

2019

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**NEW SKILLED REGIONAL VISAS (CONSEQUENTIAL AMENDMENTS) BILL
2019**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Immigration, Citizenship, Migrant Services
and Multicultural Affairs, the Hon. David Coleman MP)

NEW SKILLED REGIONAL VISAS (CONSEQUENTIAL AMENDMENTS) BILL 2019

OUTLINE

The New Skilled Regional Visas (Consequential Amendments) Bill 2019 (the Bill) makes consequential amendments to legislation administered by the Department of Social Services, the Department of Education and the Attorney-General's Department, to give effect to Government policy that holders of provisional skilled regional visas, which come into effect on 16 November 2019, to have access to welfare payments or government services as if they are holders of permanent visas.

The following legislation would be amended by the Bill:

- *A New Tax System (Family Assistance) Act 1999*
- *Disability Services Act 1986*
- *Fair Entitlements Guarantee Act 2012*
- *Higher Education Support Act 2003*
- *National Disability Insurance Scheme Act 2013*
- *Paid Parental Leave Act 2010*
- *Social Security Act 1991*.

BACKGROUND

This Bill supports the Australian Government's initiatives in managing Australia's immigration program and supporting regional Australia. As part of the Population Package announced in the 2019-20 Budget, two new regional visas are being introduced to encourage new skilled migrants to settle in regional areas. The new visas will come into effect on 16 November 2019 and will require holders to live and work in a regional area for at least three years before they are eligible for a permanent visa.

The amendments in this Bill give effect to the policy intent that holders of these provisional skilled regional visas have the same access to welfare payments and government services as permanent visa holders. This recognises that the visas provide a pathway to permanent residence.

These arrangements also ensure that provisional skilled regional visa holders are not disadvantaged compared to holders of permanent skilled visas available for people to work in metropolitan areas.

The new provisional skilled regional visas are set out in the *Migration Amendment (New Skilled Regional Visas) Regulations 2019* (the visa regulations), which amend the *Migration Regulations 1994* to provide for the following visas:

- Subclass 491 (Skilled Work Regional (Provisional)) visa;
- Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa.

The visa regulations also amend the *Migration Regulations 1994* to provide for a new permanent skilled regional visa, namely the Subclass 191 (Permanent Residence (Skilled Regional)) visa.

FINANCIAL IMPACT STATEMENT

These amendments will have a low financial impact.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

A Statement of Compatibility with Human Rights has been completed in relation to the amendments in this Bill and assesses that the amendments are compatible with Australia's human rights obligations. A copy of the Statement of Compatibility with Human Rights is at [Attachment A](#).

NEW SKILLED REGIONAL VISAS (CONSEQUENTIAL AMENDMENTS) BILL 2019

NOTES ON INDIVIDUAL CLAUSES

Clause 1 Short Title

1. Clause 1 provides that the short title of the Bill, once enacted, will be the *New Skilled Regional Visas (Consequential Amendments) Act 2019*.

Clause 2 Commencement

2. Clause 2 of the Bill sets out the times at which the various provisions of the Act commence.

3. Subclause 2(1) of the Bill provides that each provision of the Act 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.

4. Table item 1 provides that the whole of the Act will commence on the later of the day after this Act receives the Royal Assent and 16 November 2019.

5. The note in subclause 2(1) makes it clear that the table relates only to the provisions of the Act as originally enacted. The table will not be amended to deal with any later amendments of the Act.

6. Subclause 2(2) of the Bill provides that any information in column 3 of the table is not part of the Act. Information may be inserted in this column, or information in it may be edited, in any published version of the Act. There is currently no information in column 3 of the table.

Clause 3 Schedules

7. This clause provides that legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned. In addition, any other item in a Schedule to this Act has effect according to its terms.

SCHEDULE 1—Amendments of Social Services legislation

A New Tax System (Family Assistance) Act 1999

Item 1 Subsection 3(1)

8. This item inserts the definition of *provisional skilled regional visa* into the general definitions provision of subsection 3(1). The definition has the same meaning as in the *Social Security Act 1991* (Social Security Act). See the associated Item 20 of this Schedule.

9. The intention of this item is to maintain alignment of the definition with that in the Social Security Act.

Item 2 At the end of subsection 61AA(2)

10. This item adds a new paragraph 61AA(2)(c), which provides that, subject to section 61AA, an individual is subject to a newly arrived resident's waiting period if the individual becomes the holder of a provisional skilled regional visa.

11. This item ensures that provisional skilled regional visa holders are subject to the same waiting period for family tax benefit Part A as other relevant visa holders.

Item 3 Subsection 61AA(2B)

12. This item omits "Paragraph (2)(b) does not apply" and substitutes "Paragraphs (2)(b) and (c) do not apply".

Item 4 After subsection 61AA(2B)

13. This item inserts new subsection 61AA(2C). This new subsection provides that paragraph 61AA(2)(b) does not apply in relation to an individual if at any time the individual has held a visa covered by paragraph 61AA(2)(c).

Item 5 Paragraph 61AA(3)(b)

14. This item omits "the visa covered by paragraph (2)(a) or (b)" and substitutes "the visa the individual holds".

Item 6 Paragraph 61AA(5)(d)

15. This item repeals and substitutes paragraph 61AA(5)(d). New paragraph (d) is extended so that the waiting period starts on the day on which the individual first becomes the holder of either a permanent visa or a provisional skilled regional visa.

16. The intention of this item, in conjunction with Items 3, 4 and 5 of this Schedule, is to ensure that the newly arrived resident's waiting period for provisional skilled regional visa holders starts when they become the holder of that visa and does not re-start once granted a permanent visa. This enables both time on a provisional skilled regional visa and a permanent visa to contribute to serving the waiting period.

Disability Services Act 1986

Item 7 Section 21

17. Item 7 omits all the words after “unless the person” and substitutes “is an Australian resident within the meaning of the *Social Security Act 1991*” in section 21.

18. Section 21 provides the residency eligibility requirements for access to some rehabilitation programs. By changing the eligibility requirements to link them to the definition of ***Australian resident*** in the Social Security Act, it will extend the eligibility to holders of provisional skilled regional visas. See Item 23 of this Schedule, which sets out the change to the definition of Australian resident in the Social Security Act.

19. The change in these eligibility requirements will explicitly provide in the legislation that an Australian citizen or permanent visa holder is required to be resident in Australia. This is consistent with established policy.

National Disability Insurance Scheme Act 2013

Item 8 After subparagraph 23(1)(b)(ii)

20. Item 8 inserts a new subparagraph 23(1)(b)(ia) to add a new criterion for meeting the residence requirements, namely if the person is the holder of a provisional skilled regional visa (within the meaning of the *Social Security Act 1991*).

Paid Parental Leave Act 2010

Item 9 Section 6

21. This item inserts the definition of ***provisional skilled regional visa*** into the dictionary in section 6. The definition has the same meaning as in the Social Security Act. See associated Item 20 of this Schedule.

22. The intention of this item is to maintain alignment of the definition with that in the Social Security Act.

Item 10 At the end of subsection 31A(1)

23. This item adds a new paragraph 31A(1)(c) at the end of subsection 31A(1) to provide that, subject to section 31A, a person is subject to a newly arrived resident’s waiting period if the person becomes the holder of a provisional skilled regional visa.

24. This item ensures that provisional skilled regional visa holders are subject to the same waiting period for parental leave pay as other relevant visa holders.

Item 11 Subsection 31A(1B)

25. This item omits “Paragraph (1)(b) does not apply” and substitutes “Paragraphs (1)(b) and (c) do not apply”.

Item 12 After subsection 31A(1B)

26. This item inserts new subsection 31A(1C). This new subsection provides that paragraph 31A(1)(b) does not apply in relation to a person if at any time the person has held a visa covered by paragraph 31A(1)(c).

Item 13 Paragraph 31A(2)(b)

27. This item omits “the visa covered by paragraph (1)(a) or (b)” and substitutes “the visa the person holds”.

Item 14 Paragraph 31A(4)(d)

28. This item repeals and substitutes paragraph 31A(4)(d). New paragraph (d) is extended so that the waiting period starts on the day on which the person first becomes the holder of either a permanent visa or a provisional skilled regional visa.

29. The intention of this item, in conjunction with Items 11, 12 and 13 of this Schedule, is to ensure that the newly arrived resident’s waiting period for provisional skilled regional visa holders starts when they become the holder of that visa and does not re-start once granted a permanent visa. This enables both time on a provisional skilled regional visa and a permanent visa to contribute to serving the waiting period.

Item 15 At the end of subsection 115CBA(1)

30. This item adds new paragraph 115CBA(1)(c) to provide that, subject to section 115CBA, a person is subject to a newly arrived resident’s waiting period if the person becomes the holder of a provisional skilled regional visa.

31. This item ensures that provisional skilled regional visa holders are subject to the same waiting period for dad and partner pay as other relevant visa holders.

Item 16 Subsection 115CBA(1B)

32. Item 16 omits “Paragraph (1)(b) does not apply” and substitutes “Paragraphs (1)(b) and (c) do not apply” from subsection 115CBA(1B).

Item 17 After subsection 115CBA(1B)

33. This item inserts new subsection 115CBA(1C). This new subsection provides that paragraph 115CBA(1)(b) does not apply in relation to a person if at any time the person has held a visa covered by paragraph 115CBA(1)(c).

Item 18 Paragraph 115CBA(2)(b)

34. This item omits “the visa covered by paragraph (1)(a) or (b)” and substitutes “the visa the person holds”.

Item 19 Paragraph 115CBA(4)(d)

35. This item repeals and substitutes paragraph 115CBA(4)(d). The new paragraph (d) is extended so that the waiting period starts on the day on which the person first becomes the holder of either a permanent visa or a provisional skilled regional visa.

36. The intention of this item, in conjunction with Items 16, 17 and 18 of this Schedule, is to ensure that the waiting period for provisional skilled regional visa holders starts when they become the holder of that visa and does not re-start once granted a permanent visa. This enables both time on a provisional skilled regional visa and a permanent visa to contribute to serving the waiting period.

Social Security Act 1991

Item 20 Subsection 7(1)

37. This item inserts the definition of *provisional skilled regional visa* into subsection 7(1).

38. A provisional skilled regional visa means a visa referred to in the regulations under the *Migration Act 1958* (Migration Act) as a Subclass 491 (Skilled Work Regional (Provisional)) visa, or a Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa, or a visa of a kind determined in an instrument under subsection (4C). Item 23 in this Schedule inserts new subsection 7(4C).

Item 21 After subparagraph 7(2)(b)(ii)

39. This item inserts a new subparagraph 7(2)(b)(iia) into the definition of *Australian resident* in subsection 7(2). The definition is being extended so that an Australian resident includes a person who resides in Australia and is the holder of a provisional skilled regional visa, as defined in subsection 7(1) (see Item 20 of this Schedule).

40. This is the main consequential amendment in this Bill, given that the definition of Australian resident in the Social Security Act is relied on by other pieces of legislation. The amendment to this definition will flow through to these other Acts, including the *A New Tax System (Family Assistance) Act 1999*, the *Paid Parental Leave Act 2010* and the *Farm Household Support Act 2014*.

41. Extending the definition to include provisional skilled regional visa holders is a departure from the long-standing position that eligibility for social security pensions and benefits (and payments under other Acts as noted above) is generally limited to permanent visa holders. This extension reflects that provisional skilled regional visas provide a pathway to permanent residence. There is a specific permanent visa pathway for Subclass 491 and 494 visa holders that will be available from 16 November 2022, namely the Subclass 191 (Permanent Residence (Skilled Regional)) visa.

Item 22 Subsection 7(4B)

42. This item omits “permanent” (wherever occurring) in subsection 7(4B).

43. Subsection 7(4B) relates to the newly arrived resident’s waiting period and sets out rules for determining the day on which a permanent visa is granted to a person or a person becomes the holder of a permanent visa for the purpose of calculating the waiting period,

including where a decision is initially made not to grant the visa but, on review by a tribunal, the decision is set aside and the visa is granted.

44. This subsection will now extend to include a provisional skilled regional visa, ensuring that the same rules apply to these visas as to permanent visas.

Item 23 After subsection 7(4B)

45. This item inserts new subsection 7(4C). Subsection (4C) provides that the Minister may, by legislative instrument, determine a kind of visa for the purposes of paragraph (c) of the definition of *provisional skilled regional visa* in subsection (1) if the Minister has been advised by the Immigration Minister that, in the Immigration Minister's opinion, the Subclass 491 or 494 visa has been, or will be, replaced by that kind of visa and that the replacement kind of visa is intended to give the same benefits as the replaced visa Subclass.

46. This power is intended to accommodate situations where non-substantive changes to the Subclass 491 or 494 visa occur as a result of changes to the skilled migration scheme. This will be limited to circumstances where changes are made consistent with the existing policy intention of ensuring that holders of provisional skilled regional visas are eligible to access welfare payments and government services. Where the Immigration Minister has provided advice that the Subclass 491 or 494 visa has been, or will be, replaced by another kind of visa and that the replacement kind of visa is intended to give the same benefits, the Minister will have a discretion to determine whether to make a legislative instrument to extend benefits to the replacement kind of visa.

Item 24 Subsection 23(1)

47. This item inserts a signpost definition of *provisional skilled regional visa* into the dictionary in subsection 23(1). The definition itself is being inserted in subsection 7(1) (see Item 20 of this Schedule).

Item 25 At the end of section 43

48. This item adds new subsection 43(3A). This subsection provides for the circumstances in which a person who qualified for an age pension under this section ceases to be qualified.

Item 26 After subsection 94(1)

49. This item inserts new subsection 94(1A). This subsection provides for the circumstances in which a person who qualified for disability support pension under this section ceases to be qualified.

Item 27 At the end of section 95

50. This item adds new subsection 95(3). This subsection provides for the circumstances in which a person who qualified for disability support pension under this section ceases to be qualified.

51. The purpose of the amendments in this Schedule is to extend eligibility for social security payments to provisional skilled regional visa holders, consistent with eligibility for

permanent visa holders. This is on the basis that the visas provide a pathway to permanent residence.

52. The intention of Items 25, 26 and 27 of this Schedule is to ensure that provisional skilled regional visa holders who do not complete that pathway and do not apply for or are not granted a permanent visa do not retain ongoing access to social security payments.

53. These items apply in relation to the age pension (Item 25) and disability support pension (Items 26 and 27) as these payments do not have an ongoing requirement to be an Australian resident in order to remain qualified for the payment. Similar provisions are not required for other payments which do have this ongoing requirement. People who do not progress from being a provisional skilled regional visa holder to holding a permanent visa (including people who do not apply for or are not granted a permanent visa) will cease to be an Australian resident and will therefore cease to qualify for these payments.

Item 28 After paragraph 739A(1)(b)

54. This item inserts new paragraph 739A(1)(c) to provide that, subject to section 739A, a person who becomes the holder of a provisional skilled regional visa is subject to a newly arrived resident's waiting period.

55. This item ensures that provisional skilled regional visa holders are subject to the same waiting period for special benefit as other relevant visa holders. Similar amendments are not required in relation to the newly arrived resident's waiting periods for other relevant social security payments as these waiting periods apply in respect of a person who enters Australia rather than becomes the holder of a particular visa.

Item 29 Paragraph 739A(5)(d)

56. This item repeals and substitutes paragraph 739A(5)(d). The new paragraph (d) is extended so that the waiting period starts on the day on which the person first becomes the holder of either a permanent visa or a provisional skilled regional visa.

57. The intention of this item is to ensure that the waiting period for provisional skilled regional visa holders starts when they become the holder of that visa and does not re-start once granted a permanent visa. This enables both time on a provisional skilled regional visa and a permanent visa to contribute to serving the waiting period.

Item 30 Application provisions

58. Subitem 30(1) provides that the amendments of section 61AA of the *A New Tax System (Family Assistance) Act 1999* made by this Schedule apply in relation to a person who becomes the holder of a visa before or after the commencement of this item.

59. Subitem 30(2) provides that the amendments of sections 31A and 115CBA of the *Paid Parental Leave Act 2010* made by this Schedule apply in relation to a person who becomes the holder of a visa before or after the commencement of this item.

60. Subitem 30(3) provides that the amendments of section 739A of the Social Security Act made by this Schedule apply in relation to a person who becomes the holder of a visa before or after the commencement of this item.

61. The amendments made by this Schedule are intended to commence from 16 November 2019, in line with the commencement of the provisional skilled regional visas. These application provisions ensure that, in the event that these amendments do not commence until after 16 November 2019, people who become the holder of a provisional skilled regional visa in the intervening period are subject to a waiting period and the waiting period commences from when they first became the holder of that visa.

Item 31 Transitional provision

62. Subitem 31(1) provides that this item applies in relation to any period before the commencement of the item during which a person resided in Australia and was the holder of a Subclass 491 or 494 visa.

63. Subitem 31(2) provides that the period is taken to be a period in which the person was an Australian resident for the purposes of determining the following:

- whether the person has 10 years qualifying Australian residence within the meaning of subsection 7(5) of the Social Security Act;
- the person's current period as an Australian resident within the meaning of the Social Security Act;
- whether the person is subject to a newly arrived resident's waiting period within the meaning of the Social Security Act and, if so, the duration of that period;
- the period the person has been an Australian resident for the purposes of paragraph 43(1A)(d), or subparagraph 315(1)(d)(ii) or 500(1)(d)(ii) of the Social Security Act;
- the person's period of Australian working life residence for the purposes of section 1221 of the Social Security Act or section 16 of the *Social Security (International Agreements) Act 1999*;
- whether the person is subject to a newly arrived resident's waiting period within the meaning of the *Farm Household Support Act 2014* and, if so, the duration of that period.

64. Subitem 31(3) provides that the person is taken to have been an Australian resident during the period for the purposes of the following provisions of the Social Security Act:

- paragraph 43(1A)(c)
- subparagraphs 94(1)(e)(i) and (iii)
- subparagraphs 95(1)(c)(i) and (iii)
- subparagraph 315(1)(d)(i)
- paragraphs 540A(2)(a) and (c)
- paragraphs 593(1C)(a) and (c)
- subparagraph 1061PAA(1)(c)(i)
- subsection 1220(1)
- subsection 1220B(2).

65. The transitional provisions are included to ensure that any period that a person spends as a provisional skilled regional visa holder before this item commences is counted as a period of being an Australian resident for the purposes outlined above.

SCHEDULE 2—Amendment of the Higher Education Support Act 2003

Higher Education Support Act 2003

The consequential amendments to the *Higher Education Support Act 2003* (HESA) will extend the benefits described below and currently available to permanent visa holders to holders of the new provisional skilled regional visas (subclasses 491 and 494). The amendments to HESA will allow these visa holders to meet the relevant residency requirements to access:

- a Commonwealth Supported Place (CSP), which provides a subsidy towards a student’s tuition fees for their units of study in a course at a higher education provider. Therefore, these provisional visa holders will not be required to pay tuition fees applicable to international students for their units of study in a course at a higher education provider; and
- FEE-HELP assistance to cover all or part of a student’s tuition fees for a unit of study that is part of a bridging course for overseas-trained professionals. FEE-HELP is an income contingent loan that will be repaid through Australia’s taxation system once an individual’s income is at, or above, the minimum repayment threshold (\$45,881 for the 2019-20 income year). These provisional visa holders will similarly be required to repay any FEE-HELP loan they access in the same manner.

Item 1 Paragraph 36-10(2)(c)

66. Section 36-10 of HESA sets out certain circumstances in which a higher education provider must not advise a person that he or she is a Commonwealth supported student. Amongst other things, a higher education provider must not advise a person that he or she is a Commonwealth supported student unless the person meets the citizenship and residency requirements set out in subsection 36-10(2).

67. This item amends paragraph 36-10(2)(c), such that a person meets the citizenship or residency requirements for the purposes of being a Commonwealth supported student if the person is a provisional skilled regional visa holder (within the definition set out in subclause 1(1) of Schedule 1), who will be resident within Australia for the duration of the unit.

Item 2 Subsection 36-10(2A)

68. This item makes a technical amendment to replace an incorrect reference in subsection 36-10(2A) of HESA to “*subparagraph* (2)(b) or (c)” with the correct phrase “*paragraph* (2)(b) or (c)”.

Item 3 Paragraph 104-5(1)(c)

69. Section 104-5 of HESA sets out the citizenship and residency requirements for a student to be entitled to FEE-HELP assistance. Currently, under paragraph 104-5(1)(c), a permanent visa holder who is undertaking a higher education unit as part of a bridging course for overseas-trained professionals, and who will be resident in Australia for the duration of the unit, meets the citizenship and residency requirements to be entitled to FEE-HELP assistance for the unit.

70. This item amends paragraph 104-5(1)(c), such that a provisional skilled regional visa holder (within the definition set out in subclause 1(1) of Schedule 1) will also meet the citizenship or residency requirements for FEE-HELP assistance for a unit of study that is part of a bridging course for overseas-trained professionals.

Item 4 Subclause 1(1) of Schedule 1

71. This item inserts the new definition of *provisional skilled regional visa holder* into subclause 1(1) of Schedule 1 to HESA.

72. A provisional skilled regional visa holder means the holder (within the meaning of the Migration Act) of a visa referred to in the regulations under the Migration Act as a Subclass 491 (Skilled Work Regional (Provisional)) visa, or a Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa, or a visa of a kind determined in an instrument under subclause 1(4).

Item 5 At the end of clause 1 of Schedule 1

73. This item inserts new subclause 1(4). Subclause 1(4) provides that the Minister may, by legislative instrument, determine a kind of visa for the purposes of paragraph (c) of the definition of *provisional skilled regional visa* in subclause (1) if the Minister has been advised by the Immigration Minister that, in the Immigration Minister's opinion, the Subclass 491 or 494 visa has been, or will be, replaced by that kind of visa and that the replacement kind of visa is intended to give the same benefits as the replaced visa Subclass.

74. This power is intended to accommodate situations where non-substantive changes to the Subclass 491 or 494 visa occur as a result of changes to the skilled migration scheme. This will be limited to circumstances where changes are made consistent with the existing policy intention of ensuring that holders of provisional skilled regional visas are eligible to access welfare payments and government services. Where the Immigration Minister has provided advice that the Subclass 491 or 494 visa has been, or will be, replaced by another kind of visa and that the replacement kind of visa is intended to give the same benefits, the Minister will have a discretion to determine whether to make a legislative instrument to extend benefits to the replacement kind of visa.

Item 6 Application provision

75. This item provides that the amendments of sections 36-10 and 104-5 made by this Schedule apply in relation to any unit of study with a census date that is on or after the commencement of this item (whether the unit of study is part of a course commenced before or after that day).

SCHEDULE 3—Amendment of the Fair Entitlements Guarantee Act 2012

Fair Entitlements Guarantee Act 2012

Item 1 Paragraph 10(1)(g)

76. This item omits “or, under the *Migration Act 1958*, the holder of a permanent visa or a special category visa” and substitutes “or the holder (within the meaning of the *Migration Act 1958*) of a visa of a kind mentioned in subsection (3)”.

77. The intention of this item is to remove the list of kinds of visas from paragraph (1)(g) and place them in new subsection 10(3), in order to extend the list of kinds of visas to be considered as part of determining eligibility requirements for an advance.

Item 2 At the end of section 10

78. This item adds new subsections 10(3) and (4) which list the kinds of visas for the purposes of paragraph 10(1)(g) and insert a limited instrument making power.

79. The list of kinds of visas in the new subsection 10(3) includes the following:

- a permanent visa (within the meaning of the *Migration Act 1958*)
- a special category visa (within the meaning of the *Migration Act 1958*)
- a visa referred to in the regulations under the *Migration Act 1958* as a Subclass 491 (Skilled Work Regional (Provisional)) visa
- a visa referred to in the regulations under the *Migration Act 1958* as a Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa
- a visa of a kind determined in an instrument under subsection (4).

80. The list of visas has been expanded to add the two new Skilled Work Regional (Provisional) visas to the permanent and special category visas as visas that will enable the holder to access the Fair Entitlements Guarantee, where the other eligibility criteria in the Fair Entitlements Guarantee are met.

81. The instrument making power in new subsection 10(4) provides that the Minister may, by legislative instrument, determine a kind of visa for the purposes of paragraph (3)(e) if the Minister has been advised by the Immigration Minister that, in the Immigration Minister’s opinion, the Subclass 491 or 494 visa has been, or will be, replaced by that kind of visa and that the replacement kind of visa is intended to give the same benefits as the replaced visa Subclass.

82. This power is intended to accommodate situations where non-substantive changes to the Subclass 491 or 494 visa occur as a result of changes to the skilled migration scheme. This will be limited to circumstances where changes are made consistent with the existing policy intention of ensuring that holders of provisional skilled regional visas are eligible to access welfare payments and government services. Where the Immigration Minister has provided advice that the Subclass 491 or 494 visa has been, or will be, replaced by another kind of visa and that the replacement kind of visa is intended to give the same benefits, the Minister will have a discretion to determine whether to make a legislative instrument to extend benefits to the replacement kind of visa.

Item 3 Application provision

83. This item provides that the amendment of paragraph 10(1)(g) of the *Fair Entitlements Guarantee Act 2012* made by this Schedule applies in relation to the end of a person's employment, whether the employment ends before or after the commencement of this item.

Statement of Compatibility with Human Rights

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

New Skilled Regional Visas (Consequential Amendments) Bill 2019

This Bill 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 of the Bill

The Bill amends legislation of relevant Commonwealth agencies to give effect to, or as a consequence of, amendments to the *Migration Regulations 1994* by the Migration Amendment (New Skilled Regional Visas) Regulations 2019 (the visa regulations). Relevantly to this Bill, the visa regulations created the Skilled Work Regional (Provisional) (Subclass 491) visa, the Skilled Employer Sponsored Regional (Provisional) (Subclass 494) visa (collectively referred to as the *provisional skilled regional visas*). The visa regulations were registered on the Federal Register of Legislation on 8 April 2019 (F2019L00578) and the provisional skilled regional visas are due to commence on 16 November 2019.

Consequential amendments to relevant Commonwealth legislation is necessary to give effect to the policy intent that, from 16 November 2019, holders of the provisional skilled regional visas will have the same access to welfare payments and government services as permanent visa holders where eligible, with time spent on the new provisional skilled regional visas to count towards any applicable waiting periods.

These new visas support the Australian Government's initiatives in managing Australia's immigration program and supporting regional Australia. A key feature of the new visas is a requirement for regional migrants to live and work in regional Australia for three years before being eligible for permanent residence. This will encourage visa holders to remain in regional Australia with their families, which in turn will support the local communities and enhance population growth and economies of regional parts of the country. The amendments in this Bill will ensure that holders of the new provisional skilled regional visas have access to welfare payments or government services consistent with the current arrangements applicable to permanent residence visa holders. These arrangements also ensure that provisional skilled regional visa holders are not disadvantaged compared to holders of permanent skilled visas available for people to work in metropolitan areas.

The relevant Commonwealth legislation to be amended by the Bill are as follows:

- *Social Security Act 1991;*
- *A New Tax System (Family Assistance) Act 1999;*
- *Disability Services Act 1986;*
- *National Disability Insurance Scheme Act 2013;*
- *Paid Parental Leave Act 2010;*

- *Fair Entitlements Guarantee Act 2012*; and
- *Higher Education Support Act 2003*

In summary, the nature of the amendments are to the definition of Australian resident at subsection 7(2) of the *Social Security Act 1991* (to include the provisional skilled regional visas) and the subsequent necessary amendments required to give effect to this extension of eligibility across other portfolio legislation managed by the Department of Social Services. More specific amendments are to be made to the *Fair Entitlements Guarantee Act 2012* and the *Higher Education Support Act 2003* to extend eligibility for payments and services under these acts to provisional skilled regional visa holders.

Human rights implications

The amendments have been assessed against the seven core treaties to which Australia is a party.

Non-discrimination

By providing provisional skilled regional visa holders the same access to welfare payments and government services as permanent visa holders, the Bill may engage the below rights as it may indirectly discriminate against those provisional holders that do not receive such benefits.

Article 2(1) of the *International Covenant on Civil and Political Rights* (ICCPR) states:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 26 of the ICCPR states:

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.

In its General Comment 18, the UN Human Rights Committee stated that:

The Committee observes that not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant.

Similarly, in its General Comment on Article 2 of the ICESCR (E/C.12/GC/20), UNCESCR has stated (at 13) that:

Differential treatment based on prohibited grounds will be viewed as discriminatory unless the justification for differentiation is reasonable and objective. This will include an assessment as to whether the aim and effects of the measures or omissions are legitimate, compatible with the nature of the Covenant rights and solely for the purpose of promoting the general welfare in a democratic society. In addition, there

must be a clear and reasonable relationship of proportionality between the aim sought to be realized and the measures or omissions and their effects.

Neither the ICCPR nor the ICESCR give a right for non-citizens to enter Australia for the purposes of seeking residence or employment. The UN Human Rights Committee, in its General Comment 15 on the position of aliens under the Covenant, stated that:

The Covenant does not recognize the right of aliens to enter or reside in the territory of a State party. It is in principle a matter for the State to decide who it will admit to its territory. However, in certain circumstances an alien may enjoy the protection of the Covenant even in relation to entry or residence, for example, when considerations of non-discrimination, prohibition of inhuman treatment and respect for family life arise.

Consent for entry may be given subject to conditions relating, for example, to movement, residence and employment. A State may also impose general conditions upon an alien who is in transit. However, once aliens are allowed to enter the territory of a State party they are entitled to the rights set out in the Covenant.

As such, Australia is able to set requirements for the entry of non-citizens into Australia and conditions for their stay, and does so on the basis of reasonable and objective criteria. The aim of the broader skilled migration program is to maximise the benefits of skilled entrants to the Australian economy. This includes channelling provisional skilled migrants into occupations that have been identified to be in the long-term strategic interest of the economy in regional Australia. Australia sets the requirements for the entry and conditions of stay for skilled migrants on the basis of reasonable and objective criteria formulated through labour market analysis and stakeholder consultation. As a result of this analysis/consultation, the Government is of the view that amendments in this Bill will also encourage provisional skilled regional visa holders to remain in regional Australia with their families.

To the extent that the Bill engages the obligations in Article 2(1) and Article 26 of the ICCPR, the Government considers that this measure is reasonable and proportionate in achieving a legitimate objective. The Government's intention to incentivise living and working in regional Australia for newly arrived migrants is supporting the government's plan for Australia's future population by easing the pressure on the big capitals while supporting the growth of those smaller cities and regions that need skilled migrants. This is reflected by designated regional areas, to be identified in a legislative instrument, which will include all of Australia except for Sydney, Melbourne, Perth, Brisbane and the Gold Coast.

These amendments extend eligibility for welfare payments and government services to provisional skilled regional visa holders. The amendments engage the following rights positively:

Article 9 of the *International Covenant on Economic, Social and Cultural Rights (ICESCR)* provides:

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

Article 11 provides:

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Article 12 provides:

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

The amendments to the definition of Australian resident in the *Social Security Act 1991* will ensure provisional skilled regional visa holders have access to social security benefits. The amendments will also flow through a number of other pieces of legislation which refer to this definition. This includes the *A New Tax System (Family Assistance) Act 1999*, the *Paid Parental Leave Act 2010* and the *Farm Household Support Act 2014*. This will enable access to a range of other payments, including payments to assist with the cost of raising children or support parents to take leave after the birth of a new child, child care subsidies and the farm household allowance. These amendments will ensure that provisional skilled regional visa holders have access to a safety net to enable them to maintain an adequate standard of living for themselves and any dependent children, should they find themselves in need of assistance.

Under existing rules, a number of these social security and other payments are subject to waiting periods for new migrants. These waiting periods reflect the long-standing expectation that skilled and family migrants will be in a position to support themselves when first settling in Australia. The application of waiting periods is designed to achieve the reasonable and legitimate objective of encouraging self-support in order to target assistance to those most in need and keep the welfare payment system sustainable. Consistent with existing rules, these waiting periods will apply to provisional skilled regional visa holders. The full range of existing exemptions from these waiting periods will be available to provisional skilled

regional visa holders should they find themselves unable to support themselves, providing early access for those in vulnerable circumstances.

Application and transitional provisions are included in the Bill which are designed to limit the impact on provisional skilled regional visa holders in the event that passage of the Bill is delayed. These provisions ensure that people granted a provisional skilled regional visa prior to the Bill's commencement are subject to waiting periods, in line with other provisional skilled regional visa holders granted after commencement, and that the time on the provisional skilled regional visa prior to commencement counts towards the waiting period. These provisions are beneficial as otherwise time spent on the provisional skilled regional visa prior to commencement of the Bill would not count, resulting in these visa holders having to wait longer to access payments.

The amendments to the *National Disability Insurance Scheme Act 2013* to provide provisional skilled regional visa holders the ability to access the National Disability Insurance Scheme engage a range of rights, such as encompassed in the International Covenant on Civil and Political Rights or the Convention on the Rights of Persons with Disabilities.

Article 13 provides:

1. 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.

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

(a) Primary education shall be compulsory and available free to all;

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

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

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. *The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.*

4. *No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.*

The Bill engages the right to education, contained in Article 13 of the ICESCR, insofar as it relates to the provision of education and training services to provisional skilled regional visa holders in Australia on the same standing as permanent visa holders. Article 13(1) of the ICESCR recognises each person's right to education, and that education is important to "*the full development of the human personality*", and enables "*all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups*". This Bill also engages with Article 13(2)(c) of the ICESCR which states that "*higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education*".

The extension of benefits to provisional skilled regional visa holders, consistent with benefits already enjoyed by permanent visa holders under the *Higher Education Support Act 2003*, demonstrates Australia's commitment to upholding the right to education for a broader range of people choosing to pursue higher education in Australia.

Through extending access to Commonwealth supported places and FEE-HELP assistance for a unit of study for a bridging course for overseas-trained professionals to provisional skilled regional visa holders, this Bill complements the objectives of the *Higher Education Support Act 2003*. The objectives of the *Higher Education Support Act 2003* include "*...to support a higher education system that... is characterised by quality, diversity and equity of access; and... contributes to the development of cultural and intellectual life in Australia; and... is appropriate to meet Australia's social and economic needs for a highly educated and skilled population; and promotes and protects free intellectual inquiry...*" The Bill offers more students the ability to contribute to "*Australia's social and economic needs*" through undertaking higher education and obtaining those required skills, and the Bill is therefore consistent with fair and shared access to education.

The Government recognises the valuable contribution skilled visa holders provide to regional Australia. This Bill seeks to encourage and foster that contribution through the extension of benefits to provisional skilled regional visa holders.

To the extent that the right to education is engaged, the measures contained in the Bill are compatible with the right to education.

Conclusion

The Bill is compatible with human rights because, to the extent that it may limit some human rights, those limitations are reasonable, necessary and proportionate.

**The Hon. David Coleman MP, Minister for Immigration, Citizenship, Migrant Services
and Multicultural Affairs**