

**2019-2020**

**THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA**

**HOUSE OF REPRESENTATIVES**

**Migration Amendment (Common Sense Partner Visa) Bill 2020**

**EXPLANATORY MEMORANDUM**

**and**

**STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

Circulated by authority of

Julian Hill MP

## **Migration Amendment (Common Sense Partner Visa) Bill 2020**

### **OUTLINE**

This Bill seeks to amend the *Migration Act 1958* to enable, for a specified period, applicants for Subclass 309 (Partner (Provisional)) visas to be granted a visa while onshore.

Applicants for Subclass 309 visas are required by the *Migration Regulations 1994* to be outside Australia at the time of both application lodgement and visa grant. Ordinarily, applicants who are in Australia on temporary visas can leave and return to the country relatively easily in order to meet this requirement.

Disruptions to international air travel, and border restrictions implemented as a result of COVID-19, have however created considerable difficulties for affected individuals. A significant number of people – recognised as the partner of an Australian citizen or permanent resident – have been onshore since the onset of the pandemic, and unable to leave the country in order to have their visa granted as required.

With limitations on airline passenger numbers, and caps on international arrival numbers in Australia, tickets are extremely expensive and flights unreliable. Inward travellers, except those arriving on a quarantine-free flight from New Zealand, must also quarantine at a designated facility for 14 days on arrival, usually at their own expense.

The Migration Regulations require the partners of Australians to make risky and expensive return trips outside of Australia solely for the purpose of having their 309 visas granted.

Over 30,000 Australians wishing to return home are currently stranded overseas, and subject to the strict limitations on arrivals and quarantine capacity. In this context, the requirement for subclass 309 applicants to depart Australia – and therefore assume places on inbound flights, in the arrivals cap and in quarantine in lieu of stranded citizens – should be suspended. A suspension of this nature would also lower the significant public health risk associated with people unnecessarily travelling abroad where COVID-19 may be prevalent, and subsequently returning to Australia.

The Bill will alleviate significant stress for the families concerned. A solution to this impasse is critical for those who for reasons of family responsibilities, health, or financial impost, are unable to submit to the uncertainty, logistical challenges and costs involved in departing and then returning to the country in these circumstances.

The Bill enables the grant of Subclass 309 visas onshore on a temporary basis, from the day after the Royal Assent is received until 31 December 2021, after which time the current processing requirements would resume.

### **FINANCIAL IMPACT**

The bill will have no financial impact.

## **NOTES ON CLAUSES**

### **Clause 1: Short Title**

1. Clause 1 is a formal provision specifying the short title of the Bill.

### **Clause 2: Commencement**

2. Clause 2 provides for the commencement of the Bill on the day after the Act receives the Royal Assent.

### **Clause 3: Schedules**

3. Each Act specified in a Schedule to this Act is amended or repealed as is set out in the applicable terms in the Schedule. Any other item in a Schedule to the Act has effect according to its terms.

## **Schedule 1 – Amendments**

### ***Migration Act 1958***

#### **Item 1 At the end of section 40**

4. Item 1 amends section 40 of the Act to provide for the addition of new subsections (4) and (5).
5. Section 40 of the Act outlines the circumstances under which visas, or visas of a certain class, may be granted.
6. Subsection (4) includes provision for an application referred to in the regulations as a Subclass 309 (Partner (Provisional)) visa to be granted whether the applicant is inside or outside Australia.
7. Subsection (5) provides for the application of subsection (4) during the period beginning the day this subsection commences and ending on 31 December 2021, whether or not the application for the visa was made before or after the commencement of this subsection.

## STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

### Migration Amendment (Common sense Partner Visa) Bill 2020

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

This Bill seeks to amend the *Migration Act 1958* to enable applicants for Subclass 309 (Partner (Provisional)) visas to be granted the visa onshore, for a specified period.

The Bill will temporarily dispense with the requirement to depart Australia to be granted a Subclass 309 visa in recognition of the significant difficulties caused by disruptions to international air travel and COVID-19 related border restrictions.

In enabling the grant of Subclass 309 visas onshore, the Bill will ensure the availability of additional places on inbound flights, and in the international arrivals cap and designated quarantine facilities, for Australian citizens and permanent residents currently stranded overseas and wishing to return home.

#### Human rights implications

The Bill engages the following rights as provided for in the International Covenant on Civil and Political Rights (ICCPR):

- The right to freedom of movement, including the right to enter one's own country, as contained in Article 12; and
- The rights of the family, as the natural and fundamental group unit of society, to protection by the State, as contained in Article 23.

The Bill is compatible with the above rights.

The Bill will free up additional places on inbound international flights, in the arrivals cap, and in quarantine, to allow more Australian citizens to return home from overseas sooner.

The Bill will enable Subclass 309 applicants to remain with their partners and children in Australia, rather than force them to depart the country to be granted a visa, and undertake 14 days of quarantine on their return. This is particularly important for applicants who are currently pregnant, who have newborn children or whose family responsibilities otherwise preclude their absence from their family unit for three weeks or more.

#### Conclusion

This Bill is compatible with human rights as it does not raise any human rights issues.

**Julian Hill MP**