EXPLANATORY STATEMENT

Issued by the Minister for Immigration, Citizenship and Multicultural Affairs

Migration Act 1958

Migration Amendment (Work Related Visa Conditions) Regulations 2024

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.

Subsection 41(1) of the Migration Act provides that regulations may provide that visas, or visas of a specified class, are subject to specified conditions.

The *Migration Amendment (Work Related Visa Conditions) Regulations 2024* (the amendment Regulations) amend the *Migration Regulations 1994* (the Migration Regulations) to enhance the labour market mobility of temporary migrants under the following visa subclasses:

- Subclass 457 (Temporary Work (Skilled))
- Subclass 482 (Temporary Skill Shortage)
- Subclass 494 (Employer Sponsored Regional (Provisional)).

The amendment Regulations provide current and future holders of these visas a maximum period of 180 consecutive days in which they may cease to work in accordance with the normal requirements of visa conditions that would otherwise restrict their ability to work outside of their sponsorship arrangement.

During this period, a visa holder may work outside of their nominated sponsor, including in occupations that are not listed in their most recently approved sponsorship nomination. If a visa holder has ceased their existing sponsorship arrangement, then they may either search for a new employment sponsor while being unemployed, or engage in work until the limit of 180 consecutive days is reached.

The total period of time in which a visa holder may cease to work in accordance with the normal requirements of these visa conditions must not exceed 365 days after the commencement of the amendment Regulations.

These reforms seek to reduce the dependency of certain temporary migrants on a single employer sponsor to maintain their lawful status in Australia. This will help to address the existing power imbalance, and give workers confidence to raise workplace issues, leave exploitation, report exploitation, and support investigations into employer conduct. The amendment regulations are a part of a package of reforms that addresses migrant worker exploitation, and they complement other measures, including the *Migration Amendment (Strengthening Employer Compliance) Act 2024*.

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The matters dealt with in the amendment 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.

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 amendment regulations are compatible with human rights. The Statement is at Attachment A.

The Office of Impact Analysis (the OIA) has been consulted in relation to the amendments. The OIA considers that the Regulations are unlikely to have more than a minor regulatory impact and therefore no impact analysis is required. The OIA consultation reference number is OIA24-07058.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003* (the Legislation Act).

Section 17 of the Legislation Act provides that the rule-maker must be satisfied that appropriate consultation occurred in development of the legislative instrument. The Department has consulted other Commonwealth agencies in the course of developing the proposed changes to the regulations, including the Department of Employment and Workplace Relations (DEWR). The outcome was that DEWR and the other Commonwealth agencies who were consulted agreed to the proposed changes.

The amendment Regulations commence on 1 July 2024.

Further details of the amendment Regulations are set out in Attachment B.

The amendment Regulations amend the Migration Regulations, which are exempt from sunsetting under table item 38A of section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015.* The Migration Regulations are exempt from sunsetting on the basis that the repeal and remaking of the Migration Regulations:

- is unnecessary as the Migration Regulations are regularly amended numerous times each year to update policy settings for immigration programs;

- would require complex and difficult to administer transitional provisions to ensure, amongst other things, the position of the many people who hold Australian visas, and similarly, there would likely be a significant impact on undecided visa and sponsorship applications; and

- would demand complicated and costly systems, training and operational changes that would impose significant strain on Government resources and the Australian public for insignificant gain, while not advancing the aims of the Legislation Act.

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

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

Attachment A

Statement of Compatibility with Human Rights

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

Migration Amendment (Work Related Visa Conditions) Regulations 2024

This Disallowable Legislative Instrument is 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

The Government is introducing a range of measures to address migrant worker exploitation in response to the *Migrant Workers' Taskforce* report (2019), the *Jobs and Skills Summit* (2022), the *Nixon Review* (2023) and the *Migration Strategy* (2023). These measures focus on improving employer compliance and enhancing safeguards and protections for migrant workers.

A core focus of these measures is to address migration related settings that have been identified as exacerbating the vulnerability of temporary migrants to workplace exploitation, and which may inadvertently deter temporary migrants from resolving issues of exploitation.

Employer-sponsored visas are specifically designed to address gaps in the Australian labour market. These visas include a number of safeguards focused on the obligations of the employer and requirements for the migrant worker. Employers have obligations in relation to the pay and conditions, and they include financial contributions from the employer to the 'Skilling Australians Fund'. The sponsored worker is required to have the relevant skills, language requirements and work experience to appropriately fill the identified gap, and which support their stay in Australia. Under this program, the sponsored skilled worker's visa includes conditions that require the visa holder to only work in the nominated occupation for the nominated employer sponsor while the sponsorship remains in effect.

Together these safeguards seek to ensure the migrant worker is protected from exploitation, and employers have access to the skilled workers they need, ensuring the workers complement, and not displace opportunities for Australian workers.

Concerns have been raised that these settings exacerbate the vulnerability of sponsored migrant workers to exploitation. Specifically, conditions that restrict who the migrant can work for, and the role they can perform effectively makes the temporary migrant's stay in Australia contingent on the sponsorship arrangement (and their employer sponsor), further underpinning a power imbalance between the employer and the worker.

Employer-sponsored visa holders can seek a new sponsorship arrangement, however, prior to the amendments being made by this Disallowable Legislative Instrument, their visa conditions imposed a restriction of 60 or 90 days, depending on the visa subclass, on the amount of time they could have between sponsorship agreements. Their visa conditions also

imposed restrictions on their ability to work (other than in certain limited exempt occupations) while between sponsors. These restrictions could have the effect of deterring the migrant worker from speaking out or leaving an exploitative arrangement for fear that it will jeopardise their ability to remain in Australia.

The *Migration Strategy* notes: "Allowing migrant workers greater flexibility in switching jobs would reduce the likelihood of unfair treatment while also driving welcome productivity benefits to employers and the Australian economy."

The *Migration Amendment (Work Related Visa Conditions) Regulations 2024* (the Amendment Regulations) amend the *Migration Regulations 1994* (the Migration Regulations) to provide increased mobility to certain employer-sponsored visa holders by enhancing the visa holder's ability to change employers.

The amendments apply to holders of the following visa subclasses:

- Subclass 457 Temporary Work (Skilled) visa (which was closed to new applicants in March 2018, but some 457 visa holders remain in Australia);
- Subclass 482 Temporary Skills Shortage visa; and
- Subclass 494 Employer Sponsored Regional (Provisional) visa.

The Amendment Regulations provide current and future holders of these visas a maximum period of 180 consecutive days (an increase from the previous 60 or 90 days) in which they may cease to work in accordance with the normal visa requirements, to enable them to seek an alternative sponsoring employer or depart Australia.

During this period, a visa holder may work while they pursue the alternative sponsorship arrangements, including for alternative employers and in occupations other than that for which their visa was granted. The visa holder can also choose not to work during this period.

In order not to undermine the overarching intent of the program (i.e. to address identified gaps in the labour market without displacing opportunities for Australian workers), the proposed total period of time in which a visa holder may cease to work during their visa validity period must not exceed 365 days after the commencement of the Amendment Regulations.

Similarly, the enhanced mobility provisions implemented by the Amendment Regulations enhance the outcomes of the employer-sponsored visa holders without undermining the intent or benefits of the employer-sponsored temporary skilled visa programs. Employers will still be able to access to 'hard to find' skills that may not be readily available. Benefits for the migrant worker include an opportunity to earn a living with secure employment, gain international experience, and in some cases, permanent residency. With dedicated sponsor obligations, and a sponsor monitoring capability, sponsored workers can also continue to be protected through the sponsorship compliance framework.

The Amendment Regulations commence on 1 July 2024 to coincide with the commencement of the *Migration Amendment (Strengthening Employer Compliance) Act 2024* and other reforms designed to address migration related barriers to reporting exploitation or seeking workplace justice. However, the amendments made by the Amendment Regulations are not dependent on these other reforms.

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Human rights implications

These amendments engage the following rights:

- Right to work and the right to just and favourable conditions of work – Articles 6 and 7 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR)
- Rights to equality and non-discrimination – Article 26 of the *International Covenant on Civil and Political Rights* (ICCPR) and Article 2(2) of the ICESCR.

Right to work and the right to just and favourable conditions of work

Article 6(1) of the ICESCR, states that:

> *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.*

Article 7 of the ICESCR states:

> *The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:*
>
> *(a) Remuneration which provides all workers, as a minimum, with:*
>
> - *(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, …*
>
> *(b) Safe and healthy working conditions;…*

The amendments made by the Amendment Regulations promote the above rights. The broad aim of the amendments is to ensure temporary migrant workers are able to enjoy just and favourable (and equitable) conditions in the workplace. Unduly restricting a worker's mobility in the labour market creates a power imbalance that deters visa holders from reporting exploitation if their employer does not uphold their sponsorship obligations or their broader obligations under Australia's workplace laws. The increased mobility provisions ensure that temporary visa holders have additional flexibility to change employers and are not tied to a designated work occupation while searching for another employer if they are unhappy, want a change, are being exploited, or face unsafe or unhealthy working conditions.

Combined with other measures to strengthen employer compliance introduced by the *Migration Amendment (Strengthening Employer Compliance) Act 2024*, the amendments to visa conditions made by the Amendment Regulations empower temporary visa holders to more confidently:

- raise concerns about pay or conditions, including work health safety,
- report employer breaches,
- support investigations into those breaches,
- seek compensation, and/or

- exit exploitative workplace situations.

The mobility provisions also allow a visa holder to work without work-related visa restrictions while they search for a new sponsor. This assists visa holders to have financial security while searching for a new sponsor, enabling them to secure employment that suits their skill set and gives them greater choice when seeking the right employer. This further upholds the right to safe and healthy working conditions that should not be compromised in fear of adverse consequences on a person's visa status.

The amendments are a pragmatic measure aimed at empowering workers so that they will not feel compelled to remain in unjust or unfavourable conditions of work. In doing so, these amendments help to re-balance the power relationship between the sponsor and visa holder without undermining the benefits of the employer sponsorship schemes. The enhanced mobility provisions commence on 1 July 2024 for current and future holders of the specified visas. The provisions give those visa holders an opportunity to start anew. The visa holder is not required to provide evidence of exploitation to access these mobility provisions. They are empowered to seek sponsorship arrangements that give them opportunities to make an optimal contribution to the Australian labour market and thrive. This supports their rights under Articles 6 and 7 of the ICESCR.

Rights of equality and non-discrimination

This Bill may engage the right of equality and non-discrimination in Article 26 of the ICCPR, which states:

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

Similarly, Article 2(2) of the ICESCR states:

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

The mobility measures implemented by the Amendment Regulations are aimed at ensuring that holders of the specified employer-sponsored visas are not discriminated against because of their visa status. It empowers the visa holder with a more flexible visa arrangement for escaping an exploitative employer. It ensures that employer sponsored visa holders are not unduly tied to their employer if they are being exploited, and/or have an opportunity to achieve better workplace outcomes with a new sponsor. The measures are therefore intended to benefit these visa holders, particularly in relation to their exercise of work-related rights.

In benefiting these visa holders, the measures do not detract from the arrangements for visa holders not included in this measure. For example, visa holders under the Pacific-Australia Labour Mobility (PALM) scheme (visa subclass 403) have access to a range of additional supports, including a dedicatedsupport services contact and country liaison officers. They are

also able to receive support to change employers within the program, where appropriate, which mitigates the identified vulnerabilities. They are therefore not included in the measure, however their rights are not adversely affected by the introduction of this measure for certain other temporary visa holders.

Conclusion

The amendments made by the Amendment Regulations are compatible with human rights because they enhance the mobility of the specified employer sponsored visa holders, and therefore have positive benefits for those workers.

The Hon Andrew Giles MP

Minister for Immigration, Citizenship and Multicultural Affairs

Attachment B

Details of the *Migration Amendment (Work Related Visa Conditions) Regulations 2024*

Section 1 – Name

This section provides that the name of the instrument is the *Migration Amendment (Work Related Visa Conditions) Regulations 2024*.

Section 2 – Commencement

This section provides that the Regulations commence on 1 July 2024.

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. In summary, Schedule 1 to the Regulations amends the Migration Regulations as set out in the Schedule.

Schedule 1 – Amendments

Migration Regulations 1994

Item 1 – Paragraph 8107(3)(b) of Schedule 8

1. This item repeals and substitutes paragraph 8107(3)(b) of Schedule 8 of the *Migration Regulations 1994* (Migration Regulations). This item generally relates to the Subclass 457 Temporary Work (Skilled) visa (subclass 457 visa).

2. The subclass 457 visa allowed skilled workers to come to Australia to work for an approved business for up to:
   - four years after it was granted – if the worker's occupation was listed on the Medium and Long-term Strategic Skills List (MLTSSL)
   - two years after it was granted – if the worker's occupation was on the list of eligible skilled occupations but is not listed on the MLTSSL

3. The subclass 457 visa was closed to new applicants on 18 March 2018 on the commencement of *Migration Legislation Amendment (Temporary Skill Shortage Visa and Complementary Reforms) Regulations 2018*, which amended the Migration Regulations accordingly. However, a number of visa holders in Australia remain on the subclass 457 visa.

4. Visa condition 8107 is applied to subclass 457 visa holders. Subclause 8107(3) of Schedule 8 of the Migration Regulations provides that subclause 8107(3) applies:

   If the visa is, or the last substantive visa held by the applicant was, a Subclass 457 (Temporary Work (Skilled)) visa that was granted on the basis that the holder met the requirements of subclause 457.223(2) or (4).

5. The effect of that provision is that subclause 8107(3) of Schedule 8 of the Migration Regulations applies to a holder of a subclass 457 visa or to a holder of a bridging visa where the last substantive visa they held was a subclass 457 visa. The amendments implemented by Item 1 of Schedule 1 of the *Migration Amendment (Work Related Visa Conditions) Regulations 2024* (the amendment regulations) are intended to apply to all such visa holders (referred to collectively here 'condition 8107(3) visa holders').

6. Paragraph 8107(3)(a) in Schedule 8 to the Migration Regulations provides that condition 8107(3) visa holders must work only in the occupation listed in the most recently approved nomination for the holder. Paragraph 8107(3)(a) also generally requires that a condition 8107(3) visa holder must only work for the sponsor who nominated the position the holder is working in (or if their sponsor is a standard business sponsor and is an Australian business, they can also work for an associated entity of the sponsor).

7. Current paragraph 8107(3)(b) of Schedule 8 of the Migration Regulations provides that:

   if the holder ceases employment — the period during which the holder ceases employment must not exceed 60 consecutive days.

8. The effect of current paragraph 8107(3)(b) is to permit a condition 8107(3) visa holder to be unemployed for up to 60 consecutive days. However, nothing in current subclause 8107(3) permits a condition 8107(3) visa holder to engage in work that is not compliant with paragraph 8107(3)(a).

9. New paragraph 8107(3)(b) of Schedule 8 of the Migration Regulations provides that:

   (b) the holder may cease to work in accordance with paragraph (a) for a period, but:
   (i) any such period must not exceed 180 consecutive days; and
   (ii) the total number of days on which the holder does not work in accordance with paragraph (a) must not exceed 365 during the visa period for the holder's visa;

10. The effect of new subparagraph 8107(3)(b)(i) of Schedule 8 of the Migration Regulations is that a condition 8107(3) visa holder will be permitted to either be unemployed or to engage in work for up to 180 consecutive days where:

    - the occupation is not listed in the most recently approved nomination for the holder (as per subparagraph 8107(3)(a)(i)); and/or

    - the visa holder is not working for a sponsor who nominated the position the holder is working in (as per subparagraph 8107(3)(a)(ii)).

11. As discussed further below in relation to Item 4, any period of time in which a visa holder had 'ceased employment' prior to the commencement of the amendment regulations is not be counted towards the 180 consecutive days referred to in new subparagraph 8107(3)(b)(i).

12. Under new subparagraph 8107(3)(b)(ii) of Schedule 8 of the Migration Regulations, a visa holder must not have 'ceased to work in accordance with paragraph (a)' for more than 365 days. However, as discussed below in relation to Item 4, any period of time in which a visa holder had 'ceased employment' prior to the commencement of the amendment regulations is not be counted towards the 365 days referred to in new subparagraph 8107(3)(b)(ii).

13. A condition 8107(3) visa holder will not, merely by engaging in or intending to engage in work that is consistent with new paragraph 8107(3)(b), be in breach of visa condition 8107 or be required to apply for a new visa.

14. Under paragraph 8107(3)(c) of Schedule 8 of the Migration Regulations, if the condition 8107(3) visa holder is required to hold a licence, registration or membership that is mandatory to perform the occupation nominated in relation to the holder, the visa holder must comply with paragraph 8107(3)(c).

15. Subparagraph 8107(3)(c)(vi) provides that the visa holder 'must not engage in work that is inconsistent with the licence, registration or membership'. This provision will continue to apply to a condition 8107(3) visa holder at all times, including when they are engaging in, or proposing to engage in, work pursuant to new subclause 8107(3)(b).

16. However, it is intended that only work under new paragraph 8107(3)(b) that is directly inconsistent with subparagraph 8107(3)(c)(vi) will be in breach of that provision, such as:

    - work that is prohibited by the terms of the licence, registration or membership;
    - work that could render the licence, registration or membership subject to cancellation or suspension.

Item 2 – Subclause 8607(5) of Schedule 8

17. This item repeals and substitutes subclause 8607(5) of Schedule 8 to the Migration Regulations.

18. The subclass 482 – Temporary Skill Shortage visa (subclass 482 visa) is a temporary visa that allows an employer to sponsor a person to work in Australia if they are unable to source an appropriately skilled Australian worker. The criteria for the subclass 482 visa are set out in Schedule 2 of the Migration Regulations.

19. Visa condition 8607 of Schedule 8 to the Migration Regulations applies to holders of the subclass 482 visa and to certain holders of bridging visas who hold or last held a subclass 482 visa (referred to collectively here as 'condition 8607 visa holders'). The amendments implemented by item 2 of these amendment regulations apply to these visa holders.

20. Subclause 8607(1) of Schedule 8 to the Migration Regulations provides that the holder must work only in the occupation nominated in the application for the most recent subclass 482 visa held by the visa holder.

21. Subclause 8607(2) of Schedule 8 to the Migration Regulations provides that the holder must only work for the person who nominated the nominated occupation, or for the

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person's work sponsor or an associated entity (depending on the particular details of the holder's visa).

22. Subclause 8607(5) of Schedule 8 to the Migration Regulations currently provides that if the holder ceases employment, the period during which the holder ceases employment must not exceed 60 consecutive days.

23. The effect of current subclause 8607(5) is to permit a condition 8607 visa holder to be unemployed for up to 60 consecutive days. However, nothing in current visa condition 8607 permits such a visa holder to engage in work that is not compliant with subclauses (1) and (2) of visa condition 8607.

24. New subclause 8607(5) of Schedule 8 to the Migration Regulations provides as follows:

> (5) The holder may cease to work in accordance with subclauses (1) and (2) for a period, but:
>
> (a) any such period must not exceed 180 consecutive days; and
>
> (b) the total number of days on which the holder does not work in accordance with subclauses (1) and (2) must not exceed 365 during the visa period for the holder's visa.

25. The effect of new paragraph 8607(5)(a) of Schedule 8 to the Migration Regulations is that a condition 8607 visa holder will be permitted to either be unemployed or to engage in work for up to 180 consecutive days where:

- the occupation is not listed in the most recently approved nomination for the holder (as per subclause 8607(1)); and/or

- the visa holder is not working for a person who nominated the position the holder is working in, or is not working for the person's sponsor or associated entity (as per subclause 8607(2)).

26. As discussed further below in relation to Item 4, any period of time in which a visa holder had 'ceased employment' prior to the commencement of the amendment regulations is not be counted towards the 180 consecutive days referred to in new paragraph 8607(5)(a).

27. Under new paragraph 8607(5)(b) of Schedule 8 of the Migration Regulations, a visa holder must not have 'ceased to work in accordance with subclauses (1) and (2)' for more than 365 days. However, as discussed below in relation to Item 4, any period of time in which a visa holder had 'ceased employment' prior to the commencement of the amendment regulations is not be counted towards the 365 days referred to in new paragraph 8607(5)(b).

28. A condition 8607 visa holder will not, merely by engaging in or intending to engage in work that is consistent with new subclause 8607(5), be in breach of visa condition 8607 or be required to apply for a new visa.

29. Under subclause 8607(6) of Schedule 8 of the Migration Regulations, if the visa holder is required to hold a licence, registration or membership (an authorisation) that is mandatory to perform the occupation nominated in relation to the holder in the relevant location, the visa holder must comply with subclause 8607(6).

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30. Paragraph 8607(6)(e) provides that the visa holder must not engage in work that is inconsistent with the authorisation. This provision will continue to apply to a condition 8607 visa holder at all times, including when they are engaging in, or proposing to engage in, work pursuant to new subclause 8607(5).

31. However, it is intended that only work pursuant to new subclause 8607(5) that is directly inconsistent with paragraph 8607(6)(e) will be in breach of that provision, such as:

    - work that is prohibited by the terms of the licence, registration or membership;
    - work that could render the licence, registration or membership subject to cancellation or suspension.

Item 3 – Subclause 8608(5) of Schedule 8

32. This item repeals and substitutes subclause 8608(5) of Schedule 8 to the Migration Regulations.

33. The subclass 494—Skilled Employer Sponsored Regional (Provisional) visa (subclass 494 visa) enables regional employers to address identified labour shortages within their region by sponsoring skilled workers where employers are unable to source an appropriately skilled Australian worker. The criteria for the subclass 494 visa are set out in Schedule 2 of the Migration Regulations.

34. Visa condition 8608 of Schedule 8 to the Migration Regulations applies to holders of the subclass 494 visa and to certain holders of bridging visas who hold or last held a subclass 494 visa (referred to collectively here as 'condition 8608 visa holders'). The amendments implemented by item 3 of Schedule 1 of these amendment regulations apply to these visa holders.

35. Subclause 8608(1) of Schedule 8 to the Migration Regulations provides that the holder must work only in the occupation nominated in the application for the holder's most recent subclass 494 visa granted to the holder.

36. Subclause 8608(2) of Schedule 8 to the Migration Regulations provides that the holder must only work for the person who nominated the nominated occupation, or for the person's work sponsor or an associated entity (depending on the particular details of the holder's visa).

37. Subclause 8608(5) of Schedule 8 to the Migration Regulations provides that if the holder ceases employment, the period during which the holder ceases employment must not exceed 90 consecutive days.

38. The effect of current subclause 8608(5) is to permit a condition 8608 visa holder to be unemployed for up to 90 consecutive days. However, nothing in current visa condition 8608 permits such a visa holder to engage in work that is not compliant with subclauses (1) and (2) of visa condition 8608.

39. New subclause 8608(5) of Schedule 8 to the Migration Regulations provides as follows:

    (5) The holder may cease to work in accordance with subclauses (1) and (2) for a period, but:

(a) any such period must not exceed 180 consecutive days; and
(b) the total number of days on which the holder does not work in accordance with subclauses (1) and (2) must not exceed 365 during the visa period for the holder's visa.

40. The effect of new subclause 8608(5) of Schedule 8 to the Migration Regulations is that a condition 8608 visa holder will be permitted to either be unemployed or to engage in work for up to 180 consecutive days where:

- the occupation is not listed in the most recently approved nomination for the holder (as per subclause 8608(1)); and/or

- the visa holder is not working for a person who nominated the position the holder is working in, or is not working for the person's sponsor or associated entity (as per subclause 8608(2)).

41. As discussed further below in relation to Item 4, any period of time in which a visa holder had 'ceased employment' prior to the commencement of the amendment regulations is not be counted towards the 180 consecutive days referred to in new paragraph 8608(5)(a).

42. Under new paragraph 8608(5)(b) of Schedule 8 of the Migration Regulations, a visa holder must not have 'ceased to work in accordance with subclauses (1) and (2)' for more than 365 days. However, as discussed below in relation to Item 4, any period of time in which a visa holder had 'ceased employment' prior to the commencement of the amendment regulations is not be counted towards the 365 days referred to in new paragraph 8608(5)(b).

43. A condition 8608 visa holder will not, merely by engaging in or intending to engage in work that is consistent with new subclause 8608(5), be in breach of visa condition 8608 or be required to apply for a new visa.

44. Under subclause 8608(6) of Schedule 8 of the Migration Regulations, if the visa holder is required to hold a licence, registration or membership (an authorisation) that is mandatory to perform the occupation nominated in relation to the holder in the relevant location, the visa holder must comply with subclause 8608(6).

45. Paragraph 8608(6)(e) provides that the visa holder must not engage in work that is inconsistent with the authorisation. This provision will continue to apply to a condition 8608 visa holder at all times, including when they are engaging in, or proposing to engage in, work pursuant to new subclause 8608(5).

46. However, it is intended that only work pursuant to new subclause 8608(5) that is directly inconsistent with paragraph 8608(6)(e) will be in breach of that provision, such as:

- work that is prohibited by the terms of the licence, registration or membership;

- work that could render the licence, registration or membership subject to cancellation or suspension.

Item 4 – In the appropriate position in Schedule 13

47. This item inserts new Part 132 in Schedule 13 of the Migration Regulations, which provides for the operation of amendments made by this instrument.

48. New subclause 13201(1) provides that the amendments to the Migration Regulations made by Schedule 1 to the *Migration Amendment (Work Related Visa Conditions) Regulations 2024* apply in relation to a visa granted on or after the commencement of that Schedule.

49. The effect of new subclause 13201(1) is that these amendments apply to relevant visas granted on or after 1 July 2024 and also to visas applied for before that date, and granted on or after that date.

50. New subclause 13201(2) provides that amendments also apply, after the commencement of Schedule 1, in relation to a visa granted before that commencement, for the part of the visa period for the visa that occurs after that commencement, but any period for which the holder of the visa ceased employment before that commencement is to be disregarded.

51. One effect of the new subclause 13201(2) is that the amendments apply to relevant visas granted before 1 July 2024 for the period of time that the visa remains in effect after commencement of the amendments. For example, if a subclass 482 visa had been granted on 1 July 2023 to be in effect for 4 years, the amendments made by these regulations would apply to the 3 years the visa is in effect beginning 1 July 2024. The amendments would not apply to the 1 year that the visa was effect between 1 July 2023 and 30 June 2024.

52. Another effect of new subclause 13201(2) relates to the term 'ceased employment'. This term appeared in paragraph 8107(3)(b), subclause 8607(5) and subclause 8608(5) of Schedule 8 to the Migration Regulations prior to the commencement of the amendment regulations. The term 'ceased employment' in those provisions in effect referred solely to a visa holder being unemployed.

53. As noted above, new paragraph 8107(3)(b), subclause 8607(5) and subclause 8608(5) of Schedule 8 to the Migration Regulations, as implemented by the amendment regulations, refers to 'work in accordance' with the relevant requirements of the visa condition. This is a different concept from 'ceased employment' in that the effect of the new term is to permit a visa holder either to be unemployed or to engage in work for a period of time that is not compliant with the standard terms of the visa condition.

54. New subclause 13201(2) is intended to make it clear that any period of time that a visa holder had 'ceased employment' pursuant to the versions of paragraph 8107(3)(b), subclause 8607(5) and subclause 8608(5) of Schedule 8 to the Migration Regulations in effect prior to the commencement of these amendment regulations:

- is to be disregarded in calculating the maximum 180 consecutive days referred to in new paragraphs 8107(3)(b)(i), 8607(5)(a) and 8608(5)(a); and

- is to be disregarded in calculating the 365 day total referred to in new paragraphs 8107(3)(b)(ii), 8607(5)(b) and 8608(5)(b).

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55. For example, if a visa holder had ‘ceased employment’ for the 30 days immediately prior to 1 July 2024, those 30 days would not count towards the maximum 180 consecutive days permitted beginning 1 July 2024.

56. In another example, if a visa holder had ‘ceased employment’ for any period of time (or separate periods of time) prior to 1 July 2024, any such period or periods of time would not count towards the maximum 365 days permitted beginning 1 July 2024.

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