



Australian Government
Department of Home Affairs

Inquiry into the New Skilled Regional Visas (Consequential Amendments) Bill 2019

**Senate Legal and Constitutional Affairs
Legislation Committee**

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Introduction

The Department of Home Affairs (the Department) welcomes the opportunity to provide a submission to the Senate Legal and Constitutional Affairs Legislation Committee inquiry into the *New Skilled Regional Visas (Consequential Amendments) Bill 2019* (the Bill), following the introduction of the Bill into the House of Representatives on 31 July 2019.

The Bill was referred to the Committee by the Senate Selection of Bills Committee in its Report No. 5 of 2019. The reason for referral being: "Further investigation and consultation with stakeholders on the impact of the legislation".

This submission explains the key measures in, and the purpose of, the Bill.

Outline of the Bill

The Bill, as introduced in the House of Representatives on 31 July 2019, recognises that people holding a provisional skilled regional visa are on a pathway to becoming Australian permanent residents. As such, it amends legislation to allow holders of the new provisional skilled regional visas to access welfare payments and government services as if they were permanent visa holders. The Bill makes consequential amendments to legislation administered by the Department of Social Services, the Department of Education, and the Attorney-General's Department.

Specifically, the Bill amends:

- *A New Tax System (Family Assistance) Act 1999*
- *Disability Services Act 1986*
- *Fair Entitlements Guarantee Act 2012*
- *Higher Education Support Act 2003*
- *National Disability Insurance Scheme Act 2013*
- *Paid Parental Leave Act 2010*; and
- *Social Security Act 1991*.

The new provisional skilled regional visas, which commence on 16 November 2019, support regional communities and businesses to access skilled migrants to assist regional economies, and to encourage migrants and their families to settle in regional communities. The two new provisional skilled regional visas are the:

- Skilled Employer Sponsored Regional (Provisional) (Subclass 494) visa, enabling an Australian business to sponsor skilled workers to work in their business; and
- Skilled Work Regional (Provisional) (Subclass 491) visa, for skilled people who are nominated by a State or Territory government or sponsored by an eligible family member residing in regional Australia, to live and work in regional Australia.

These two new provisional skilled regional visas will replace the Regional Sponsored Migration Scheme (subclass 187) visa, except for certain transitional cohorts and the Skilled Regional (Provisional) (subclass 489) visa to primary applicants seeking to satisfy the criteria for grant of the Subclass 489 visa in the First Provisional Visa Stream.

Holders of these new provisional skilled regional visas are required to live, work and study in regional Australia for the duration of their visa.

Measures in the Bill

Amendments to the *Social Security Act 1991*

The Bill will amend the definition of 'Australian resident' so that people who reside in Australia and hold a provisional skilled regional visa (a Subclass 491 or 494 visa) are also considered to be an Australian resident. These changes will ensure that provisional skilled regional visa holders are able to access social security payments, subject to meeting all other eligibility requirements, including any waiting periods that apply.

- Australia's welfare payments system is residence-based, which means that most payments are limited to people who are considered to be an 'Australian resident' – generally this means either an Australian citizen or permanent visa holder who is residing in Australia.

These changes will also flow through to other legislation, ensuring that these visa holders also have access to other payments and benefits, including family payments, child care subsidy and Farm Household Allowance, where eligible.

The changes will give holders of provisional skilled regional visas the same access to welfare payments and concession cards as permanent visa holders. This recognises that these visas provide a pathway to permanent residence. Without these changes, these visa holders would not qualify for payments until they were granted a permanent visa.

Most of these skilled migrants are not expected to claim social security payments, such as Newstart Allowance or Disability Support Pension. They are coming to Australia to work and to contribute to regional areas across Australia. However, these changes ensure a safety net is available should they find themselves in need, for example, due to a change in circumstances. These changes also ensure that visa holders with children can access support to enable them to fully participate, such as the child care subsidy.

All existing waiting periods for welfare payments will continue to apply to provisional skilled regional visa holders. This includes the Newly Arrived Resident's Waiting Period of up to four years that applies to most working age payments, family payments and concession cards, and the 10 year qualifying residence period that applies to Age Pension and Disability Support Pension.

The changes in the Bill will ensure that provisional skilled regional visa holders can count time on these visas towards meeting these waiting periods and that the waiting period does not restart once they are granted a permanent visa. They will also enable these visa holders to access the full range of existing exemptions from these waiting periods where eligible. These exemptions provide earlier access to support for those who find themselves in vulnerable circumstances, for example, due to injury, relationship breakdown or domestic violence.

The changes in the Bill are intended to commence from 16 November 2019 when the visas become available. However, in the event of any delays, the transitional provisions will enable the period of residence between visa grant and commencement of the Bill to be counted towards relevant qualification and waiting period requirements.

It is long-standing policy that waiting periods apply to new permanent skilled and family migrants before they can access certain welfare payments. This reflects the reasonable expectation that skilled and family migrants seeking to settle permanently in Australia will support themselves and their family during their initial settlement period.

The Government introduced a range of changes to waiting periods from 1 January 2019 to encourage new skilled and family migrants to support themselves and their families for longer while maintaining a safety net for those in vulnerable circumstances.

Provisional skilled regional visa holders will be subject to the same waiting periods as other migrants granted a permanent skilled or family visa on or after 1 January 2019. There continue to be a comprehensive range of exemptions and exceptions for certain vulnerable cohorts, including for people in financial hardship due to a substantial change in circumstances, such as serious illness or domestic violence.

Amendments to the *A New Tax System (Family Assistance) Act 1999*

The changes made to the *Social Security Act 1991* (Social Security Act) to include provisional skilled regional visa holders in the definition of 'Australian resident' will automatically flow through to the *A New Tax System (Family Assistance Act) 1999* (Family Assistance Act). This means that these visa holders will also be considered an Australian resident for family assistance purposes and can access payments, including Family Tax Benefit and Child Care Subsidy.

The Bill also makes changes to the Family Assistance Act to ensure that provisional skilled regional visa holders are subject to the Newly Arrived Resident's Waiting Period for Family Tax Benefit Part A, in line with existing rules.

The changes will give holders of provisional skilled regional visas the same access to family and child care payments as permanent visa holders. This recognises that these visas provide a pathway to permanent residence. Without these changes, these provisional visa holders would not qualify for family or child care payments until they were granted a permanent visa.

The changes will mean that these visa holders will be subject to the existing one year Newly Arrived Resident's Waiting Period for Family Tax Benefit Part A and will ensure that the waiting period does not apply again once they are granted a permanent visa.

Under these changes, provisional skilled regional visa holders who bring their families with them to Australia will be able to access Family Tax Benefit Part A after one year to assist them with the costs of raising their children here. The changes will also enable these visa holders to access existing exemptions from the waiting period where eligible if they find themselves in vulnerable circumstances.

These families will be able to access Family Tax Benefit Part B and Child Care Subsidy immediately on arriving in Australia, where eligible, as these payments do not have a waiting period.

The changes in the Bill are intended to commence from 16 November 2019, when the provisional skilled regional visas commence. However, in the event of any delays, the transitional provisions will enable the period of residence between visa grant and commencement of the Bill to be counted towards the waiting period.

Amendments to the *Disability Services Act 1986*

The Bill will amend section 21 of the *Disability Services Act 1986* (Disability Services Act) to refer to the definition of 'Australian resident' in the Social Security Act. This means that the changes made to the Social Security Act to include provisional skilled regional visa holders in the definition of 'Australian resident' will automatically flow through and will enable these visa holders to be eligible for Disability Employment Services.

Under existing provider guidelines, the meaning of Australian resident – and therefore who can access Disability Employment Services – is already aligned with the Social Security Act. This change will make the definition in the Disability Services Act transparent and consistent with the other legislation. The change does not alter in practice eligibility for Disability Employment Services, other than to allow access for provisional skilled regional visa holders.

The changes will give holders of provisional skilled regional visas the same access to Disability Employment Services as permanent visa holders. Without these changes, these provisional visa holders would not qualify for this assistance until they were granted a permanent visa.

The requirements of the provisional skilled regional visas, including health requirements, mean that most of these skilled migrants are not expected to need assistance from a Disability Employment Services provider once they come to Australia. However, these changes ensure that these visa holders can access this assistance to help them to return to work, should they need it, for example, due to a change in circumstances, such as illness or injury.

Amendments to the *National Disability Insurance Scheme Act 2013*

The Bill will amend the *National Disability Insurance Scheme Act 2013* so that people who hold a provisional skilled regional visa are able to access the National Disability Insurance Scheme, subject to meeting all other eligibility requirements.

The changes will give holders of provisional skilled regional visas the same access to supports under the National Disability Insurance Scheme as permanent visa holders. Without these changes, these provisional visa holders would not qualify for support until they were granted a permanent visa.

The requirements of the provisional skilled regional visas, including health requirements, mean that most of these skilled migrants are not expected to need assistance from the National Disability Insurance Scheme once they come to Australia. However, these changes ensure that these visa holders can access this assistance should they need it, for example, if they acquire a disability.

Amendments to the *Paid Parental Leave Act 2010*

The changes made to the Social Security Act to include provisional skilled regional visa holders in the definition of 'Australian resident' will automatically flow through to the *Paid Parental Leave Act 2010* (Paid Parental Leave Act). This means that these visa holders will also be considered an Australian resident for paid parental leave purposes and can access Parental Leave Pay and Dad and Partner Pay.

The Bill also makes changes to the Paid Parental Leave Act to ensure that provisional skilled regional visa holders are subject to the Newly Arrived Resident's Waiting Period for parental leave payments, in line with existing rules.

The changes will give holders of provisional skilled regional visas the same access to paid parental leave payments as permanent visa holders. This recognises that these visas provide a pathway to permanent residence. Without these changes, these provisional visa holders would not qualify for Parental Leave Pay or Dad and Partner Pay until they were granted a permanent visa.

The changes will mean that these visa holders will be subject to the existing two year Newly Arrived Resident's Waiting Period for parental leave payments and will ensure that the waiting period does not apply again once they are granted a permanent visa. The changes will also enable these visa holders to access the full range of existing exemptions from the waiting period where eligible if they find themselves in vulnerable circumstances.

Under these changes, provisional skilled regional visa holders who have served the two year waiting period (or have been granted an exemption) when they give birth to or adopt a new baby will be able to access Parental Leave Pay or Dad and Partner Pay for that baby.

The changes in the Bill are intended to commence from 16 November 2019 when the visas become available. However, in the event of any delays, the transitional provisions will enable the period between which a person both resided in Australia and was the holder of a provisional skilled regional visa and commencement of the Bill to be counted towards the waiting period.

Amendments to the *Higher Education Support Act 2003*

The Bill amends the *Higher Education Support Act 2003* (Higher Education Support Act) with the effect to extend benefits currently available to permanent visa holders to holders of the new provisional skilled regional visas.

Provisional skilled regional visa holders will be eligible for a Commonwealth supported place at a higher education provider, providing a subsidy towards their tuition fees.

They will also be able to access FEE-HELP for a unit of study that is part of a bridging course for overseas trained professionals. This will allow them to defer tuition fees for these courses and repay them when they reach the income threshold for compulsory repayments.

The amendments to the Higher Education Support Act will allow provisional skilled regional visa holders to meet the relevant residency requirements to access:

- A Commonwealth Supported Place (CSP), which provides a subsidy towards a student's tuition fees for their units of study in a course of study at a higher education provider. A CSP is a place at a university or higher education provider where the Government pays part of a student's tuition fees, and the student then pays the remaining student contribution amount. Therefore, these provisional skilled regional visa holders will be entitled to access a CSP for a unit of study in a course of study at a higher education provider, rather than being required to pay tuition fees applicable to international students; and
- FEE-HELP assistance to pay all or part of their tuition fees for a unit of study that is part of a bridging course for overseas-trained professionals. FEE-HELP is an income contingent loan that requires a student to repay the loan through Australia's taxation system once the student's income is at, or above, the minimum repayment threshold for compulsory repayment. The compulsory repayment threshold for the 2019-20 income year is \$45,881. These provisional skilled regional visa holders will similarly be required to repay any FEE-HELP loan they have accessed in the same manner.

The Australian Government recognises the valuable contribution that these provisional skilled regional visa holders will provide to Australia's regional areas.

Extending Commonwealth assistance for study that is available to permanent residents, to provisional skilled regional visa holders, ensures education remains accessible to these people working and living in Australia's regional areas. This fosters upskilling and further contribution from these individuals to Australia's regional communities.

It also aligns with the Australian Government's initiative for supporting population and economic growth in these regional areas.

If provisional skilled regional visa holders meet the eligibility requirements under the Higher Education Support Act they can apply to access Commonwealth assistance for their studies, with no waiting period.

Amendments to the *Fair Entitlements Guarantee Act 2012*

The residence requirements for the *Fair Entitlements Guarantee Act 2012* are being changed to include holders of the new provisional skilled regional visas. The effect of the changes will mean holders of either of the two new classes of provisional skilled regional visas will be able to access the Fair Entitlements Guarantee (FEG) on the same basis as others who can access the scheme (being Australian citizens, holders of permanent visas, and holders of special category visas).

Holders of provisional skilled regional visas will be able to access financial assistance under the FEG for certain unpaid employee entitlements in the event that they are made redundant due to the insolvency or bankruptcy of the employer, and their previous employer is unable to pay their entitlements.

Conclusion

This Bill makes consequential amendments to legislation administered by the Department of Social Services, the Department of Education and the Attorney-General's Department to give effect to government policy that holders of new provisional skilled regional visas will have access to government benefits and services consistent with permanent visa holders.

A key feature of the new provisional skilled regional visas is a requirement for migrants to live and work in a regional area for three years before being eligible for permanent residence.

This will encourage visa holders to remain in regional Australia, which in turn will support local communities and enhance population growth and economies of regional parts of the country.