

## **EXPLANATORY STATEMENT**

Issued by the Minister for Home Affairs

*Migration Act 1958*

*Migration Amendment (Extension of Subclass 485 (Temporary Graduate) Visa and Increase in Subclass 500 (Student) Visa Work Hours) Regulations 2023*

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.

The *Migration Amendment (Extension of Subclass 485 (Temporary Graduate) Visa and Increase in Subclass 500 (Student) Visa Work Hours) Regulations 2023* (the amending Regulations) amend the *Migration Regulations 1994* (the Migration Regulations) to give effect to commitments made by the Government following the Jobs and Skills Summit and developed further after advice from a working group made up of the Council of International Education, the National Tertiary Education Union, Universities Australia, and the Departments of Home Affairs and Education.

### *Changes to the duration of Temporary Graduate visas*

The amending Regulations address skills shortages by providing the Minister with the flexibility to extend post-study stay in Australia with unrestricted work rights for certain international students who have graduated from an Australian higher education provider. The Government released the list of eligible qualifications on 21 February 2023. The list includes qualifications in areas such as science, medicine, health care, engineering and technology. The list will be incorporated in a legislative instrument made by the Minister under the Migration Regulations as amended by the amending Regulations.

The extended stay will be implemented from 1 July 2023. Current settings, detailed in published policy, will be increased by two years. This will extend post study stay in Australia from:

- two years to four years for select Bachelor degrees
- three years to five years for select Masters degrees
- four years to six years for all Doctoral degrees.

Existing settings for regional and remote Australia will also be maintained, and where relevant, will be eligible for the additional two years.

This will support businesses across the country and help rebuild the international education sector following the pandemic. It is a practical change that will increase the availability of a well-trained and highly capable workforce to help ease current pressures.

The amending Regulations provide increased flexibility to the Minister to specify the duration of Temporary Graduate visas, to accommodate the new focus on the demand for particular qualifications in the Australian workforce, which will be reviewed annually. Given the need for flexibility, the visa duration policies will be set out in published policy instructions, rather than being detailed in the Migration Regulations.

For an applicant's first Subclass 485 (Temporary Graduate) visa, applied for from 1 July 2023, an additional period of two years will be added to the standard visa period. Eligible applicants applying, from 1 July 2023, for a Temporary Graduate visa in the Replacement stream, or in the Post-Study Work stream on the basis of study and residence in regional Australia, will also be granted the additional two years if it has not been provided on a previous Temporary Graduate visa.

The amendments also facilitate the grant of an additional Temporary Graduate visa in the Post-Study Work stream, at no cost, for eligible visa holders who have not previously been provided with the extended visa duration on a previous Temporary Graduate visa.

#### *Changes to the permitted hours of work for Student visa holders*

The amending Regulations increase the permitted hours of work for holders of Subclass 500 (Student) visas, and for holders of associated bridging visas, from 40 hours per fortnight to 48 hours per fortnight. This is a modest and realistic increase to the permitted hours of work, and will assist in ensuring the ongoing integrity of the overseas student program.

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

The matters dealt with in the amending 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 in Attachment A. These include, for example, subsection 31(3), which provides that 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 effectively manage the operation of Australia's visa program and respond quickly to emerging needs.

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 Impact Analysis (OIA) has been consulted in relation to the amendments. No Impact Analysis is required. The OIA consultation references are OBPR22-03858 (Temporary Graduate visas) and OIA23-05094 (Student visa work conditions).

Consultation has been undertaken with other government agencies and peak body representatives. The Post Study Work Rights Working Group was established to advise the Ministers for Home Affairs and Education on the extension of post study work rights for international graduates and on the appropriate number of hours for student work hour restrictions. The working group included representatives from the Council of International Education, the National Tertiary Education Union, Universities Australia, and the Departments of Home Affairs and Education. Information regarding the proposed changes was also shared through the Education Visa Consultative Committee (EVCC). EVCC is a forum for the Department to discuss visa/border issues as they emerge in regard to the International Education sector with both industry and other government stakeholders. Public consultation was not considered necessary or appropriate as the amendments are entirely beneficial to visa applicants, there is no disadvantageous impact on visa applicant's rights, and no liabilities are imposed. This accords with the consultation requirements in section 17 of the *Legislation Act 2003* (the Legislation Act).

The amendments commence on 1 July 2023.

Further details of the Regulations are set out in Attachment C.

The amending Regulations amend the Migration Regulations, which are exempt from sunsetting under table item 38A of section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*. The Migration Regulations are exempt from sunsetting on the basis that the repeal and remaking of the Migration Regulations:

- is unnecessary as the Migration Regulations are regularly amended numerous times each year to update policy settings for immigration programs;
- would require complex and difficult to administer transitional provisions to ensure, amongst other things, the position of the many people who hold Australian visas, and similarly, there would likely be a significant impact on undecided visa and sponsorship applications; and
- would demand complicated and costly systems, training and operational changes that would impose significant strain on Government resources and the Australian public for insignificant gain, while not advancing the aims of the Legislation Act.

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

## **ATTACHMENT A**

### **AUTHORISING PROVISIONS**

Subsection 504(1) of the *Migration Act 1958* (the Migration Act) relevantly provides that the Governor-General may make 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 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;
- paragraph 46(1)(b), which provides that a visa application is valid if, and only if, it satisfies the criteria and requirements prescribed under section 46;
- 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
- paragraph 46(4)(a), which provides that, without limiting subsection 46(3), the regulations may prescribe the circumstances that must exist for an application for a visa of a specified class to be a valid application.

## **ATTACHMENT B**

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

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

#### ***Migration Amendment (Extension of Subclass 485 (Temporary Graduate) Visa and Increase in Subclass 500 (Student) Visa Work Hours) Regulations 2023***

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 purpose of amendments to the *Migration Regulations 1994* (the Regulations) is to give effect to the Government's commitment to:

- a) allow certain Subclass 485 (Temporary Graduate) visa holders an additional duration of stay in Australia; and
- b) increase permitted work hours for Subclass 500 (Student) visa holders, and holders of associated bridging visas, from 40 hours to 48 hours per fortnight to allow holders of this visa to gain valuable work experience in Australia and contribute to Australia's workforce needs.

#### *Subclass 485 (Temporary Graduate) visa*

On 2 September 2022, the Minister for Home Affairs together with the Minister for Education, announced the decision to increase the duration of post-study work rights for international graduates with 'select degrees' in areas of 'verified skills shortage'.

A Working Group was established in September 2022 to advise the Ministers for Home Affairs and Education on the implementation of this arrangement. On 28 October 2022, the Working Group provided a report to the Ministers for Home Affairs and Education with 20 recommendations.

Both Ministers announced the Government response to the recommendations of the Working Group on 21 February 2023, which included two year increases in visa validity for university graduates with select skills and qualifications in national shortage.

This measure will enhance the marketability of an Australian education for international students, and encourage these students to gain skills needed to help address shortages in the Australian labour market. Targeted skills will be considered on an annual basis and updated as needed.

### *Previous settings*

Originally, only one Temporary Graduate visa in the Post-Study Work stream (PSW visa) was permitted. Under policy, the PSW visas are granted for different durations, depending on the applicant's eligible qualification obtained in Australia:

- Bachelor degree – two years;
- Masters degree – three years;
- Doctorate – four years.

[Note: There is an exception for Hong Kong passport holders and British National (Overseas) passport holders, who are granted a PSW visa valid for five years regardless of their qualification. This policy was implemented as part of a package of concessions in relation to persons from Hong Kong, implemented by the Government in 2020 and 2021 (*Migration Amendment (Hong Kong Passport Holders) Regulations 2020; Migration Legislation Amendment (Hong Kong) Regulations 2021*).]

The option of a second PSW visa was created in 2020 (*Migration Amendment (Temporary Graduate Visas) Regulations 2020*), dependent on studying, living and working in regional areas (PSW Regional visa). The PSW Regional visa provides two years stay, based on study and residence in more remote areas (*regional centre or other regional area*), or one year stay, based on study and residence in all other *designated regional areas*, comprising all areas outside of Sydney, Melbourne and Brisbane.

In addition, in response to the disruption created by COVID-19, the *Migration Amendment (Subclass 485 (Temporary Graduate) Visa Replacement Stream and Other Measures) Regulations 2022*, created a new Replacement stream to allow another visa of the same duration to be obtained (Replacement visa).

This opened up the possibility that up to three PSW visas could be held successively:

- First PSW visa followed by PSW Regional visa followed by Replacement visa; or
- First PSW visa followed by Replacement visa followed by PSW Regional visa.

### *New settings*

The changes are intended to provide an additional two years stay in Australia for persons who hold qualifications that are specified by the Minister in a legislative instrument. For example, whereas any degree under the Australian Qualification Framework conferred or awarded by an Australian education institution (also specified in legislative instruments) will qualify the holder for the first PSW visa (and subsequent visas, if any are held as outlined above), only certain degrees will be listed for the purpose of eligibility for the additional two years. This will include a wide range of qualifications across medicine, health care, engineering, and information technology.

The additional two years will be delivered as follows:

PSW visa holders who are eligible for a subsequent PSW Regional visa, or related Replacement visa, will have that subsequent visa granted for two years in addition to the duration they were previously eligible for, if they hold a specified qualification.

PSW visa holders with specified qualifications who would not have been eligible for a subsequent PSW Regional visa, or related Replacement visa, and who have not already benefited from the additional time, can now apply for a further PSW visa at no cost (a ‘nil’ VAC), which would be granted for two years. This ensures that eligible PSW visa holders who were at the end of their post-study work path at the time of these changes can still obtain a further two year stay in Australia at no additional cost.

In particular, if a person is applying, on or after 1 July 2023, for the first PSW visa, or for a PSW Regional visa, or for a Replacement visa, the two years will be added to the duration of the visa that would otherwise have been granted. For example:

- a person with a Bachelor degree listed in the legislative instrument, who is applying for the first PSW visa on or after 1 July 2023, would previously have been granted a visa for two years. If they have an eligible qualification, that visa will now be granted for four years;
- a person with a doctorate, who holds the first PSW visa on 1 July 2023 and is applying on or after 1 July 2023 for a Replacement visa, would usually be granted a visa for four years. That visa will now be granted for six years (all doctorates will be eligible for the additional two years, regardless of subject);
- a person with a first PSW visa or a Replacement visa, who is applying on or after 1 July 2023 for PSW Regional visa, on the basis of residence in a *regional centre or other regional area*, would usually be granted a visa for two years. If they have an eligible qualification, that visa will now be granted for four years.

If a person already holds a first PSW visa, or a PSW Regional visa or Replacement visa, they can apply, on or after 1 July 2023, for another PSW visa, at no cost (a ‘nil’ VAC). That additional visa will be granted for the time remaining on the visa they hold plus an additional two years.

All of these visa durations will be set under policy, to allow the easy implementation of any subsequent extensions or concessions that may be determined by the Government from time to time.

It is noted that a person can only receive the additional two years once, either on their first PSW visa, through the nil VAC visa option or when applying for a subsequent PSW Regional or Replacement visa.

#### *Subclass 500 (Student) visa*

The amendments to visa conditions 8104 and 8105 relate to the amount of work overseas students, and their accompanying family members, are permitted to undertake while holding a Subclass 500 (Student) visa or an associated bridging visa.

Visa condition 8104 is a mandatory visa condition for applicants for Subclass 500 (Student) visas who satisfy the secondary criteria for the grant of the visa (i.e. members of the family unit of the primary visa holder). The effect of the amendment is that the family member must not engage in work for more than 48 hours per fortnight while the holder is in Australia (new subclause 8104(3A) and existing subclause 8104(1)). There is no change to the restrictions that apply to family members before the primary visa holder's course of study commences (subclauses 8104(2), 8104(2A), and 8104(2B)), and no change to the rules applying to the family members of certain masters and doctoral students (subclause 8104(3)).

Visa condition 8105 is a mandatory visa condition for applicants for Subclass 500 (Student) visas who satisfy the primary criteria for the grant of the visa (i.e. because they are enrolled in a course of study in Australia). The effect of the amendment (new subclause 8105(2A) and existing subclause 8105(1)) is that the visa holder may work for up to 48 hours per fortnight during any fortnight when the holder's course of study or training is in session. There is no change to the rules that apply to work before the holder's course of study commences (subclauses 8105(1A) and 8105(1B)), and no change to the rules affecting certain masters and doctoral students (subclause 8105(2)).

The background to these changes is that the Government has relaxed enforcement of work limitations for Student visa holders, and this relaxation will end on 30 June 2023. The relaxation of enforcement of Student visa work limitations was progressively introduced during the COVID-19 pandemic. Initially introduced for supermarket workers on 13 March 2020; then for aged care workers on 18 March 2020; and further expansions until the relaxation was applied to all Student visa holders in January 2022. This was done to allow primary and secondary Student visa holders to work over their normal limit of 40 hours per fortnight to address workforce shortages.

At the Jobs and Skills Summit in September 2022, the Government announced that the relaxed enforcement will continue until 30 June 2023. After 30 June 2023, work hours for international students would be capped again. The number of hours would be subject to consultation with peak bodies across industry and education sectors, with a view to striking the right balance between work and study.

In the 28 October 2022 report to the Ministers for Home Affairs and Education, the Working Group recommended increasing the cap to 48 hours per fortnight. This recommendation was supported by the Government.

In an announcement on 21 February 2023, the Government clarified that the cap on work hours would again be enforced from 1 July 2023, however the period of work allowed per fortnight would be increased from 40 hours to 48 hours. The Government considers 48 hours a fortnight as an appropriate balance between work and study, acknowledging that study is the primary purpose of the Student visa.

The Government also announced that Student visa holders already working in the aged care sector on 9 May 2023 can continue to work unrestricted hours in the aged care sector until 31 December 2023. This is being implemented by not enforcing the condition for those who fall within this category.

## Human rights implications

### *Subclass 485 (Temporary Graduate) visa*

This Disallowable Legislative Instrument may engage the rights of equality and non-discrimination contained in Article 2(1) and Article 26 of the *International Covenant on Civil and Political Rights* (ICCPR) and Article 2(2) of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).

Article 2(1) of ICCPR requires that Australia ensure the rights recognised in the ICCPR extend to all individuals (citizens, residents and non-citizens) within its territory and subject to its jurisdiction. Article 26 of the ICCPR provides that all persons are equal before the law and are entitled without any discrimination to the protection of the law. Laws, policies and programs should not discriminate on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 2(2) of the ICESCR provides that:

*The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

However, not all treatment that differs among individuals or groups on any of the grounds mentioned in the ICCPR and ICESCR will amount to prohibited discrimination. The United Nations Human Rights Committee has recognised 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 amendments to the Regulations to allow certain subclass 485 visa holders an additional duration of two years stay in Australia, may engage the right to non-discrimination as this increase in visa validity will only be available to subclass 485 visa applicants who hold qualifications that are specified by the Minister in a legislative instrument. The specified qualifications have been determined using the Skills Priority List (SPL) as a basis for identifying occupations in verified skills shortage for the measure. The SPL is a methodologically robust, tested and nationally comprehensive model that identifies Australian skills needs both current and over a five-year forecasting horizon. This list will include specified occupations in both ‘strong’ and ‘moderate’ demand to ensure that the skills needs of vital sectors, such as agriculture and education, will be in-scope for eligibility. To derive a list of eligible qualifications, in-scope occupations were considered against the Commonwealth Register of Institutions and Courses for Overseas Students course classification system. The changes to enable eligibility for this increase in visa validity are necessary, reasonable and proportionate to achieving the legitimate objective of increasing the availability of a qualified workforce to help address skills-shortages in the Australian labour market.

These amendments may also engage the right to work contained in Article 6(1) of the ICESCR. The right to work may be positively engaged by these measures to the extent that they provide additional time in Australia for certain subclass 485 holders to gain skills and work experience.

### *Subclass 500 (Student) visa*

The amendments to Conditions 8104 and 8105 in Schedule 8 to the Regulations positively engage the right to work contained in Article 6(1) of the ICESCR. The increase to the cap on hours that Student visa holders will be allowed to work will provide a benefit to international students who choose to study and work in Australia by increasing their opportunity to gain valuable work experience.

The increase from 40 to 48 hours per fortnight is aimed at striking a better balance in ensuring continued integrity in the Student visa program, while providing Student visa holders with more working hours to gain work experience and support Australia in filling workforce gaps.

Further, the right to the enjoyment of just and favourable conditions of work in Article 7 of the ICESCR will not be limited by these changes. Migrant workers in Australia will continue to be protected under domestic law:

- Student visa holders enjoy the same rights under Australian workplace law as all other employees, including access to the Fair Work Ombudsman (FWO), and are covered by the minimum employment standards prescribed in the National Employment Standards (NES).
- Student visa holders are also included in the Assurance Protocol, an arrangement between the Department of Home Affairs and the FWO that allows visa holders to seek help from the FWO without fear of visa cancellation if they have breached their work-related visa conditions. For more information please see: [Workers rights and visa protections](https://www.homeaffairs.gov.au) ([homeaffairs.gov.au](https://www.homeaffairs.gov.au))
- Measures to ensure migrant workers have the information they need to understand their workplace rights include:
  - providing information on workplace rights and entitlements in visa grant letters; and
  - providing dedicated migrant worker resources and information in multiple languages on the FWO website.

### **Conclusion**

This Disallowable Legislative Instrument is compatible with human rights because it promotes the protection of human rights and to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

**The Hon Clare O’Neil MP**  
**Minister for Home Affairs**

## **ATTACHMENT C**

### **Details of the *Migration Amendment (Extension of Subclass 485 (Temporary Graduate) Visa and Increase in Subclass 500 (Student) Visa Work Hours) Regulations 2023***

#### **Section 1 - Name**

This section provides that the name of the instrument is the *Migration Amendment (Extension of Subclass 485 (Temporary Graduate) Visa and Increase in Subclass 500 (Student) Visa Work Hours) Regulations 2023*.

#### **Section 2 - Commencement**

This section provides for the commencement of the instrument.

Subsection 2(1) provides that each provision of the instrument 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.

The effect of the table is be that the whole of the instrument commences on 1 July 2023.

#### **Section 3 - Authority**

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

#### **Section 4 - Schedules**

This section provides for how the amendments made by the regulations operate.

#### **Schedule 1 – Amendments**

##### **Part 1—Amendments relating to Subclass 485 (Temporary Graduate) Visas**

###### ***Migration Regulations 1994***

###### **Item [1] – Subparagraph 1229(2)(a)(i) of Schedule 1**

Items 1 and 2 amend provisions in item 1229 of Schedule 1 to the *Migration Regulations 1994* (the Regulations). Item 1229 sets out the requirements that must be met to make a valid application for a Skilled (Provisional) (Class VC) visa. Class VC contains one visa subclass, which is the Subclass 485 (Temporary Graduate) visa (the Temporary Graduate visa). The Temporary Graduate visa allows further stay in Australia by recent graduates from eligible Australian educational institutions. The visa includes three streams:

- the Graduate Work stream (which now caters primarily for applicants with vocational qualifications);

- the Post-Study Work stream (catering for applicants with Bachelor degrees or higher qualifications, regardless of the area of study); and
- the Replacement stream (a temporary concession in response to the disruption cause by COVID-19).

The effect of new sub subparagraph 1229(2)(a)(ia)(A) is that no visa application charge (VAC) is payable by certain applicants for a subsequent Temporary Graduate visa in the Post-Study Work stream who hold specified qualifications (see item 2 below). In practice, the subsequent Temporary Graduate visa in the Post-Study Work stream will be the applicant's second or third visa in that stream. A maximum of three visas in that stream may be held.

The effect of new sub subparagraph 1229(2)(a)(ia)(B) is that the exemption from the VAC also applies to members of the applicant's family unit who are applying with the applicant.

The reason for allowing this cohort to apply for an additional visa at no cost is to facilitate uptake of the Government's offer of an extended stay in Australia, for an additional two years, in cases where the primary applicant has qualifications that are in high demand in Australia. The additional visa will be available to eligible applicants who have not already received the additional stay period of two years as a result of a prior application for a Temporary Graduate visa in the Post-Study Work stream or the Replacement stream.

For all Temporary Graduate visas in the Post-Study Work stream or the Replacement stream, applied for on or after 1 July 2023, the additional two years will be added to the standard visa duration for eligible applicants. In those cases, there will be no need for the visa holder to make a further application in order to obtain the additional two years. The option of an additional Temporary Graduate visa in the Post-Study Work, at no cost, is being provided to ensure that no eligible applicant misses out on the opportunity to obtain an additional two years in Australia. The policy position in relation to visa duration is explained at items 19 to 21 below.

There is no change to the VACs that are imposed on applicants who are not part of the new cohort described in item 2. That is, in cases where the applicant does not hold a specified qualification, new paragraph 1229(2)(a)(i) maintains the existing VACs that are imposed on applicants who hold a Temporary Graduate visa in the Post-Study Work stream or the Replacement Stream, and who are applying for another Temporary Graduate visa in the Post-Study Work stream.

### **Item [2] – After subitem 1229(2) of Schedule 1**

Item 2 inserts new subitems 1229(2A) and 1229(2B) into item 1229 of Schedule 1 to the Regulations. The purpose of new subitem 1229(2A) is to identify the applicants for a Temporary Graduate visa in the Post-Study Work stream who are entitled to make the visa application at no cost. The effect of the provisions is as follows:

- Paragraph 1229(2A)(a) – the applicant must hold a Temporary Graduate visa in the Post-Study Work stream or the Replacement stream and be applying for a subsequent (i.e.

second or third) Temporary Graduate visa in the Post-Study Work stream. All applicants must pay the applicable VAC for their first Temporary Graduate visa in the Post-Study Work stream, regardless of their qualifications;

- Paragraph 1229(2A)(b) – the applicant must hold a qualification specified, or of a kind specified, by the Minister, in a legislative instrument. It does not have to be the qualification that led to the grant of the first Temporary Graduate visa in the Post-Study Work stream. It could be a different qualification that the applicant obtained as a result of study in Australia at any time. Overseas qualifications will not be taken into account.
  - The mechanism for specifying the eligible qualifications will be a legislative instrument made by the Minister (under subregulation 2.07(5) of the Regulations) for the purposes of new paragraph 1229(2A)(b). The new legislative instrument, which will commence on 1 July 2023, will specify individual courses by reference to their CRICOS course code. CRICOS is the Commonwealth Register of Institutions and Courses for Overseas Students. The Register is established under section 14A of the *Education Services for Overseas Student Act 2000*;
- Paragraph 1229(2A)(c) – the applicant must not be seeking to satisfy the visa criteria that require the applicant to have studied, and then lived and worked, in regional Australia (clause 485.232, 485.233, 485.234 or 485.235 of Schedule 2). Applicants seeking to satisfy those criteria must continue to pay the currently applicable VACs as set out in the table at subparagraph 1229(2)(a)(i). However, if that application is made on or after 1 July 2023 and the applicant has a qualification specified in the legislative instrument, the visa will be granted for an additional two years, beyond the standard duration of one year or two years. The standard duration depends on where in regional Australia the applicant has studied, lived and worked. Accordingly, applicants with eligible qualifications will be granted a visa valid for three years or four years;
- Paragraph 1229(2A)(d) – the applicant must not have previously been granted a visa that provided the additional period of stay in Australia (for a period of two years) that these new provisions are intended to facilitate:
  - Subparagraph 1229(2A)(d)(i) covers the situation where the applicant has previously been granted a Temporary Graduate visa in the Post-Study Work stream on the basis of a ‘nil’ VAC application, i.e. the applicant can only ever be granted one visa on the basis of the ‘nil’ VAC application;
  - Subparagraph 1229(2A)(d)(ii) covers the situation where the applicant has previously been granted a Temporary Graduate visa with a duration that includes the additional period of two years that these amendments are intended to facilitate for applicants with eligible qualifications. The period of two years is not mentioned in this provision, as the visa duration of all Temporary Graduate visas will now be determined under policy rather than being detailed in the regulations. This is explained below at items 19 to 21.

- Paragraph 1229(2A)(e) – the applicant must not hold a Hong Kong passport or a British National (Overseas) passport. The reason for the exclusion is that Temporary Graduate visas granted to those passport holders are already granted for a period of five years, and have an associated pathway to permanent residence, pursuant to concessions in relation to persons from Hong Kong implemented in 2020 and 2021 (*Migration Amendment (Hong Kong Passport Holders) Regulations 2020; Migration Legislation Amendment (Hong Kong) Regulations 2021*).

The purpose of new subitem 1229(2B), which links back to paragraph 1229(2)(a)(i) (inserted by item 1) is to maintain the existing VACs that are imposed on applicants who hold a Temporary Graduate visa in the Post-Study Work stream or the Replacement Stream, and who are applying for another Temporary Graduate visa in the Post-Study Work stream, and who are not covered by subitem 1229(2A).

**Item [3] – Paragraph 1229(3)(la) of Schedule 1**

**Item [4] – Subparagraphs 1229(4)(a)(v) and (vi) of Schedule 1**

Items 3 and 4 make consequential amendments to reflect the fact that, as a result of the amendments being made by these amending regulations, it will be possible to hold up to three Temporary Graduate visas in the Post-Study Work stream. In these provisions, the reference to an application for a “second” visa has been changed to a reference to a “subsequent” visa. In practice the application will be for the second or third Temporary Graduate visa in the Post-Study Work stream.

**Item [5] – After paragraph 1229(4)(a) of Schedule 1**

Item 5 inserts new paragraph 1229(4)(aa) in Schedule 1 to the Regulations. The purpose of the new paragraph is to provide clarity in relation to the number and type of Temporary Graduate visas that may be granted to a primary applicant who has been granted a first Temporary Graduate visa in the Post-Study Work stream. This provision ensures that no applicant is able to make a valid application outside of these parameters. Up to four visas may be held as a primary applicant. For eligible applicants, the first visa can be followed by another visa in the Post-Study Work stream (having satisfied regional Australia criteria), or a visa in the Replacement stream, or another visa in the Post-Study Work stream (‘nil’ VAC visa, for applicants with eligible qualifications, with a visa duration of two years). As noted above, the ‘nil’ VAC visa can only be applied for if the additional period of two years has not already been provided as part of the visa duration of a previous visa in the Post-Study Work stream or the Replacement stream.

**Item [6] – Paragraph 1229(4)(b) of Schedule 1**

Item 6 repeals and substitutes paragraph 1229(4)(b) of Schedule 1. Prior to the substitution, the paragraph required all applicants seeking to satisfy the primary criteria for a Temporary Graduate visa to be aged less than 50. The new paragraph removes this requirement for applicants for a Temporary Graduate visa in the Post-Study Work stream who are otherwise eligible to apply for an additional visa, at no cost, as identified in subitem 1229(2A) (see item 2 above). The rationale is that the additional visa, which will be valid for two years, is intended as

an extension of the stay permitted by the previous visa. As such, it is inappropriate to impose the age cut-off in relation to the application for the additional visa. Those applicants could therefore be aged in their early 50s, depending on how close to the age cut-off they were when they applied for the previous visa.

**Item [7] – Before subparagraph 485.211(c)(i) of Schedule 2**

**Item [8] – Paragraph 485.211(d) of Schedule 2**

Items 7 and 8 amend clause 485.211 to make it clear that a non-citizen may hold up to three Temporary Graduate visas in the Post-Study Work stream:

- the first such visa, which is available to all recent graduates with a degree qualification or higher; and
- a visa based on having studied for the qualification in regional Australia (defined to include all of Australia other than Sydney, Melbourne and Brisbane), and then continuing to live/work/study in regional Australia; and
- a visa based on eligible qualifications specified by the Minister in the legislative instrument (which is only available if the two years duration of that visa has not already been added on to a previous visa in the Post-Study Work stream or a visa in the Replacement stream.)

**Item [9] – Subclause 485.212(2) of Schedule 2**

Item 9 substitutes new subclause 485.212(2) in Schedule 2 to the Migration Regulations. The purpose of this amendment is to exclude applicants for the additional Temporary Graduate visa in the Post-Study Work stream (applications to which subparagraph 1229(2)(a)(ia) of Schedule 1 applied) from the requirement to provide evidence of English language proficiency. This evidence would have been provided with the application for the first Temporary Graduate visa, and does not need to be provided again.

**Item [10] – Subclause 485.213(2) of Schedule 2**

Item 10 substitutes new subclause 485.213(2) in Schedule 2 to the Regulations. The purpose of this amendment is to exclude applicants for the additional Temporary Graduate visa in the Post-Study Work stream (applications to which subparagraph 1229(2)(a)(ia) of Schedule 1 applied) from the requirement to provide evidence of having applied for an Australian Federal Police check. This evidence would have been provided with the application for the first Temporary Graduate visa, and does not need to be provided again. Applicants are, however, required to meet the standard character requirements as set out at clause 485.216, which incorporates the standard public interest criteria.

**Item [11] – Subclause 485.231(1A) of Schedule 2**

Item 11 substitutes new 485.231(1A) in Schedule 2 to the Migration Regulations. The purpose of the amendment is to provide that the criteria for the grant of a first Temporary Graduate visa in

the Post-Study Work stream, set out in clause 485.231, do not apply to an applicant for the additional visa in the Post-Study Work stream (applications to which subparagraph 1229(2)(a)(ia) of Schedule 1 applied). Those criteria were met for the grant of the first visa in the Post-Study Work stream and they do not need to be assessed again.

**Item [12] – Subclause 485.232(1) of Schedule 2**

**Item [13] – Paragraph 485.233(1)(c) of Schedule 2**

**Item [14] – Subclause 485.234(1) of Schedule 2**

**Item [15] – Subclauses 485.234(2) and (3) of Schedule 2**

**Item [16] – Subclause 485.235(1) of Schedule 2**

**Item [17] – Subclauses 485.235(2) to (4) of Schedule 2**

**Item [18] – At the end of Subdivision 485.23 of Schedule 2**

Items 12 to 18 make consequential changes to the criteria for the grant of a Temporary Graduate visa in the Post-Study Work stream, to reflect the creation of the new pathway to an additional visa in that stream (applications to which subparagraph 1229(2)(a)(ia) of Schedule 1 applied). In particular, the purpose of the amendments is to ensure that the new visa in that stream can be accessed by holders of Temporary Graduate visas in the Post-Study Work stream who hold their existing visa on the basis of having satisfied the criteria relating to study, living and working in regional Australia.

The effect of the amendments is that the existing pathways are preserved and new pathways are created, as follows:

- clause 485.232 covers applicants moving from a first Temporary Graduate visa in the Post-Study Work stream to a second visa in that stream, based on study and residence in a *regional centre or other regional area*;
- clause 485.233 covers applicants moving from a first Temporary Graduate visa in the Post-Study Work stream to a second visa in that stream, based on study and residence in a *designated regional area*;
- clause 485.234 covers applicants moving from a Temporary Graduate visa in the Replacement stream, or from a ‘nil’ VAC visa, to a subsequent (i.e. second or third) visa in the Post-Study Work stream based on study and residence in a *regional centre or other regional area*;
- clause 485.235 covers applicants moving from a Temporary Graduate visa in the Replacement stream, or from a ‘nil’ VAC visa to a subsequent (i.e. second or third) visa in the Post-Study Work stream based on study and residence in a *designated regional area*;
- new clause 485.236 covers applicants moving from a Temporary Graduate visa in the Post-Study Work stream, that was granted on the basis of study and residence in a *regional centre or other regional area*, to a ‘nil’ VAC visa which will provide an additional stay of two years;
- new clause 485.237 covers applicants moving from a Temporary Graduate visa in the Post-Study Work stream, that was granted on the basis of study and residence in a *designated regional area*, to a ‘nil’ VAC visa which will provide an additional stay of two years.

**Item [19] – Clauses 485.511 to 485.512B of Schedule 2**

**Item [20] – Clause 485.513 of Schedule 2**

**Item [21] – Clause 485.514 of Schedule 2**

Items 19 and 20 simplify the position in relation to the duration of Temporary Graduate visas. Item 21 repeals a redundant provision.

As a result of the amendments made by items 18 and 19, the duration of visas will now be determined under policy and specified by the Minister when granting the visa. This has always been the position for Temporary Graduate visas, except that amendments in 2020 and 2021 provided legislative specification of the visa periods (one year or two years) applicable to applicants who qualify on the basis of study and residence in regional Australia (clauses 485.511, 485.512, 485.512A and 485.512B). Those settings will now be maintained under policy. It is not intended that any visa applicant will be disadvantaged by this change.

Allowing visa duration to be determined under policy ensures that the Minister has flexibility to grant visas for longer periods in cases where this is desirable (e.g. during periods of disruption such as occurred with COVID-19). The policy-based approach also avoids the legislative complexity that would otherwise be involved in dealing comprehensively with visa duration in the Regulations.

The visa periods that will apply under policy, to visa applications made from 1 July 2023, will be as follows, subject to any future decisions of Government to change these policies:

- a Temporary visa in the Graduate Work stream will be granted for 2 years (This was temporarily increased from 18 months on 1 December 2021 in response to COVID-19, and this measure ceases on 2 September 2023). However, Hong Kong and British National (Overseas) passport holders are granted visas valid for five years (subsequent to Government concessions announced in 2020 and 2021, which include dedicated pathways to permanent residence);
- The first Temporary Graduate visa in the Post-Study Work stream will be granted for a period based on eligible Australian qualifications:
  - Bachelor degree – two years (or four years if specified qualifications are held);
  - Masters Degree – three years (or five years if specified qualifications are held);
  - Doctoral degree – six years (all doctoral degrees will be covered).
- However, Hong Kong and British National (Overseas) passport holders will be granted first Temporary Graduate visas in the Post-Study Work stream valid for five years. This reflects the existing concessions;
- A Temporary Graduate visa in the Post-Study Work stream, based on study and residence in a *regional centre or other regional area*, will be granted for two years (on the basis previously set out in clauses 485.511 and 485.512A) or for four years if: (i) specified qualifications are held; (ii) the additional two years has not been provided on a previous Temporary Graduate visa; and (iii) the applicant does not hold a Hong Kong passport or a British National (Overseas) passport;

- A Temporary Graduate visa in the Post-Study Work stream, based on study and residence in a *designated regional area*, will be granted for one year (on the basis previously set out in clauses 485.512 and 485.512B) or for three years if: (i) specified qualifications are held; (ii) the additional two years has not been provided on a previous Temporary Graduate visa; and (iii) the applicant does not hold a Hong Kong passport or a British National (Overseas) passport;
- A Temporary Graduate visa in the Replacement stream will be granted for the same period as the visa that is being replaced (i.e. the COVID-19 affected visa), and two years will be added if: (i) specified qualifications are held; (ii) the additional two years has not been provided on a previous Temporary Graduate visa; and (iii) the applicant does not hold a Hong Kong passport or a British National (Overseas) passport;
- A Temporary Graduate visa in the Post-Study Work stream, based on a ‘nil’ VAC application, will be granted for two years. The two year period will be calculated from the date that the visa held at time of application was originally scheduled to cease. The purpose of the nil VAC visa is to provide a two year extension to the visa held by the applicant at that time, because they hold a specified degree.

**Item [22] – Subclause 485.613(1) of Schedule 2**

**Item [23] – Subclause 485.613(1) of Schedule 2**

These items make consequential changes to clause 485.613 to ensure that visa condition 8610 (see items 24 and 25 below) applies to applicants who satisfy the new criteria requiring study and residence in regional Australia (clauses 485.236 and 485.237)

**Item [24] – Subclause 8610(1) of Schedule 8**

**Item [25] – Subclause 8610(3) of Schedule 8**

These items make consequential changes to visa condition 8610 to ensure that the condition 8610 applies to applicants who satisfy the new criteria requiring study and residence in regional Australia (clauses 485.236 and 485.237).

The effect of the amendments is that:

- a visa holder who satisfied clause 485.236 must while in Australia, live, work and study only in a part of Australia that was a regional centre or other regional area at the time the visa was granted; and
- a visa holder who satisfied clause 485.237 must while in Australia, live, work and study only in a part of Australia that was a designated regional area at the time the visa was granted; and
- a visa holder who satisfied the secondary criteria is subject to the same condition that applies to the primary visa holder.

## Part 2 —Amendments relating to Subclass 500 (Student) Visas

### *Migration Regulations 1994*

#### **Item [26] – After subclause 8104(3) of Schedule 8**

#### **Item [27] – After subclause 8105(2) of Schedule 8**

Items 26 and 27 amend visa conditions 8104 and 8105 to allow student visa holders to work for a maximum of 48 hours per fortnight in situations where the previous maximum was 40 hours per fortnight. This change also applies to holders of bridging visas granted on the basis of a valid application for a student visa, in cases where conditions 8104 and 8105 are applicable.

Visa condition 8104 is a mandatory visa condition for applicants for Subclass 500 (Student) visas who satisfy the secondary criteria for the grant of the visa (i.e. members of the family unit of the primary visa holder). The effect of the amendment is that the family member must not engage in work for more than 48 hours per fortnight while the holder is in Australia (new subclause 8104(3A) and existing subclause 8104(1)). There is no change to the restrictions that apply to family members before the primary visa holder’s course of study commences (subclauses 8104(2), 8104(2A), and 8104(2B)), and no change to the rules applying to the family members of certain masters and doctoral students (subclause 8104(3)).

Visa condition 8105 is a mandatory visa condition for applicants for Subclass 500 (Student) visas who satisfy the primary criteria for the grant of the visa (i.e. because they are enrolled in a course of study in Australia). The effect of the amendment (new subclause 8105(2A) and existing subclause 8105(1)) is that the visa holder may work for up to 48 hours per fortnight during any fortnight when the holder’s course of study or training is in session. There is no change to the rules that apply to work before the holder’s course of study commences (subclauses 8105(1A) and 8105(1B)), and no change to the rules affecting certain masters and doctoral students (subclause 8105(2)).

The background and context to this change is as follows:

- Student visa work restrictions were relaxed throughout the COVID-19 pandemic, and completely removed in January 2022 to allow primary and secondary student visa holders to work over their normal limit of 40 hours per fortnight to address workforce shortages;
- At the Jobs and Skills Summit in September 2022, the Government announced that the relaxed enforcement would continue until 30 June 2023. After 30 June 2023, work hours for international students would be capped again. The number of hours would be subject to consultation with peak bodies across industry and education sectors, with a view to striking the right balance between work and study;
- A working group was established to advise the Ministers for Home Affairs and Education on this matter as part of their remit to consider the extension of post study work rights for international graduates.
- In their report to the Government, the working group recommended increasing the cap to 48 hours per fortnight. This recommendation was supported by the Government.
- In an announcement on 21 February 2023, the Government clarified that the cap on work hours would again be enforced from 1 July 2023, however the period of work allowed per

fortnight would be increased from 40 hours to 48 hours. The Government considers 48 hours a fortnight as an appropriate balance between work and study, acknowledging that study is the primary purpose of the Student visa.

- The Government also announced that student visa holders already working in the aged care sector on 9 May 2023 can continue to work unrestricted hours in the aged care sector until 31 December 2023. This is being implemented by not enforcing the condition for those who fall within this category.

### **Part 3 —Application of amendments**

#### *Migration Regulations 1994*

##### **Item [28] – In the appropriate position in Schedule 13**

Item 28 inserts Part 117 in Schedule 13 to the Regulations. The purpose of Part 117 is to set out the application provisions that apply to the amendments made by the amending Regulations.

Subclause 11701(1) provides that the amendments to the Temporary Graduate visa criteria made by Part 1 of Schedule 1 of the amending regulations apply to applications for Temporary Graduate visas made on or after the commencement date, which will be 1 July 2023.

Subclause 11701(2) provides that the amendments to student visa conditions and bridging visa conditions made by Part 2 of Schedule 1 of the amending regulations apply in relation to work engaged in by visa holders on or after the commencement date (1 July 2023). The changes apply to visas granted before, on, or after that date. As the changes are beneficial to visa holders, it is appropriate to apply the changes to visas granted before the commencement day as well as visas granted on or after the commencement day.