# EXPLANATORY STATEMENT

Issued by the Assistant Minister for Citizenship and Multicultural Affairs

*Migration Act 1958*

*Migration Amendment (Labour Agreement Requirements (Subclass 186, 482 and 494 Visas)) Regulations 2024*

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.

Subsection 31(3) of the Migration Act provides that the regulations may prescribe criteria for a visa or visas of a specified class.

The *Migration Amendment (Labour Agreement Requirements (Subclass 186, 482 and 494 Visas)) Regulations 2024* (the Amendment Regulations) amend the *Migration Regulations 1994* (the Migration Regulations) to clarify and enhance the statutory framework for the Minister to prescribe alternative requirements to the standard skilled nomination and visa criteria, in labour agreements, for visa applicants who are seeking to satisfy the Labour Agreement stream criteria for the following visa subclasses:

- Subclass 186 (Employer Sponsored Nomination);
- Subclass 482 (Skills in Demand);
- Subclass 482 (Temporary Skill Shortage); and
- Subclass 494 (Skilled Employer Sponsored Regional (Provisional)).

These amendments extend to matters such as visa criteria for English language proficiency, age, qualifications and work experience, skills assessments, pathways to permanent residence, as well as salary, sponsorship obligations and occupations.

The amendments in the Amendment Regulations clarify and build on existing arrangements under the Migration Regulations in relation to labour agreements, including in relation to the new Skills in Demand visa, which commenced on 7 December 2024. The amendments provide express statutory authority for the Minister to prescribe alternative requirements to standard skilled nomination and visa criteria, in a labour agreement, for visa applicants who are seeking to satisfy the Labour Agreement stream for the Temporary Skill Shortage

(Subclass 482) visa (TSS visa), the new Skills in Demand (Subclass 482) visa (SID visa), the Skilled Employer Sponsored Regional (Subclass 494) visa (SESR visa) and the Employer Nomination Scheme (Subclass 186) visa (ENS visa). These amendments clarify and build on existing and long-standing arrangements under the Migration Regulations in relation to labour agreements, and support initiatives in the Government's Migration Strategy, released on 11 December 2023.

A labour agreement is a formal contract negotiated between the Minister and employers that allows approved employers to sponsor skilled overseas workers under flexible arrangements when there is a demonstrated need that cannot be met in the Australian labour market, or through standard visa programmes. There are six different categories of labour agreements – Company-specific, Industry, Project Agreements, Global Talent Employer Sponsored Agreements, Skilled Refugee Labour Agreement Pilot, and Designated Area Migration Agreements. The Regulations strengthen the legislative basis for providing alternative requirements to standard skilled nomination and visa criteria through the use of labour agreements.

The Amendment Regulations amend the Migration Regulations to prescribe matters that may be specified in a labour agreement, such as certain visa criteria (but without limiting the other matters that may be specified in a labour agreement). The amendments will have no impact on existing processes with respect to the grant and access of alternative nomination and visa criteria in a labour agreement. The purpose of the amendments is to increase the transparency, consistency and efficiency of the labour agreement program, providing certainty for parties to an agreement, as well as visa applicants.

Once a labour agreement is established, employers may nominate overseas workers under the terms and conditions of the agreement for a TSS visa, SID visa, SESR visa and/or ENS visa. The SID visa replaces the TSS visa on 7 December 2024 following the commencement of the *Migration Amendment (2024 Measures No. 1) Regulations 2024*, closing the TSS visa to new applications. Nominations and visa applications for a TSS visa under the Labour Agreement stream made before 7 December 2024, but not finally determined before the commencement of the Amendment Regulations, will be assessed under the requirements in the Amendment Regulations.

Labour agreements are a long-standing program, and have been designed to complement existing skilled migration, by enabling approved employers to sponsor skilled overseas workers under flexible arrangements when there is a demonstrated need that cannot be met by the Australian labour market and where standard visa programs are not available. This is to assist employers in addressing immediate skills needs, whilst ensuring that opportunities for job-ready Australians are protected.

Under the Migration Regulations, the Minister may enter into a labour agreement with a person, an unincorporated association or a partnership in Australia under which the person,

association or partnership is authorised to recruit, employ or engage services of a person in occupations and at locations covered by the agreement.

The Migration Regulations set out the requirements that are required to be met where nominations and visa applications are lodged under the Labour Agreement stream of a TSS visa, SID visa, SESR visa and an ENS visa. The specific detail of those requirements are specified by the Minister in the labour agreement. This approach enables the program to be responsive to unique and changing labour market needs.

The amendments strengthen provisions for the Minister to prescribe alternative requirements to standard skilled nomination and visa criteria in a labour agreement for applicants seeking to satisfy Labour Agreement stream criteria. These amendments will strengthen the existing framework with respect to prescribing and accessing alternative nomination and visa requirements in a labour agreement, and will not have any impact on existing processes and labour agreements currently in effect as at the date of commencement. The amendments will also improve transparency and efficiency of the labour agreement program.

The Amendment Regulations also provide that (without limiting the matters that may be specified) a labour agreement may specify certain matters such as the number of approved nominations permitted under the agreement, occupations that may be nominated under the agreement, requirements relating to salary, sponsorship obligations, and maximum stay period permitted for a person undertaking an occupation under the agreement. The amendments prescribe in the Migration Regulations the types of matters that are already specified in a labour agreement under the current framework, and will strengthen and support existing policy settings of the program.

Matters to be specified under a labour agreement are considered on a case by case basis, and employers are required to provide a strong business case in support of their request, including evidence that the matters specified in the labour agreement will not create inconsistent employment conditions between overseas workers and Australians in equivalent roles.

The amendments of the Migration Regulations made by the Amendment Regulations apply to all visa applications made, but not finally determined, before the commencement date, as well as applications made on or after the commencement date.

Labour agreements entered into, and still in effect, before the commencement date will continue to have effect on or after the commencement day as if they were a labour agreement made under the Amendment Regulations.

*Statement of Compatibility*

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 and conclusion is that the Amendment Regulations are compatible with the human rights and freedoms recognised or declared in the international instruments listed in

section 3 of that Act because, to the extent the Amendment Regulations engage the right to work, they promote this right. The Statement is at Attachment A.

*General matters concerning the Amendment Regulations*

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

The Amendment Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Amendment Regulations commence on the day after they are registered on the Federal Register of Legislation.

Further details of the Amendment Regulations are set out in Attachment B.

*Consultation and other matters concerning parliamentary scrutiny*

The Office of Impact Analysis (OIA) has been consulted in relation to the amendments. The OIA consultation reference number is OIA24-07446.

The development of amendments relating to the Skills in Demand visa and the other amendments in the Amendment Regulations has been informed through consultation with businesses, unions, and other stakeholders undertaken throughout the Migration Review, and which in turn informed the Government's Migration Strategy. The Department also engaged in whole of government consultation in the course of developing the Migration Strategy, including with the Department of Employment and Workplace Relations and the Department of the Prime Minister and Cabinet. This accords with the consultation requirements of the Legislation Act.

The matters dealt with in the amending Regulations are appropriate for implementation in regulations rather than 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 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 in Attachment C. These include, for example, subsection 31(3), which provides that the Migration 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.

The Amendment 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 Amendment Regulations will be repealed by operation of Division 1 of Part 3 of Chapter 3 of the Legislation Act. Specifically, that Division (under section 48A) operates to automatically repeal a legislative instrument that has the sole purpose of amending or repealing another instrument. As the Amendment Regulations will automatically repeal, they do not engage the sunsetting framework under Part 4 of the Legislation Act.

**ATTACHMENT A**

# Statement of Compatibility with Human Rights

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

***Migration Amendment (Labour Agreement Requirements (Subclass 186, 482 and 494 Visas)) Regulations 2024***

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

## Overview of the Disallowable Legislative Instrument

The *Migration Amendment (Labour Agreement Requirements (Subclass 186, 482 and 494 Visas)) Regulations 2024* (Amendment Regulations) amend the *Migration Regulations 1994* (Migration Regulations) to strengthen provisions for the Minister to prescribe alternative requirements to standard skilled nomination and visa criteria, in a labour agreement, for visa applicants who are seeking to satisfy the Labour Agreement stream for the Temporary Skill Shortage (Subclass 482) visa (TSS visa), the Skills in Demand (Subclass 482) visa (SID visa), the Skilled Employer Sponsored Regional (Subclass 494) visa (SESR visa) and the Employer Nomination Scheme (Subclass 186) visa (ENS visa).

The Amendment Regulations also amend the Migration Regulations to prescribe matters that may, although not limited to, be specified in a labour agreement, such as visa criteria. The amendments will have no impact on existing processes with respect to the grant and access of alternative nomination and visa criteria in a labour agreement. The purpose of the amendments is to increase the transparency, consistency and efficiency of the labour agreement program.

A labour agreement is a formal contract negotiated between the Minister and Australian employers. There are six different categories of labour agreements – Company-specific, Industry, Project Agreements, Global Talent Employer Sponsored Agreements, Skilled Refugee Labour Agreement Pilot, and Designated Area Migration Agreements.

Once a labour agreement is established, employers may nominate overseas workers under the terms and conditions of the agreement for a TSS visa, SID visa, SESR visa and/or ENS visa. The SID visa replaces the TSS visa on 7 December 2024 following the commencement of the *Migration Amendment (2024 Measures No. 1) Regulations 2024*, closing the TSS visa to new applications. Nominations and visa applications for a TSS visa under the Labour Agreement stream made before 7 December 2024, but not finally determined before the commencement

of the Amendment Regulations, will be assessed under the requirements in the Amendment Regulations.

Labour agreements are a longstanding program, and have been designed to complement existing skilled migration, by enabling approved employers to sponsor skilled overseas workers under flexible arrangements when there is a demonstrated need that cannot be met by the Australian labour market and where standard visa programs are not available. This is to assist employers in addressing immediate skills needs, whilst ensuring that opportunities for job-ready Australians are protected.

Under the Migration Regulations, the Minister may enter into a labour agreement with a person, an unincorporated association or a partnership in Australia under which the person, association or partnership is authorised to recruit, employ or engage services of a person in occupations and at locations covered by the agreement.

The Migration Regulations set out the requirements that are required to be met where nominations and visa applications are lodged under the Labour Agreement stream of a TSS visa, SID visa, SESR visa and an ENS visa. The specific detail of those requirements are specified by the Minister in the labour agreement. This approach enables the program to be responsive to unique and changing labour market needs.

The amendments strengthen provisions for the Minister to prescribe alternative requirements to standard skilled nomination and visa criteria in a labour agreement for applicants seeking to satisfy Labour Agreement stream criteria. These amendments will strengthen the existing framework with respect to prescribing and accessing alternative nomination and visa requirements in a labour agreement, and will not have any impact on existing processes and labour agreements currently in effect as at the date of commencement. The amendments will also improve transparency and efficiency of the labour agreement program.

The Amendment Regulations also provide that, without limiting the matters that may be specified in a labour agreement, a labour agreement may specify certain matters, such as the number of approved nominations permitted under the agreement, occupations that may be nominated under the agreement, requirements relating to salary, sponsorship obligations, and maximum stay period permitted for a person undertaking an occupation under the agreement. The amendments prescribe in the Migration Regulations the types of matters that are already specified in a labour agreement under the current framework, and will strengthen and support existing policy settings of the program.

Matters to be specified under a labour agreement are considered on a case by case basis, and employers are required to provide a strong business case in support of their request, including evidence that the matters specified in the labour agreement will not create inconsistent employment conditions between overseas workers and Australians in equivalent roles.

The Amendment Regulations will apply to all visa applications made, but not finally determined, before the commencement date, or made on or after the commencement date.

Labour agreements entered into, and still in effect, before the commencement date will continue to have effect on or after the commencement day as if they were a labour agreement made under the Amendment Regulations.

**Human rights implications**

For each of the four visa subclasses an applicant may be in or outside Australia. Where an applicant is outside Australia, the amendments will not engage the applicable rights and freedoms.

Where the applicant is in Australia, this Disallowable Legislative Instrument may engage the right to work under Article 6(1) of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).

Article 6(1) of ICESCR states:

> *The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.*

The amendments made by the Amendment Regulations provide the Minister with express powers to prescribe alternative requirements for standard skilled nomination and visa criteria for visa applicants who are seeking to satisfy the Labour Agreement stream of the TSS visa, the SID visa, the SESR visa, and the ENS visa. The amendments strengthen and support existing policy settings of the Labour Agreement program, and will have no impact on existing processes with respect to the grant of and access to alternative nomination and visa requirements under a labour agreement.

The amendments may promote the right to work for applicants in Australia by increasing the likelihood that applicants can meet the eligibility criteria under each of the four visa subclasses in circumstances where the Minister prescribes alternative requirements to standard skilled nomination and visa eligibility criteria to an employer in relation to a labour agreement.

**Conclusion**

This Disallowable Legislative Instrument is compatible with human rights because to the extent it engages the right to work, it promotes this right.

**The Hon Julian Hill MP**

**Assistant Minister for Citizenship and Multicultural Affairs**

**ATTACHMENT B**

**Details of the *Migration Amendment (Labour Agreement Requirements (Subclass 186, 482 and 494 Visas)) Regulations 2024***

Section 1 – Name of Regulations

This section provides that the title of the Regulations is the *Migration Amendment (Labour Agreement Requirements (Subclass 186, 482 and 494 Visas)) Regulations 2024* (the Regulations).

Section 2 – Commencement

This provides that the Regulations commence on the day after they are registered on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the *Migration Amendment (Labour Agreement Requirements (Subclass 186, 482 and 494 Visas)) Regulations 2024* are made under the *Migration Act 1958* (Migration Act).

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments

***Migration Regulations 1994***

**Item [1] – Regulation 1.03 (definition of *labour agreement*)**

This item repeals and substitutes the definition of ***labour agreement*** in Regulation 1.03.

The current definition of ***labour agreement*** provides that it is a formal agreement entered into between the Minister, or the Employment Minister, and a person or organisation in Australia, under which an employer is authorised to recruit persons to be employed by that employer in Australia.

This item provides that a ***labour agreement*** instead has the meaning given by new subregulation 2.75C(1), which is introduced by the amendment in item [3] of this Schedule.

**Item [2] – Division 2.18 (heading)**

This item omits "**Work**" and substitutes "**Labour**" in the heading of Division 2.18 of Part 2A of the Migration Regulations. The effect is that Division 2.18 is retitled "Labour agreements".

**Item [3] – After Division 2.18 (heading)**

This item inserts new Subdivision 2.18.1 (Labour agreements) into Division 2.18 of Part 2A of the Migration Regulations. This item also inserts new regulation 2.75C into this Subdivision to introduce an express provision into the Migration Regulations that provides clear statutory authority for the Minister to enter into a labour agreement, in writing, that may specify certain matters like the criteria for the grant of a visa subclass.

New subregulation 2.75C(1) provides that the Minister may, in writing, enter into an agreement (a ***labour agreement***) with a person, an unincorporated association or a partnership in Australia under which the person, unincorporated association or partnership is authorised to recruit, employ or engage services of a person in occupations and at locations covered by the agreement.

New subregulation 2.75C(2) sets out the matters that may be specified in a labour agreement. These may include, amongst other things, the number of approved nominations that are permitted under the agreement, requirements relating to salary for occupations nominated under the agreement, and matters relating to criteria specified for a visa or visa of a specified class.

New subregulation 2.75C(3) provides that a labour agreement may be varied by the parties to the agreement after it has come into effect.

**Item [4] – Paragraph 2.76(2)(a)**

This item repeals current paragraph 2.76(2)(a) of the Migration Regulations.

Subregulation 2.76(1) provides that, for section 140GC of the Migration Act (the Act), and for the definition of work agreement in subsection 5(1) of the Act, a work agreement must meet the requirements prescribed in regulation 2.76.

Currently, paragraph 2.76(2)(a) prescribes that a work agreement must be between the Commonwealth, as represented by the Minister, or by the Minister and one or more other Ministers, and a person, an unincorporated association or a partnership.

The insertion of the new express definition of ***labour agreement*** in regulation 2.75C of the Migration Regulations (see the discussion in item [3]) means that paragraph 2.76(2)(a) is no longer necessary, given that a work agreement is a type of labour agreement (under paragraph 2.75(2)(b)).

**Item [5] – Paragraph 2.76(2)(b)**

This item inserts a reference to the Subclass 482 (Skills in Demand) visa into paragraph 2.76(2)(b) of the Migration Regulations. The insertion of this reference recognises the implementation of the new Subclass 482 (Skills in Demand) visa through the *Migration Amendment (2024 Measures No. 1) Regulations*, which commenced on 7 December 2024.

The effect is that the definition of ***work agreement*** is revised to so that it must be a ***labour agreement*** that authorises the recruitment, employment or engagement of services of a person who is intended to be employed or engaged as a holder of a Subclass 482 (Skills in Demand) visa, Subclass 482 (Temporary Skill Shortage) visa, or Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa that is in effect.

**Item [6] – Subparagraph 1240(3)(g)(i) of Schedule 1**

This item inserts a reference to the Specialist Skills stream or Core Skills stream of the Subclass 482 (Skills in Demand) visa in subparagraph 1240(3)(g)(i) of Schedule 1 to the Migration Regulations.

Paragraph 1240(3)(g) of Schedule 1 of the Migration Regulations in effect requires, for a primary applicant mentioned in subparagraph (i), whose nominated occupation is specified a legislative instrument made by the Minister for the purposes of that paragraph (currently *Migration (IMMI 18/039: Mandatory Skills Assessment—Subclass 482 Visa) Instrument 2018*), and who is in a class of persons specified in that paragraph, that:

- an assessing authority specified in the legislative instrument as the assessing authority for the occupation must have assessed the applicant's skills as suitable etc. (subparagraph 1240(3)(g)(iv)); or

- the applicant has made an arrangement with the assessing authority specified in the legislative instrument as the assessing authority for the occupation to assess the applicant's skills etc. and the assessing authority has not completed the assessment (subparagraph 1240(3)(g)(v)).

The effect of this item is to restrict the requirement in paragraph 1240(3)(g) of Schedule 1 to a primary applicant for a Subclass 482 (Skills in Demand) visa in the Specialist Skills stream or the Core Skills stream. This is because an applicant for the Labour Agreement stream will instead be assessed under the skills assessment criteria set out in Schedule 2 to the Migration Regulations (see new clause 482.242A, as introduced in item [15), thereby maintaining consistency with the intent of the labour agreement framework.

**Item [7] – Clause 186.111 of Schedule 2 (note 1)**

This item amends note 1 in clause 186.111 of Schedule 2 to the Migration Regulations by adding a reference to ***regional provisional visa*** after the existing reference to "***labour***

***agreement***". The effect is to clarify that the meaning of ***regional provisional visa*** is provided for in regulation 1.03 of the Migration Regulations.

**Item [8] – Clause 186.212B of Schedule 2**

This item repeals clause 186.212B of Schedule 2 to the Migration Regulations.

The repeal of this clause removes a period of stay requirement that was a common criterion for all applicants seeking to satisfy the primary criteria for a Subclass 186 (Employer Nomination Scheme) visa who currently hold, or whose last substantive visa held, was a Subclass 491 (Skilled Work Regional (Provisional)) visa or Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa.

Currently, all applicants in this cohort must have held their Subclass 491 (Skilled Work Regional (Provisional)) visa or Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa for at least 3 years to meet the requirement, unless circumstances specified in an instrument under subclause 186.212B(2) exist.

The removal of this requirement from the common criteria allows the Minister to specify alternative requirements (including concessions) to period of stay requirements in labour agreements, which apply to applicants to the Labour Agreement stream of the visa.

This requirement continues to apply for applicants to the Direct Entry stream of the Subclass 186 (Employer Nomination Scheme) visa, as provided for by the amendment in item [8] of this Schedule.

**Item [9] – After clause 186.232 of Schedule 2**

This item inserts clause 186.232A into the Schedule 2 to the Migration Regulations.

New subclause 186.232A(1) applies to a primary applicant for the Subclass 186 (Employer Nomination Scheme) visa in the Direct Entry stream. The clause requires that, if at the time of the application, the applicant held a regional provisional visa, or the last substantive visa held by the applicant was a regional provisional visa, the applicant must have held that visa for 3 years at the time of circumstances specified in the instrument under subclause (2) exists.

New subclause 186.232A(2) empowers the Minister to specify circumstances for the purposes of subclause (1) through making an legislative instrument.

**Item [10] – Paragraph 186.241(b) of Schedule 2**

This item repeals and substitutes paragraph 186.241(b) of Schedule 2 to the Migration Regulations.

Clause 186.241 sets out the age requirement for applicants to the Labour Agreement stream for a Subclass 186 (Employer Nomination Scheme) visa. Under paragraph 186.241(a), the

standard requirement for such an applicant is that they had not turned 45 at the time of application.

New paragraph 186.241(b) enables an applicant to meet the age requirement where they have not reached the age specified by the Minister in a labour agreement that is in effect, to which the employer is a party, and under which the position to which the application relates is nominated.

The effect of this item is to strengthen the legislative basis for the Minister to specify alternative requirements to this age requirement in a labour agreement for applicants to the Labour Agreement stream for a Subclass 186 (Employer Nomination Scheme) visa.

**Item [11] – After clause 186.241 of Schedule 2**

This item inserts new clause 186.241A into Schedule 2 to the Migration Regulations.

New paragraph 186.241A provides for the period of stay requirements for an applicant for the Labour Agreement stream for the Subclass 186 (Employer Sponsor Nomination) visa, who currently hold, or whose last substantive visa held, was a ***regional provisional visa*** (as defined under regulation 1.03).

This effect of this amendment is to strengthen the legislative basis for the Minister to specify alternative requirements to period of stay requirements in a labour agreement mentioned in new paragraph 186.241(b). This ensures that applicants to the Labour Agreement stream of the Subclass 186 (Employer Sponsor Nomination) visa in the cohort above are not bound to the period of stay requirement of at least three years, if a different period is specified by the Minister in the labour agreement.

**Item [12] – Clause 186.243 of Schedule 2**

This item repeals and substitutes subclause 186.243 of Schedule 2 to the Migration Regulations.

The new clause sets out a series of criteria that must be satisfied by a primary applicant for the Subclass 186 (Employer Nomination Scheme) visa in the Labour Agreement stream. In essence, clause 186.243 provides that the applicant must satisfy the following criteria, if specified by the Minister in the labour agreement mentioned in paragraph 186.241(b), for the occupation to which the position relates, and for the visa:

- any requirements around qualifications, experience, and other attributes (subclause 186.243(1));
- any language test requirements (subclause 186.243(2));
- any requirements to demonstrate their English language proficiency in the manner specified by the Minister (subclause 186.243(3));

- any requirements to demonstrate that they have the skills that are necessary to perform the tasks of the occupation to which the position relates in the manner (if any) specified by the Minister (subclause 186.243(4)).

Subclause 186.243(5) provides that if the manner specified in the labour agreement for the purposes of subclause 186.243(4) is that the applicant's skills must have been assessed as suitable for the occupation to which the position relates, then the following requirements all apply:

- the applicant's skills have been assessed as suitable by:
    - if there is a relevant assessing authority for the occupation – the relevant assessing authority for the occupation (sub-subparagraph 186.243(5)(a)(i));
    - otherwise – the person or body specified by the Minister in the labour agreement for the occupation;
- if the assessment specified a period during which the assessment was valid, and the period did not end more than 3 years after the date of the assessment – the period has not ended (paragraph 186.243(4)(b)); and
- if paragraph 186.243(4)(b) does not apply – not more than 3 years have passed since the day of the assessment (paragraph 186.243(4)(c)).

**Item [13] – Paragraph 482.241(a) of Schedule 2**

This item omits "Commonwealth" and substitute "Minister" in paragraph 482.241(a) of Schedule 2 to the Migration Regulations. This is a minor consequential amendment that reflects the change made by item [4], which repeals current paragraph 2.76(2)(a) of the Migration Regulations.

The effect is that clause 482.241 is revised to require, for a primary applicant for the Subclass 482 (Skills in Demand) visa or Subclass 482 (Temporary Skill Shortage) visa, that both:

- the nominated occupation is the subject of a work agreement between the Commonwealth and the person who nominated the nominated occupation; and
- the work agreement authorises the recruitment, employment or engagement of services of a person who is intended or engaged as the holder of a Subclass 482 visa.

**Item [14] – Paragraph 482.242(b) of Schedule 2**

This item repeals and substitutes paragraph 482.242(b) of Schedule 2 to the Migration Regulations.

New paragraph 482.242(b) allows the primary applicant for a Subclass 482 (Skills in Demand) visa or a Subclass 482 (Temporary Skill Shortage) visa in the Labour Agreement stream to satisfy the relevant work experience requirements if they have worked in the nominated occupation or a related field for the period (if any) specified by the Minister in the work agreement mentioned in clause 482.241, for the nominated occupation, and for the visa.

**Item [15] – Clause 482.242A of Schedule 2**

This item repeals and substitutes clause 482.242A of Schedule 2 to the Migration Regulations.

The new clause sets out the skills criteria that must be satisfied by a primary applicant for the Subclass 482 (Skills in Demand) visa or the Subclass 482 (Temporary Skill Shortage) visa in the Labour Agreement stream. In essence, new clause 482.242A provides that the applicant must satisfy the following skills criteria, if specified by the Minister in the work agreement mentioned in clause 482.241, for the nominated occupation, and for the visa:

- any requirements around skills, qualifications, and employment background (subclause 482.242A(1));

- any requirements to demonstrate that they have the skills that are necessary to perform the tasks of the occupation to which the position relates in the manner (if any) specified by the Minister (subclause 482.242A(2)).

Subclause 482.242A(3) provides that if the manner specified in the labour agreement for the purposes of subclause 482.242A(2) is that the applicant's skills must have been assessed as suitable for nominated occupation, then the following requirements all apply:

- the applicant's skills have been assessed as suitable by:

    - if there is a relevant assessing authority for the occupation – the relevant assessing authority for the occupation (sub-subparagraph 482.242A(3)(a)(i));

    - otherwise – the person or body specified by the Minister in the work agreement for the occupation (sub-subparagraph 482.242A(3)(b)(ii));

- if the assessment specified a period during which the assessment was valid, and the period did not end more than 3 years after the date of the assessment – the period has not ended (paragraph 482.242A(3)(b)); and

- if paragraph 482.242A(3)(b) does not apply – not more than 3 years have passed since the day of the assessment (paragraph 482.242A(3)(c)).

**Item [16] – Clause 482.243 of Schedule 2**

This item repeals and substitutes clause 482.243 of Schedule 2 to the Migration Regulations.

The new clause sets out the English language requirements that must be satisfied by a primary applicant for the Subclass 482 (Skills in Demand) visa or the Subclass 482 (Temporary Skills Shortage) visa in the Labour Agreement stream. In essence, new clause 482.243 provides that the applicant must satisfy the following English language criteria, if specified by the Minister in the work agreement mentioned in the work agreement mentioned in clause 482.241, for the nominated occupation, and for the visa:

- any language test requirements (subclause 482.243(1));
- any requirements to demonstrate their English language proficiency in the manner (if any) specified by the Minister (subclause 482.243(2)).

**Item [17] – Paragraph 494.232(a) of Schedule 2**

This item omits "Commonwealth" and substitutes "Minister" in paragraph 494.232(a) of Schedule 2 to the Migration Regulations. This is a minor consequential change that reflects the change made by the amendment in item [4], which repeals current paragraph 2.76(2)(a) of the Migration Regulations.

The effect is that paragraph 494.232(a) of Schedule 2 is revised to require, for a primary applicant for a Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa in the Labour Agreement stream is that both of the following are met:

- the nominated occupation is the subject of a work agreement between the Commonwealth and the person who nominated the nominated occupation; and
- the work agreement authorises the recruitment, employment or engagement of services of a person who is intended or engaged as the holder of a Subclass 494 visa.

**Item [18] – Paragraph 494.233(b) of Schedule 2**

This item repeals and substitutes paragraph 494.233(b) of Schedule 2 to the Migration Regulations.

Clause 494.233 sets out the age requirement for applicants to the Labour Agreement stream for a Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa. Under paragraph 494.233(a), the standard requirement for such an applicant is that they had not turned 45 at the time of application.

New paragraph 494.233(b) enables an applicant to meet the age requirement where they have not reached the age specified by the Minister in the work agreement mentioned in clause 494.232 for the nominated occupation, and for the visa.

The effect of this item is to strengthen the legislative basis for the Minister to specify alternative requirements to this age requirement in a work agreement for applicants to the Labour Agreement stream for a Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa.

**Item [19] – Clause 494.234 of Schedule 2**

This item repeals and substitutes clause 494.234 of Schedule 2 to the Migration Regulations.

The new clause sets out the English language requirements that must be satisfied by a primary applicant for the Subclass 494 (Skilled Employer Sponsored Regional (Provisional) visa in the Labour Agreement stream. In essence, new clause 494.234 provides that the applicant must satisfy the following English language criteria, if specified by the Minister in the work agreement mentioned in the work agreement mentioned in clause 494.232, for the nominated occupation, and for the visa:

- any language test requirements (subclause 494.234(1));
- Any requirements to demonstrate their English language proficiency in the manner (if any) specified by the Minister (subclause 494.234(2)).

This item strengthens the legislative basis for the Minister to specify the English language criteria in a work agreement, for an applicant for the Labour Agreement stream for a Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa.

**Item [20] – Subclause 494.235(1) of Schedule 2**

This item repeals subclause 494.235(1) of Schedule 2 to the Migration Regulations.

The new paragraph requires a primary applicant for the Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa in the Labour Agreement stream to have the skills, qualifications, and employment background (if any) specified by the Minister in the work agreement mentioned in clause 494.232 for the nominated occupation, and for the visa.

This item strengthens the legislative basis for the Minister to specify skills, qualifications, and employment background requirements in a work agreement, for an applicant for the Labour Agreement stream for a Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa.

**Item [21] – Paragraph 494.235(2)(b) of Schedule 2**

This item repeals and substitutes paragraph 494.235(2)(b) of Schedule 2 to the Migration Regulations.

The new paragraph requires a primary applicant for the Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa in the Labour Agreement stream to have worked in the nominated occupation or a related field for the period (if any) specified by the Minister

in the work agreement mentioned in clause 494.232 for the nominated occupation, and for the visa.

This item strengthens the legislative basis for the Minister to specify the relevant work experience requirements in a work agreement, for an applicant for the Labour Agreement stream for a Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa.

**Item [22] – Subclause 494.235(3) of Schedule 2**

This item repeals and substitutes subclause 494.235(3) of Schedule 2 to the Migration Regulations.

The new subclause 494.235(3) provides that a primary applicant for the Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa in the Labour Agreement stream must demonstrate that they have the skills that are necessary to perform the tasks of the nominated occupation in the manner (if any) specified by the Minister in the work agreement mentioned in clause 494.232, for the nominated occupation and for the visa.

The new subclause 494.235(4) provides that if the manner specified in the labour agreement for the purposes of subclause 494.235(3) is that the applicant's skills must have been assessed as suitable for nominated occupation, then the following requirements all apply:

- the applicant's skills have been assessed as suitable by:
    - if there is a relevant assessing authority for the occupation – the relevant assessing authority for the occupation (sub-subparagraph 494.235(4)(a)(i));
    - otherwise – the person or body specified by the Minister in the work agreement for the occupation (sub-subparagraph 494.235(4)(a)(ii));
- if the assessment specified a period during which the assessment was valid, and the period did not end more than 3 years after the date of the assessment – the period has not ended (paragraph 494.235(3)(b)); and
- if paragraph 494.235(3)(b) does not apply – not more than 3 years have passed since the day of the assessment (paragraph 494.235(3)(c)).

**Item [23] – In the appropriate position in Schedule 13**

This item inserts Part 149 into the appropriate position in Schedule 13 to the Migration Regulations, which provides for the operation of amendments made by this instrument.

New clause 14901 provides for the definitions to be used in Part 149. Specifically, ***amending regulations*** means the *Migration Amendment (Labour Agreement Requirements (Subclass 186, 482 and 494 Visas)) Regulations 2024*. The ***commencement day*** means the day Schedule 1 to the amending Regulations commences.

New clause 14902 provides for the operation of Schedule 1 to the amending Regulations.

New subclause 14902(1) provides that the amendments of the Migration Regulations made by Schedule 1 to the amending Regulations apply to a visa application made, but not finally determined, before the commencement day, or made on or after the commencement day.

New subclause 14902(2) provides that if a labour agreement was entered into before the commencement day, and immediately before the commencement day the labour agreement was still in effect, then, despite the amendment of the Migration Regulations made by Schedule 1 to the amending Regulations, the labour agreement continues to have effect on and after the commencement day as if it were a labour agreement made for the purposes of regulation 2.75C, as inserted by Schedule 1 to the amending Regulations.

**ATTACHMENT C**

## 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 Migration Regulations may prescribe classes of visas;
- subsection 31(3), which provides that the Migration Regulations may prescribe criteria for a visa or visas of a specified class;
- subsection 31(4), which provides that the Migration Regulations may prescribe whether visas of a class are visas to travel to and enter Australia, or to remain in Australia, or both;
- subsection 31(5), which provides that the Migration Regulations may specify that a visa is a visa of a particular class;
- section 40, which provides that the Migration 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 Migration Regulations may provide that visas, or visas of a specified class, are subject to specified conditions;
- subsection 45(1), which provides that subject to the Migration Act and the Migration Regulations, a non-citizen who wants a visa must apply for a visa of a particular class;
- section 45A, which provides that a non-citizen who makes an application for a visa is liable to pay a visa application charge if, assuming the charge were paid, the application would be a valid visa application;
- subsection 45B(1), which provides that the amount of visa application charge is the amount, not exceeding the visa application charge limit, prescribed in relation to the application (the visa application charge limit is determined under the *Migration (Visa Application) Charge Act 1997*);
- subsection 45B(2), which provides that the amount prescribed in relation to an application may be nil;
- paragraph 46(1)(b), which provides that the Migration Regulations may prescribe the

criteria and requirements for making a valid application for a visa;

- subsection 46(3), which provides that the Migration Regulations may prescribe criteria that must be satisfied for an application for a visa of a specified class to be a valid application;
- subsection 46(4), which provides that, without limiting subsection 46(3), the Migration Regulations may prescribe:

  a) the circumstances that must exist for an application for a visa of a specified class to be a valid application; and

  b) how an application for a visa of a specified class must be made; and

  c) where an application for a visa of a specified class must be made; and

  d) where an applicant must be when an application for a visa of a specified class is made;

- subsection 504(2) of the Migration Act, which provides that section 14 of the Legislation Act does not prevent regulations whose operation depends on a country or other matter being specified or certified by the Minister in an instrument in writing made under the regulations after the commencement of the regulations.