

2019

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**New Skilled Regional Visas
(Consequential Amendments) Bill 2019**

No. , 2019

(Immigration, Citizenship, Migrant Services and Multicultural Affairs)

**A Bill for an Act to amend the law consequential to
the creation of certain visas, and for related
purposes**

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A Bill for an Act to amend the law consequential to the creation of certain visas, and for related purposes

The Parliament of Australia enacts:

1 Short title

This Act is the New Skilled Regional Visas (Consequential Amendments) Act 2019.

2 Commencement

- (1) Each provision of this 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.

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The later of: (a) the day after this Act receives the Royal Assent; and (b) 16 November 2019.	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

1 Subsection 3(1)

Insert:

provisional skilled regional visa has the same meaning as in the *Social Security Act 1991*.

2 At the end of subsection 61AA(2)

Add:

; or (c) becomes the holder of a provisional skilled regional visa.

3 Subsection 61AA(2B)

Omit “Paragraph (2)(b) does not apply”, substitute “Paragraphs (2)(b) and (c) do not apply”.

4 After subsection 61AA(2B)

Insert:

(2C) Paragraph (2)(b) does not apply in relation to an individual if at any time the individual has held a visa covered by paragraph (2)(c).

5 Paragraph 61AA(3)(b)

Omit “the visa covered by paragraph (2)(a) or (b)”, substitute “the visa the individual holds”.

6 Paragraph 61AA(5)(d)

Repeal the paragraph, substitute:

(d) first becomes the holder of either a permanent visa or a provisional skilled regional visa;

Disability Services Act 1986

7 Section 21

Omit all the words after “unless the person”, substitute “is an Australian resident within the meaning of the *Social Security Act 1991*”.

National Disability Insurance Scheme Act 2013

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

Insert:

(ia) the holder of a provisional skilled regional visa (within the meaning of the *Social Security Act 1991*);

Paid Parental Leave Act 2010

9 Section 6

Insert:

provisional skilled regional visa has the same meaning as in the Social Security Act.

10 At the end of subsection 31A(1)

Add:

; or (c) becomes the holder of a provisional skilled regional visa.

11 Subsection 31A(1B)

Omit “Paragraph (1)(b) does not apply”, substitute “Paragraphs (1)(b) and (c) do not apply”.

12 After subsection 31A(1B)

Insert:

(1C) Paragraph (1)(b) does not apply in relation to a person if at any time the person has held a visa covered by paragraph (1)(c).

13 Paragraph 31A(2)(b)

Omit “the visa covered by paragraph (1)(a) or (b)”, substitute “the visa the person holds”.

14 Paragraph 31A(4)(d)

Repeal the paragraph, substitute:

- (d) first becomes the holder of either a permanent visa or a provisional skilled regional visa;

15 At the end of subsection 115CBA(1)

Add:

- ; or (c) becomes the holder of a provisional skilled regional visa.

16 Subsection 115CBA(1B)

Omit “Paragraph (1)(b) does not apply”, substitute “Paragraphs (1)(b) and (c) do not apply”.

17 After subsection 115CBA(1B)

Insert:

- (1C) Paragraph (1)(b) does not apply in relation to a person if at any time the person has held a visa covered by paragraph (1)(c).

18 Paragraph 115CBA(2)(b)

Omit “the visa covered by paragraph (1)(a) or (b)”, substitute “the visa the person holds”.

19 Paragraph 115CBA(4)(d)

Repeal the paragraph, substitute:

- (d) first becomes the holder of either a permanent visa or a provisional skilled regional visa;

Social Security Act 1991

20 Subsection 7(1)

Insert:

provisional skilled regional visa means:

- (a) a visa referred to in the regulations under the *Migration Act 1958* as a Subclass 491 (Skilled Work Regional (Provisional)) visa; or

- (b) a visa referred to in the regulations under the *Migration Act 1958* as a Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa; or
- (c) a visa of a kind determined in an instrument under subsection (4C).

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

Insert:

- (ia) the holder of a provisional skilled regional visa;

22 Subsection 7(4B)

Omit “permanent” (wherever occurring).

23 After subsection 7(4B)

Insert:

- (4C) 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 Minister administering the *Migration Act 1958* (the *Immigration Minister*) that, in the opinion of the Immigration Minister:
 - (a) a visa Subclass mentioned in paragraph (a) or (b) of that definition has been or will be replaced by that kind of visa; and
 - (b) the replacement kind of visa is intended to give the same benefits as the replaced visa Subclass.

24 Subsection 23(1)

Insert:

provisional skilled regional visa: see subsection 7(1).

25 At the end of section 43

Add:

- (3A) If a person qualified for an age pension when the person was the holder of a provisional skilled regional visa, then:
 - (a) if the person does not apply for a permanent visa while the holder of a provisional skilled regional visa—the person

ceases to be qualified when the person is no longer the holder of a provisional skilled regional visa; and

- (b) if the person applies for a permanent visa while the holder of a provisional skilled regional visa—the person ceases to be qualified if:
 - (i) the permanent visa has been refused and the application has been finally determined within the meaning of the *Migration Act 1958*; and
 - (ii) the person is no longer the holder of a provisional skilled regional visa.

26 After subsection 94(1)

Insert:

- (1A) If a person qualified for disability support pension under this section while the person was the holder of a provisional skilled regional visa, then:
 - (a) if the person does not apply for a permanent visa while the holder of a provisional skilled regional visa—the person ceases to be qualified when the person is no longer the holder of a provisional skilled regional visa; and
 - (b) if the person applies for a permanent visa while the holder of a provisional skilled regional visa—the person ceases to be qualified if:
 - (i) the permanent visa has been refused and the application has been finally determined within the meaning of the *Migration Act 1958*; and
 - (ii) the person is no longer the holder of a provisional skilled regional visa.

27 At the end of section 95

Add:

- (3) If a person qualified for disability support pension under this section while the person was the holder of a provisional skilled regional visa, then:
 - (a) if the person does not apply for a permanent visa while the holder of a provisional skilled regional visa—the person ceases to be qualified when the person is no longer the holder of a provisional skilled regional visa; and

- (b) if the person applies for a permanent visa while the holder of a provisional skilled regional visa—the person ceases to be qualified if:
 - (i) the permanent visa has been refused and the application has been finally determined within the meaning of the *Migration Act 1958*; and
 - (ii) the person is no longer the holder of a provisional skilled regional visa.

28 After paragraph 739A(1)(b)

Insert:

- (c) becomes the holder of a provisional skilled regional visa; or

29 Paragraph 739A(5)(d)

Repeal the paragraph, substitute:

- (d) first becomes the holder of either a permanent visa or a provisional skilled regional visa;

30 Application provisions

- (1) 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.
- (2) 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.
- (3) The amendments of section 739A of the *Social Security Act 1991* 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.

31 Transitional provision

- (1) This item applies in relation to any period before the commencement of this item during which a person:
 - (a) resided in Australia; and
 - (b) was the holder of a visa referred to in the regulations under the *Migration Act 1958* as a Subclass 491 (Skilled Work

Regional (Provisional)) visa or a Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa.

- (2) The period is taken to be a period in which the person was an Australian resident for the purposes of determining the following:
- (a) whether the person has 10 years qualifying Australian residence within the meaning of subsection 7(5) of the *Social Security Act 1991*;
 - (b) the person's current period as an Australian resident within the meaning of the *Social Security Act 1991*;
 - (c) whether the person is subject to a newly arrived resident's waiting period within the meaning of the *Social Security Act 1991* and, if so, the duration of that period;
 - (d) 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 1991*;
 - (e) the person's period of Australian working life residence for the purposes of section 1221 of the *Social Security Act 1991* or section 16 of the *Social Security (International Agreements) Act 1999*;
 - (f) 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.
- (3) 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 1991*:
- (a) paragraph 43(1A)(c);
 - (b) subparagraphs 94(1)(e)(i) and (iii);
 - (c) subparagraphs 95(1)(c)(i) and (iii);
 - (d) subparagraph 315(1)(d)(i);
 - (e) paragraphs 540A(2)(a) and (c);
 - (f) paragraphs 593(1C)(a) and (c);
 - (g) subparagraph 1061PAA(1)(c)(i);
 - (h) subsection 1220(1);
 - (i) subsection 1220B(2).

Schedule 2—Amendment of the Higher Education Support Act 2003

Higher Education Support Act 2003

1 Paragraph 36-10(2)(c)

After “holder”, insert “, or a *provisional skilled regional visa holder,”.

2 Subsection 36-10(2A)

Omit “subparagraph”, substitute “paragraph”.

3 Paragraph 104-5(1)(c)

After “holder”, insert “, or a *provisional skilled regional visa holder,”.

4 Subclause 1(1) of Schedule 1

Insert:

provisional skilled regional visa holder means the holder (within the meaning of the *Migration Act 1958*) of:

- (a) a visa referred to in the regulations under that Act as a Subclass 491 (Skilled Work Regional (Provisional)) visa; or
- (b) a visa referred to in the regulations under that Act as a Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa; or
- (c) a visa of a kind determined in an instrument under subclause (4).

5 At the end of clause 1 of Schedule 1

Add:

- (4) 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 holder* in subclause (1) if the Minister has been advised by the Minister administering the *Migration Act 1958* (the *Immigration Minister*) that, in the opinion of the Immigration Minister:

- (a) a visa Subclass mentioned in paragraph (a) or (b) of that definition has been or will be replaced by that kind of visa; and
- (b) the replacement kind of visa is intended to give the same benefits as the replaced visa Subclass.

6 Application provision

The amendments of sections 36-10 and 104-5 of the *Higher Education Support Act 2003* 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 of study commenced before or after that day).

Schedule 3—Amendment of the Fair Entitlements Guarantee Act 2012

Fair Entitlements Guarantee Act 2012

1 Paragraph 10(1)(g)

Omit “or, under the *Migration Act 1958*, the holder of a permanent visa or a special category visa”, substitute “or the holder (within the meaning of the *Migration Act 1958*) of a visa of a kind mentioned in subsection (3)”.

2 At the end of section 10

Add:

Visas

- (3) For the purposes of paragraph (1)(g), the kinds of visa are the following:
- (a) a permanent visa (within the meaning of the *Migration Act 1958*);
 - (b) a special category visa (within the meaning of the *Migration Act 1958*);
 - (c) a visa referred to in the regulations under the *Migration Act 1958* as a Subclass 491 (Skilled Work Regional (Provisional)) visa;
 - (d) a visa referred to in the regulations under the *Migration Act 1958* as a Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa;
 - (e) a visa of a kind determined in an instrument under subsection (4).
- (4) 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 Minister administering the *Migration Act 1958* (the ***Immigration Minister***) that, in the opinion of the Immigration Minister:
- (a) a visa Subclass mentioned in paragraph (3)(c) or (d) has been or will be replaced by that kind of visa; and

- (b) the replacement kind of visa is intended to give the same benefits as the replaced visa Subclass.

3 Application provision

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.