

## **EXPLANATORY STATEMENT**

Issued by the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

*Migration Act 1958*

*Migration Amendment (Temporary Sponsored Parent Visas) Regulations 2021*

This instrument amends the *Migration Regulations 1994* (the Migration Regulations) to make concessions for certain visa holders affected by COVID-19 travel restrictions.

The *Migration Act 1958* (the Migration Act) is an Act relating to the entry into, and presence in, Australia of aliens, and the departure or deportation from Australia of aliens and certain other persons.

Subsection 504(1) of the Migration Act provides that the Governor-General may make regulations, not inconsistent with the Migration Act, prescribing matters required or permitted to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Migration Act.

In addition, regulations may be made pursuant to the provisions listed in Attachment A.

The *Migration Amendment (Temporary Sponsored Parent Visas) Regulations 2021* (the Regulations) amend the Migration Regulations to extend for an additional 18 months, Subclass 870 (Sponsored Parent (Temporary)) visas held by persons who were outside Australia on 1 July 2021, in order to assist persons who may have had difficulty using the visa to travel to Australia due to COVID-19 related travel restrictions.

The Subclass 870 visa enables parents sponsored by their Australia citizen, permanent resident or eligible New Zealand citizen children to travel to, enter and remain in Australia for up to three or five years at a time, up to a maximum total period of 10 years. Subclass 870 visas commence at the time they are granted irrespective of where the applicant is located at that time.

The amendments limit the adverse impact of COVID-19 related travel restrictions on holders of Subclass 870 visas who were outside Australia on 1 July 2021. These visa holders may have been granted the visa while outside Australia and now have difficulty in travelling to Australia, or may have left Australia while holding the visa but now have difficulty in returning. The amendments assist these visa holders by allowing them additional time to travel to and stay in Australia when travel resumes.

The matters dealt with in the Regulations are appropriate for implementation in regulations rather than by Parliamentary enactment. It has been the consistent practice of the Government of the day to provide for detailed visa criteria, visa validity periods and conditions in the Migration Regulations rather than in the Migration Act itself. The Migration Act expressly provides for these matters to be prescribed in regulations, as can be seen in the authorising provisions listed at Attachment A. These include, for example, subsection 31(3), which provides that the regulations may prescribe criteria for a visa or visas of a specified class.

The current Migration Regulations have been in place since 1994, when they replaced regulations made in 1989 and 1993. Providing for these details to be in delegated legislation rather than primary legislation gives the Government the ability to respond quickly to emerging situations such as the COVID-19 pandemic.

A Statement of Compatibility with Human Rights (the Statement) has been completed in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The overall assessment is that the Regulations are compatible with human rights. A copy of the Statement is at [Attachment B](#).

The Office of Best Practice Regulation (the OBPR) has been consulted in relation to the amendments. No Regulation Impact Statement is required. The OBPR consultation reference number is 44063.

Consultation in relation to the amendments was undertaken with the Treasury, the Department of Finance, and the Department of the Prime Minister and Cabinet. The measures in the instrument have been informed by feedback received from a number of stakeholders, including affected visa holders, who have raised concerns about the impacts of ongoing COVID-19 related travel restrictions.

These consultations accord with subsection 17(1) of the *Legislation Act 2003* (the Legislation Act).

The Regulations commence on 30 July 2021 to align with updates to Department systems.

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

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

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

**AUTHORISING PROVISIONS**

Subsection 504(1) of the *Migration Act 1958* (the Migration Act) relevantly provides that the Governor-General may make regulations (the Regulations) prescribing matters required or permitted to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Migration Act.

In addition, the following provisions of the Migration Act may also be relevant:

- subsection 29(1), which provides that the Minister may grant a non-citizen permission, to be known as a visa, to do either or both of the following: (a) travel to and enter Australia; (b) remain in Australia;
- subsection 29(2), which provides that, without limiting subsection 29(1), a visa to travel to, enter and remain in Australia may be one to:
  - (a) travel to and enter Australia during a prescribed or specified period; and
  - (b) if, and only if, the holder travels to and enters during that period, remain in Australia during a prescribed or specified period or indefinitely;
- subsection 30(2), which provides that a visa to remain in Australia (whether also a visa to travel to and enter Australia) may be a visa, to be known as a temporary visa, to remain during a specified period, or until a specified event happens, or while the holder has a specified status;
- subsection 31(1), which provides that the Regulations may prescribe classes of visas;
- subsection 31(3), which provides that the Regulations may prescribe criteria for a visa or visas of a specified class;
- subsection 31(4), which provides that the Regulations may prescribe whether visas of a class are visas to travel to and enter Australia, or to remain in Australia, or both;
- subsection 31(5), which provides that the Regulations may specify that a visa is a visa of a particular class;
- paragraph 46(1)(b), which provides that the Regulations may prescribe the criteria and requirements for making a valid application for a visa;
- subsection 46(3), which provides that the Regulations may prescribe criteria that must be satisfied for an application for a visa of a specified class to be a valid application; and
- subsection 46(4), which provides that, without limiting subsection 46(3), the Regulations may prescribe:
  - (a) the circumstances that must exist for an application for a visa of a

- specified class to be a valid application; and
- (b) how an application for a visa of a specified class must be made; and
  - (c) where an application for a visa of a specified class must be made; and
  - (d) where an applicant must be when an application for a visa of a specified class is made.

## **Statement of Compatibility with Human Rights**

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

### ***Migration Amendment (Temporary Sponsored Parent Visas) Regulations 2021***

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 of the Disallowable Legislative Instrument**

The *Migration Amendment (Temporary Sponsored Parent Visas) Regulations 2021* (the Disallowable Legislative Instrument) amends the *Migration Regulations 1994* (the Migration Regulations).

The Subclass 870 (Sponsored Parent (Temporary)) visa enables parents sponsored by their adult Australian citizen, permanent resident or eligible New Zealand citizen children to travel to, enter and remain in Australia for up to three or five years at a time, and may be held for a maximum total cumulative period of up to 10 years. Subclass 870 visas commence at the time they are granted irrespective of where the applicant is located at that time.

The amendments made by this Disallowable Legislative Instrument automatically extend for 18 months, in addition to the period for which the visa was originally granted, Subclass 870 visas held by persons who are outside Australia on 1 July 2021 and have faced difficulties in using the visa to travel to Australia due to COVID-19 travel restrictions and the practical difficulties of travel at this time.

The amendments limit the adverse impact of COVID-19 related travel restrictions and practical difficulties on holders of Subclass 870 visas who may have been granted the visa while outside Australia and now may have difficulty in travelling to Australia, or who may have left Australia while holding the visa but may now have difficulty in returning. The amendments assist Subclass 870 visa holders who are outside Australia on 1 July 2021 by allowing them additional time to travel to and stay in Australia when travel resumes.

#### **Human rights implications**

This Disallowable Legislative Instrument may, in a broad sense, support rights relating to family unity and children, in particular Article 23 of the International Covenant on Civil and Political Rights (ICCPR).

Article 23 of the ICCPR provides that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

While sponsors of Subclass 870 visa applicants must be over 18 years of age, the amendments in some cases may support extended families, which may include children and/or grandchildren under 18, to spend time together in Australia.

Extending the validity period of Subclass 870 visas held by persons outside Australia and affected by travel restrictions is intended to assist those visa holders by providing an additional period of time to enter and remain in Australia with their families once international travel becomes easier. These changes may assist in mitigating the negative impact of COVID-19 related travel restrictions and practical difficulties, and provide a positive benefit to the visa holder, as well as their adult child sponsor and their extended family in Australia. In some cases this may include a positive impact on children under 18 years of age, who may be able to maintain closer contact in Australia with grandparents who hold a Subclass 870 visa.

### **Conclusion**

This Disallowable Legislative Instrument is compatible with human rights.

**The Hon Alex Hawke MP**

**Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**

**Details of the Migration Amendment (Temporary Sponsored Parent Visas) Regulations 2021**

**Section 1 – Name**

This section provides that the name of the instrument is the *Migration Legislation Amendment (Temporary Sponsored Parent Visas) Regulations 2021* (the Regulations).

**Section 2 – Commencement**

This section provides for the commencement of the instrument.

The whole instrument commences on 30 July 2021, to align with the roll-out of changes to the relevant departmental systems.

**Section 3 – Authority**

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

**Section 4 – Schedules**

This section provides for how the amendments in the Regulations operate.

**Schedule 1 – Amendments**

***Migration Regulations 1994***

**Item [1] – Paragraph 1239(3)(f) of Schedule 1**

This item amends paragraph 1239(3)(f) of Schedule 1 to the Migration Regulations by omitting the words “does not exceed 10 years” and substituting the words “is less than 10 years”.

Item 1239 (Family (Temporary)(Class GH)) sets out the requirements for making a valid application for the Subclass 870 (Sponsored Parent (Temporary)) visa. The requirements include the requirement that the visa holder must not previously have held Subclass 870 visas having a total period of effect of 10 years. The intention is that a visa holder may not apply for a further Subclass 870 visa when the total period of Subclass 870 visas already held by the visa holder has reached 10 years.

This requirement operates in conjunction with paragraph 870.511(2)(b) of Schedule 2 to the Migration Regulations which generally prevents the grant of a Subclass 870 visa that would result in the total period of effect of Subclass 870 visas held by the applicant exceeding 10 years.

The purpose of the amendment is to clarify the wording of the bar in paragraph 1239(3)(f) of Schedule 1 on when an application for a further Subclass 870 visa may be made. The wording “does not exceed 10 years” permits an application to be made by an applicant whose visa period is equal to, but does not exceed, 10 years.

The amended wording makes it clear that the total period of Subclass 870 visas already held by the applicant must be less than 10 years in order for a valid application for a further Subclass 870 visa to be made.

#### **Item [2] – Paragraph 870.511(1)(b) of Schedule 2**

This item amends paragraph 870.511(1)(b) of Schedule 2 to the Migration Regulations, by inserting a reference to subclause (2A). This amendment facilitates the insertion of a new subclause (2A) in clause 870.511 by item 4 of the Regulations. For further details please see the notes on item 4, below.

#### **Item [3] – Paragraph 870.511(2)(b) of Schedule 2**

This item amends paragraph 870.511(2)(b) of Schedule 2 to the Migration Regulations to insert the words “(other than any visa that, in accordance with subclause (2A), ceased to be in effect 18 months after the date specified under paragraph (1)(b) for that visa)”.

Paragraph 870.511(2)(b) prevents a visa period being specified on the grant of a Subclass 870 visa that would result in the total period of effect of Subclass 870 visas held by the particular applicant exceeding 10 years. The effect of the amendment is that in calculating the total period of effect of an applicant’s Subclass 870 visas, the period of a visa that is extended by 18 months by new subclause (2A), inserted by item 4 of the Regulations, below, is disregarded.

This amendment facilitates the grant of further Subclass 870 visas to relevant applicants to allow these applicants to benefit from the extension of their visas by 18 months and to ensure that they are able to remain in Australia as holders of a Subclass 870 visa for a period of up to 10 years, as intended.

#### **Item [4] – After subclause 870.511(2) of Schedule 2**

This item amends clause 870.511 of Schedule 2 to the Migration Regulations, to add a new subclause (2A) after subclause (2).

New subclause 870.511(2A) provides that if a Subclass 870 visa is in effect on 1 July 2021 and the holder of the visa is outside Australia on 1 July 2021, then subject to subclause (3) (see item 5, below), the period of effect of the visa ends 18 months after the date specified under paragraph (1)(b) for the visa.

The effect of this amendment is that Subclass 870 visas held by the relevant visa holders are automatically extended by 18 months in addition to the period for which the visa was originally granted. This amendment acknowledges that these visa holders are outside Australia and subject to COVID-19 related travel restrictions which generally make it difficult for them to travel to Australia. The extension of 18 months ensures that when travel resumes, they are able to remain in Australia for the full period intended.

Subclass 870 visas have been granted since July 2019. All visas granted are for three or five years. Therefore it is not possible for any Subclass 870 visa held by a relevant visa holder to expire between 1 July 2021 and 30 July 2021, the date of commencement of these amendments, and therefore the amendment could not have retrospective effect in regard to any visas.

**Item [5] – Subclause 870.511(3) of Schedule 2**

This item amends subclause 870.511(3) of Schedule 2 to the Migration Regulations to clarify the operation of the subclause 870.511(3) in regard to new subclause 870.511(2A) that is inserted by item 4 of the Regulations (please see above).

Subclause 870.511(3) provides for the early cessation of a Subclass 870 visa if an event relating to the death of the visa holder's parent sponsor or the cancellation or withdrawal of sponsorship occurs before the date originally specified for the visa. This amendment clarifies that if a Subclass 870 visa is extended for 18 months under new subclause 870.511(2A) (see item 4 above), the visa ceases within the specified period if one of the specified events relating to the visa holder's parent sponsor or sponsorship occurs before the end of the extended visa period.