EXPLANATORY STATEMENT

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

Migration Act 1958

Migration Amendment (2022 Measures No. 2) 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 (2022 Measures No.2) Regulations 2022* (the Regulations) amends the *Migration Regulations 1994* (the Migration Regulations) to extend the period of stay in Australia for certain skilled visas; facilitates a pathway to permanent residence for short-term skilled visas; and supports the expanded use of a digital app to apply for an Electronic Travel Authority visa (a tourist visa traditionally applied for and granted through a travel agent). In particular:

Schedule 1 – Subclass 476 (Skilled – Recognised Graduate) visas

Schedule 1 extends, until 14 April 2024, Subclass 476 (Skilled – Recognised Graduate) visas whose holders were outside Australia during the COVID-19 related travel restrictions (1 February 2020 to 14 December 2021). This extension assists holders to use the visa as intended and assists in relieving labour shortages.

Schedule 2 – Electronic Travel Authority (Class UD) visas

As international borders open, Schedule 2 facilitates the ability to apply for an Electronic Travel Authority visa using a recently launched digital app, for all ETA-eligible passport holders. This supports the digital transformation strategy and the recovery of Australia's tourism industry.

Schedule 3 – Temporary Skill Shortage (Class GK) visas

Schedule 3 facilitates short-term skilled visa holders accessing a pathway to permanent residence (currently generally only available to longer-term visa holders), by enabling them to apply for a further short-term stream visa in Australia in order to secure an employer nomination for a permanent visa. These changes permit more skilled workers to remain in Australia, supporting economic recovery.

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 (OBPR) has been consulted in relation to the amendments. No Regulation Impact Statement is required. The OBPR consultation references are:

- Schedule 1 – OBPR22-01739
- Schedule 2 – OBPR22-01608
- Schedule 3 – OPBR22-01517

In relation to Schedule 1, which extends certain skilled visas for holders affected by travel restrictions, no consultation was considered to be necessary however consideration was given to representations by affected visas holders.

In relation to Schedule 2, which expands access to the ETA app, no consultation was considered to be necessary as no substantive changes were made.

In relation to Schedule 3, which permits applications for a third short-term skilled visa while Australia, a range of Federal Government Departments were consulted on an enhanced pathway to permanent residence along with the Ministerial Advisory Council on Skilled Migration. The amendments also address recommendations of other committees, including the Joint Standing Committee on Migration, to improve access to permanent residence for temporary workers.

Schedule 1 commences retrospectively on 31 January 2020 to ensure that relevant visas that ceased in the intervening period are also retrospectively extended, despite their earlier cessation. Retrospective commencement is beneficial to affected persons and is consistent with section 12 of the *Legislation Act 2003* (the Legislation Act).

Schedule 2 commences on 5 April 2022. Schedule 3 commences on 1 July 2022. These commencement dates enable the necessary IT systems changes and other administrative arrangements to be implemented before the commencement of the amendments

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

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

ATTACHMENT A

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, subject to the Act, the Minister may grant a non-citizen permission, to be known as a visa, to do either or both of travel to and enter Australia, or 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 a visa to travel to and enter Australia during a prescribed or specified period, and if and only if the holder travels to and enters during that period, to remain in Australia during the prescribed or specified period or indefinitely;

- subsection 29(3) which provides that, without limiting subsection 29(1), a visa to travel to, enter and remain in Australia may be a visa to travel to and enter Australia during a prescribed or specified period, and if and only if the holder travels and enters during that period, to remain in Australia during a specified or prescribed period or indefinitely, and, if the holder leaves Australia during a prescribed or specified period, to travel and re-enter Australia during a prescribed or specified period;

- 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;

- 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;

- section 40, 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;

- paragraph 46(1)(b), which provides that a visa application is valid only if it satisfies the criteria and requirements prescribed in the regulations;

- subsection 46(2) which provides that an application for a visa is valid if it is an application for a visa of a class prescribed for the purposes of this subsection and, under the regulations, the application is taken to have been validly made;

- 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 the circumstances that must exist for an application for a visa to be valid, how an application for a visa must be made, where an application for a visa must be made, and where an applicant must be when an application for a visa is made.

ATTACHMENT B

Statement of Compatibility with Human Rights

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

Migration Amendment (2022 Measures No. 2) Regulations 2022

The *Migration Amendment (2022 Measures No. 2) 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 – Subclass 476 (Skilled – Recognised Graduate) visas

Overview

The Skilled – Recognised Graduate (subclass 476) visa is for recent graduates who, in the two years prior to applying for this visa, have graduated from an institution specified in a legislative instrument, with a degree or higher qualification in a discipline specified in the instrument. The relevant instrument, the *Institutions and Disciplines for Subclass 476 (Skilled – Recognised Graduate) Visas* – IMMI 14/010, specifies institutions in a range of countries, and the discipline of Engineering. The subclass 476 visa permits the holder to come to Australia temporarily to live, work or study until a date specified by the Minister, usually for up to 18 months.

As a result of COVID-19 related international travel restrictions between 1 February 2020 and 14 December 2021, a number of subclass 476 visa holders have been unable to travel or return to Australia. To assist affected subclass 476 visa holders, Schedule 1 to the Amendment Regulations amends the *Migration Regulations 1994* to provide for the visa duration period (that is, the period during which the person can enter and remain in Australia) of certain subclass 476 visa holders and former holders to be extended until 14 April 2024. This provides subclass 476 visa holders and former holders affected by COVID-19 international travel restrictions with an additional 24 months to live, work and study in Australia to assist them to use the visa as intended.

This extension applies to all primary subclass 476 visa holders who were outside of Australia at any time between 1 February 2020 and 14 December 2021, while they held a valid subclass 476 visa. This applies even if the visa has already ceased, or would have ceased before the Amendment Regulations are made, but was not cancelled.

The same extension applies to secondary visa holders, that is, persons who were granted a subclass 476 visa on the basis of being a member of the family unit of the primary visa holder, if the primary visa holder is eligible.

While the subclass 476 visa is a visa that people apply for outside Australia, and who, in most cases, must be outside Australia at the time of grant, the extension will operate regardless of whether the person is in Australia or outside Australia at the time Schedule 1 of the Amendment Regulations takes effect.

Human rights implications

The amendments made by 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,* particularly where the person is in Australia.

The amendments made by Schedule 1 broadly support the right to work and the right to education insofar as they aim to mitigate the impact of the COVID-19 pandemic and associated travel restrictions on affected subclass 476 visa holders by providing them with an extended period in which they can live, study and work in Australia.

Schedule 2 – Electronic Travel Authority (Class UD) visas

Overview

The Electronic Travel Authority (ETA) is an electronically stored authority for travel to Australia for short term tourism or business visits for eligible passport holders. The ETA is a temporary visa (subclass 601) that enables the visa holder to travel to, and enter Australia on multiple occasions within twelve months from the date of grant of the visa or until the expiry date of the visa holder's passport, whichever is earlier. The ETA visa holder can stay in Australia for up to three months after each entry for the purposes of visiting Australia temporarily as a tourist or to engage in a limited business visitor activity, such as participating in a conference or a trade fair.

Passport holders from over 30 countries and jurisdictions are eligible to apply for an ETA visa. In addition, European Union and United Kingdom passport holders who are eligible for the ETA also have access to the eVisitor visa (subclass 651). Applications for the eVisitor visa are made online, and, similarly to the ETA visa, there is no visa application charge VAC and streamlined processing arrangements apply.

An application for an ETA visa is usually made while the applicant is outside Australia but can be made while an applicant is in immigration clearance in Australia. Traditionally, most applicants have applied for an ETA visa through a travel agent, however other methods, such as applying in person, may be available depending on the person's circumstances.

Schedule 2 to the Amendment Regulations amends the Migration Regulations to:

- clarify how an application for an ETA visa may be made; and

- expand who can utilise the AustralianETA App to apply for an ETA visa, to include persons who hold a passport that is both an ETA-eligible passport and an eVisitor eligible passport.

The amendments reflect the changing preferences of both the Department and its clients to utilise the AustralianETA App.

The effect of the amendments is that the expected or usual method for making an ETA application will be through an approved form specified by the Minister in a legislative instrument, although the amendments clarify that this is not the only method. It is intended that the legislative instrument will specify an approved form, being the AustralianETA App.

The majority of ETA visa applications are expected to be made using the AustralianETA App. The AustralianETA App, which was launched in October 2020, has benefits for applicants as they are able to lodge their ETA visa application using their own portable device, at a time of their choosing and convenience. With the reopening of the international border, ETA visa eligible travellers are seeking to travel to Australia in greater numbers, and apply for a visa in a fast and convenient manner.

For this reason, the amendments also enable a person who holds an ETA-eligible passport that is also an eVisitor eligible passport to apply for an ETA visa electronically using the AustralianETA App. Previously, such a person was not able to apply for an ETA visa using this method and had to use other methods. Such persons retain the ability to apply for an eVisitor visa if they prefer.

The AustralianETA App is a flexible platform which allows responses to emerging situations to be implemented rapidly, is able to be updated with improvements to reflect customer preferences and technology and has the ability to collect additional information from applicants via a dynamic form. It auto-populates biographical information from the applicant's passport and collects biometrics through the capture of passport and live facial images. These features improve application data accuracy leading to more efficient visa processing.

Applicants who are seeking an ETA visa and who do not wish to use the AustralianETA App can use other available visa products, such as eVisitor, while those who wish to use the AustralianETA App but cannot or do not want to download it themselves can seek the assistance of a travel agent, or friend or family member. The AustralianETA App has specific travel agent functionality to enable travel agents to download the Australian ETA App to lodge an application on behalf of an applicant. The applicant will need to be present with the travel agent in order to have their facial image captured and their passport scanned via the AustralianETA App, as they would if they had downloaded it themselves.

In addition, the amendments retain the ability for certain people who are in immigration clearance in Australia to apply for an ETA visa by presenting to an officer their ETA-eligible passport and asking the officer for an ETA visa.

Human rights implications

Generally, Australia's human rights obligations extend only to those persons within its territory and/or jurisdiction. Prospective ETA visa applicants apply for the ETA visa while outside Australia although can do so while in immigration clearance in Australia.

The following human rights may be engaged:

- Right to equality and non-discrimination –Article 26 of the *International Covenant on Civil and Political Rights* (ICCPR); Article 5 of the *Convention on the Rights of Persons with Disabilities* (CRPD); and

- Right to privacy – Article 17(1) of the ICCPR.

Right to equality and non-discrimination

Article 26 of the ICCPR provides that 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. Further, the CRPD contains a number of principles, obligations and rights, including Article 5, relating to the non-discriminatory treatment of persons with a disability.

The amendments are aimed at improving processing efficiencies and at making it easier for applicants who wish to travel to Australia for tourism or limited short-term business purposes to apply for an ETA visa by permitting those applicants who hold an ETA-eligible passport that is also an eVisitor eligible passport, to apply for an ETA visa using the AustralianETA App.

To the extent that not all applicants may be able to access the AustralianETA App, the amendments may engage the rights of a person to equality and non-discrimination. To assist with accessibility and usability, the AustralianETA App has been designed with accessibility requirements in mind and includes features such as descriptive labels for all links, buttons and form fields and contrast ratio for text and backgrounds. It also includes Bluetooth keyboard accessibility. Individuals can use mobile translation apps if needed to assist with understanding and inputting information into the AustralianETA App.

ETA visa applicants can also seek assistance from family members and friends to complete their application or can seek assistance through a travel agent to use the AustralianETA App on their behalf, particularly if they do not have access to the relevant technology.

For persons who apply for an ETA visa to travel to Australia for tourism or limited short-term business purposes using the AustralianETA App, the accessibility and usability features of the App, combined with the possibility of a person being able to have someone assist them with completing the application via this method, is consistent with the right to equality and non-discrimination.

Right to privacy

Article 17(1) of the ICCPR states:

> *No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.*

If an applicant chooses to apply for an ETA visa to travel to Australia for tourism or short-term limited business purposes, including via the AustralianETA App, they will be asked to provide personal information. The amendments may therefore engage the right to privacy to the extent that they provide a way of applying for an ETA visa through the AustralianETA App, which was

not previously available to them, which involves the collection and use of that personal information.

The collection, storage, use and disclosure of personal information by the Department is undertaken in accordance with the Australian Privacy Principles contained in the *Privacy Act 1988*. Existing safeguards applied to the Department's collection of personal information, will continue to apply, regardless of the ETA visa application method. In addition, 'personal identifiers', which includes biometric information, such as some of the information that is captured by the AustralianETA App, is subject to the requirements in Part 4A of the *Migration Act 1958* which provides for a range of rules and offences relating to the access, disclosure and use of such information. This is consistent with the United Nations Human Rights Committee General Comment 16 in which the Committee stated that the gathering and holding of personal information using information technology must be regulated by law and that effective measures must be taken to ensure that the information collected is not accessed by persons who are not authorised by law to receive, process or use it.

The Department, in conjunction with other agencies, has a critical role in protecting Australia's borders and national security efforts to combat terrorism, trans-national crime and irregular migration. The collection and use of personal information provided by ETA visa applicants, including through the AustralianETA App, enables the Department to identify visa applicants as soon as practicable, including those who may be concealing their true identity and/or who may pose a risk to the Australian community.

Any limitation on the right to freedom from interference with privacy of persons who choose to apply for the ETA visa so they can enter to Australia for tourism or short-term limited business purposes, including through the AustralianETA App which was not available to some ETA visa applicants prior to the amendments made by Schedule 2, is lawful, reasonable, necessary and proportionate to achieving the legitimate objectives of ensuring the integrity of Australia's visa system and the protection of the Australian community, while improving the facilitation of applications for an ETA visa to travel to Australia.

Schedule 3 – Temporary Skill Shortage (Class GK visas)

Overview

The Subclass 482 (Temporary Skill Shortage) visa (TSS visa) is a visa that allows employers in Australia to nominate foreign workers to work in Australia in skilled occupations which are experiencing labour shortages. TSS visas allow the nominated foreign worker, and members of their family unit, to work and study in Australia for the duration of their visa. TSS visas have a Short-term stream (2 years duration), a Medium-term stream (4 years duration), and a Labour Agreement stream (up to a 4 year duration depending on the terms in the labour agreement).

In addition, the Migration Regulations require applicants for a further TSS visa to be outside Australia where they have held two or more TSS visas in the Short-term stream and where their most recent TSS visa application in the Short-term stream was made in Australia. An exception to this exists where it would be inconsistent with any international trade obligation of Australia to require the applicant to be outside Australia. The Migration Regulations also require that an applicant for an applicable pathway to permanent residence visa stream for temporary skilled work visa holders must be the holder of a TSS visa or Subclass 457 (Temporary Work (Skilled))

visa (which is a visa that the TSS visa replaced in 2018), or a Bridging visa associated with a TSS or Subclass 457 visa application, at the time of the nomination application for that stream.

On 25 November 2021, the Government announced a range of measures aimed at recognising the contribution of skilled migrants who remained in Australia during the COVID-19 pandemic and encouraging them to stay in Australia, by making it easier for highly skilled migrants to remain in Australia and to continue working in critical sectors as Australia's economic recovery continues. One of the announced measures is to improve access to permanent residence for TSS visa holders in the Short-term stream.

Schedule 3 to the Amendment Regulations amends the Migration Regulations to support this measure.

Firstly, the amendment is intended to allow TSS visa holders who have worked in Australia during the COVID-19 pandemic to apply for a third TSS visa in the Short-term stream without having to leave Australia. Specifically, this ability to apply for a third TSS visa applies to those who:

- were in Australia as the holder of a TSS visa in the Short-term stream for periods that total at least 12 months between 1 February 2020 and 14 December 2021; and
- make that further application before 1 July 2023 unless the Minister specifies a later date.

Secondly, the concession introduced by this amendment will also, in conjunction with changes to be implemented by way of legislative instruments, help facilitate a pathway to a permanent visa for this cohort, while they remain in Australia, as it will enable them to be holders of, or applicants for, a TSS visa as required for the applicable pathway to permanent residence visa stream. This concession, together with the implementation of other measures to assist visa holders to remain working in Australia, allows certain prospective applicants for the permanent pathway to remain in Australia rather than departing Australia for the purpose of applying for a further TSS visa.

Human rights implications

The amendments made by Schedule 3 broadly support the right to work in Article 6 of the *International Covenant on Economic, Social and Cultural Rights*. That is, they provide greater opportunities for individuals, who have been working in Australia during COVID-19 pandemic as holders of a TSS visa in the Short-term stream, to access a further TSS visa in the Short-term stream without having to leave Australia to apply. A further TSS visa will allow them (and members of their family unit) to extend their stay in Australia and continue working, if they choose to do so.

Conclusion

The amendments made by the Amendment Regulations are compatible with human rights. To the extent that the amendments may limit some human rights, those limitations are reasonable, necessary and proportionate to their objectives.

The Hon Alex Hawke MP

Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

ATTACHMENT C

Details of the *Migration Amendment (2022 Measures No. 2) Regulations 2022*

Section 1 - Name

This section provides that the name of the instrument is the *Migration Amendment (2022 Measures No. 2) Regulations 2022.*

Section 2 - Commencement

This section provides for the commencement of the instrument.

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 commences retrospectively on 31 January 2020.
- Schedule 2 commences on 5 April 2022.
- Schedule 3 commences on 1 July 2022.

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 - Subclass 476 (Recognised – Skilled Graduate) visas

Part 1 – Main amendments

Migration Regulations 1994

Item [1] – At the end of Division 476.5 of Schedule 2

This item adds a new clause 476.512 in Subclass 476 (Skilled – Recognised Graduate) of Schedule 2 to the Migration Regulations.

Subclass 476 (Skilled – Recognised Graduate) visas are granted to applicants under 31 years old who recently obtained a professional qualification in an occupation in demand from an institution specified in a legislative instrument. The applicant must have completed the course within the last 24 months at an institution specified in a legislative instrument, for the award of a degree or higher qualification in a discipline specified in the instrument. The specified institutions are in a range of countries, and the specified discipline is engineering.

Current clause 476.511 provides that a Subclass 476 (Recognised – Skilled Graduate) visa is a temporary visa permitting the holder to travel to, enter and remain in Australia until a date specified by the Minister.

New clause 476.512 provides that, despite clause 476.511, if subclause 476.512(2) or (3) applies to a Subclass 476 (Recognised – Skilled Graduate) visa, the visa is a temporary visa permitting the holder to travel to, enter and remain in Australia until 14 April 2024.

Subclause 476.512(2) applies to a Subclass 476 (Recognised – Skilled Graduate) visa at and after the end of the date (the original end date) specified by the Minister in relation to the visa as mentioned in clause 476.511 if:

- the visa was granted to a person who satisfied the primary criteria,
- the person was outside Australia on a day to which all of the following apply:
    - the day occurred on or before the original end date;
    - the day occurred between 1 February 2020 and 14 December 2021 (the period of travel restrictions);
    - the visa was in effect on the day, and
- the original end date is before 14 April 2024, and
- the visa has not been cancelled on or before the original end date.

Subclause 476.512(3) applies to a Subclass 476 (Recognised – Skilled 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 476.512(2) applies. This provision ensures that a visa held by a secondary applicant is extended to 14 April 2024 if the visa held by the primary applicant is extended. As noted above, a visa held by the primary applicant will not be extended if the visa has been cancelled. Consequently, a visa held by a secondary applicant will not be extended if the visa held by the primary person has been cancelled, even though the visa held by the secondary person may not have been cancelled at the same time as the primary person's visa was cancelled.

It is likely that a number of Subclass 476 (Recognised – Skilled Graduate) visas have ceased since the visa holder met the requirement to be outside Australia as the holder of a current visa at any time between 1 February 2020 and 14 December 2021. It is intended for these visa holders to have the benefit of the extension also.

For this reason the amendments commence retrospectively on 31 January 2020, with the effect that a visa which was in effect at any time on or after that date is taken to have been extended to 14 April 2024 if the requirements in new clause 476.512 are met, even if the visa had ceased before these amendments were made.

Retrospective regulations are permissible in accordance with section 12 of the Legislation Act. 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.*

Affected visa holders whose visas remain in effect on the date the Regulations are registered should not be disadvantaged by retrospective commencement. The effect of new subclause 476.512 is that a visa which is in effect on the date of registration is prospectively extended until 14 April 2024. The Regulations do not have any retrospective effect in relation to these visa holders and so no issue under section 12 of the Legislation Act arises.

Affected visa holders whose visas have ceased to be in effect by the date the new Regulations are registered will have their visas retrospectively extended to 14 April 2024 by operation of 476.512. This retrospective operation does not have a disadvantageous impact on the rights of these visa holders, nor does it impose any liabilities. The new provisions instead confer the benefit of allowing affected visa holders to travel to, enter and remain in Australia for the extended visa period until 14 April 2024 in circumstances where their visa would otherwise have ceased to be in effect before that date. This is consistent with section 12 of the Legislation Act.

Part 2 – Application of amendments

Migration Regulations 1994

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

This item inserts a new Part 107 – Amendments made by the *Migration Amendment (2022 Measures No. 2) Regulations 2022* – in Schedule 13 (Transitional Arrangements) to the Migration Regulations.

Item 10701 (Operation of Schedule 1 (Subclass 476 (Skilled – Recognised Graduate) visas) provides that the amendments made by Schedule 1, which extend certain Subclass 476 (Recognised – Skilled Graduate) visas until 14 April 2024 if the visa meets the circumstances set out in new clause 476.512, apply in relation to a Subclass 476 visa granted before, on or after 31 January 2020 and which did not cease to be in effect before 31 January 2020.

Schedule 2 – Electronic Travel Authority (Class UD) visas

Part 1 – Main amendments

Migration Regulations 1994

Item [1] – Before subregulation 2.07AB(1)

New subregulation 2.07AB(1AA) provides that an Electronic Travel Authority (Class UD) visa is a class prescribed for the purposes of subsection 46(2) of the Migration Act. Subsection 46(2) provides for an application for a visa of a class that is prescribed under this subsection to be a valid application if, under the regulations, the application is taken to have been validly made.

New subregulation 2.07AB(1AA) clarifies that an application for an Electronic Travel Authority (Class UD) visa is to be taken as validly made if the circumstances in subregulation 2.07AB(1) or (2) are met, despite regulations 2.07 and 2.10. Regulation 2.07 provides the general requirements that must be met in order to make an application for a visa. Regulation 2.10 sets out where an application for a visa must be made. Hence, new regulation 2.07AB provides the specific requirements for an application for an Electronic Travel Authority (Class UD) visa to be a valid application, rather than the general requirements provided in regulations 2.07 and 2.10.

This item also inserts two notes after new subregulation 2.07AB(1AA). Note 1 provides that an application made in accordance with subregulation 2.07AB(1) or (2) does not need to be made using the approved form (mentioned in subitem 1208A(1) of Schedule 1 to the Migration Regulations), or in the manner or place (mentioned in paragraph 1208A(3)(a) of Schedule 1 to the Migration Regulations). Note 1 clarifies that regulation 2.07AB provides an alternative way to completing a form and making the application in a certain manner or place than that required in accordance with subitem 1208A(1) and paragraph 1208A(3)(a).

New Note 2 confirms that there is no visa application charge for an Electronic Travel Authority (Class UD) visa, as provided in subitem 1208A(2) of Schedule 1.

Item [2] – Subregulation 2.07AB(1)

This item omits the words “For the purposes of sections 45 and 46 of the Act, an”, and substitutes the word “An”, in subregulation 2.07AB(1) of Part 2 of the Migration Regulations.

This amendment is consequential to the amendment made by item 1, which inserts subregulation 2.07AB(1AA).

New subregulation 2.07AB(1AA) provides that an Electronic Travel Authority (Class UD) visa is a class prescribed for the purposes of subsection 46(2) of the Migration Act. There is therefore

no need to repeat that subregulation 2.07AB(1) is made for the purposes of section 46 of the Migration Act. The reference to section 45 of the Migration Act has been removed, as subsection 46(2) of the Migration Act is the power under which regulation 2.07AB is made.

Item [3] – Subregulation 2.07AB(1)

This item omits the words "in Australia (except in immigration clearance), or outside Australia,", and substitutes the words "by the applicant while outside Australia" in subregulation 2.07AB(1) of Part 2 of the Migration Regulations.

The effect of this amendment to subregulation 2.07AB(1) is to provide that subregulation 2.07AB(1) only applies to an applicant who is outside Australia. The amendment clarifies that subregulation 2.07AB(1) applies to an applicant who is outside Australia, whilst new subregulation 2.07AB(2) applies to an applicant who is in immigration clearance.

Item [4] – Subregulation 2.07AB(1)

This item omits the words "his or her passport details", and substitutes the words "details of an ETA eligible passport held by the applicant" in subregulation 2.07AB(1) of Part 2 of the Migration Regulations.

Regulation 1.11B of Part 1 of the Migration Regulations defines an 'ETA-eligible passport' as a valid passport of a kind specified in a legislative instrument made by the Minister, and that the conditions (if any) also specified in a legislative instrument made by the Minister for passports of that kind are satisfied in relation to the application. The current legislative instrument (*Migration (IMMI 18/084: Specification of ETA-Eligible Passports) Instrument 2018)* specifies 33 ETA-eligible passports, specified following bilateral agreement between Australia and each of the countries who issue those passports.

This amendment clarifies that an applicant must provide details of an ETA eligible passport held by the applicant, rather than any passport details. It is also consistent with the requirement in paragraph 1208A(3)(f) of Schedule 1 to the Migration Regulations which provides that an applicant must hold an ETA-eligible passport.

Item [5] – Paragraph 2.07AB(1)(g)

This item repeals paragraph 2.07AB(1)(g) of Part 2 of the Migration Regulations and replaces it with new paragraph 2.07AB(1)(g).

This amendment is consequential to the repeal of paragraph 2.07AB(3)(b) and moves the relevant information to paragraph 2.07AB(1)(g). No substantive change is made.

Item [6] – Subregulation 2.07AB(2)

This item omits the words "For the purposes of sections 45 and 46 of the Act, an", and substitutes the word "An" in subregulation 2.07AB(2) of Part 2 of the Migration Regulations.

This amendment is consequential to the amendment made by item 1 which inserts subregulation 2.07AB(1AA).

Subregulation 2.07AB(1AA) provides that an Electronic Travel Authority (Class UD) visa is a class prescribed for the purposes of subsection 46(2) of the Migration Act. There is therefore no need to repeat that subregulation 2.07AB(2) is made for the purposes of subsection 46(2) of the Migration Act. The reference to section 45 of the Migration Act has been removed, as subsection 46(2) of the Migration Act is the power under which regulation 2.07AB is made.

Items [7] – Paragraph 2.07AB(2)(a)

This item inserts after the word "passport" the words "held by the applicant" in paragraph 2.07AB(2)(a) of Part 2 of the Migration Regulations.

New paragraph 2.07AB(2)(a) clarifies that the ETA-eligible passport presented to an officer must be an ETA-eligible passport held by the applicant.

Item [8] – Subregulations 2.07AB(3) and (4)

This item repeals subregulations 2.07AB(3) and (4) of Part 2 of the Migration Regulations.

Subregulation 2.07AB(3) is generally not required because where an application is taken to have been made is not relevant. Instead, what is relevant is where the applicant must be located when they make the application which is provided in subregulation 2.07AB(2) and new subregulation 2.07AB(1), inserted by item 3 of this Schedule.

In addition, paragraph 2.07AB(3)(b) is not required because the requirements of this provision are now included in new paragraph 2.07AB(1)(g), inserted by item 5 of this Schedule.

Subregulation 2.07AB(4) is repealed because it is no longer the policy intention to prevent a person who is an eVisitor eligible passport holder who is also an ETA-eligible passport holder from applying for an Electronic Travel Authority (Class UD) visa by electronic transmission using a computer.

Regulation 1.11C of Part 1 of the Migration Regulations defines an eVisitor eligible passport as a valid passport of a kind specified by the Minister in an instrument in writing to be an eVisitor eligible passport, and the conditions (if any) specified in the instrument are satisfied. The current legislative instrument (Migration Regulations 1994 – Specification of an eVisitor – Eligible Passports- IMMI 13/078) specifies 36 eVisitor passports, of countries located in Europe who are members of the European Union.

Item [9] – Subitem 1208A(1) of Schedule 1

This item repeals subitem 1208A(1) of Schedule 1 to the Migration Regulations (including the note) and substitutes it with new subitem 1208A(1) and a new note.

New subitem 1208A(1) provides that the approved form specified by the Minister in a legislative instrument made for the purposes of item 1208A under subregulation 2.07(5) is the form to apply for an Electronic Travel Authority (Class UD) visa in accordance with item 1208A.

It is usual practise for items in Schedule 1 to the Migration Regulations to refer to an approved form specified in an instrument made by the Minister under the existing power in subregulation 2.07(5) for the purpose of making a visa application.

The policy intention is that the approved form that is the AustralianETA App will be specified by the Minister in a legislative instrument. New subitem 1208A(1), together with new paragraph 1208A(3)(a), inserted by item 10 of this Schedule below, provide a way to make an application for an Electronic Travel Authority (Class UD) visa in addition to that provided in regulation 2.07AB. It is anticipated that an application made using an approved form will be the most common way that an application for an Electronic Travel Authority (Class UD) visa is made.

Item [10] – Paragraphs 1208A(3)(a) to (e) of Schedule 1

This item repeals paragraphs 1208A(3)(a) to (e) of Schedule 1 to the Migration Regulations and substitutes new paragraphs 1208A(3)(a) and (b).

New paragraph 1208A(3)(a) provides that an application must be made at the place and in the manner (if any) specified by the Minister in a legislative instrument made for the purposes of item 1208A under subregulation 2.07(5). The policy intention is that the manner that will be specified by the Minister in the legislative instrument is the AustralianETA App. No place is necessary to be specified as the application is made using the AustralianETA App.

New paragraph 1208A(3)(b) requires an applicant be outside Australia or in immigration clearance when they make an application for an Electronic Travel Authority (Class UD) visa. Hence, no person in Australia (except those in immigration clearance) may make an application. Previously, repealed paragraphs 1208A(3)(b) and 1208A(3)(c) required that an applicant must be in immigration clearance to make an application in immigration clearance, or outside Australia to make an application in Australia (except in immigration clearance), respectively. This amendment clarifies the intended operation of these paragraphs.

The Department anticipates that due to the convenience and ease of making an Electronic Travel Authority (Class UD) application using the Australian ETA App, that this will be the most common manner in which an Electronic Travel Authority (Class UD) application may be made.

Item [11] – Clause 601.411 of Schedule 2

This item omits the words “application is made in immigration clearance”, and substitutes them with the words “applicant is in immigration clearance at the time of application” in clause 604.411 of Schedule 2 to the Migration Regulations.

New clause 604.411 provides that if an applicant is in immigration clearance at the time of application, the applicant must be in immigration clearance at time of grant. This amendment reflects the requirement in new paragraph 1208A(3)(b) of Schedule 1 to the Migration Regulations about where an applicant must be physically located when they make an application

for an Electronic Travel Authority (Class UD) visa, rather than the place where the application must be made.

Item [12] – Clause 601.412 of Schedule 2

This item omits the words "application is made outside Australia", and substitutes them with "applicant is outside Australia at the time of application" in clause 604.412 of Schedule 2 to the Migration Regulations.

New clause 604.412 provides that if an applicant is outside Australia at the time of application, the applicant must be outside Australia at time of grant. This amendment reflects the requirement in new paragraph 1208A(3)(b) of Schedule 1 to the Migration Regulations about where an applicant must be physically located when they make an application for an Electronic Travel Authority (Class UD) visa, rather than the place where the application must be made.

Part 2 – Application of amendments

Migration Regulations 1994

Item [13] – At the end of Part 107 of Schedule 13

This item inserts a new item 10702 (Operation of Schedule 2 (Electronic travel Authority (Class UD) visas) in Part 107 (Amendments made by the Migration Amendment (2022 Measures No. 2) Regulations 2022) of Schedule 13 (Transitional Provisions) the Migration Regulations.

New subitem 10702(1) provides that the amendments made by Part 1 of Schedule 2, above, apply in relation to an application for a visa made on or after 5 April 2022, the date Schedule 2 commences.

New subitem 10702(2) ensures that any past approvals made under former paragraph 2.07AB(3)(b) are maintained after these amendments

Schedule 3 – Temporary Skill Shortage (Class GK) visas

Migration Regulations 1994

Item [1] – Subparagraph 1240(3)(b)(ii) of Schedule 1

This item repeals subparagraph 1240(3)(b)(ii) of Schedule 1 to the Migration Regulations and substitutes a new subparagraph 1240(3)(b)(ii).

Item 1240 of Schedule 1 sets out the requirements for making a valid application for a Temporary Skill Shortage (Class GK) visa, which includes Subclass 482 (Temporary Skill Shortage). The Temporary Skill Shortage (TSS) program facilitates the temporary entry of skilled workers from overseas to address skilled workforce needs of Australian businesses.

Previously, subparagraphs 1240(3)(b)(ii) and (iii) required that an applicant of a Subclass 482 (Temporary Skill Shortage) visa (TSS visa) in the Short-term stream (ST stream) must be outside Australia when making the application, if the applicant has held more than one TSS visa in the ST stream and was in Australia when applying for the last visa. The effect of this provision was that an applicant could not make an application for more than two TSS visas in the ST stream while remaining in Australia.

New subparagraph 1240(3)(b)(ii) retains the existing requirement that an applicant must be outside Australia to apply for another TSS visa in the ST stream if the applicant has already held two or more TSS visas in the ST stream and the last visa was applied for while the applicant was in Australia.

The new subparagraph also provides, as an exception to this requirement, that an applicant may apply in Australia if the applicant has already held two TSS visas in the ST stream and the last visa was applied for while in Australia, if the applicant satisfies the requirements set out in new subitem 1240(3A). See item 2 of this Schedule, below, for details of the requirements an applicant must meet to apply for more than two TSS visas in the ST stream while remaining in Australia.

Item [2] – After subitem 1240(3) of Schedule 1

This item inserts new subitems 1240(3A) and 1240(3B) in Schedule 1 to the Migration Regulations.

As described under item 1 of this Schedule, above, new subitem 1240(3A), in conjunction with new subparagraph 1240(3)(b)(ii), allows applicants who meet the requirements of the new subitem to make an application for a further TSS visa in the ST stream while remaining in Australia even if they have already held two TSS visas in the ST stream and the last visa that they held was applied for in Australia.

The conditions that an applicant must meet in order to make a further application for a TSS visa in the ST stream while remaining in Australia are:

- the applicant must have held a Subclass 482 visas in the short-term stream for a period that totals at least 12 months during the period from 1 February 2020 to 14 December 2021; and
- the applicant must make the application before 1 July 2023, unless the Minister specifies a later date.

New subitem 1240(3B) provides a power for the Minister to make a legislative instrument to specify a later date by which applicants can make an application to meet the requirements of new subitem 1240(3A).

These amendments permit holders of Subclass 482 visas in the ST stream who have been in Australia during the period of COVID-19 related travel restrictions to apply for a further visa without having to leave Australia. This recognises that these visa holders may have encountered difficulties in travelling to and from Australia during the pandemic. This concession will allow persons in the affected cohort to obtain another visa while remaining in Australia which will

facilitate an application for approval of an employer nomination for the person under subregulation 5.19(5) of the Migration Regulations in conjunction with an instrument that specifies them for the purposes of subparagraph 5.19(5)(a)(iii). This will allow these visa holders to apply for a permanent visa and ensure that their skills can be retained in Australia.

It is intended that the concession to obtain a further visa in Australia will be available only for one year, until 1 July 2023. However, if a longer period is required to ensure that all the targeted groups are able to take the opportunity to obtain a further visa, there is provision for the Minister to specify a longer period in a legislative instrument.

Item [3] – At the end of Part 107 of Schedule 13

This item adds a new item 10703 (Operation of Schedule 3 (Temporary Skill Shortage (Class GK) visas) in Part 107 (Amendments made by the *Migration Amendment (2022 Measures No. 2) Regulations 2022)* of Schedule 13 (Transitional Arrangements) to the Migration Regulations.

New item 10703 provides that the amendments made by Schedule 3 (see above) apply in relation to an application referred to in subparagraph 1240(3)(b)(i) of Schedule 1 to the Migration Regulations that is made on or after the commencement of the amendments.