EXPLANATORY STATEMENT

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

Migration Act 1958

Migration Legislation Amendment (Hong Kong) Regulations 2021

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

The *Migration Legislation Amendment (Hong Kong) Regulations 2021* (the Hong Kong Regulations) amend the *Migration Regulations 1994* (the Migration Regulations) and the *Migration Amendment (New Skilled Visas) Regulations 2019* to complete the implementation of concessions for certain visa holders from Hong Kong that were jointly announced by the Prime Minister and the Acting Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs on 9 July 2020.

In particular, the Hong Kong Regulations make amendments as follows:

Schedule 1—British National (Overseas) passport holders

Schedule 1 extends previously granted temporary skilled and temporary graduate visas (Subclasses 457,482, 485), and provides for future grants of those visas to be for five years, if the primary visa holder held a British National (Overseas) passport when the visa was granted. The changes mirror visa concessions for holders of Hong Kong passports, implemented by the *Migration Amendment (Hong Kong Passport Holders) Regulations 2020*. British National (Overseas) passports are granted by the United Kingdom to persons who have the nationality of British National (Overseas) by virtue of their connection with Hong Kong prior to 1 July 1997.

Schedule 1 commences retrospectively immediately after the commencement of the *Migration Amendment (Hong Kong Passport Holders) Regulations 2020,* which commenced on 9 July 2020. The aim is to put the holders of British National (Overseas) passports in the same position that holders of Hong Kong passports were placed in from 9 July 2020. Retrospective commencement is entirely beneficial to holders of these visas and therefore accords with section 12 of the *Legislative Instruments Act 2003*.

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Schedule 2—Pathways to permanent residence

Schedule 2 creates pathways to permanent residence for temporary skilled and temporary graduate visa holders from Hong Kong, and their family members, who come within the concessional arrangements for both Hong Kong passport holders and British National (Overseas) passport holders:

- for primary visa holders who have lived, worked and studied exclusively in a designated regional area, access to permanent residence after three years via a new stream in the Subclass 191 Permanent Residence (Skilled Regional) visa;

- for all primary visa holders, access to permanent residence after four years via a new stream in the Subclass 189 (Skilled – Independent) visa; and

- for all members of the family unit of the primary visa holders that are eligible for the permanent visas. There are no age restrictions on dependent children, but they are required to be still living with their parents in Australia to be eligible.

Schedule 2 commences on 5 March 2022 in line with the systems release of the new visa streams.

Schedule 3—Commencement of Schedule 3 to the Migration Amendment (New Skilled Regional Visas) Regulations 2019

Schedule 3 brings forward the commencement of Schedule 3 to the *Migration Amendment (New Skilled Regional Visas) Regulations 2019* from 16 November 2022 to 5 March 2022.

The Subclass 191 Permanent Residence (Skilled Regional) visa was created by the *Migration Amendment (New Skilled Regional Visas) Regulations 2019*, with a commencement date of 16 November 2022 (three years after the commencement of the pre-requisite provisional visa which must be held for three years). However, as the new stream relating to the Hong Kong concessions is created in this subclass, and there will be persons eligible for the new stream by March 2022, commencement has been brought forward from 16 November 2022 to 5 March 2022 (in line with systems release of the new stream). This allows eligible temporary skilled and temporary graduate visa holders from Hong Kong to apply for the stream as soon as possible.

The matters dealt with in the Hong Kong 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 and other global changes.

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Sections 1-4 of the Hong Kong Regulations commence on the day after they are registered on the Federal Register of Legislation.

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 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 Regulations may be exercised.

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

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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;

- paragraph 46(1)(b), which provides that a visa application is valid only if it satisfies the criteria and requirements prescribed in the regulations; and

- subsection 45B(1), which provides that the amount of the visa application charge is the amount, not exceeding the visa application charge limit, prescribed in relation to the application.

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ATTACHMENT B

Statement of Compatibility with Human Rights

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

Migration Legislation Amendment (Hong Kong) 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

On 9 July 2020, the Prime Minister and the former Acting Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs announced new extended visa options for temporary graduates and temporary skilled workers from Hong Kong in response to the imposition of Beijing's National Security Law, and to welcome the best and brightest from Hong Kong to contribute to Australia's economy. They announced that the new visa arrangements provide further opportunities for Hong Kong citizens to live, work and study in Australia, with pathways to permanent residency.

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. Australia has a long history of attracting Hong Kong's best and brightest who have contributed significantly to our economic growth and job creation.

The *Migration Amendment (Hong Kong Passport Holders) Regulations 2020* implemented the first part of these new visa arrangements on 21 August 2020. Those regulations extended temporary graduate visas and temporary skilled visas held by Hong Kong passport holders on 9 July 2020 for five years. Those regulations also provided that future grants of these visas to Hong Kong passport holders have a validity of five years.

Since these changes, the Australian Government has decided to extend these arrangements to British National Overseas (BNO) Passport holders. British National (Overseas) is a nationality status conferred by the United Kingdom on persons who had a relevant connection with Hong Kong before 1 July 1997 when it was a British Dependent Territory. In January 2021, the Hong Kong Special Administrative Region (SAR) Government stopped recognising BNO passport holders for immigration and identification purposes. The Australian Government's decision to extend eligibility for the visa arrangements noted above to BNO passport holders means that BNO passport holders have access to the same adjusted visa settings and pathway to permanent residence as Hong Kong passport holders.

This Disallowable Legislative Instrument, the *Migration Legislation Amendment (Hong Kong) Regulations 2021,* amends the *Migration Regulations 1994* to implement the extended visa arrangements for BNO passport holders and the permanent residence pathways for both Hong Kong and BNO passport holders.

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These amendments made by the *Migration Legislation Amendment (Hong Kong) Regulations 2021* extend previously granted temporary skilled visas and temporary graduate visas, and provide for future grants of those visas to be for five years, if the primary visa holder held a BNO passport when the visa was granted. The same extensions and visa validity periods apply to family members who satisfy the secondary criteria for the grant of the visa, regardless of the passport they hold. These changes mirror the visa concessions for holders of Hong Kong passports implemented by the *Migration Amendment (Hong Kong Passport Holders) Regulations 2020*.

The amendments made by the *Migration Legislation Amendment (Hong Kong) Regulations 2021* also create pathways to permanent residence for temporary skilled visa holders and temporary graduate visa holders from Hong Kong, and their family members, who are covered by the concessional arrangements for Hong Kong passport holders and BNO passport holders. The permanent residence pathways are available through new streams in the existing Skilled Independent (subclass 189) visa, and in the Permanent Residence (Skilled Regional) (subclass 191) visa which has not yet come into effect. The Permanent Residence (Skilled Regional) (subclass 191) visa was created by the *Migration Amendment (New Skilled Regional Visas) Regulations 2019* and will commence on 5 March 2022 by virtue of these amendments.

- To be granted a Skilled Independent (subclass 189) visa, Hong Kong and BNO passport holders will need to have held and complied with the conditions of the relevant temporary graduate or temporary skilled visa for at least 4 years and met the usual health, character and security requirements for the grant of the visa.

- To qualify for a Permanent Residence (Skilled Regional) (subclass 191) visa, Hong Kong and BNO passport holders will need to have held and complied with the conditions of the relevant temporary graduate or temporary skilled visa; lived, worked or studied in a regional area for three years; and met the health, character and security requirements for the grant of the visa.

- Members of the family unit of the primary visa holder will also be eligible for these permanent visas. The amendments provide that children who have turned 23, and who would not normally be considered a member of the family unit for the purpose of visa applications, will be continue to be a member of the family unit for the purpose of applications for the subclass 191 visa and for the Hong Kong stream of the subclass 189 visa. This allows children who were dependent children at the start of a permanent residence pathway for these visas, where there is a relevant pathway, to be able to progress to permanent residence along with other members of their family.

Human rights implications

This Disallowable Legislative Instrument may engage the rights of equality and non-discrimination contained in 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 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.*

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.*

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.*

Similarly, in its General Comment on Article 2 of the ICESCR (E/C.12/GC/20), UNCESCR has stated (at 13) that:

> *Differential treatment based on prohibited grounds will be viewed as discriminatory unless the justification for differentiation is reasonable and objective. This will include an assessment as to whether the aim and effects of the measures or omissions are legitimate, compatible with the nature of the Covenant rights and solely for the purpose of promoting the general welfare in a democratic society. In addition, there must be a clear and reasonable relationship of proportionality between the aim sought to be realized and the measures or omissions and their effects.*

As such, Australia is able to set requirements for the entry of non-citizens into Australia and conditions for their stay, including access to permanent residence, and does so on the basis of reasonable and objective criteria. One of the aims of Australia's skilled and temporary graduate visas, including the Temporary Skill Shortage (Subclass 482), Temporary Graduate (Subclass 485), Skilled Independent (Subclass 189) and Permanent Residence (Skilled Regional) (Subclass 191) visas, is to maximise the benefits of skilled and temporary graduate entrants to the Australian economy. Australia sets the requirements for the entry and conditions of stay for skilled migrants and temporary graduate entrants on the basis of reasonable and objective criteria formulated through labour market analysis and stakeholder consultation.

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These measures, in providing for extended visa validity for temporary skilled visas and temporary graduate visas for BNO passport holders in a way that mirrors existing arrangements for Hong Kong passport holders and in providing more streamlined pathways to permanent residence for both Hong Kong and BNO passport holders, treat these passport holders differently to citizens of other countries who are seeking to enter or remain in Australia. These measures may also support these passport holders to exercise other rights in Australia, such as the right to work in Article 6 of the ICESCR.

This differential treatment will not amount to prohibited discrimination on grounds of nationality, as it is necessary, reasonable and proportionate to achieving a legitimate objective. That is because it addresses the public, social and international concern with the imposition of the National Security law in Hong Kong, whilst maximising the benefits of skilled and temporary graduate entrants to the Australian economy by attracting highly skilled Hong Kong and BNO passport holders who are looking to leave Hong Kong and/or remain in Australia following the imposition of the National Security Law.

The Australian 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.

From 31 January 2021 the Hong Kong Special Administrative Region (SAR) Government stopped recognising BNO passport holders for immigration and identification purposes. The National Security Law constitutes a fundamental change of circumstances, and as a result of these changes, there will be Hong Kong and BNO passport holders who may be looking to use their skills and pursue business opportunities elsewhere.

Global competition for this talent has been, and continues to be, fierce. These measures will increase the pool of talent willing to relocate or remain in Australia and will help drive the economic recovery in Australia 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 BNO passport holders who want to live, work and study in Australia, and providing permanent residency pathways for both Hong Kong and BNO passport holders. Importantly, the amendments do not adversely affect the 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, Temporary Graduate (Subclass 485) visas, and Skilled Independent (Subclass 189) visas or who will be able to apply for the Permanent Residence (Skilled Regional) (Subclass 191) visa once it commences.

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.

The Hon Alex Hawke MP

Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

ATTACHMENT C

Details of the *Migration Legislation Amendment (Hong Kong) Regulations 2021*

Section 1 – Name

This section provides that the name of the instrument is the *Migration Legislation Amendment (Hong Kong) Regulations 2021* (the Regulations).

Section 2 – Commencement

This section provides for the commencement of the instrument.

Subsection 2(1) provides that each provision of the Regulations 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 that the Regulations commence as follows:

- Sections 1 to 4, which are the formal provisions relating to the name, commencement and operation of the Regulations, commence on the day after the Regulations are registered on the Federal Register of Legislation;

- Schedule 1, which contains the provisions relating to British National (Overseas) passport holders, commences retrospectively on 9 July 2020. This is to align with the commencement date of the *Migration Amendment (Hong Kong Passport Holders) Regulations 2020*; and

- Schedule 2 and Schedule 3, providing for the commencement of the Subclass 191 Permanent Residence (Skilled Regional) visa, and related amendments to that visa and to the Subclass 189 (Skilled – Independent) visa, commence on 5 March 2022.

A note clarifies that this table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

Subsection 2(2) provides that any information in column 3 of the table is not part of the regulations. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument. Column 3 of the table provides the date/details of the commencement date.

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 in the regulations operate.

Schedule 1 – British National (Overseas) passport holders

Migration Regulations 1994

Item [1] – Regulation 1.03

This item amends regulation 1.03 of the Migration Regulations to insert a definition of British National (Overseas) passport. The definition states: ***British National (Overseas) passport*** means a passport issued by the United Kingdom of Great Britain and Northern Ireland to a person who is identified in the passport as having a form of British nationality described as British National (Overseas).

British National (Overseas) is a nationality status conferred by the United Kingdom on persons who had a relevant connection with Hong Kong before 1 July 1997 when it was a British Dependent Territory.

Item [2] – Subclause 482.511(1) of Schedule 2 (paragraph (b) of table item 2, column 1)
Item [3] – Subclause 482.511(1) of Schedule 2 (paragraphs (b) and (c) of table item 5, column 1)

These items amend subclause 482.511(1) of Schedule 2 to the Migration Regulations to incorporate references to British National (Overseas) passports for the purpose of providing that Subclass 482 (Temporary Skill Shortage) visas granted to primary applicants holding those passports will be valid for five years from the date of grant. The amendments also have the effect that visas granted to their family members who satisfy the secondary criteria expire at the same time as the visa of the primary visa holder. This mirrors the existing arrangement for holders of Hong Kong passports that came into effect on 9 July 2020.

This amendment operates retrospectively to 9 July 2020 and has the effect that all Subclass 482 visas granted to holders of British National (Overseas) passports from that date will be valid for five years from the date of grant. This is a beneficial retrospective amendment, as the maximum period for which those visas can be granted is currently four years.

Item [4] – In the appropriate position in Schedule 13

This item amends Schedule 13 (Transitional Arrangements) to the Migration Regulations, to insert Part 101 – Amendments made by the *Migration Legislation Amendment (Hong Kong) Regulations 2021.* The purpose of Part 101 is to explain how the new regulations apply.

The amendments to cater for holders of British National (Overseas) passports operate retrospectively, from 9 July 2020. This is to provide consistency with the changes made by the *Migration Amendment (Hong Kong Passport Holders) Regulations 2020,* which also commenced retrospectively on 9 July 2020. An amendment with prospective operation applies to visas in effect when the amendment commences, but do not apply to visas that have been granted since 9 July 2020 or have ceased since 9 July 2020. Only a small number of persons will be affected by the retrospectivity, and the change is beneficial to those persons.

If the visa has ceased since 9 July 2020, it will be re-enlivened unless the visa holder has already been granted another substantive visa or the visa has been cancelled.

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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.

Clause 10101 – 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 10101 provides that Subclass 457 visas, held by primary visa holders who held British National (Overseas) 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. If the visa has ceased since 9 July 2020, it will be re-enlivened unless the visa holder has already been granted another substantive visa or the visa has been cancelled.

Clause 10101 mirrors the provisions that apply to holders of Hong Kong passports, as inserted by the *Migration Amendment (Hong Kong Passport Holders) Regulations 2020.*
An end date of 8 July 2025 is beneficial 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 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.

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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).

10102 – Subclass 482 visas granted before 9 July 2020

Clause 10102 provides that Subclass 482 (Temporary Skill Shortage) visas that were, on 9 July 2020, held by primary visa holders who held British National (Overseas) 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. If the visa has ceased since 9 July 2020, it will be re-enlivened unless the visa holder has already been granted another substantive visa or the visa has been cancelled.

Clause 10102 mirrors the provisions that apply to holders of Hong Kong passports, as inserted by the *Migration Amendment (Hong Kong Passport Holders) Regulations 2020.*

The extension of Subclass 482 visas that were in effect on 9 July 2020 is beneficial 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 10103 – Subclass 482 visas granted on or after 9 July 2020

Clause 10103 provides that the amendments of clause 482.511, made by items [2] and [3] of this Schedule, apply 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. The amendments of clause 482.511 provide for Subclass 482 visas granted to primary applicants who hold a British National (Overseas) passport at time of grant, to be granted for a period of five years. Visas granted to family members who satisfy the secondary criteria are granted for the same period. If the visa has ceased since 9 July 2020, it will be re-enlivened unless the visa holder has already been granted another substantive visa or the visa has been cancelled. Clause 10103 mirrors the provisions that apply to holders of Hong Kong passports, as inserted by the *Migration Amendment (Hong Kong Passport Holders) Regulations 2020.*

The amendment complements clause 10102, 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. These visas may then lead to permanent residence via one of the visa pathways created by Schedule 2 to these Regulations.

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Clause 10104 – 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 485.513 of Schedule 2 to the Migration Regulations. The visa permits the holder to undertake further study or work in Australia.

Clause 10104 provides that Subclass 485 (Temporary Graduate) visas that were, on 9 July 2020, held by primary visa holders who held British National (Overseas) 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. If the visa has ceased since 9 July 2020, it will be re-enlivened unless the visa holder has already been granted another substantive visa or the visa has been cancelled.

Clause 10104 mirrors the provisions that apply to holders of Hong Kong passports, as inserted by the *Migration Amendment (Hong Kong Passport Holders) Regulations.*

Clause 10105 – Subclass 485 visas granted on or after 9 July 2020 and before 3 November 2021

Clause 10105 provides that Subclass 485 (Temporary Graduate) visas granted to primary applicants who were British National (Overseas) passport holders, and their family members, on or after 9 July 2020, and before 3 November 2021, are now valid for a period of five years from the date of grant, unless the visa was granted under criteria allowing for the grant of a second visa. Under policy, the maximum period of the initial grant of those visas was four years, and the retrospective amendment is therefore a beneficial change for all visa holders. If the visa has ceased since 9 July 2020, it will be re-enlivened unless the visa holder has already been granted another substantive visa or the visa has been cancelled.

Subclass 485 (Temporary Graduate) visas granted to primary British National (Overseas) passport holders and their family members from 3 November 2021 will be granted for a period of five years under policy pursuant to clause 485.513.

The date 3 November 2021 has been chosen to allow systems and other administrative arrangements to be put in place to ensure that under policy, visas granted on and after that date will be for five years.

Schedule 2 – Pathways to permanent residence

Part 1—Subclass 189 visas

Migration Regulations 1994

Item [1] – After subitem 1137(4G) of Schedule 1

This item amends item 1137 of Schedule 1 to the Migration Regulations to insert requirements that must be met by applicants seeking to apply for a Subclass 189 (Skilled—Independent) visa in the new Hong Kong stream.

The purpose of the Hong Kong stream in Subclass 189 is to grant permanent residence to Hong Kong passport holders and British National (Overseas) passport holders, and their family members, who meet the requirements for making a valid application for the stream set out in Schedule 1 to the Migration Regulations, and the criteria for visa grant set out in Schedule 2 to the Migration Regulations (see item 3 of this Schedule below).

New subitems 1137(4J) and (4K) set out the visa application charges that are payable at the time the application is made.

The visa application charge is a tax imposed on visa applications by the *Migration (Visa Application Charge) Act 1997* (the VAC Act). The amount payable on a particular application is prescribed in the Migration Regulations. The prescribed amount may be any amount up to the visa application charge limit set for most visas under section 5 of the VAC Act. The original visa application charge limit in the 1996-1997 financial year was $12,500. This amount has been indexed annually in relation to the Consumer Price Index.

The first instalment of the visa application charges are:

Base application charge (payable by primary applicant) -	$4,115
Additional application charge for a secondary applicant over 18 -	$2,055
Additional application charge for a secondary applicant under 18 -	$1,030

Subitem 1137(4K) specifies that a second instalment of the visa application charge of $4,885, payable before grant of the visa, will apply to applicants who were at least 18 at the time of application and who are assessed as not having functional English.

The amount of the first and second instalment of the visa application charges aligns with the existing visa application charges for the Points-tested stream in the Subclass 189 visa and the Hong Kong (Regional) stream in the Subclass 191 Permanent Residence (Skilled Regional) visa (see item 5 of this Schedule below). This alignment is appropriate to maintain parity across the skills based visas.

Subitem 1137(4L) specifies a number of other requirements that must be met in order to make a valid application:

- paragraph 1137(4L)(a) is a standard clause in relation to the way in which an application must be made;

- paragraph 1137(4L)(b) provides that an application must be made on or after 5 March 2022. This date has been chosen to allow the Department of Home Affairs to plan for the orderly processing of applications. The date does not disadvantage applicants, because none of the qualifying temporary visas held by Hong Kong passport holders will expire before 8 July 2025 and applicants must have held the visa for 4 years before applying (see paragraph 1137(4L)(e) below);

- paragraph 1137(4L)(c) provides that the applicant may be in or outside Australia when the application is made, but must not be in immigration clearance. This is consistent with the existing streams in the Subclass 189 visa;

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- paragraph 1137(4L)(d) provides that the applicant must not nominate the Points-tested stream or the New Zealand stream. This provision ensures that there is no confusion about which stream the applicant has applied for. A person seeking to meet the criteria for the Hong Kong stream has no need to apply for the other streams;

- paragraph 1137(4L)(e) and subitem 1137(4M) have the combined effect that primary applicants for the Hong Kong stream must:

    - hold a Hong Kong passport or a British National (Overseas) passport; and

    - hold, as the primary visa holder, either a Subclass 457, Subclass 482 or Subclass 485 visa covered by the Hong Kong concessions (i.e. a visa that was extended to 8 July 2025 or granted for a period of five years); and

    - have held that visa for at least 4 years (unless the applicant is in the small transitional caseload of holders of Subclass 457 visas granted on or after 9 July 2020; see the transitional provisions in item 10 of Part 4 of this Schedule below). The requirement to have held the visa for 4 years at time of application was specified because it is intended that applicants should only progress to permanent residence after demonstrating a strong commitment to Australia (see also the residence requirement at clause 189.242 - item 3 of this Schedule below). However, it is also specified that an applicant must apply for the Hong Kong stream in Subclass 189 visa before the extended or five year visa expires. This reflects an expectation that a qualified applicant will apply for permanent residence as soon as possible. It is not intended that potential applicants should be permitted to keep the option of applying in reserve for later use. Accordingly, the specification of 4 years in this provision allows a window of twelve months (or longer for visa holders whose visas were extended on 9 July 2020) in which the visa holder may apply for a Subclass 189 visa;

- paragraph 1137(4L)(f) provides that an application by a secondary applicant may be made at the same time as, and combined with, an application by a primary Hong Kong stream applicant. This is a standard clause to permit family members to apply on the same form.

As noted above, the effect of subitem 1137(4M) is that a primary Hong Kong stream applicant must, when the application is made, hold as the primary visa holder either a Subclass 457, Subclass 482 or Subclass 485 visa covered by the Hong Kong concessions. This has two aspects, as set out in subparagraphs 1137(4M)(c)(i) and (ii):

- subparagraph 1137(4M)(c)(i) covers the situation where the applicant held a Subclass 457, Subclass 482, or Subclass 485 visa on 9 July 2020, and the effect of the Hong Kong concessions was to extend that visa by five years, to 8 July 2025; and

- subparagraph 1137(4M)(c)(ii) refers to visas that were granted on and after 9 July 2020, and which were granted for a period of five years. Applicants covered by the Hong Kong concessions are the only applicants who are granted Subclass 482 or Subclass 485 visas for five years.

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However, the transitional provisions at subclause 10106(2) of Part 101 of Division 2 of Schedule 13 to the Regulations (see Part 4 of this Schedule below) have the effect that, for the purpose of any Subclass 457 visas granted on or after 9 July 2020, the requirements at paragraph 1137(4M)(c) are to be disregarded. This transitional provision is included because any Subclass 457 visas granted to Hong Kong passport holders or British National (Overseas) passport holders on or after 9 July 2020 will have an end date of 8 July 2025 rather than being granted for a five year period. There should be very few if any Subclass 457 visas in this category, noting that the Subclass 457 visa was repealed on 18 March 2018 and there was only a small number of unfinalised applications as at 9 July 2020. The transitional provision ensures that there is no disadvantage to any Hong Kong passport holder or British National (Overseas) passport holder in this category.

Item [2] – Division 189.2 of Schedule 2 (note to the heading)

This item inserts a new note to the heading of Division 189.2 of Schedule 2 to the Migration Regulations. Division 189.2 sets out the criteria that must be satisfied by primary applicants for a Subclass 189 (Skilled – Independent) visa.

The purpose of the new note is to clarify that, for a Subclass 189 visa in the new Hong Kong stream, the criteria in Subdivisions 189.21 and 189.24 are the primary criteria. Subdivision 189.21 contains the common criteria applicable to all primary applicants for a Subclass 189 visa. Subdivision 189.24 contains the additional criteria that must be met by applicants for the Hong Kong stream.

Item [3] – At the end of Division 189.2 of Schedule 2

This item inserts new Subdivision 189.24 in Schedule 2 to the Migration Regulations, to set out the additional criteria that must be met by applicants for a Subclass 189 visa in the Hong Kong stream:

- clause 189.241 requires the applicant to have substantially complied with the conditions of the Subclass 457 (Temporary Work (Skilled)) visa, Subclass 482 (Temporary Skill Shortage) visa or Subclass 485 (Temporary Graduate) visa held when the application is made, and also the conditions attached to any subsequent bridging visa held by the applicant;

- clause 189.242 requires the applicant to be usually resident in Australia for a continuous period of at least 4 years immediately before the date of the application. The concept of usual residence allows for some temporary absences from Australia (e.g. for holidays or short work assignments), but Australia must be the applicant's genuine home. The period of 4 years mirrors the requirement in Schedule 1 for making a valid application for the visa (see item 1 of this Schedule above);

- clause 189.243 requires the primary Hong Kong stream applicant and family members to satisfy public interest criterion 4007. This is a health criterion, the text of which is set out in Schedule 4 to the Migration Regulations. It incorporates a health waiver to allow for a visa to be granted even if the applicant has a disease or condition, provided that grant of the visa will not prejudice the access of Australians to health care or community services, or impose undue cost on the Australian community.

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Item [4] – Subclause 189.312(5) of Schedule 2

This item makes a technical amendment to accommodate the new Hong Kong stream.

Item [5] – Subclause 189.313(1) of Schedule 2

This item adds a reference to the Hong Kong stream in subclause 189.313(1) of Schedule 2 to the Migration Regulations.

The effect of this amendment is that a secondary applicant for a Subclass 189 visa who is a member of the family unit of a primary applicant who satisfied the criteria for the Hong Kong stream must meet special return criteria (SRC) 5001, 5002 and 5010 as set out in Schedule 5 to the Migration Regulations. SRCs 5001 and 5002 apply to applicants who have previously been in Australia and were removed on character grounds. SRC 5010 applies to applicants who have previously been in Australia as Foreign Affairs students and prevents the grant of a visa within specified periods.

Part 2—Subclass 191 visas

Migration Regulations 1994

Item [6] – Subitem 1139(2) of Schedule 1

This item repeals and substitutes subitem 1139(2) of Schedule 1 to the Migration Regulations, which sets out the visa application charges that apply to applications for a Subclass 191 Permanent Residence (Skilled Regional) visa. As explained at item 1 above, the visa application charge is a tax imposed on visa applications by the *Migration (Visa Application Charge) Act 1997.*

The Subclass 191 visa is created by Schedule 3 to the *Migration Amendment (New Skilled Regional Visas) Regulations 2019,* which was originally scheduled to commence on 16 November 2022 (see Schedule 3 below which changes the commencement date to 5 March 2022). The original purpose of the Subclass 191 visa was to provide a pathway to permanent residence for holders of regional provisional visas – the Subclass 491 (Skilled Work Regional (Provisional)) visa and the Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa. Those visas were created by Schedules 1 and 2 to the *Migration Amendment (New Skilled Regional Visas) Regulations 2019*, and commenced on 16 November 2019.

The purpose of the current amendments is to amend the Subclass 191 visa so that it will also provide a pathway to permanent residence for visa holders covered by the Hong Kong concessions.

To achieve this purpose, the Subclass 191 visa has been restructured to include two streams for primary applicants:

- the Regional Provisional Visas stream; and
- the Hong Kong (Regional) stream.

The visa application charges relating to the Regional Provisional Visas stream are the same as previously set out for this cohort in the *Migration Amendment (New Skilled Regional Visas)*

Regulations 2019, adjusted to reflect the annual indexation that applied to visa application charges on 1 July 2021:

Base application charge -	$425
Additional application charge for a secondary applicant over 18 -	$210
Additional application charge for a secondary applicant under 18 -	$110

These visa application charges are set at a lower level because higher visa application charges are paid in connection with applications for the regional provisional visas.

The visa application charges relating to the Hong Kong (Regional) stream are as follows:

Base application charge (payable by primary HK applicant) -	$4,115
Additional application charge for a secondary applicant over 18 -	$2,055
Additional application charge for a secondary applicant under 18 -	$1,030

Paragraph 1139(2)(b) specifies that a second instalment of $4,885 will apply to primary or secondary Hong Kong (Regional) stream applicants who were at least 18 at the time of application and who are assessed as not having functional English.

The visa application charges are the same as those that apply to applications for the Hong Kong Passport Holders stream in the Subclass 189 visa (see explanation at item 1 of this Schedule above).

Item [7] – Paragraph 1139(3)(c) of Schedule 1

This item repeals paragraph 1139(3)(c) of Schedule 1 to the Migration Regulations and inserts new paragraphs, with the following effect:

- New paragraphs 1139(3)(ba) and (c) have the effect that an application by a primary Regional Provisional applicant or a secondary Regional Provisional applicant can only be made on or after 16 November 2022 and only if the primary applicant has held a regional provisional visa for three years. *Regional provisional visa* is defined in regulation 1.03 to mean a Subclass 491 (Skilled Work Regional (Provisional)) visa or a Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa. Eligibility to apply for a Subclass 191 visa cannot arise before 16 November 2022, as the regional provisional visas were only created on 16 November 2019 and 16 November 2022 is the earliest date on which the requirement to have held the visa for three years can be met;

- New paragraphs 1139(3)(bb) and (ca) have the effect that an application by a primary applicant for the Hong Kong (Regional) stream, or an application as a secondary applicant, can only be made on or after 5 March 2022. In addition, the application can only be made if the primary applicant holds a Hong Kong passport or a British National (Overseas) passport and has held a qualifying visa (see item 7 below) for at least three years. Because of this three year requirement, 5 March 2022 was selected as a reasonable date to begin receiving and processing applications from the Hong Kong cohort.

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Item [8] – After subitem 1139(3) of Schedule 1

This item inserts new subitem 1139(3A) into Schedule 1 to the Migration Regulations.

Paragraph 1139(3A)(a) has the effect that, subject to the rules in paragraphs (b) and (c), the qualifying visas for the purpose of applications by primary applicants for the Hong Kong (Regional) stream are:

- a Subclass 457 (Temporary Work (Skilled)) visa;
- a Subclass 482 (Temporary Skill Shortage) visa; and
- a Subclass 485 (Temporary Graduate) visa.

Paragraph 1139(3A)(b) provides that the visa must have been granted on the basis that the applicant satisfied the primary criteria for the grant of the visa. This reflects the focus on skilled applicants. Family members who were granted the qualifying visa as a secondary applicant are able to apply for the Subclass 191 visa as secondary applicants.

Paragraph 1139(3A)(c) has the effect that the qualifying visa must be covered by the Hong Kong concessions. This has two aspects, as set out in subparagraphs 1137(3A)(c)(i) and (ii):

- subparagraph 1139(3A)(c)(i) is a reference to the situation where a Hong Kong or British National (Overseas) passport holder already held a Subclass 457, Subclass 482, or Subclass 485 visa on 9 July 2020, and the effect of the Hong Kong concessions is that those visas are extended by five years, to 8 July 2025; and

- subparagraph 1139(3A)(c)(ii) refers to visas that were granted on and after 9 July 2020, and which were granted for a period of five years in accordance with the Hong Kong concessions. Applicants covered by the Hong Kong concessions are the only applicants who are granted these visas for five years.

However, the transitional provisions at subclause 10106(2) of Part 101 of Schedule 13 to the Regulations (see Part 4 of this Schedule below) have the effect that, for the purpose of any Subclass 457 visas granted to Hong Kong or British National (Overseas) passport holders on or after 9 July 2020, the description of the qualifying visas covered by the Hong Kong concessions, at paragraph 1139(3A)(c), is to be disregarded. This transitional provision is included because any Subclass 457 visas granted to Hong Kong passport holders or British National (Overseas) passport holders on or after 9 July 2020 will have an end date of 8 July 2025 rather than being granted for a five year period. There should be very few if any Subclass 457 visas in this category, noting that the Subclass 457 visa was repealed on 18 March 2018 and there was only a small number of unfinalised applications as at 9 July 2020. The transitional provision ensures that there is no disadvantage to any Hong Kong passport holder or British National (Overseas) passport holder in this category.

Item [9] – Division 191.2 of Schedule 2

This item repeals Division 191.2 of Schedule 2 to the Migration Regulations and substitutes a new Division 191.2

As noted above (item 5), the Subclass 191 (Permanent Residence (Skilled Regional)) visa is created by Schedule 3 to the *Migration Amendment (New Skilled Regional Visas) Regulations 2019***Error! Use the Home tab to apply ShortT to the text that you want to**

appear here., to provide a pathway to permanent residence for holders of regional provisional visas, and the purpose of the current amendments is to amend the Subclass 191 visa so that it also provides a pathway to permanent residence for visa holders covered by the Hong Kong concessions.

To achieve this, the Subclass 191 visa has been redrafted to include two streams for primary applicants:

- the Regional Provisional Visas stream; and
- the Hong Kong (Regional) stream.

Subdivision 191.21 sets out the common criteria. These are the criteria that must be met by all primary applicants, regardless of which stream they have applied for:

- clause 191.211 sets out the public interest criteria. These are standard provisions. The numerical references are to criteria in Schedule 4 to the Migration Regulations where the text of each criterion is set out;

- clause 191.212 sets out the special return criteria. These are standard provisions. The numerical references are to criteria in Schedule 5 to the Migration Regulations where the text of each criterion is set out.

Subdivision 191.22 sets out the criteria for the Regional Provisional Visas stream. A note specifies that the criteria are only for applicants seeking to satisfy the primary criteria for a Subclass 191 visa in the Regional Provisional Visas stream. The criteria have been carried over from the criteria in Schedule 3 to the *Migration Amendment (New Skilled Regional Visas) Regulations 2019.*

Clause 191.221 sets out requirements that an applicant must have complied with the conditions that applied to the regional provisional visa or subsequent bridging visa:

- subclause 191.221(1) provides that the applicant must have substantially complied with the conditions (other than condition 8579) of the regional provisional visa held by the applicant at the time of application for the Subclass 191 visa, or any subsequent bridging visa held by the applicant;

- subclause 191.221(2) requires that applicant complied with condition 8579, unless the applicant is in a class of persons specified by the Minister in an instrument under subclause 191.221(3) (see below). Condition 8579 was inserted in Schedule 8 to the Migration Regulations by Schedule 1 to the *Migration Amendment (New Skilled Regional Visas) Regulations 2019*. The condition requires the visa holder to live, work and study only in a designated regional area of Australia. The effect of subclause 191.221(2) is that the applicant, unless in an exempt class of persons, must have strictly complied with the condition by living, working and studying only in a designated regional area of Australia while holding the regional provisional visa;

- subclause 191.221(3) provides that the Minister may make a legislative instrument specifying a class of persons who are not required to have complied with condition 8579 (see subclause 191.221(2) above). The provision provides flexibility to administer the residence requirements by exempting persons who would otherwise have been required to comply strictly with condition 8579.

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Clause 191.222 requires a primary applicant for a Subclass 191 visa to have attained a minimum level of income for at least three years as the holder of a regional provisional visa.

- subclause 191.222(1) requires the applicant to provide documents relating to the applicant's taxable income for three income years as the holder of a regional provisional visa;

- subclause 191.222(2) requires the applicant to attain a level of taxable income for each of those income years that is at least equal to the amount specified in an instrument at subclause 191.222(3);

- subclause 191.222(3) authorises the Minister to make a legislative instrument specifying income amounts for the purpose of subclause 191.222(2) (see above) in relation to all applicants or different classes of applicants. This enables the amount to be adjusted as appropriate in relation to particular classes of applicants and in response to changes in economic conditions;

- subclause 191.222(4) clarifies that subclause 191.222(1) is satisfied in relation to a copy of a notice of assessment under the *Income Tax Assessment Act 1936* even if the copy does not include the applicant's tax file number within the meaning of Part VA of that Act.

Subdivision 191.23 sets out the criteria for the Hong Kong (Regional) stream. A note specifies that the criteria are only for applicants seeking to satisfy the primary criteria for a Subclass 191 visa in the Hong Kong (Regional) stream.

Clause 191.231 sets out requirements for an applicant to have complied with visa conditions and to have lived, worked and studied in a designated regional area:

- subclause 191.231(1) provides that the applicant must have substantially complied with the conditions that applied to the qualifying visa held at time of application (Subclass 457, Subclass 482, or Subclass 485), and also any subsequent bridging visa held by the applicant;

- subclause 191.231(2) requires that during the three years ending immediately before the date of application, the applicant did not live, work or study in a part of Australia that was not a designated regional area unless the applicant is included in a class of persons specified in an instrument under subclause 191.231(3). This places applicants for the Hong Kong (Regional) stream in the same substantive position as applicants for the Regional Provisional Visas stream;

- subclause 191.231(3) provides that the Minister may make a legislative instrument specifying a class of persons who are not required to have complied with the requirements in subclause 191.231(2) above. The provision provides flexibility to administer the residence requirements by exempting classes of persons who otherwise have been required to comply strictly with those requirements.

Clause 191.232 imposes an additional residence requirement. It requires that the applicant must have been usually resident in Australia for a continuous period of at least three years immediately before the date of the application. This clause is necessary because subclause 191.231(2) (see above) alone would not disqualify an applicant who lived outside Australia.

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Clause 191.232 therefore achieves the policy intention that applicants must have lived, worked and studied exclusively in a designated regional area of Australia.

The additional residence requirement was not included in the Regional Provisional Visas stream because that stream has an Australian income requirement (clause 191.222 described above) which effectively precludes applicants from being overseas for lengthy periods. The income requirement was not included in the Hong Kong (Regional) stream because the concessions are not limited to skilled visa holders. Applicants may hold Subclass 485 (Temporary Graduate) visas, which do not have any income or work requirements.

Part 3—Definition of member of the family unit

Migration Regulations 1994

Item [10] – Subregulation 1.12(5) (table item 9)

This item updates the table at subregulation 1.12(5) of the Migration Regulations by repealing table item 9 and inserting a new table item 9 and new table items 10 and 11.

Regulation 1.12 of the Migration Regulations sets out the persons who are members of the family unit of a person who applies for a visa on the basis of satisfying the primary criteria. A member of that applicant's family unit needs to satisfy only the secondary criteria for grant of the relevant visa. The general rule is that a child who has turned 23 (and who is not dependent because of physical or mental incapacity) is no longer a member of the family unit for the purpose of visa applications.

The table in subregulation 1.12(5) has the effect that children who have turned 23 are regarded as members of the family unit for certain visa applications. In particular, the table covers applicants who are on a pathway from a provisional visa to a permanent visa, where it would be inappropriate to exclude children who have come to Australia with the family at a younger age.

The effect of the amendments is that a child who was granted a visa specified in column 2 of the table as a secondary applicant will continue to be a member of the family unit of the primary applicant for the purpose of an application for a visa specified in column 1 of the table, even if the child has turned 23:

- table item 9 applies to children holding Subclass 457, Subclass 482 or Subclass 485 visas who are applying as a member of the family unit in an application for the Subclass 189 visa in the Hong Kong stream;

- table item 10 applies to children holding Subclass 491 or Subclass 494 visas who are applying as a member of the family unit in an application for the Subclass 191 visa in the Regional Provisional Visas stream;

- table item 11 applies to children holding Subclass 457, Subclass 482 or Subclass 485 visas who are applying as a member of the family unit in an application for the Subclass 191 visa in the Hong Kong (Regional) stream.

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Part 4—Transitional provisions

Migration Regulations 1994

Item [11] – At the end of Part 101 of Schedule 13

This item adds **Division 2 – Amendments made by Schedule 2** to Part 101 of Schedule 13 to the Migration Regulations. Part 101 is inserted by Schedule 1 to these Regulations. The purpose of Division 2 is to explain how the amendments made by Schedule 2 to these Regulations will apply.

Clause 10106 – Subclass 457 visa holders

Subclause 10106(1) provides that the requirement in subparagraph 1137(4L)(e)(iii) of Schedule 1 to the Migration Regulations (see item 1 of Schedule 2 above) does not apply in relation to a Subclass 457 (Temporary Work (Skilled)) visa granted on or after 9 July 2020. This means that the standard requirement for a primary applicant for a Subclass 189 visa in the Hong Kong stream to have held the qualifying visa for 4 years does not apply. The reason for this provision is that visas in this small caseload are granted with an end date of 8 July 2025, which could make the 4 years requirement difficult or impossible to achieve before the visa expires. This provision was included in Schedule 13 of the Migration Regulations rather than Schedule 1 of the Migration Regulations in order to simplify the drafting of the Schedule 1 provisions in relation to the very small caseload of remaining Subclass 457 applications.

Subclause 10101(2) has the effect that, for the purpose of any Subclass 457 visas granted to Hong Kong passport holders or British National (Overseas) Passport holders on or after 9 July 2020, the description of the qualifying visas covered by the Hong Kong concessions, at paragraphs 1137(4M)(c) and 1139(3A)(c) of Schedule 1, can be disregarded. This provision was included in Schedule 13 to simplify the drafting of the Schedule 1 provisions. A more detailed explanation is provided in the explanation of paragraphs 1137(4M)(c) (item 1 of Schedule 2 above) and 1139(3A)(c) (item 7 of Schedule 2 above).

Schedule 3—Commencement of Schedule 3 to the Migration Amendment (New Skilled Regional Visas) Regulations 2019

Home Affairs Legislation Amendment (2019 Measures No. 1) Regulations 2019

Item [1] – Part 2 of Schedule 3 (heading)

This item aligns the commencement of an amendment to the Subclass 191 provisions, made by the *Home Affairs Legislation Amendment (2019 Measures No. 1) Regulations 2019,* with the new commencement date for Subclass 191 as explained in the next item.

Migration Amendment (New Skilled Regional Visas) Regulations 2019

Item [2] – Subsection 2(1) (table item 3)

This item changes the commencement date of Schedule 3 to the *Migration Amendment (New Skilled Regional Visas) Regulations 2019*. Schedule 3 creates the Subclass 191 visa, which was

previously scheduled to commence on 16 November 2022. This amendment changes the commencement date to 5 March 2022.

The amendment does not affect the original intent of the *Migration Amendment (New Skilled Regional Visas) Regulations 2019* that holders of regional provisional visas will be able to apply for Subclass 191 visas from 16 November 2022. The change was necessary to accommodate the Hong Kong related amendments made by Schedule 2 to these Regulations.

The change to the commencement date also has the benefit of reducing the complexity of the amendments and will thereby assist readers of the legislation. It means that the provisions relating to Subclass 191 visa will appear in the text of the *Migration Regulations 1994* at a much earlier date and readers will not need to consult four regulations - the Migration Regulations 1994, the *Migration Amendment (New Skilled Regional Visas) Regulations 2019*, the *Home Affairs Legislation Amendment (2019 Measures No. 1) Regulations 2019*, and these Regulations, in order to understand the legislative scheme. Although the provisions will appear in the *Migration Regulations 1994*, applications for a Subclass 191 visa in the Regional Provisional Visas steam cannot be made until on or after 16 November 2022. However, applications for a Subclass 191 visa in Hong Kong (Regional) stream may be made on or after 5 March 2022.

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