

EXPLANATORY STATEMENT

Issued by the Minister for Immigration, Citizenship and Multicultural Affairs

Migration Act 1958

Migration Amendment (Occupation Nomination and Skills Assessment for Subclass 485 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 subsection 31(3) of the Migration Act which provides that the regulations may prescribe criteria for a visa or visas of a specified class, and subsection 46(3) of the Migration Act which provides for the regulations to prescribe criteria and requirements for making a valid application for a visa.

The *Migration Amendment (Occupation Nomination and Skills Assessment for Subclass 485 Visas) Regulations 2022* (the Regulations) amend the *Migration Regulations 1994* (the Migration Regulations) to temporarily remove the requirements for applicants for a Subclass 485 (Temporary Graduate) visa in the Graduate Work stream to nominate an eligible skilled occupation and to obtain an assessment of the applicant's skills in relation to the occupation. These requirements do not apply in respect of applications made between 1 July 2022 and 30 June 2023 (inclusive). The amendments also include provision to extend this date beyond 30 June 2023 to a date specified by the Minister in a legislative instrument, if it becomes appropriate to do so under prevailing economic conditions.

These amendments would encourage a broader range of graduates with degree, diploma and trade qualifications that satisfy the Australian study requirement but are not currently eligible for the Subclass 485 visa in the Graduate Work stream as their related occupations are not included in the current list of specified eligible occupations, to live and work in Australia for a further temporary period.

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 and economic conditions.

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 A](#).

The Office of Best Practice (OBPR) has been consulted in relation to the amendments. No Regulation Impact Statement is required. The OBPR consultation reference is OBPR22-01569.

The Department of Education, Skills and Employment and Trades Recognition Australia were consulted in relation to the regulations. This accords with subsection 17(1) of the *Legislation Act* (the Legislation Act).

The amendments commence on 1 July 2022 to align with required systems changes.

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

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

Statement of Compatibility with Human Rights

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

Migration Amendment (Occupation Nomination and Skills Assessment for Subclass 485 Visas) Regulations 2022

The *Migration Amendment (Occupation Nomination and Skills Assessment for Subclass 485 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*.

Overview of the Disallowable Legislative Instrument

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.

The Subclass 485 visa contains two streams of primary criteria, each catering for different a specific cohort of international students. The Graduate Work stream caters for graduates with Australian diploma and trade qualifications. The rationale for the Graduate Work stream is that those graduates may need additional time to gain the skills required to apply for a skilled visa. An applicant for a Subclass 485 visa in the Graduate Work stream is required to nominate an eligible occupation, which must be closely related to the applicant's Australian educational qualification(s). The applicant is also required to obtain a positive provisional skills assessment in relation to the nominated occupation.

Applicants with Australian qualifications at a higher level (Bachelor degree and above) are also eligible to apply for the Graduate Work stream, but in addition they are eligible for a different stream – the Post-Study Work stream – which does not have any requirement to nominate an occupation, and which, under policy, allows a longer stay in Australia. In practice, therefore, graduates at the Bachelor degree level or higher generally apply for the Post-Study Work stream.

Under both streams, visa holders (and their family unit members) are free to study or work as they choose. There is no obligation to undertake work or study. The underpinning assumption is that these recently graduated international students are a valuable resource for Australia, whether they undertake further study or choose to work or travel, and are a potential source of future permanent migration to Australia.

The Amendment Regulations amend the Migration Regulations to help fill critical labour and skills gaps by temporarily removing certain requirements for applicants for the Subclass 485 visa in the Graduate Work stream.

Presently, applicants for the Graduate Work stream need to:

- nominate an occupation on the Medium and Long-term Strategic Skills List;
- have a degree, diploma or trade qualification closely related to that occupation; and
- be assessed by a relevant assessing authority as having skills suitable for that occupation.

Removing these requirements will encourage more international vocational education and training (VET) graduates to stay and work in Australia for a longer period. It will also open up the visa stream to a broader range of graduates with diploma and trade qualifications that are not closely related to occupations on the skilled occupation list.

These requirements will be removed for all applications lodged during the 2022-23 financial year. The duration of the concession may however be extended, by legislative instrument, should current labour shortages not be ameliorated after this period.

Human rights implications

This Disallowable Legislative Instrument engages the following human rights:

- the right to work in Article 6 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR);
- the right to education in Article 13 of the ICESCR

Right to work

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

Article 6(1) of the ICESCR states:

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

The amendments provide expanded access to the Australian labour market for graduates with degree, diploma and trade level qualifications who would previously have been ineligible for a Subclass 485 visa and who lodge their visa application in the 2022-23 financial year.

The amendments promote the right to work because they provide eligible visa applicants (and their family unit members) with further opportunities to seek or continue work anywhere in Australia once granted a Subclass 485 visa in the Graduate Work stream. If applicants are already engaged in employment, such as part-time work on a Student visa, a Subclass 485 visa provides them with the opportunity to continue this employment and further the development of their knowledge and skills.

Right to education

The amendments engage the right of everyone to an education in Article 13 of the ICESCR.

Article 13(1) of the ICESCR states:

The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

Article 13(2) of the ICESCR states in part:

The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right: [...]

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

The amendments promote the right to education because they expand eligibility for a Subclass 485 visa in the Graduate Work stream which allows visa holders (including family unit members of the primary visa holder) to pursue further study in Australia.

Conclusion

The Amendment Regulations are compatible with human rights.

The Hon. Andrew Giles, MP
Minister for Immigration, Citizenship and Multicultural Affairs

Details of the *Migration Amendment (Occupation Nomination and Skills Assessment for Subclass 485 Visas) Regulations 2022*

Section 1 - Name

This section provides that the name of the instrument is the *Migration Amendment (Occupation Nomination and Skills Assessment for Subclass 485 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 whole of the Regulations commence on 1 July 2022.

Section 3 - Authority

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

Section 4 - Schedules

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

Schedule 1 – Amendments

Migration Regulations 1994

Item [1] – After paragraph 1229(3)(k) of Schedule 1

This item inserts new paragraph 1229(3)(ka) in item 1229 (Skilled (Provisional))(Class VC) of Schedule 1 to the Migration Regulations.

New paragraph 1229(3)(ka) provides that paragraph 1229(3)(k) does not apply to an application for a Subclass 485 (Temporary Graduate) visa in the Graduate Work stream if the application is made on a day between 1 July 2022 and 30 June 2023, inclusive. Paragraph 1229(3)(k) requires that an applicant seeking to satisfy the primary criteria for the grant of a Subclass 485 (Temporary Graduate) visa in the Graduate Work stream must nominate a skilled occupation from the list of occupations that is specified by the Minister in an instrument in writing for the purposes of the paragraph.

The effect of this amendment is that persons applying for the visa between 1 July 2022 and 30 June 2023 will not be required to nominate a skilled occupation from the list of specified skilled occupations. Removing this requirement will open up the visa stream to a broader range of international graduates with degree, diploma and trade qualifications whose occupations may not be included on the list. This will encourage more overseas graduates of Australian educational institutions to extend their stay in Australia until labour market conditions stabilise.

New paragraph 1229(3)(ka) includes provision for the concession to be extended to applications made after 30 June 2023 and before a date specified by the Minister in a legislative instrument, provided the legislative instrument is made before 30 June 2023. Providing for the date to be extended by legislative instrument allows for the concession to be extended to further applications without interruption, should it be appropriate to do so under economic conditions prevailing during the next 12 months.

Item [2] – Clause 485.222 of Schedule 2

This item inserts the number “(1)” before the word “Each” at the beginning of clause 485.222 of Schedule 2 to the Migration Regulations.

This amendment is consequential to the addition of new subclause 485.222(2) by the following item of this Schedule.

Item [3] – At the end of clause 485.222 of Schedule 2

Clauses 485.221-224 of Schedule 2 to the Migration Regulations prescribe primary criteria to be satisfied by an applicant for a Subclass 485 (Temporary Graduate) visa in the Graduate Work stream.

This item adds a new subclause 485.222(2) in clause 485.222. Clause 485.222 requires that each degree, diploma or trade qualification used to satisfy the Australian study requirement, as required by clause 485.221, must be closely related to the applicant’s nominated skilled occupation.

New subclause 485.222(2) provides that this requirement does not apply to applications made in the period mentioned in paragraph 1229(3)(ka) of Schedule 1. Paragraph 1229(3)(ka) is inserted in Schedule 1 to the Migration Regulations by item 1 of this Schedule, above. The period mentioned is from 1 July 2022 to 30 June 2023, unless a later date is specified by the Minister in an instrument. Paragraph 1229(3)(ka) provides that applications made during that period are not required to nominate an eligible skilled occupation and therefore clause 485.222 is not relevant in respect of those applications.

Item [4] – Clause 485.223 of Schedule 2

This item inserts the number “(1)”, before the word “When” at the beginning of clause 485.223 of Schedule 2 to the Migration Regulations.

This amendment is consequential to the addition of new subclause 485.223(2) by the following item of this Schedule.

Item [5] – At the end of clause 485.223 of Schedule 2

This item adds a new subclause 485.223(2) in clause 485.223 of Schedule 2 to the Migration Regulations.

Clause 485.223 requires that when an application was made, it was accompanied by evidence that the applicant had applied for an assessment by a relevant assessing authority of the applicant's skills for the nominated skilled occupation.

New subclause 485.223(2) provides that this requirement does not apply to applications made in the period mentioned in paragraph 1229(3)(ka) of Schedule 1. Paragraph 1229(3)(ka) is inserted in Schedule 1 to the Migration Regulations by item 1 of this Schedule, above. The period mentioned is from 1 July 2022 to 30 June 2023, unless a later date is specified by the Minister in an instrument. Paragraph 1229(3)(ka) provides that applications made during that period are not required to nominate an eligible skilled occupation and therefore clause 485.223 is not relevant in respect of those applications.

Item [6] – At the end of clause 485.224 of Schedule 2

This item adds a new subclause 485.224(3) in clause 485.224 of Schedule 2 to the Migration Regulations.

New subclause 485.224(3) provides that subclauses (1), (1A) and (2) do not apply if the application is made during the period mentioned in paragraph 1229(3)(ka) of Schedule 1. Paragraph 1229(3)(ka) is inserted in Schedule 1 to the Migration Regulations by item 1 of this Schedule, above. The period mentioned is from 1 July 2022 to 30 June 2023, unless a later date is specified by the Minister in an instrument.

Subclauses 485.224(1), (1A) and (2) require that the applicant's skills for the applicant's nominated skilled occupation must have been assessed by a relevant assessing authority during the last 3 years as suitable for the occupation, and make other requirements relating to the skills assessment. Paragraph 1229(3)(ka) provides that applications made during the period referred to are not required to nominate an eligible skilled occupation, and therefore subclauses 485.224(1), (1A) and (2) are not relevant in respect of those applications.