**EXPLANATORY STATEMENT**

Issued by the Minister for Population, Cities and Urban Infrastructure
for the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

*Migration Act 1958*

*Migration Amendment (Hong Kong Passport Holders) Regulations 2020*

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 Actprovides 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 can be made pursuant to, or for the purposes of, the provisions listed at Attachment A.

The *Migration Amendment (Hong Kong Passport Holders) Regulations 2020* (the Hong Kong Passport Holders Regulations) amend the *Migration Regulations 1994* (the Migration Regulations) to implement policy changes relating to visas for Hong Kong passport holders, as jointly announced by the Prime Minister and the Acting Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs on 9 July 2020.

The amendments extend temporary skilled and temporary graduate visas, for five years from 9 July 2020, to provide a new end date of 8 July 2025, if the primary visa holder held a Hong Kong passport when the visa was granted. Hong Kong passport is defined to mean a *Hong Kong Special Administrative Region of the People’s Republic of China passport*. These passports are available to citizens of the People’s Republic of China who are permanently resident in the Hong Kong Special Administrative Region. The visas of family members, who satisfied the secondary visa criteria, are also extended to 8 July 2025, regardless of the passport they hold.

The amendments also provide that, from 9 July 2020, grants of Subclass 482 (Temporary Skill Shortage) visas to Hong Kong passport holders and family members will be for a period of five years. The same five year visa period, for grants of Subclass 485 (Temporary Graduate) visas, is being implemented under existing regulations. The Prime Minister and the Acting Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs also announced on 9 July 2020 that there will be a permanent residence pathway at the end of the five year period. That component is not covered by these amendments. It will be developed at a later stage.

The amendments support and encourage skilled workers from Hong Kong and Hong Kong graduates to remain in Australia or relocate to Australia (subject to the lifting of COVID-19 travel restrictions). The amendments provide a benefit to both the visa holders and their Australian employers.

The matters dealt with in these 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. 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 including changes in the labour market and the economy, and also in response to crises such as the COVID-19 pandemic.

The Hong Kong Passport Holders Regulations commence retrospectively, on 9 July 2020, to implement the joint announcement by the Prime Minister and the Acting Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs that the changes operate from that date. As the changes are beneficial to all affected persons, it is appropriate to provide for retrospective commencement in these regulations.

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.

Details of the Regulations are set out in Attachment C.

The Department of Home Affairs has consulted with the Department of Prime Minister and Cabinet, the Attorney-General’s Department and the Department of Foreign Affairs and Trade.  No other consultation was undertaken for the purposes of the proposed Regulations as it was not considered appropriate or reasonably practicable.  This accords with subsection 17(1) of the *Legislation Act 2003* (the Legislation Act).

The Office of Best Practice Regulation (the OBPR) has been consulted in relation to the amendments made to the Regulations, and has advised that a Regulation Impact Statement is not required. The OBPR reference is 42773.

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

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

The Regulations commence on 9 July 2020, and apply to visas held on that date and to visa applications made before, on or after that date.

**ATTACHMENT A**

**AUTHORISING PROVISIONS**

Subsection 504(1) of the *Migration Act 1958* (the Migration Act) relevantly provides that the Governor‑General may make regulations, not inconsistent with the Migration Act, prescribing all matters which by the Migration Act are required or permitted to be prescribed or which are 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 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 29(3), 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: (i) remain in it during a prescribed or specified period or indefinitely; and (ii) if the holder leaves Australia during a prescribed or specified period, travel to and re-enter it during a prescribed or specified period;
* subsection 31(3), which provides that the regulations may prescribe criteria for a visa or visas of a specified class;
* subsection 40(1), which provides that the regulations may provide that visas or visas of a specified class may only be granted in specified circumstances;
* subsection 41(1), which provides that the regulations may provide that visas, or visas of a specified class, are subject to specified conditions; and
* subsection 504(2), which provides that section 14 of the *Legislation Act 2003* does not prevent regulations whose operation depends on a country or other matter being specified by the Minister in an instrument made under the regulations after the commencement of the regulations.

**ATTACHMENT B**

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

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

**Migration Amendment (Hong Kong Passport Holders) Regulations 2020**

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**

On 9 July 2020 the Prime Minister and the Acting Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs announced additional benefits for Hong Kong passport holders on temporary skilled and temporary graduate visas.

The joint announcement noted that Australia and Hong Kong have always shared a close relationship, with people-to-people links including close family connections, business ties and shared values. It was also noted that Australia is a favoured destination for people from Hong Kong, and has been for many years, and that Australia has a long history of attracting Hong Kong’s best and brightest who have contributed significantly to our economic growth and job creation.

To further strengthen these ties, the Prime Minister and the Acting Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs announced that Australia will introduce new measures for students, temporary graduates and skilled workers from Hong Kong who want to live, work and study in Australia.

New visa arrangements will provide further opportunities for Hong Kong passport holders to remain in Australia, with pathways to permanent residency.

They will also attract talent and companies to Australia in order to boost productivity and create further job opportunities for Australians. The measures include:

* Temporary graduate and skilled workers will be provided an additional five years of work rights in Australia on top of the time they have already been in Australia, with a pathway to permanent residency at the end of that period.
* Students will be eligible for a five year graduate visa from the conclusion of their studies, with a pathway to permanent residency at the end of that period.
* Hong Kong applicants for temporary skilled visas will be provided with a five year visa.

The *Migration Amendment (Hong Kong Passport Holders) Regulations 2020* implement these measures, except for the pathway to permanent residence, which will be developed at a later stage. In particular, the *Migration Amendment (Hong Kong Passport Holders) Regulations 2020* deal with the following matters.

Subclass 485 Temporary Graduate visa holders

Amendments are made to the *Migration Regulations 1994* (the Regulations) to provide that any Subclass 485 (Temporary Graduate) visa that was in effect on 9 July 2020, and held by a primary visa holder who held a Hong Kong passport when the visa was granted, has the validity of that visa extended to 8 July 2025. The same extension applies to family members who satisfy the secondary criteria, regardless of the passport they hold.

Temporary skilled visas

Amendments are made to the Regulations to provide that any primary Subclass 457 (Temporary Work (Skilled)) visa or primary Subclass 482 (Temporary Skill Shortage) visa that was in effect on 9 July 2020, and held by a person who held a Hong Kong passport when the visa was granted, will have the validity of that visa extended to 8 July 2025. The same extension applies to family members who satisfy the secondary criteria, regardless of the passport they hold.

Amendments also provide for an 8 July 2025 end date for any primary Subclass 457 visas granted to Hong Kong passport holders from 9 July 2020, noting that there are very few such applications remaining following the closure of the Subclass 457 visa to new applications on 18 March 2018. The same visa end date applies to family members who satisfy the secondary criteria, regardless of the passport they hold.

Amendments also provide that the validity period for any primary Subclass 482 visa grants on or after 9 July 2020, resulting from pending and future applications, will be for a period of 5 years for applicants who hold an eligible Hong Kong passport, noting that eligible classes of Hong Kong passports can be specified by the Minister in a legislative instrument. Under transitional arrangements, all Hong Kong passports are specified until this is altered by the making of a legislative instrument. The same visa end date applies to family members who satisfy the secondary criteria, regardless of the passport they hold.

### **Human rights implications**

This Disallowable Legislative Instrument engages the rights of equality and non‑discrimination contained in Articles 2 and 26 of the *International Covenant on Civil and Political Rights* (ICCPR).

Article 2(1) of the ICCPR provides that:

*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 opinions, national or social original, property, birth or other status.*

Article 26 of the ICCPR provides that:

*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.*

The ICCPR does not 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 skilled entry program is to maximise the benefits of skilled entrants to the Australian economy. Australia sets the requirements for the entry and conditions of stay for skilled migrants and temporary entrants on the basis of reasonable and objective criteria formulated through labour market analysis and stakeholder consultation.

These measures, in providing for extended visa validity for temporary skilled and graduate visas for Hong Kong passport holders, treat Hong Kong passport holders differently to citizens of other countries.

The right to freedom from discrimination may be limited by measures which are necessary, reasonable, and proportionate to achieving a legitimate objective. Whilst the amendments extend the visa validity of Hong Kong passport holders and members of their family unit for a period longer than will be available for visa applicants from all other countries, the differential treatment will not amount to prohibited discrimination on grounds of nationality, as it is necessary, reasonable and proportionate to achieving a legitimate objective. In particular, it addresses the public, social and international concern of the imposition in Hong Kong of the National Security law, whilst maximising the benefits of skilled entrants to the Australian economy by attracting highly skilled Hong Kong passport holders who are looking to leave Hong Kong following the imposition of the National Security Law.

The Government, together with other governments around the world, has been very consistent in expressing concerns about the imposition of the National Security Law on Hong Kong. The Foreign Minister has issued a number of statements expressing concerns about the new law, specifically noting that Australia is troubled by the law’s implications for Hong Kong’s judicial independence, and on the rights and freedoms enjoyed by the people of Hong Kong. The National Security Law constitutes a fundamental change of circumstances, and as a result of these changes, there will be citizens of Hong Kong who may be looking to take their skills and their businesses, running under the previous set of rules and arrangements in Hong Kong, and seek that opportunity elsewhere.

Global competition for this talent will be fierce and these measures will increase the pool of talent willing to relocate or remain in Australia and help drive the economic recovery over the coming years. It is not appropriate that these measures be more broadly applied to any passport holder, as these measures are specifically aimed at addressing the current and unique circumstances in Hong Kong.

In this regard, the amendments are directed to providing further opportunities for Hong Kong passport holders who want to live, work and study in Australia, and eventually provide pathways to permanent residency. The amendments do not alter existing arrangements for visa holders and applicants who hold other passports, and who continue to be able to apply for Temporary Skill Shortage (Subclass 482) visas and Temporary Graduate (Subclass 485) visas.

### **Conclusion**

The Disallowable Legislative Instrument is compatible with human rights because the amendments will not amount to prohibited discrimination on grounds of nationality, as they are necessary, reasonable and proportionate to achieving a legitimate objective.

**ATTACHMENT C**

**Details of the *Migration Amendment (Hong Kong Passport Holders) Regulations 2020***

Section 1 – Name

This section provides that the title of the Regulations is the *Migration Amendment (Hong Kong Passport Holders) Regulations 2020.*

Section 2 – Commencement

This section is the formal enabling provision for the instrument (that is, for the whole of the Regulations). It provides that the instrument commences on 9 July 2020. An explanation for the retrospective commencement date is provided at item 3 below.

Section 3 – Authority

This section provides that the Regulations are made under the *Migration Act 1958* (the Migration Act)*.*

Section 4 – Schedules

The purpose of this section is to provide for how the amendments in these Regulations operate.

**Schedule 1 – Amendments**

***Migration Regulations 1994***

Item 1 – Regulation 1.03

This item inserts a definition of *Hong Kong passport*, which is defined as meaning a *Hong Kong Special Administrative Region of the People’s Republic of China passport*.

The amendments in item 3 below refer to Hong Kong passports, as defined in regulation 1.03, for the purpose of extending specified visas that were in effect on 9 July 2020, in cases where the primary visa holder held a Hong Kong passport when the visa was granted. The relevant visa subclasses are:

* the Subclass 457 (Temporary Work (Skilled)) visa (clause 9001);
* the Subclass 482 (Temporary Skill Shortage) visa (clause 9002); and
* the Subclass 485 (Temporary Graduate) visa (clause 9004).

In addition, the amendments in item 2 below refer to Hong Kong passports, as defined in regulation 1.03, that are in a class specified in a legislative instrument. The grant of a five year Subclass 482 (Temporary Skill Shortage) visa after 9 July 2020 requires that the Hong Kong passport is in a class that is specified in the legislative instrument when the visa is granted.

See also subclauses 9003(2) and 9003(3) (item 3 below) which provide that, until the first instrument is made, all Hong Kong passports are taken to be specified.

The capacity to specify classes of Hong Kong passports in a legislative instrument provides flexibility to respond to future changes. It will allow the Minister to limit the concession, for example by specifying passports issued before a particular date.

As a result of the *Legislation (Exemptions and Other Matters) Regulation 2015,* the instrument will not be disallowable because it is made under Part 1 of the *Migration Regulations 1994* (the Migration Regulations).

For the purpose of grants of Subclass 485 (Temporary Graduate) visas, flexibility exists under clause 485.511, which allows the visa to be granted until a date specified by the Minister. The duration of the visas granted to Hong Kong passport holders can be regulated under policy. Accordingly, there is no requirement to refer to Hong Kong passport holders in clause 485.511.

The purpose of the amendments, by providing five year visas, is to support and encourage skilled workers from Hong Kong to remain in Australia or to apply to come to Australia (subject to the lifting of COVID-19 travel restrictions). The concessions provide a benefit to both the visa holders and their Australian employers.

Item 2 – Clause 482.511 of Schedule 2

This clause repeals and substitutes clause 482.511 of Schedule 2 to the Migration Regulations. Clause 482.511 specifies the duration of a Subclass 482 (Temporary Skill Shortage) visa. Prior to the repeal and substitution, the clause provided that, for all primary visa holders, the visa had a duration linked to the period specified in the nomination made by the sponsoring employer. The nomination could be for one, two, three, or four years. The visa was granted for the period specified in the nomination.

Clause 482.511, as substituted, carries forward those rules (reformulated into a table), and adds new rules to reflect the concessions announced on 9 July 2020.

The new rules have the effect that, regardless of the period specified in the nomination, a visa granted to a primary visa applicant is valid for five years if that person holds a Hong Kong passport in a class specified under subclause 485.511(2) when the visa is granted. This is provided for by table item 2 in the table at clause 482.511.

The same visa end date will apply to family members who satisfy the secondary visa criteria on the basis of their relationship to a primary visa holder who held an eligible Hong Kong passport when the primary visa was granted. If the primary visa was granted on or before 9 July 2020, all Hong Kong passports are eligible. For example, the family member may apply after 9 July 2020 for a visa to reunite with a primary visa holder who was already working in Australia before 9 July 2020. On the other hand, if the primary visa was granted after 9 July 2020 the Hong Kong passport must be in a class specified in a legislative instrument under subclause 482.511(2). This distinction will not have any relevance unless an instrument is made under subclause 482.511(2). The transitional provisions at subclauses 9003(2) and 9003(3) (item 3 below) provide that all Hong Kong passports are taken to be specified until the first instrument is made under subclause 482.511(2). Further information about the power to make an instrument under subclause 485.511(2) is set out under item 1 above.

If the secondary visa applicant applied with the primary visa applicant, both will be granted a visa valid for five years. If the secondary applicant applies after the primary applicant has been granted the visa, the end date of the secondary applicant will be aligned with the end date of the primary visa holder. This is provided for by table item 5 in the table at clause 482.511 and is consistent with the usual rules that apply to secondary applicants for this visa.

The rule that usually applies to children of primary Subclass 482 visa holders, under which the child’s visa may cease at age twenty-three, will not apply to children of a primary visa holder who held an eligible Hong Kong passport when the primary visa was granted. This is in recognition of the policy intention to provide a streamlined pathway to permanent residence for the primary visa holders and their families at the end of the five year visa period.

Item 3 – In the appropriate position in Schedule 13

This item inserts a new Part 90 (Amendments made by the Migration Amendment (Hong Kong Passport Holders) Regulations 2020) in Schedule 13 (Transitional Arrangements) to the Migration Regulations. New Part 90 inserts transitional provisions related to the amendments made by these Regulations and implements the related policy changes.

The amendments operate retrospectively, from 9 July 2020. This is necessary because a small number of visas ceased to be in effect in the weeks after the joint announcement, on 9 July 2020, that the visas would be extended by five years. An amendment with prospective operation would apply to visas in effect when the amendment commences, but would not apply to visas that have ceased. Therefore, to give full effect to the joint announcement, the amendments must operate retrospectively. During the short period after these visas ceased, the relevant individuals, if they were in Australia at the time, have remained in the community.

Retrospective regulations are permissible in accordance with section 12 of the *Legislation Act 2003*. Subsections 12(1A) and 12(2) provide:

*Retrospective commencement*

*(1A)  Despite any principle or rule of common law, a legislative instrument or notifiable instrument may provide that the instrument, or a provision of the instrument, commences before the instrument is registered.*

*Retrospective application*

*(2)  However, if a legislative instrument or notifiable instrument, or a provision of such an instrument, commences before the instrument is registered, the instrument or provision does not apply in relation to a person (other than the Commonwealth or an authority of the Commonwealth) to the extent that as a result of that commencement:*

*(a)  the person's rights as at the time the instrument is registered would be affected so as to disadvantage the person; or*

*(b)  liabilities would be imposed on the person in respect of anything done or omitted to be done before the instrument is registered.*

The amendments to extend the duration of visas, including the small number of visas that have ceased since 9 July 2020, are beneficial to visa holders and their employers. There is no disadvantageous impact on any person’s rights and no liabilities are imposed on any person in respect of anything done or omitted to be done before the instrument is registered.

New Part 90 has four clauses as set out below.

**9001 – Subclass 457 visas**

The Subclass 457 (Temporary Work (Skilled)) visa closed to new applications on 18 March 2018 when it was replaced by the Subclass 482 (Temporary Skill Shortage) visa, as the temporary skilled visa for use by overseas workers who are sponsored by Australian employers. A number of Subclass 457 visas remain in effect and there are a small number of unresolved Subclass 457 visa applications.

Clause 9001 provides that Subclass 457 visas, held by primary visa holders who held Hong Kong passports at time of visa grant, remain in effect until 8 July 2025. This end date will apply whether the visa was granted before, on or after 9 July 2020. The same end date applies to family members who satisfied the secondary criteria.

Clause 9001 gives effect to the joint announcement on 9 July 2020 that visas held on that date would be extended by 5 years. For the very small number of Subclass 457 visa applications that are not resolved, the same end date of 8 July 2025 will apply if the visa is granted.

An end date of 8 July 2025 provides a significant benefit to the visa holder and the Australian employer, compared to the effect of previous policy and legislation relating to the Subclass 457 visa. It allows the Australian employer to continue employing the visa holder without the need to nominate the visa holder as part of an application for a Subclass 482 (Temporary Skill Shortage) visa (as Subclass 457 applications can no longer be made, these workers would now require a Subclass 482 visa). There is no obligation on the employer to continue employing the visa holder if a worker is no longer required.

The primary Subclass 457 visa holder will remain subject to visa condition 8107, which requires the holder to maintain employment in a nominated skilled occupation, with nomination and sponsorship by a standard business sponsor (which does not have to be their first sponsor).

**9002 – Subclass 482 visas granted before 9 July 2020**

Clause 9002 provides that Subclass 482 (Temporary Skill Shortage) visas that were, on 9 July 2020, held by primary visa holders who held Hong Kong passports at time of visa grant, are to remain in effect until 8 July 2025. The same end date applies to family members who satisfied the secondary criteria.

Clause 9002 gives effect to the joint announcement on 9 July 2020 that visas held on that date would be extended by 5 years. Subclass 482 visas granted after 9 July 2020 will be granted for a period of five years (see item 2 above and clause 9003 below).

The extension of Subclass 482 visas that were in effect on 9 July 2020 provides a significant benefit to the visa holder and the Australian employer. The visas were granted for a period of one, two, three or four years, as nominated by the employer. Depending on when the visa was due to cease, an end date of 8 July 2025 provides a significant extension of the visa. This change does not impose any additional obligations on the Australian employer. It allows the Australian employer to continue employing the visa holder without the need to nominate the visa holder as part of an application for another Subclass 482 visa. There is no obligation on the employer to continue employing the visa holder if a worker is no longer required.

The primary Subclass 482 visa holder will remain subject to visa condition 8607, which requires the holder to maintain employment in a nominated skilled occupation, with nomination and sponsorship by a standard business sponsor (which does not have to be their first sponsor).

**Clause 9003 – Subclass 482 visas granted on or after 9 July 2020**

Clause 9003 provides that the amendment of clause 482.511, made by item 2 of Schedule 1 to this instrument, applies to Subclass 482 (Temporary Skill Shortage) visas granted on or after 9 July 2020, whether the application for the visa was made before, on or after 9 July 2020.

Clause 9003 gives effect to the joint announcement on 9 July 2020 that Subclass 482 visas will be granted to Hong Kong passport holders for a period of 5 years. For example, a visa granted on 1 January 2022 would be valid until 31 December 2026. The amendment complements clause 9002, which provides a five year extension for visas that were granted before 9 July 2020, and remained in effect on that day, so that they will cease on 8 July 2025. At the conclusion of the five year period applicable to the individual visa holder, there will be a pathway to permanent residence, which will be created by future amendments to the Migration Regulations.

Subclauses 9003(2) and (3) are transitional provisions to remove any immediate need to make an instrument under subclause 482.511(2) specifying a class of Hong Kong passports. The effect is that all Hong Kong passports are taken to be in a specified class, and this remains the case until the first instrument (if any) is made under subclause 485.511(2). The legislative instrument mechanism under subclause 485.511(2) is explained above (item 1).

**Clause 9004 – Subclass 485 visas granted before 9 July 2020**

Subclass 485 (Temporary Graduate) visas are available to international students who have recently completed a qualification in Australia. The visas are granted for up to four years, under policy guidelines for the exercise of the Minister’s discretion under clause 485.511 of Schedule 2 to the Migration Regulations, which states that the Subclass 485 visa is a “[*temporary*](https://legend.border.gov.au/migration/2017-2020/2020/01-07-2020/acts/Pages/_document00000/_level%20100002/level%20100003.aspx#JD_5-temporaryvisadefinition) *visa permitting the holder to travel to,*[*enter*](https://legend.border.gov.au/migration/2017-2020/2020/01-07-2020/acts/Pages/_document00000/level%20100002.aspx#JD_5-enterAustraliadefinition) *and* [*remain in Australia*](https://legend.border.gov.au/migration/2017-2020/2020/01-07-2020/regs/Pages/_document00000/_level%20100001/_level%20200001/_level%20200002/legend_current_mrPop00132.aspx) *until a date specified by the Minister*”. The visa permits the holder to undertake further study or work in Australia.

Clause 9003 provides that Subclass 485 (Temporary Graduate) visas that were, on 9 July 2020, held by primary visa holders who held Hong Kong passports at time of visa grant, will remain in effect until 8 July 2025. The same end date applies to family members who satisfied the secondary criteria.

Clause 9003 gives effect to the joint announcement on 9 July 2020 that Subclass 485 visas held on that date would be extended by 5 years. Subclass 485 visas granted after 9 July 2020 will be granted for a period of five years pursuant to the existing provision in clause 485.511.