial to affected visa holders and do not disadvantage any person. Retrospective commencement of the amendments is therefore consistent with section 12 of the Legislation Act. Part 2 of Schedule 2 to the Regulations commences the day after registration. The amendments made by Part 2 extend Subclass 491 (Skilled Work Regional (Provisional)) and Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visas. Those visas have only been

granted since 2019 and none have yet ceased. Therefore, retrospective commencement of Part 2 is not required to ensure that all relevant visas are extended.

Further details of the Regulations are set out in Attachment C.

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 (the 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 29(1), which provides that the Minister may grant a non-citizen permission, to be known as a visa, to do either or both of the following: (a) travel to and enter Australia; (b) remain in Australia;
- subsection 29(2), which provides that, without limiting subsection 29(1), a visa to travel to, enter and remain in Australia may be one to:
  - (a) travel to and enter Australia during a prescribed or specified period; and
  - (b) if, and only if, the holder travels to and enters during that period, remain in Australia during a prescribed or specified period or indefinitely; and
- subsection 30(2), which provides that a visa to remain in Australia (whether also a visa to travel to and enter Australia) may be a visa, to be known as a temporary visa, to remain during a specified period, or until a specified event happens, or while the holder has a specified status.

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### ***Migration Amendment (Temporary Graduate and Skilled Regional Provisional Visas) Regulations 2022***

The *Migration Amendment (Temporary Graduate and Skilled Regional Provisional Visas) Regulations 2022* (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.

#### **Schedule 1 – Extension of certain Subclass 485 (Temporary Graduate) visas**

##### **Overview**

The Temporary Graduate (subclass 485) visa is for international students who have recently graduated from an Australian education or training institution. It allows international graduates (and members of their family unit), to live, study and work in Australia temporarily. Subclass 485 visas are usually granted for a period between one and four years, depending on the visa stream and qualification level. Hong Kong and British National Overseas passport holders may stay for five years.

On 25 November 2021, the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs and the Minister for Education and Youth jointly announced that the Government intends to introduce a replacement subclass 485 visa for holders who have lost time in Australia as a result of COVID-19 international travel restrictions. The replacement visa would be available to people who were outside of Australia at any time between 1 February 2020 and 15 December 2021 while they held a valid subclass 485 visa. This reflects the period of international travel restrictions impacting affected visa holders, noting that from 15 December 2021, Australia reopened to fully vaccinated eligible visa holders, including subclass 485 visa holders, without needing to apply for a travel exemption.

The joint announcement noted the replacement visa would be open for applications from mid 2022. To assist affected subclass 485 visa holders (and former holders) in the meantime, Schedule 1 to the Amendment Regulations amends the Migration Regulations to provide for the periods of certain subclass 485 visas to be extended until 30 September 2022. This will allow visa holders affected by COVID-19 international travel restrictions to enter or remain in Australia to live, study and work until they are able to apply for, and be granted, the replacement visa from mid 2022.

This extension applies to all subclass 485 visa holders, where the primary visa holder:

- was outside of Australia at any time between 1 February 2020 and 14 December 2021 and holds or held a subclass 485 visa which was in effect during that time which has ceased, or would have ceased, before 1 October 2022, but was not cancelled; and
- has not been granted another substantive visa.

The same extension applies to secondary visa holders, that is, persons who were granted a subclass 485 visa on the basis of being the member of the family unit of the primary visa holder, if the primary visa holder is eligible.

### **Human rights implications**

Schedule 1 to the Amendment Regulations may positively engage the right to work and the right to education, respectively recognised in Articles 6 and 13 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), particularly where the person is in Australia.

This amendment aims to mitigate the impact of the COVID-19 pandemic and associated travel restrictions on affected subclass 485 visa holders by providing them with an extended period in which they can live, study and work in Australia.

As such, Schedule 1 to the Amendment Regulations broadly supports the right to work in Article 6 of the ICESCR and the right of to education in Article 13 of the ICESCR.

### **Schedule 2 – Skilled regional provisional visas**

#### **Overview**

The Australian Government is committed to supporting the sustainable prosperity of regional areas with responsive and tailored migration policy and arrangements to enable regional communities to address skills and labour shortages and capitalise on the significant economic benefits that migration brings to Australia.

Skilled regional provisional visas are a centrepiece of the Australian Government's regional migration strategy that delivers skilled overseas workers to regional areas. Namely:

- The Skilled Work Regional (Provisional) (subclass 491) visa is for skilled workers (and members of their family unit) who are nominated by a State or Territory Government or sponsored by an eligible family member who is resident in regional Australia to live, work and study in a designated regional area.
- The Skilled Employer Sponsored Regional (Provisional) (subclass 494) visa is for skilled workers (and members of their family unit) sponsored by an Australian business in regional Australia to live, work and study in a designated regional area.

These visas commenced on 16 November 2019 and are granted for a duration of five years. Visa holders who live, work and study only in a designated regional area for at least three years of their five-year visa are eligible to apply for permanent residence.

In addition to the subclass 491 and 494 visas above, there is a legacy cohort of Skilled Regional (Provisional) (subclass 489) visa holders. The subclass 489 visa was for skilled workers (and members of their family unit) who wanted to live, work and study in a specified region of Australia, however, it was closed to new applications on 15 November 2019, and was replaced by the subclass 491 visa. Subclass 489 visa holders who live for at least two years and work full time for at least one year in a specified region of Australia of their four-year visa are eligible to apply for permanent residence.

Many skilled regional provisional visa holders have been impacted by COVID-19 international travel restrictions since February 2020, which has limited their ability to enter and work in regional Australia. Others have experienced the need to depart Australia while working and have not been able to return to regional Australia to continue within their occupation, or to commence in other appropriate employment they may have secured prior to their departure.

On 25 November 2021, the Australian Government first announced, as part of a range of measures to assist a range of visa holders and applicants adversely impacted by the pandemic, that it would extend current and ceased visas for the affected skilled regional provisional visa cohort to provide additional time for them to meet regional residential and work requirements for permanent residency. On 18 January 2022, the Government further clarified that the extension of these visas would be for a period of three years.

There is strong support for this concession from businesses and visa holders. Skilled regional provisional visa holders are a skills-assessed, job-ready cohort.

Schedule 2 to the Amendment Regulations amends the Migration Regulations to implement the extended visa arrangements for subclass 489, 491 and 494 visa holders impacted by COVID-19 related travel restrictions, allowing them to maintain the relevant pathways towards permanent residency in Australia.

This amendment extends skilled regional provisional visas by three years from their original cessation date, that is, the amendments provide an additional three years on top of the original duration of the person's visa. This includes where the visa ceased during the relevant period (relevant only to the subclass 489 visa as none of the subclass 491 and 494 visas have ceased yet). This extension applies to all skilled regional provisional visa holders where the primary visa holder:

- was outside Australia for any length of time between 1 February 2020 and 14 December 2021 inclusive and who holds or held a subclass 489, 491 or 494 visa during that time which has not been cancelled; and
- in the case of affected subclass 491 and 494 visa holders, that visa is in effect on 18 February 2022.

The 1 February 2020 – 14 December 2021 timeframe reflects the period of international travel restrictions impacting affected visa holders, as from 15 December 2021, Australia reopened to fully vaccinated eligible visa holders, including subclass 489, 491 and 494 visa holders, without needing to apply for a travel exemption.

The same extension applies to secondary visa holders, that is, persons who were granted a subclass 489, 491 or 494 visa on the basis of being the member of the family unit of the primary visa holder, if the primary visa holder is eligible.

This extension aims to provide sufficient additional time for all current and former visa holders to make travel arrangements and start or resume living, working and studying in regional Australia.

### **Human rights implications**

Schedule 2 to the Amendment Regulations may positively engage the right to work and the right to education, respectively recognised in Articles 6 and 13 of the ICESCR, particularly where the person is in Australia.

This amendment aims to mitigate the impact of the COVID-19 pandemic and associated travel restrictions on affected subclass 489, 491 and 494 visa holders, by providing an extended period in which they can live, work and study in Australia, as well as allowing them to maintain the relevant pathways towards permanent residency in Australia.

This amendment may also assist regional employers to re-engage the employment of overseas skilled workers.

As such, Schedule 2 to the Amendment Regulations broadly supports the right to work in Article 6 of the ICESCR and the right of to education in Article 13 of ICESCR.

### **Conclusion**

The Amendment Regulations are compatible with human rights.

**The Hon Alex Hawke MP,  
Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**



**Details of the Migration Amendment (Extension of Temporary Graduate and Skilled Regional Provisional Visas) Regulations 2022**

**Section 1 - Name**

This section provides that the name of the instrument is the *Migration Amendment (Extension of Temporary Graduate and Skilled Regional Provisional Visas) Regulations 2022*.

**Section 2 - Commencement**

This section provides for the commencement of the instrument.

Subsection 2(1) provides that each provision of the Regulations specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

The effect of the table is that the Regulations commence as follows:

- Sections 1 to 4, which are the formal provisions relating to the name, commencement and operation of the Regulations, commence the day after the instrument is registered.
- Schedule 1, which contains the provisions extending certain Subclass 485 (Temporary Graduate) visas, commences retrospectively on 31 January 2020.
- Schedule 2, Part 1, which contains the provisions extending certain Subclass 489 (Skilled – Regional (Provisional)) visas, commences retrospectively on 31 January 2020.
- Schedule 2, Part 2, which contains the provisions extending certain Subclass 491 (Skilled Work Regional (Provisional)) visas and Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visas, commences on 18 February 2022.

The commencement dates are further explained in the notes relating to the relevant Schedules and Parts.

**Section 3 - Authority**

This section provides that the instrument is made under the *Migration Act 1958* (the Migration Act).

**Section 4 - Schedules**

This section provides for how the amendments made by the Regulations operate.

## **Schedule 1 – Extension of certain Subclass 485 (Temporary Graduate) visas**

### ***Migration Regulations 1994***

#### **Item [1] – At the end of Division 485.5 of Schedule 2**

This item adds a new clause 485.514 in Subclass 485 of Schedule 2 to the Migration Regulations.

Current clauses 485.511, 485.512 and 485.513 provide that a Subclass 485 (Temporary Graduate) visa is a temporary visa permitting the holder to travel to, enter and remain in Australia until a date specified by the Minister, unless the visa is a second Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream when the visa may be for up to one or two years depending on the criteria satisfied for the grant of the visa.

New clause 485.514 provides that, despite subclauses 485.511, 485.512 and 485.513, if subclause 485.514(2) or (3) applies to a Subclass 485 (Temporary Graduate) visa, the visa is a temporary visa permitting the holder to travel to, enter and remain in Australia until 30 September 2022. The effect is that subclause 485.514 prevails irrespective of the period for which an affected visa was originally granted.

Subclause 485.514(2) applies to a Subclass 485 (Temporary Graduate) visa held by a person if:

- the visa was granted when the person was in Australia to a person who satisfied the primary criteria; and
- the person was outside Australia on any day between 1 February 2020 and the 14 December 2021 (the period of major travel restrictions) and the visa was in effect on that day; and
- the cessation date of the visa is before 1 October 2022; and
- the visa has not been cancelled, and no other visa has come into effect for the person.

Subclause 485.514(3) applies to a Subclass 485 (Temporary Graduate) visa held by a person if the visa was granted on the basis that the person satisfied the secondary criteria as a member of the family unit of a person who held a visa to which subclause 485.514(2) applies. This provision ensures that a visa held by a secondary applicant is extended to 30 September 2022 if the visa held by the primary applicant is extended. As noted above, a visa held by the primary applicant is not extended if the visa has been cancelled or if another substantive visa has come into effect for the person. Consequently, in those circumstances a visa held by a secondary applicant is also not extended.

The Subclass 485 (Temporary Graduate) visa provides for recent graduates of an Australian education or training institution who studied in Australia while holding a Student visa to remain temporarily to live, work and study in Australia. Travel restrictions imposed in response to the COVID-19 pandemic have resulted in many visa holders being unable to spend the full time in Australia provided for by the visa. To make up for this loss of time, the Government announced on 25 November 2021 that it intends to introduce a replacement Subclass 485 (Temporary Graduate) visa. This replacement visa would not be available, however, until mid 2022. The purpose of clause 485.514 is to keep relevant Subclass 485 (Temporary Graduate) visas in effect until 30 September 2022, to ensure that visa holders have sufficient opportunity to apply for a replacement visa when it becomes available.

Some affected Subclass 485 (Temporary Graduate) visas will have ceased before these amendments are made. For this reason, the amendments are made to commence retrospectively on 31 January 2020 so that the relevant visas are taken to have been extended to 30 September 2022 even if they otherwise ceased before these amendments were made. This provision is entirely beneficial to visa holders affected by the retrospectivity as it means that they are taken to hold the visa until 30 September 2022 notwithstanding its earlier cessation, unless the visa was cancelled or another substantive visa came into effect for the person.

Retrospective regulations are permissible in accordance with section 12 of the *Legislation Act 2003*. Section 12 provides, relevantly:

*Retrospective commencement*

*(1A) Despite any principle or rule of common law, a legislative instrument or notifiable instrument may provide that the instrument, or a provision of the instrument, commences before the instrument is registered.*

*Retrospective application*

*(2) However, if a legislative instrument or notifiable instrument, or a provision of such an instrument, commences before the instrument is registered, the instrument or provision does not apply in relation to a person (other than the Commonwealth or an authority of the Commonwealth) to the extent that as a result of that commencement:*

*(a) the person's rights as at the time the instrument is registered would be affected so as to disadvantage the person; or*

*(b) liabilities would be imposed on the person in respect of anything done or omitted to be done before the instrument is registered.*

The amendments to extend the duration of Subclass 485 (Temporary Graduate) visas, including visas that have ceased since 1 February 2020, are beneficial to visa holders. There is no disadvantageous impact on any person's rights and no liabilities are imposed on any person in respect of anything done or omitted to be done before the instrument is registered.

**Item [2] – In the appropriate position in Schedule 13**

This item inserts a new Part 103 – Amendments made by the *Migration Amendment (Extension of Temporary Graduate and Skilled Regional Provisional Visas) Regulations 2022* – in Schedule 13 (Transitional Arrangements) to the Migration Regulations.

Item 10301 (Operation of Schedule 1) makes it clear that the amendments made by Schedule 1, which extend certain Subclass 485 (Temporary Graduate) visas until 30 September 2022 if the visa meets the circumstances set out in new clause 485.514, apply in relation to a Subclass 485 visa granted before, on or after 31 January 2020.

## **Schedule 2 – Skilled regional provisional visas**

### **Part 1 – Subclass 489 (Skilled – Regional (Provisional)) visas**

#### ***Migration Regulations 1994***

##### **Item [1] – Clause 489.511 of Schedule 2**

This item makes a technical amendment to clause 489.511 of Subclass 489 in Schedule 2 to the Migration Regulations, to facilitate the insertion of a new subclause 489.511(2) by the following item of this Schedule.

##### **Item [2] – At the end of clause 489.511 of Schedule 2.**

This item adds a new subclause 489.511(2) in Subclass 489 of Schedule 2 to the Migration Regulations.

Clause 489.511 provides that a Subclass 489 (Skilled – Regional (Provisional)) visa in the First Provisional Visa stream is a temporary visa permitting the holder to travel to, enter and remain in Australia for 4 years from the date of grant.

New subclause 489.511(2) makes a further provision that if, however, the visa is in effect on any day between 1 February 2020 and 14 December 2021 and the holder of the visa is outside Australia on that day, the visa is a temporary visa permitting the holder to travel to, enter and remain in Australia for 7 years from the date of grant of the visa.

The effect of new subclause 489.511(2) is to extend the visa for an additional 3 years if the visa holder was outside Australia while holding the visa at any time between 1 February 2020 and 14 December 2021, the period of international travel restrictions because of the COVID-19 pandemic. This amendment provides affected visa holders with a further 3 years, in addition to the 4 years for which the visa was originally granted, to enter, live and work in regional Australia. (See further details of the effect of the amendment, below.)

##### **Item [3] – Clause 489.512 of Schedule 2**

This item makes a technical amendment to clause 489.512 of Subclass 489 of Schedule 2 to the Migration Regulations, to facilitate the insertion of a new subclause 489.512(2) by item 5 of this Schedule, below.

##### **Item [4] – Clause 489.512 of Schedule 2**

This item amends clause 489.512 of Schedule 2 to the Migration Regulations by inserting “(the starting date)” after the word “date”. This amendment relates to the amendment made by the following item of this Schedule.

##### **Item [5] – At the end of clause 489.512 of Schedule 2.**

This item adds a new subclause 489.512(2) in Subclass 489 of Schedule 2 to the Migration Regulations.

Clause 489.512 provides that a Subclass 489 (Skilled – Regional (Provisional)) visa in the Second Provisional Visa stream is a temporary visa permitting the holder to travel to, enter and remain in Australia for 4 years after the date of grant of the provisional visa that the applicant held at the time of application. For the purposes of clause 489.512, the date of grant of that provisional visa is defined as “the starting date” by the amendment made by the above item.

New subclause 489.512(2) makes a further provision that if, however, the visa is in effect on any day between 1 February 2020 and 14 December 2021 and the holder of the visa is outside Australia on that day, the visa is a temporary visa permitting the holder to travel to, enter and remain in Australia for 7 years from the starting date.

The effect of new subclause 489.512(2) is to extend the visa for an additional 3 years if the visa holder was outside Australia while holding the visa at any time between 1 February 2020 and 14 December 2021, the period of international travel restrictions due to the COVID-19 pandemic. This amendment provides affected visa holders with a further 3 years to enter, live and work in regional Australia.

Existing clause 489.513 provides that a visa granted to a member of the family unit of a person who holds a Subclass 489 visa in the First Provisional Visa stream or the Second Provisional Visa stream has the same period of effect as the visa granted to the applicant who satisfied the primary criteria. The effect of this provision is therefore that if the period of the primary applicant’s visa is extended under new subclause 489.511(2) or 489.512(2), the visa held by a member of the family unit is also extended.

Subclass 489 (Skilled – Regional (Provisional)) visas have been granted since 2012. The visa was closed to new applications in 2019 when it was replaced by the Subclass 491 (Skilled Work Regional (Provisional)) visa, but a number of visa holders remain. The Subclass 489 visa allows holders to live, work and study in a specified regional area of Australia. Visa holders who have lived in a specified regional area for 2 years (or for 18 months if coming within a concessionary provision) and worked in the regional area for at least one year (or 9 months if coming within a concessionary provision) may be eligible for the grant of a Subclass 887 (Skilled – Regional) permanent visa. These amendments provide additional time for visa holders who have been impacted by COVID-19 related travel restrictions to meet these requirements.

Some affected Subclass 489 (Skilled – Regional (Provisional)) visas will have ceased before these amendments are made. For this reason, the amendments are made to commence retrospectively on 31 January 2020 so that the relevant visas are taken to have been extended for 3 years even if they ceased before these amendments were made. This provision is entirely beneficial to visa holders affected by the retrospectivity as it means that they are taken to hold the visa for an additional 3 years notwithstanding its earlier cessation, unless the visa was cancelled.

Retrospective regulations are permissible in accordance with section 12 of the *Legislation Act 2003*. Please see the notes under item 1 of Schedule 1 to these Regulations, above, for further details of the operation of section 12 of the *Legislation Act 2003*.

The amendments to extend the duration of Subclass 489 (Skilled – Regional (Provisional)) visas, including visas that have ceased to be in effect since 1 February 2020, are beneficial to

visa holders and are in accordance with section 12 of the *Legislation Act 2003*. There is no disadvantageous impact on any person's rights and no liabilities are imposed on any person in respect of anything done or omitted to be done before the instrument is registered.

#### **Item [6] – At the end of Part 103 of Schedule 13**

This item adds a new item 10302 (Operation of Schedule 2) in Part 103 (Amendments made by the *Migration Amendment (Extension of Temporary Graduate and Skilled Regional Provisional Visas) Regulations 2022*) in Schedule 13 (Transitional Arrangements) to the Migration Regulations. Part 103 is inserted in Schedule 13 by item 2 of Schedule 1 to these Regulations, above.

Item 10302 (Operation of Schedule 2) makes it clear that the amendments made by Schedule 2, which extend certain Subclass 489 (Skilled – Regional (Provisional)) visas, apply in relation to a Subclass 489 visa granted before, on or after 31 January 2020 if the visa holder meets the requirements of new subclause 489.511(2) or 489.512(2), but the amendments do not apply if the visa was cancelled.

#### **Part 2 – Subclass 491 (Skilled Work Regional (Provisional)) visas and Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visas**

##### ***Migration Regulations 1994***

**Items [7] – [10] of Part 2 of Schedule 2 to these Regulations** make amendments to Division 491.5 of Subclass 491 (Skilled Work Regional (Provisional)) in Schedule 2 to the Migration Regulations. Division 491.5 provides for when Subclass 491 granted to primary applicants and members of their family units are in effect.

The Subclass 491 (Skilled Work Regional (Provisional)) visa was introduced on 16 November 2019. It is granted for 5 years from the date of grant, so none are due to cease until around the end of 2024. Holders of a Subclass 491 visa may apply for a Subclass 191 (Permanent Residence (Skilled Regional)) visa in the Regional Provisional Visas stream (which commences on 5 March 2022 but applications cannot be made before 16 November 2022) after holding the provisional visa for 3 years and living, working or studying in a designated regional area of Australia during that time.

The amendments made by these items provide additional time for visa holders impacted by COVID-19 related international travel restrictions to satisfy these requirements. Details of the amendments are as follows:

#### **Item [7] – Clause 491.511 of Schedule 2**

This item makes a technical amendment to clause 491.511 of Subclass 491 in Schedule 2 to the Migration Regulations, to facilitate the insertion of a new subclause 491.511(2) by the following item of this Schedule.

#### **Item [8] – At the end of clause 491.511 of Schedule 2**

This item adds a new subclause 491.511(2) to clause 491.511 in Subclass 491 of Schedule 2 to the Migration Regulations.

Clause 491.511 originally provided that a Subclass 491 visa granted to an applicant who satisfies the primary criteria is a temporary visa permitting the holder to travel to, enter and remain in Australia for 5 years from the date of grant.

New subclause 491.511(2) provides that, if, however, the visa is in effect on any day between 1 February 2020 and 14 December 2021, the period of COVID-19 related international travel restrictions, the visa holder is outside Australia on that day, and the visa is in effect on 18 February 2022 (the date these amendments commence), the visa is a temporary visa permitting the holder to travel to, enter and remain in Australia for 8 years from the date of grant.

The effect of new subclause 491.511(2) is that visa holders who meet the requirements of the subclause have an additional 3 years on the visa to make up for time lost while outside Australia during the period of travel restrictions thus giving them further time to meet the requirements for grant of a Subclass 191 permanent visa.

#### **Item [9] – Clause 491.512 of Schedule 2**

This item makes a technical amendment to clause 491.512 of Subclass 491 in Schedule 2 to the Migration Regulations, to facilitate the insertion of a new subclause 491.512(2) by the following item of this Schedule.

#### **Item [10] – Paragraph 491.512(a) of Schedule 2**

This item amends paragraph 491.512(a) of Subclass 491 in Schedule 2 to the Migration Regulations to insert a definitional term “the *secondary visa*” to describe a visa granted to an applicant who satisfies the secondary criteria. This is a technical amendment to support the terminology used in new subclause 491.512(2), added by the following item of this Schedule.

#### **Item [11] – At the end of clause 491.512 of Schedule 2**

This item adds a new subclause 491.512(2) to clause 491.512 of Subclass 491 in Schedule 2 to the Migration Regulations.

Clause 491.512 originally provided that a Subclass 491 visa granted to an applicant who satisfies the secondary criteria as a member of the family unit of a person who satisfies the primary criteria is a temporary visa permitting the holder to travel to, enter and remain in Australia for 5 years from the date of grant of the primary visa holder’s visa.

New subclause 491.512(2) provides that, if, however, the primary visa holder’s visa is in effect on any day between 1 February 2020 and 14 December 2021 (the period of COVID-19 related international travel restrictions), the primary visa holder is outside Australia on that day, and the primary visa holder’s visa and the secondary visa are in effect on 18 February 2022 (the date these amendments commence), the visa is a temporary visa permitting the holder to travel to, enter and remain in Australia for 8 years from the date of grant of the primary visa holder’s visa.

The effect of this amendment is that if the primary visa holder satisfies the requirements in new subclause 491.511(2) for the visa to be extended to 8 years from the date of grant, a visa

held by a member of the primary visa holder's family unit is also extended to 8 years from the date of grant of the primary visa holder's visa.

The primary visa holder's visa is not extended if it is not in effect on 18 February 2022. A Subclass 491 visa would not be in effect on that date only if the visa has been cancelled or if another substantive visa has come into effect for the person. In those circumstances the visa would cease to be in effect under subsection 82(1) or (2) of the Migration Act, respectively. Consequently, a visa held by a member of the primary visa holder's family unit is not extended even if the visa held by the family member was not cancelled when the visa of the primary visa holder was cancelled, or did not otherwise cease.

A secondary visa is also not extended if the visa is not in effect on 18 February 2022. However, a secondary visa granted on or after 18 February 2022 to a member of a family unit of a primary visa holder whose visa satisfies new subclause 491.511(2) will be granted for 8 years from the date of grant of the primary visa.

**Items [12] – [16] of Part 2 of Schedule 2 to these Regulations** make amendments to Division 494.5 of Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) in Schedule 2 to the Migration Regulations. Division 494.5 provides for when Subclass 494 granted to primary applicants and members of their family units are in effect.

The Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa was introduced on 16 November 2019 and is granted for 5 years from the date of grant. Holders may apply for a Subclass 191 (Permanent Residence (Skilled Regional)) visa in the Regional Provisional Visas stream (which commences on 5 March 2022 but applications cannot be made before 16 November 2022) after holding the visa for 3 years and working for an employer in a designated regional area of Australia during that time.

The amendments made by these items provide additional time for visa holders impacted by COVID-19 related international travel restrictions to satisfy these requirements. Details of the amendments are as follows:

#### **Item [12] – Clause 494.511 of Schedule 2**

This item makes a technical amendment to clause 494.511 of Subclass 494 in Schedule 2 to the Migration Regulations, to facilitate the insertion of a new subclause 494.511(2) by the following item of this Schedule.

#### **Item [13] – At the end of clause 494.511 of Schedule 2**

This item adds a new subclause 494.511(2) to clause 494.511 in Subclass 494 of Schedule 2 to the Migration Regulations.

Clause 494.511 originally provided that a Subclass 494 visa granted to an applicant who satisfies the primary criteria is a temporary visa permitting the holder to travel to, enter and remain in Australia for 5 years from the date of grant.

New subclause 494.511(2) provides that, if, however, the visa is in effect on any day between 1 February 2020 and 14 December 2021, the period of COVID-19 related international travel restrictions, the visa holder is outside Australia on that day, and the visa is in effect on 18



February 2022 (the date these amendments commence), the visa is a temporary visa permitting the holder to travel to, enter and remain in Australia for 8 years from the date of grant.

The effect of new subclause 494.511(2) is that visa holders who meet the requirements of the subclause have an additional 3 years on the visa to make up for time lost while outside Australia during the period of travel restrictions thus giving them further time to meet the requirements for grant of a Subclass 191 permanent visa.

#### **Item [14] – Clause 494.512 of Schedule 2**

This item makes a technical amendment to clause 494.512 of Subclass 494 in Schedule 2 to the Migration Regulations, to facilitate the insertion of a new subclause 494.512(2) by the following item of this Schedule.

#### **Item [15] – Paragraph 494.512(a) of Schedule 2**

This item amends paragraph 494.512(a) of Subclass 494 in Schedule 2 to the Migration Regulations to insert a definitional term “the *secondary visa*” to describe a visa granted to an applicant who satisfies the secondary criteria. This is a technical amendment to support the terminology used in new subclause 494.512(2), added by the following item of this Schedule.

#### **Item [16] – At the end of clause 494.512 of Schedule 2**

This item adds a new subclause 494.512(2) to clause 494.512 of Subclass 491 in Schedule 2 to the Migration Regulations.

Clause 494.512 originally provided that a Subclass 494 visa granted to an applicant who satisfies the secondary criteria as a member of the family unit of a person who satisfies the primary criteria is a temporary visa permitting the holder to travel to, enter and remain in Australia for 5 years from the date of grant of the primary visa holder’s visa.

New subclause 494.512(2) provides that, if, however, the primary visa holder’s visa is in effect on any day between 1 February 2020 and 14 December 2021 (the period of COVID-19 related international travel restrictions), the primary visa holder is outside Australia on that day, and the primary visa holder’s visa and the secondary visa are in effect on 18 February 2022 (the date these amendments commence), the visa is a temporary visa permitting the holder to travel to, enter and remain in Australia for 8 years from the date of grant of the primary visa holder’s visa.

The effect of this amendment is that if the primary visa holder satisfies the requirements in new subclause 494.511(2) for the visa to be extended to 8 years from the date of grant, a visa held by a member of the primary visa holder’s family unit is also extended to 8 years from the date of grant of the primary visa holder’s visa.

It should be noted that if the primary visa holder’s visa is not in effect on 18 February 2022, the date of commencement of these amendments, a visa held by a member of the person’s family unit is not extended under new subclause 494.512(2).

The primary visa holder's visa is not extended if it is not in effect on 18 February 2022. A Subclass 494 visa would not be in effect on that date only if the visa has been cancelled or if another substantive visa has come into effect for the person. In those circumstances the visa would cease to be in effect under subsection 82(1) or (2) of the Migration Act, respectively. Consequently, a visa held by a member of the primary visa holder's family unit is not extended even if the visa held by the member of the family unit was not cancelled when the visa of the primary visa holder was cancelled, or did not otherwise cease.

A secondary visa is also not extended if the visa is not in effect on 18 February 2022. However, a secondary visa granted on or after 18 February 2022 to a member of the family unit of a primary visa holder whose visa satisfies new subclause 494.511(2) will be granted for 8 years from the date of grant of the primary visa