



Migration Amendment (Expanding Access to Temporary Residence Transition Stream) Regulations 2023

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 23 November 2023

David Hurley
Governor-General

By His Excellency's Command

Andrew Giles
Minister for Immigration, Citizenship and Multicultural Affairs

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1 Name

This instrument is the *Migration Amendment (Expanding Access to Temporary Residence Transition Stream) Regulations 2023*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	25 November 2023.	25 November 2023

Note: This table relates only to the provisions of this instrument as originally made.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.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Migration Act 1958*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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

1 Subparagraph 2.12F(3B)(c)(vii)

Omit “the 3-year requirement in paragraph 5.19(5)(e) or paragraph 5.19(5)(f) or (g) (as applicable) or any requirement for a different period of time specified for the applicant in an instrument made under subregulation 5.19(6)”, substitute “the requirement in paragraph 5.19(5)(e), or in paragraph 5.19(5)(f) or (g) (as applicable)”.

2 Subparagraphs 5.19(5)(a)(i) to (vi)

Repeal the subparagraphs, substitute:

- (i) a Subclass 457 (Temporary Work (Skilled)) visa; or
- (ii) a Subclass 482 (Temporary Skill Shortage) visa; or
- (iii) if the last substantive visa held by the identified person was a visa mentioned in subparagraph (i) or (ii)—a bridging visa granted on the basis that the person is an applicant for a visa mentioned in subparagraph (i) or (ii), a Subclass 186 (Employer Nomination Scheme) visa or a Subclass 187 (Regional Sponsored Migration Scheme) visa;

3 Paragraph 5.19(5)(c)

Repeal the paragraph.

4 Paragraph 5.19(5)(e)

Omit “4 years”, substitute “3 years”.

5 Paragraph 5.19(5)(e)

Omit “3 years”, substitute “2 years”.

6 Subparagraphs 5.19(5)(e)(i) to (iii)

Repeal the subparagraphs, substitute:

- (i) a Subclass 457 (Temporary Work (Skilled)) visa;
- (ii) a Subclass 482 (Temporary Skill Shortage) visa;

7 Paragraph 5.19(5)(f)

Omit “4 years”, substitute “3 years”.

8 Subparagraph 5.19(5)(f)(i)

Omit “3 years”, substitute “2 years”.

9 Paragraph 5.19(5)(g)

Omit “4 years”, substitute “3 years”.

10 Paragraph 5.19(5)(g)

Omit “3 years”, substitute “2 years”.

11 Subparagraph 5.19(5)(h)(i)

Repeal the subparagraph, substitute:

- (i) was the standard business sponsor, or the party to a work agreement, who last identified the identified person in a nomination approved under section 140GB of the Act; and

12 Subregulation 5.19(8)

Repeal the subregulation.

13 Paragraph 1240(3)(b) of Schedule 1

Repeal the paragraph.

14 Paragraph 1240(3)(c) of Schedule 1

Repeal the paragraph, substitute:

- (c) An applicant for a Subclass 482 (Temporary Skill Shortage) visa may be in or outside Australia, but not in immigration clearance.

15 Subitems 1240(3A) and (3B) of Schedule 1

Repeal the subitems.

16 In the appropriate position in Schedule 13

Insert:

Part 123—Amendments made by the Migration Amendment (Expanding Access to Temporary Residence Transition Stream) Regulations 2023

12301 Definitions

In this Part:

amending regulations means the *Migration Amendment (Expanding Access to Temporary Residence Transition Stream) Regulations 2023*.

12302 Operation of amendments

- (1) The amendment of regulation 2.12F of these Regulations made by Schedule 1 to the amending regulations applies in relation to the withdrawal of a visa application on or after the commencement of that amendment, if the nomination application:
 - (a) is made on or after 18 March 2018 and not finally determined before that commencement; or
 - (b) is made on or after that commencement.
- (2) The amendments of regulation 5.19 of these Regulations made by Schedule 1 to the amending regulations apply in relation to an application under that regulation:
 - (a) made on or after 18 March 2018 and not finally determined before the commencement of those amendments; or

- (b) made on or after the commencement of those amendments.
- (3) The amendments of clause 1240 of Schedule 1 to these Regulations made by Schedule 1 to the amending regulations apply in relation to visa applications made on or after the commencement of those amendments.

EXPLANATORY STATEMENT

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

Migration Act 1958

*Migration Amendment (Expanding Access to Temporary Residence Transition Stream)
Regulations 2023*

The *Migration Act 1958* (the Migration Act) is an Act relating to the entry into, and presence in, Australia of aliens, and the departure or deportation from Australia of aliens and certain other persons.

Subsection 504(1) of the Migration Act provides that the Governor-General may make regulations, not inconsistent with the Migration Act, prescribing matters required or permitted to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Migration Act.

In addition, regulations may be made pursuant to the provisions listed in Attachment A.

The *Migration Amendment (Expanding Access to Temporary Residence Transition Stream) Regulations 2023* (the Regulations) amend the *Migration Regulations 1994* (the Migration Regulations) to expand pathways to permanent residence for temporary skilled workers. The Regulations implement decisions of the Government made in response to the Jobs and Skills Summit held in September 2022. In particular, the Government announced that, by the end of 2023, temporary skilled sponsored workers would have a pathway to permanent residence. The amendments are a first step to provide more equitable access to permanent residence for temporary skilled workers pending further reforms arising from the review of Australia's migration program.

The Regulations expand access to the Temporary Residence Transition (TRT) stream in the Subclass 186 (Employer Nomination Scheme) visa (Subclass 186 visa). The changes also apply to the TRT stream of the Subclass 187 (Regional Sponsored Migration Scheme) visa (Subclass 187 visa). The Subclass 186 and Subclass 187 visas allow employers to nominate skilled workers for permanent residence to fill genuine vacancies in their business (noting that applications for the Subclass 187 visa are now closed except for certain transitional cases).

Within those visas, the TRT streams provide access to permanent residence for eligible holders of the Subclass 482 (Temporary Skill Shortage) visa (Subclass 482 visa) and eligible remaining holders of the repealed Subclass 457 (Temporary Work (Skilled)) visa (Subclass 457 visa) where their employer wishes to offer ongoing employment. The Subclass 457 visa was repealed on 18 March 2018 and a small cohort of eligible visa holders have yet to transition to a permanent visa.

To apply under the TRT stream, a Subclass 482 or Subclass 457 visa holder's most recent sponsoring employer must first lodge a nomination, identifying a position within their Australian business. A nomination application in the TRT stream must meet a range of requirements, including that the visa holder has been employed for the specified period and did so as the holder of a Subclass 457 or 482 visa. The employer must also demonstrate a

commitment to continue employing the person in the relevant position, on a full-time basis, for at least two years. If the employer's nomination is approved, the Subclass 186 or Subclass 187 visa can be granted, provided that the visa applicant satisfies the applicable criteria for the grant of the relevant visa.

The Subclass 482 visa enables employers to source skilled overseas workers to address labour shortages where an appropriately skilled Australian worker is unavailable. Overseas workers must be nominated by a sponsoring employer and obtain a Subclass 482 visa before they can commence work in Australia.

Regulation 5.19 of the Migration Regulations prescribes the criteria for approval of a nomination application for the purpose of the Subclass 186 and Subclass 187 visas.

The key changes made by the Regulations are set out below.

- The Regulations expand access to the TRT streams of the Subclass 186 or 187 visas to cover all holders of Subclass 482 and Subclass 457 visas, regardless of the stream in which their visa is held. When the Subclass 482 visa was created on 18 March 2018, only holders of a Subclass 482 visa in the Medium-term stream would have access to the Temporary Residence Transition stream. From 1 July 2022 in response to strong labour demand and the declining number of temporary visa holders in 2021 due to the COVID-19 pandemic, a limited pathway was created for Short-term stream Subclass 482 visa holders who were in Australia for at least 12 months during the pandemic between 1 February 2020 and 14 December 2021. However those who have arrived in Australia since borders reopened to temporary skilled migration from December 2021 are unable to access this pathway.
- The Regulations reduce the length of the eligibility period that is required for approval of a nomination in the TRT stream (the TRT eligibility period). This reduction reflects the desirability of retaining skilled workers in Australia by providing earlier access to permanent residence and increases Australia's attractiveness as a destination for potential migrants. The amended provisions require that the identified person, while holding a Subclass 482 visa, a Subclass 457 visa, or a bridging visa associated with an application for a Subclass 482, 457, 186 or 187 visa, worked in the position, in relation to which the Subclass 482 or Subclass 457 visa was granted, for two out of the three years immediately before the nomination application is made. Previously the requirement was three years out of four.
- The Regulations remove the requirement for the occupation identified in the nomination to be specified in a legislative instrument. This means it is no longer a requirement for the TRT stream for the occupation to be listed on the Medium and Long-term Strategic Skills List or the Regional Occupation List. This change is consistent with the new availability of a pathway to permanent residence for all temporary skilled workers, determined by the employer's capacity and need to sponsor the worker rather than considerations of broader labour market demand for a particular occupation. In light of this change it is no longer necessary or appropriate to use occupations lists as an additional filter for Subclass 482 and Subclass 457 holders with a qualifying employment history in Australia. This change enables employers to sponsor workers in a wider range of occupations on a permanent basis, helping to retain staff and alleviate skills shortages. It also creates greater certainty for

employers and Subclass 482 visa holders by ensuring that applicants for a Subclass 186 or 187 visa will not be disadvantaged if their occupation is removed from the relevant occupation list, which would otherwise mean that their pathway to permanent residency is lost.

- The Regulations make consequential changes to allow all employers with the most recently approved nomination of a holder of a Subclass 482 or Subclass 457 visa to make a nomination under the TRT streams. This change involves extending permission beyond ‘standard business sponsors’ to also include parties to a work agreement who sponsored the worker pursuant to a labour agreement.
- The Regulations make consequential changes to the provisions that provide for discretionary refund of the first instalment of the visa application charge if the TRT stream Subclass 186 or Subclass 187 visa application is withdrawn. A refund may be available if the nomination application is made prior to the visa holder meeting the TRT eligibility period as specified in the criteria for the approval of the nomination. The provisions have been simplified, to refer directly to the relevant clauses in which the relevant timeframes are specified, to avoid confusion in relation to what qualifying time period an applicant is required to meet.
- The Regulations remove the limit on the number of Subclass 482 visa applications in the Short-term stream that can be made in Australia. When the Subclass 482 visa was created on 18 March 2018, the Migration Regulations provided that an applicant may be in Australia or outside Australia when applying for the Subclass 482 visa, except for an applicant for the Short-term stream who must be outside Australia if more than one Short-term visa has been held and the most recently held Short-term stream visa was applied for in Australia. It was intended to deter visa holders from remaining in Australia for long periods without a permanent residence pathway. The rule was subsequently temporarily relaxed due to the impact of the COVID-19 pandemic to facilitate access to the TRT streams of the Subclass 186 or Subclass 187 visas for certain Short-term stream Subclass 482 visa holders. The requirement that an applicant must be offshore for their third or subsequent 482 visa has now been repealed to reflect the decision that all streams of the Subclass 482 visa will have a pathway to permanent residence. In light of that change there is no longer any reason for preventing the making of multiple applications for the Subclass 482 visa in the Short-term stream in Australia.

The matters dealt with in the 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.

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 such as the COVID-19 pandemic and other global changes.

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. The Statement is at Attachment B.

The Office of Impact analysis (formerly the Office of Best Practice Regulation) has been consulted in relation to the amendments. No Regulation Impact Statement is required. The OIA consultation reference number is OIA23-04693.

Subsection 17(1) of the *Legislation Act 2003* (the Legislation Act) requires that appropriate and reasonably practicable consultation be undertaken prior to implementing changes to regulations. These changes have been implemented in response to stakeholder feedback received at the Jobs and Skills Summit, held in September 2022, as well as support for expanding access to permanent residence through public submissions to the review of Australia's migration system. Consultation has also occurred across government.

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

The Regulations commence on 25 November 2023.

The amendments to the visa application charge refund provisions in regulation 2.12F of the Migration Regulations apply to visa applications withdrawn on or after commencement where the associated nomination has not been finally determined or the nomination is made on or after commencement.

The amendments to regulation 5.19 of the Migration Regulations apply to nomination applications made but not yet finally determined at commencement, as well as nomination applications made on or after commencement. The amendments of regulation 5.19 are beneficial to applicants and do not engage subsection 12(2) of the Legislation Act.

The amendments to item 1240 of Schedule 1 to the Migration Regulations apply to visa applications made on or after commencement.

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

AUTHORISING PROVISIONS

Subsection 504(1) of the *Migration Act 1958* (the Migration Act) relevantly provides that the Governor-General may make regulations (the 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(3) which provides that the regulations may prescribe criteria for a visa or visas of a specified class.
- Paragraph 45C(2)(b) which provides the regulations may make provision for the remission, refund or waiver of visa application charge or an amount of visa application charge.
- Subsection 46(3) which provides the 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 regulations may prescribe the circumstances that must exist for an application for a visa to be valid, how an application for a visa must be made, where an application for a visa must be made, and where an applicant must be when an application for a visa is made.

Statement of Compatibility with Human Rights

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

***Migration Amendment (Expanding Access to Temporary Residence Transition Stream)
Regulations 2023***

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

Overview of the Disallowable Legislative Instrument

The *Migration Amendment (Expanding Access to Temporary Residence Transition Stream) Regulations 2023* (the Amendment Regulations) amend the *Migration Regulations 1994* (the Migration Regulations) to expand access to the Temporary Residence Transition (TRT) stream of the Subclass 186 (Employer Nomination Scheme) visa (Subclass 186 visa). The changes also apply to the TRT stream of the Subclass 187 (Regional Sponsored Migration Scheme) visa (Subclass 187 visa).

The Subclass 186 visa and Subclass 187 visa are permanent visas that allow employers to nominate skilled overseas workers for permanent residence in Australia to fill genuine vacancies in their business. The Subclass 186 visa is available nationally, while the Subclass 187 is for skilled workers who want to work in regional Australia. Both programs consist of a TRT stream, with a Direct Entry stream and a Labour Agreement stream also available in the Subclass 186 visa.

The TRT stream of the Subclass 186 and Subclass 187 visas provides a permanent visa pathway to Subclass 482 (Temporary Skill Shortage) visa (Subclass 482 visa) and certain Subclass 457 (Temporary Work (Skilled)) visa (Subclass 457 visa) holders who have worked in Australia for a specified period with a sponsoring employer who wishes to sponsor them for permanent residence.

The Subclass 457 visa closed to new applications on 18 March 2018 and was replaced with the Subclass 482 visa.

The Subclass 482 visa enables employers to source skilled overseas workers to address labour shortages where an appropriately skilled Australian worker is unavailable. Overseas workers must be nominated by a sponsoring business and obtain a Subclass 482 visa before they can commence work in Australia. Subclass 482 visas have a Short-term stream (up to 2 years duration), a Medium-term stream (up to 4 years duration), and a Labour Agreement stream (up to a 4 year duration depending on the terms in the labour agreement).

New applications for a Subclass 187 visa in the Direct Entry stream closed on 16 November 2019. Applications in the TRT stream of this visa remain open, if the applicant is a:

- transitional 457 worker (being a person who held a Subclass 457 visa at any time on or after 18 April 2017); or
- transitional 482 worker (being a person who on 20 March 2019 held or was an applicant for and was subsequently granted a Subclass 482 visa in the Medium-term stream).

Following the Jobs and Skills Summit, held in September 2022, the Australian Government agreed to expand pathways to permanent residence for temporary skilled workers. The Minister for Home Affairs announced that by the end of 2023, all temporary skilled sponsored workers will have a pathway to permanent residence.

The amendments made by the Amendment Regulations are a first step to provide more equitable access to permanent residence for all temporary skilled workers pending further reforms arising from the review of Australia's migration program. These measures focus on expanding pathways to permanent residence for all Subclass 482 and Subclass 457 visa holders through the TRT stream of the Subclass 186 visa.

The Amendment Regulations amend the Migration Regulations to:

- expand access to the TRT stream of the Subclass 186 visa for Subclass 482 holders in all streams, (that is Medium-term, Short-term and Labour Agreement streams), whereas previously access was largely limited to those in the Medium term stream. Access is also being facilitated to all Subclass 457 visa holders including those who were granted their visa under a labour agreement.
- remove the TRT stream nomination requirement for the nominated occupation to be on the skilled migration occupation list specified in a legislative instrument and
- reduce the period of time a visa holder must hold their visa and work in their nominated position or occupation (referred to in this Statement as the TRT eligibility period) to be eligible to be nominated for the TRT stream.

To simplify nomination requirements and streamline decision-making, the changes also apply to the TRT stream of the Subclass 187 visa.

Changes to the TRT stream nomination requirements apply to new nomination applications lodged, as well as applications that are yet to be finally determined at the time the regulations commence. The changes are not expected to disadvantage any applicants but will assist some applicants to meet requirements they would otherwise not have been able to meet. The most common example of this would be where a nomination was lodged prematurely, and the Subclass 457 or 482 visa holder did not meet the TRT eligibility period.

The amendments made by the Amendment Regulations also:

- remove restrictions on the number of Subclass 482 visa applications in the Short-term stream which can be lodged in Australia. This enables affected visa holders to continue their employment with their employer without needing to depart Australia to lodge a further Subclass 482 visa application in the Short-term stream.

- ensure existing provisions for discretionary refunds of the visa application charge continue to be available for eligible applicants where they did not meet the TRT eligibility period requirements at the time their employer nominated them.

Human rights implications

This Disallowable Legislative Instrument positively engages the right to work under Article 6 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 promote this right by expanding access to permanent residence for a cohort of temporary skilled workers already working in Australia, who otherwise would not have a pathway to permanent residence on account of the occupation in which they work and/or the stream of temporary skilled sponsored visa they hold. The grant of a permanent visa will enable these individuals to continue working in Australia as well as access the broader benefits of permanent residence.

Further, the reduction in the periods of time applicants in the TRT stream need to have held their Subclass 482 and/or Subclass 457 visa(s) assists these individuals to progress to permanent residence more quickly.

In addition, removing the limitation on the number of Subclass 482 visa applications in the Short-term stream a person can make while remaining in Australia will mean they can continue working in Australia and not have to depart Australia to lodge a further Subclass 482 visa application in the Short-term stream.

Conclusion

The Disallowable Legislative Instrument is compatible with human rights because it promotes human rights.

The Hon. Andrew Giles MP

Minister for Immigration, Citizenship and Multicultural Affairs

Details of the Migration Amendment (Expanding Access to Temporary Residence Transition Stream) Regulations 2023

Section 1 - Name

This section provides the name of the instrument is the *Migration Amendment (Expanding Access to Temporary Residence Transition Stream) Regulations 2023*.

Section 2 - Commencement

This section provides the instrument commences on 25 November 2023.

Section 3 - Authority

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

Section 4 - Schedules

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

Schedule 1 – Amendments

Item [1] – Subparagraph 2.12F(3B)(c)(vii)

This item makes a consequential change to a provision providing for the discretionary refund of the first instalment of the visa application charge (VAC) when a Subclass 186 (Employer Nomination Scheme) or Subclass 187 (Regional Sponsored Migration Scheme) visa application in the Temporary Residence Transition (TRT) stream is withdrawn on the basis that when the associated nomination application was made, the applicant did not satisfy the eligibility period requirement. A nomination for the TRT stream can only be approved if, at the time it is made, the identified person (also known as the visa applicant) has worked in the position, or worked in the occupation (if applicable), for the period of time specified in paragraphs 5.19(5)(e), (f) and (g) of the *Migration Regulations 1994* (Migration Regulations). If the nomination is made prematurely, it may be withdrawn and remade at the appropriate time. If the nomination is not withdrawn, then it may be refused. In both scenarios, the corresponding visa application can be withdrawn and a new application made when the specified time periods (the TRT eligibility periods) are met.

A refund of the first instalment of the VAC may be available if an applicant withdraws their Subclass 186 or Subclass 187 visa application in the TRT stream on the basis they did not satisfy the time period requirement in paragraphs 5.19(5)(e), (f) or (g), when the nomination application was made. This item simplifies the wording of the existing provision and refers to paragraphs 5.19(5)(e), (f) and (g) directly, rather than specifying the required time period. This is to avoid confusion given the change in the time periods as per items [4], [5], [7], [8], [9], and [10] below. Where a nomination was refused prior to commencement of this Regulation due to the identified person not meeting the 3-year TRT eligibility period specified in paragraphs 5.19(5)(e), (f) and (g), a refund on the VAC can be requested. Where

a nomination is refused after commencement of this Regulation due to the identified person not meeting the 2-year TRT eligibility period, a refund can also be requested. In accordance with item [16] below these amendments apply to all nominations not finally determined upon commencement, and as such any nominations on hand will be assessed against the new 2-year requirements.

This item also removes reference to paragraph 5.19(6) to assist in simplification and readability. It should be noted that paragraph 5.19(6) allows the Minister to specify in an instrument, different TRT eligibility periods for the purposes of subparagraphs 5.19(5)(e), (f) and (g). Accordingly, a refund can be requested in circumstances where an applicant was required to meet different TRT eligibility periods in accordance with an instrument specified under paragraph 5.19(6) but the nominator had made the nomination application before the eligibility period was met and it was refused on that basis.

Item [2] – Subparagraphs 5.19(5)(a)(i) to (vi)

This item amends the types of visas that can be held by the identified person at the time the nomination under the TRT stream application is made.

Previously, employers could nominate a position under the TRT stream, identifying certain holders of a Subclass 457 visa, and holders of a Subclass 482 visa in the Medium-term stream for permanent residence. A limited pathway was also available for Subclass 482 visa holders in the Short-term stream if they were working in Australia during the COVID-19 pandemic. The types of visas the identified person can hold to satisfy nomination requirements now includes all holders of Subclass 482 visas (regardless of stream), all holders of Subclass 457 visas, and also holders of bridging visas associated with an application for a Subclass 482, 457, 186 or 187 visa.

Applications for a Subclass 187 visa in the TRT stream made on or after 16 November 2019 can only be made if the identified person is a *transitional 457 worker* or a *transitional 482 worker* at the time the application is made. These amendments do not alter the application validity criteria for a Regional Employer Nomination (Permanent) (Class RN) visa (of which the Subclass 187 visa is the only subclass).

Item [3] – Paragraph 5.19(5)(c)

This item removes the requirement for the occupation identified in the nomination to be specified in a legislative instrument and for the occupation to apply to the identified person in accordance with that instrument. Legislative instruments made under this provision previously listed occupations categorised under the Medium and Long-term Strategic Skills List (MLTSSL) or the Regional Occupation List (ROL). The occupations were determined based on labour market advice provided by the then Department of Jobs and Small Business to ensure they were responsive to skilled workforce needs across Australia.

While the MLTSSL and ROL will continue to underpin other skilled visa programs, and the MLTSSL will continue to be in place for the Direct Entry stream of the Subclass 186 visa, it is no longer a requirement for nomination applications which relate to a visa in the TRT stream for the nominated occupation to be specified on any list. This means temporary skilled

workers will continue to have a pathway to permanent residence even if their occupation is removed from an occupation list.

The nominated occupation must still be listed on the Australian and New Zealand Standard Classification of Occupations (ANZSCO) and be in the same ANZSCO unit group code which formed the basis for granting the Subclass 457 or Subclass 482 visa (as required by paragraph 5.19(5)(b) of the Migration Regulations).

Item [4] – Paragraph 5.19(5)(e)

Item [5] – Paragraph 5.19(5)(e)

Items [4] and [5] reduce the period of time during which the identified person is required to have held their Subclass 457 or Subclass 482 visa to satisfy TRT stream nomination requirements. Applicants were previously required to have held their visa for at least 3 years out of the 4 years immediately before a nomination application was made. The requirement has been reduced to at least 2 years during the preceding 3 years before the nomination application is made.

Item [6] – Subparagraphs 5.19(5)(e)(i) to (iii)

Item [6] amends subparagraphs 5.19(5)(e)(i) to (iii) to provide that the identified person must have held a Subclass 457 or Subclass 482 visa for the time period mentioned in paragraph 5.19(5)(e). This supports the amendments made by item [2], to facilitate all Subclass 457 and Subclass 482 visa holders, regardless of the stream, being eligible for nomination in the TRT stream.

Item [7] – Paragraph 5.19(5)(f)

Item [8] – Subparagraph 5.19(5)(f)(i)

These items reduce the period of time the identified person is required to have worked in their nominated position to satisfy nomination requirements in the TRT stream. The identified person was previously required to have been employed in the position in relation to which their Subclass 457 visa or Subclass 482 visa was granted for a period of at least 3 years out of the 4 years immediately before the nomination application was made. The requirement has been reduced to at least 2 years (not including any periods of unpaid leave) in the period of 3 years immediately before the application is made.

Item [9] – Paragraph 5.19(5)(g)

Item [10] – Paragraph 5.19(5)(g)

These items reduce the time period requirements in relation to employment in specified occupations. Where the occupation is specified in an instrument made under subregulation 2.72(13) of the Migration Regulations, the TRT eligibility period has been reduced from 3 years to 2 years. The identified person was previously required to have been employed in the occupation in relation to which their Subclass 457 visa or Subclass 482 visa was granted for a period of at least 3 years out of the 4 years immediately before the nomination application was made. The requirement has been reduced to at least 2 years (not including any periods of unpaid leave) in the period of 3 years immediately before the application is made.

Item [11] – Subparagraph 5.19(5)(h)(i)

This item amends the requirement in paragraph 5.19(5)(h) for the nominator to be the same standard business sponsor who last identified the person in an approved nomination for a Subclass 457 or Subclass 482 visa, to also include sponsors who are parties to a work agreement. This enables sponsors who are parties to a work agreement, but who may not be a standard business sponsor, to be eligible to nominate a position in the TRT stream. This is complementary to the amendments to expand access to the TRT stream to all streams of the Subclass 482 visa and Subclass 457 visa including the Labour Agreement stream.

Item [12] – Subregulation 5.19(8)

This item repeals subregulation 5.19(8), which provided that the Minister may specify, by legislative instrument, occupations, exemptions, and matters to determine whether the occupation applies to an identified person, for the purposes of paragraph 5.19(5)(c). As the requirement in paragraph 5.19(5)(c) has been removed, the power to make legislative instruments for this purpose is no longer required.

Items [13] – Paragraph 1240(3)(b) of Schedule 1

This item repeals the provision which limits the number of Short-term stream Subclass 482 visa applications that could be made from within Australia. A limit previously applied to the number of applications in the Short-term stream that could be made in Australia, meaning that additional applications could only be made by departing Australia and applying while offshore. This was intended to deter Short-term stream Subclass 482 visa holders from remaining in Australia for long periods, when they did not have a permanent residence pathway. Similar restrictions were not in place for Medium-term stream or Labour Agreement stream Subclass 482 visa holders. A limited concession was available during the COVID-19 pandemic to facilitate additional applications for a Subclass 482 visa in the Short-term stream being made in Australia.

These limits are no longer required given the changes at items [2] and [6] which enables employers in a nomination in the TRT stream to identify Short-term Stream Subclass 482 visa holders.

Item [14] – Paragraph 1240(3)(c) of Schedule 1

This item amends paragraph 1240(3)(c) of Schedule 1 to the Migration Regulations to enable all applicants for a Subclass 482 visa to be in or outside Australia (but not in immigration clearance) when lodging their visa application.

This amendment enables all Subclass 482 visa applicants, including those in the Short-term stream, to make their Subclass 482 visa applications while in Australia, provided they continue to meet the validity and eligibility requirements.

This enables Short-term stream Subclass 482 visa holders to apply for a further Subclass 482 visa without needing to depart Australia to make their visa application. It also means requirements about where the applicant must be to make a Subclass 482 visa application are the same for all streams.

Item [15] – Subitems 1240(3A) and (3B) of Schedule 1

This item repeals subitems 1240(3A) and (3B), which allowed for additional onshore applications for persons holding a Subclass 482 visa in the Short-term stream who were working in Australia while COVID-19 travel restrictions were in effect. These arrangements are no longer required as these amendments now allow all Subclass 482 visa applications to be made in Australia.

Item [16] – In the appropriate position in Schedule 13

This item specifies the operation of the amendments. The amendments to regulation 2.12F apply to visa applications withdrawn on or after commencement where the associated nomination has not been finally determined or the nomination is made on or after commencement. This ensures a refund continues to be available following the commencement of these amendments. The previous provision continues to operate to facilitate requests for refunds where the nomination application has already been finally determined or the visa application has already been withdrawn at the time of commencement.

The amendments to regulation 5.19 apply to nomination applications made but not yet finally determined at commencement, as well as nomination applications made on or after commencement. The amendments of regulation 5.19 are beneficial to applicants and do not engage subsection 12(2) of the *Legislation Act 2003*.

The amendments to item 1240 of Schedule 1 to the Migration Regulations apply to visa applications made on or after the date of commencement.