New Skilled Regional Visas (Consequential Amendments) Bill 2019

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Date introduced: 31 July 2019
House: House of Representatives
Portfolio: Immigration, Citizenship,
  Migrant Services and Multicultural
  Affairs
Commencement: The later of the day
  after Royal Assent and

Links: The links to the Bill, its Explanatory
  Memorandum and second reading speech
  can be found on the Bill’s home page, or
  through the Australian Parliament website.
  When Bills have been passed and have
  received Royal Assent, they become Acts,
  which can be found at the Federal Register
  of Legislation website.

All hyperlinks in this Bills Digest are correct
  as at September 2019.
Purpose of the Bill

The purpose of the New Skilled Regional Visas (Consequential Amendments) Bill 2019 (the Bill) is to make amendments to various legislation in the Social Services, Education, and Attorney-General’s portfolios, to provide that the holders of new provisional skilled regional visas (which will commence in November 2019) will have access to social security payments and certain government services on the same terms as permanent visa holders.

Structure of the Bill

The Bill consists of three Schedules:

- **Schedule 1** amends social services legislation, namely the A New Tax System (Family Assistance) Act 1999, the Disability Services Act 1986, the National Disability Insurance Scheme Act 2013, the Paid Parental Leave Act 2010, and the Social Security Act 1991, to provide that provisional skilled regional visa holders are included in the definition of ‘Australian resident’ for the purposes of eligibility for social security payments, participation in the National Disability Insurance Scheme, parental leave and dad and partner pay, and certain rehabilitation programs. It also makes amendments to provide that, where newly arrived resident’s waiting periods apply to those payments, the relevant waiting period will begin on the day a person is granted a provisional skilled regional visa, not on the day they become a permanent resident.

- **Schedule 2** amends the Higher Education Support Act 2003 to provide that provisional skilled regional visa holders are entitled to a Commonwealth Supported Place, and are entitled to FEE-HELP if they are undertaking a higher education unit as part of a bridging course for overseas-trained professionals.

- **Schedule 3** amends the Fair Entitlements Guarantee Act 2012 to provide that provisional skilled regional visa holders are entitled to the Fair Entitlements Guarantee.

Background

The Government’s plan to introduce new provisional skilled regional visas, which will require the visa holders to live and work in a regional area for three years before being eligible for permanent residency, was first announced in March 2019 as one part of the Government’s ‘Plan for Australia’s Future Population’. The Government intends to allocate 23,000 places for these visas within the Migration Program each year.

The rationale behind the introduction of these visas is set out in the document Planning for Australia’s Future Population, which argues that population growth in Australia has been unevenly distributed across metropolitan and regional areas, as well as between metropolitan areas, and that regional areas are suffering from skill shortages that cannot be addressed through the local labour market:

Regional Australia has skill shortages and positions that cannot be filled locally. Many regions and industries are desperate to fill positions so that they can continue to operate. The Regional Australia Institute estimates there are 47,000 job vacancies outside capital cities.

We need migration that contributes to regional communities, meets local skill shortages and invests in local economies and communities.

1. S Morrison (Prime Minister), A Tudge (Minister for Cities, Urban Infrastructure and Population), B McKenzie (Minister for Regional Services, Sport, Local Government and Decentralisation) and D Tehan (Minister for Education), A plan for Australia’s future population, media release, 20 March 2019.
2. Ibid., p. 2.
The Government’s new regional provisional visas are designed to support these efforts by encouraging more migrants to settle and remain in regional areas. These visas will enable skilled migrants to become established in regional communities and contribute to regional economies, with a pathway to permanent residency at the end of a three year period.

Overseas migration has played an important role in maintaining population in regional areas, contributing slightly more to population growth than natural increase.

For example, migrants are the largest contributor to population growth in New England and the Riverina in NSW, Warrnambool and the Mallee region in Victoria, and the wheat belt and resource-rich southern part of Western Australia. Of those migrants who settled outside Sydney, Melbourne, Brisbane and Perth, at least 85 per cent were still there five years later.3

Regulations introducing the two new provisional visas were tabled in Parliament on 2 July 2019, with the visas scheduled to commence on 16 November 2019.4 The new visas are:

- **Subclass 491 (Skilled Work Regional (Provisional)) visa**, for people sponsored by a state or territory government, or an eligible family member. The subclass 491 will replace the existing subclass 489 (Skilled Regional (Provisional)) visa.5

- **Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa**, for people sponsored by an eligible business. The subclass 494 will replace the existing subclass 187 (Regional Sponsored Migration Scheme) visa.6

Visa holders will be required to live in regional areas for three years after which they will become eligible for grant of a permanent visa. It is intended that ‘regional areas’ for the purposes of these visas will include all of Australia except for Sydney, Melbourne, Perth, Brisbane and the Gold Coast.7 The hope is that by requiring holders of the provisional visa to live and work in a regional area, they will develop ties with the community, and remain in that regional area in the long term, even once they have a permanent visa which no longer requires them to stay there.8

The Regulations also introduce a new permanent visa, the subclass 191 (Permanent Residence (Skilled Regional)) visa. This is the permanent visa for which subclass 491 and subclass 494 holders will become eligible at the end of three years.9

The two new provisional visas introduced by the Regulations are temporary visas. Holders of temporary visas are generally not eligible for the full range of government payments and services for which permanent visa holders (that is, permanent residents) are eligible. The one general exception to this is protected special category visa (SCV) holders. SCVs are temporary visas which allow citizens of New Zealand to live and work in Australia indefinitely. Certain SCV holders who were in Australia prior to 26 February 2001 are classed as ‘protected’ SCV holders, and are eligible for social security payments and other benefits.10

The Minister’s second reading speech introducing the Bill states that it ‘will give effect to government policy that holders of new provisional skilled visas ... will have access to government

services consistent with skilled permanent visa holders.’ Similarly, the Explanatory Memorandum states:

The amendments in this Bill give effect to the policy intent that holders of these provisional skilled regional visas have the same access to welfare payments and government services as permanent visa holders. This recognises that the visas provide a pathway to permanent residence.  

This appears to be the first time that this policy intent has been articulated—it was not mentioned when the new visas were announced in March 2019 or at the time the amending Regulations were made. A range of provisional visas, which require certain conditions to be met as a precondition for eligibility for a permanent visa, already exist within Australia’s visa system. For example, the existing Skilled Regional (Provisional) (subclass 489) visa requires people to live and work in certain areas, leading to eligibility for a Skilled Regional (Permanent) visa (subclass 887). As the subclass 489 is classed as a temporary visa, visa holders are not able to access government payments and services on the same terms as permanent residents. The policy intent to provide access to payments and services to holders of provisional skilled visas which provide a pathway to permanent residency, as though they are already permanent residents, is therefore a new development.

Committee consideration

**Senate Selection of Bills Committee**

On 12 September 2019 the Bill was referred to the Legal and Constitutional Affairs Legislation Committee for inquiry and report by 11 October 2019. Details of the inquiry are available on the Committee’s [inquiry webpage](#).

**Senate Standing Committee for the Scrutiny of Bills**

The Senate Standing Committee for the Scrutiny of Bills had no comment on the Bill.

**Policy position of non-government parties/independents**

At the time of writing no non-government parties or independents have commented on the Bill.

**Position of major interest groups**

At the time of writing no major interest groups have commented on the Bill.

**Financial implications**

The Explanatory Memorandum to the Bill states that the amendments will have a ‘low financial impact’.

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13. Department of Home Affairs (DoHA), ‘Skilled Regional (Provisional) visa’, DoHA website. The subclass 489 provisional visa will be closed to new applicants as of 16 November 2019, as it is superseded by the new skilled regional visas. See Migration Amendment (New Skilled Regional Visas) Regulations 2019, Schedule 1.
17. Explanatory Memorandum, op. cit., p. 3.
Statement of Compatibility with Human Rights

As required under Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth), the Government has assessed the Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bill is compatible.18

Parliamentary Joint Committee on Human Rights

The Parliamentary Joint Committee on Human Rights considers that the Bill does not raise human rights concerns.19

Key issues and provisions

Schedule 1—Social Services legislation

Schedule 1 amends various pieces of social services legislation, to provide that holders of either of the new provisional skilled regional visas, and potentially any visas that replace them in the future, will have access to social security payments, family assistance payments, family tax benefit, paid parental leave, the National Disability Insurance Scheme, and other disability services, on the same terms as Australian permanent residents.

Definition of Australian resident

The key amendment is to the definition of Australian resident in subsection 7(2) of the Social Security Act 1991, made by item 21 of Schedule 1. Currently, Australian resident is defined as a person who resides in Australia and is either an Australian citizen, permanent visa holder, or a protected SCV holder. Item 21 inserts proposed subparagraph 7(2)(b)(iiia) which will have the effect of including the holder of a provisional skilled regional visa in the definition of Australian resident.

The definition of provisional skilled regional visa is inserted into subsection 7(1) of the Social Security Act by item 20, which provides that it will include the subclass 491 (Skilled Work Regional (Provisional)) visa, the subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa, or a visa determined in a legislative instrument. Proposed subsection 7(4C) (inserted by item 23), provides that the Minister may make a legislative instrument determining that a visa meets the definition of provisional skilled regional visa on advice from the Immigration Minister that the subclass 491 or subclass 494 has been, or will be, replaced by a visa intended to provide the same benefit as the replaced visa.

The effect of this will be that holders of the new provisional skilled regional visas, and potentially any visas that replace them in the future, will be considered to be Australian residents for the purposes of eligibility for payments under the Social Security Act. They will also be considered Australian residents for the purposes of eligibility for payments under the A New Tax System (Family Assistance) Act 1999, the Paid Parental Leave Act 2010, and the Farm Household Support Act 2014, as these Acts link their definition of Australian resident to the definition in the Social Security Act.

The Explanatory Memorandum notes:

18. The Statement of Compatibility with Human Rights can be found at page 17 of the Explanatory Memorandum to the Bill.
extending the definition to include provisional skilled regional visa holders is a departure from the long-standing position that eligibility for social security pensions and benefits ... is generally limited to permanent visa holders. This extension reflects that provisional skilled regional visas provide a pathway to permanent residence.²⁰

As outlined above, there are existing provisional visas that provide a pathway to permanent residency that do not provide entitlement to social security payments. This therefore represents a significant change in policy regarding provisional visas.

**Newly arrived resident’s waiting periods**

Most social security payments and concession cards have either a waiting period or qualifying residence criteria that apply to new arrivals in Australia. These waiting periods generally begin when a person is granted a permanent visa—time spent in Australia on a temporary visa is not counted. Waiting periods for those newly arrived residents granted a permanent visa after 1 January 2019 are:

- four years for Bereavement Allowance, Farm Household Allowance, Newstart Allowance, Mobility Allowance, Sickness Allowance, Youth Allowance, Austudy, Commonwealth Seniors Health Card, Ex-Carer Allowance (Child) Health Care Card, Low Income Health Care Card, Parenting Payment, Pensioner Education Supplement, and Special Benefit
- two years for Carer Payment, Dad and Partner Pay, and Parental Leave Pay and
- one year for Carer Allowance and Family Tax Benefit Part A.²¹

Other payments do not have a newly arrived resident’s waiting period, but have their own ‘qualifying residence’ requirements. For example, Age Pension and Disability Support Pension have qualifying residence requirements of ten years.²² There is no newly arrived resident’s waiting period or qualifying residence requirement for Family Tax Benefit Part B or Child Care Subsidy.²³

Exemptions from the waiting periods can apply in certain circumstances such as where a person is an Australian citizen or a refugee. Exemptions can also be granted for particular payments in certain situations. For example, a Newstart Allowance claimant may be exempt from the newly arrived resident’s waiting period if they became a lone parent or the principal carer of a dependent child since arriving in Australia as an Australian resident.²⁴

The Bill amends the *Social Security Act* to provide that provisional skilled regional holders will be subject to the newly arrived resident’s waiting periods on the same terms as permanent visa holders. The waiting period will begin on the day on which they are granted the provisional skilled regional visa, and will not begin again when they are granted a permanent visa.

Existing subsection 7(4B) currently defines the day on which a person becomes the holder of a permanent visa, or a permanent visa is granted, for the purposes of calculating a newly arrived resident’s waiting period. This is either:

- the day an initial decision maker decides to grant the visa or

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²⁴. DHS, ‘Exemptions to the newly arrived residents waiting period’, DHS website, last updated 15 July 2019.
• if the initial decision maker decides not to grant the visa, but this decision is set aside on review, the date of the initial decision maker’s original decision.

**Item 22** omits the word ‘permanent’ wherever it occurs in this provision, which allows the same rules to apply to a provisional skilled regional visa holder.

**Proposed paragraph 739A(1)(c)** provides that a provisional skilled regional visa holder will be subject to a newly arrived resident’s waiting period in relation to eligibility for Special Benefit.  
**Proposed paragraph 739A(5)(d)** provides that the newly arrived resident’s waiting period for Special Benefit will begin when a person first becomes either a permanent visa holder or a provisional skilled regional visa holder.

For other payments under the *Social Security Act* the newly arrived resident’s waiting period is applied with reference to the period for which a person has been an Australian resident, or the day on which they became an Australian resident. The amendment to the definition of *Australian resident* at **item 21** (discussed above) will therefore have the effect of providing that the newly arrived resident’s waiting period begins on the day a person becomes a provisional skilled regional visa holder (or the day on which they enter Australia as a provisional skilled regional visa holder, if the visa is granted offshore), as that is the day on which they become an Australian resident. The effect of this is that time spent residing in Australia on a provisional skilled regional visa will count as time served towards the newly arrived resident’s waiting period.

This means, for example, that for payments to which a four year waiting period applies, a person who resides in Australia on a provisional skilled regional visa for three years, and then transitions to a permanent visa, will become eligible after one year on that permanent visa, as the waiting period will have commenced when they were granted the provisional visa. Under current arrangements, they would not be eligible for payments until they had resided in Australia for seven years—three years on a provisional visa to qualify for a permanent visa, followed by the four year waiting period beginning on the date of the permanent visa grant.

The amendment to the definition of *Australian resident* also flows through to the *Farm Household Support Act 2014*, meaning that the current four year waiting period for Farm Household Allowance will also begin when a person becomes a provisional skilled regional visa holder, and not begin again when they become a permanent visa holder.

**Items 1 to 6** amend the *A New Tax System (Family Assistance) Act 1999* to provide that provisional skilled regional visa holders will be subject to the newly arrived resident’s waiting period for Family Tax Benefit Part A (currently one year) on the same terms as permanent visa holders (**proposed paragraph 61AA(2)(c)**). The waiting period will begin on the day they become a provisional skilled regional visa holder, and will not restart on the day they become a permanent resident (**proposed paragraph 61AA(5)(d)**).

This will have the effect of causing a provisional skilled regional visa holder to become eligible for Family Tax Benefit Part A after they have been in Australia on that visa for one year, rather than

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25. Special Benefit is a payment for people who are in severe financial hardship and do not qualify for other income support payments. See DHS, *Special Benefit*, DHS website, last updated 4 September 2019.

26. These two provisions are inserted by **items 28 and 29** of **Schedule 1**, respectively.

27. For example: *Social Security Act*, sections 201AB (in relation to the Carer Payment), 323 (in relation to the Bereavement allowance), 500Y (in relation to the Parenting Payment), 549E (in relation to Youth Allowance).

28. Also see **proposed subsection 61AA(2C)**, inserted by **item 4**, which provides that an individual is not subject to a newly arrived resident’s waiting period on becoming the holder of a permanent visa, if at any time they have held a provisional skilled regional visa.
the four years they would have to wait under current arrangements—three years on a provisional visa to qualify for a permanent visa, followed by the one year waiting period beginning on the date of the permanent visa grant.

**Item 9** amends the *Paid Parental Leave Act* to provide that ‘provisional skilled regional visa’ will have the same meaning as in the *Social Security Act*. 29

**Items 10 and 15** also amend the *Paid Parental Leave Act* to provide that provisional skilled regional visa holders will be subject to a newly arrived resident’s waiting period for eligibility for parental leave (proposed paragraph 31A(1)(c)) and dad and partner pay (proposed paragraph 115CBA(1)(c)).

**Items 11 to 14** provide that the waiting period for provisional skilled regional visa holders to become eligible for Parental Leave Pay commences from when they are granted a provisional skilled regional visa, and will not recommence on the day they are granted a permanent visa. **Items 16 to 19** do the same in relation to the waiting period for Dad and Partner Pay.

The newly arrived resident’s waiting period for these payments is currently two years, beginning on the date a person enters Australia, or is granted a permanent visa, whichever is latest. 30 The effect of these amendments is that provisional skilled regional visa holders will become eligible for Parental Leave Pay, and Dad and Partner Pay, after they have resided in Australia for two years, rather than the five years they would have to wait under current arrangements—three years on a provisional skilled regional visa to qualify for a permanent visa, followed by the two year waiting period beginning on the date of the permanent visa grant.

**Cessation of qualification for Age Pension and Disability Support Pension**

As noted above, there is no newly arrived residence waiting period for the Age Pension or Disability Support Pension, but these are subject to a qualifying residence period of ten years. 31 Exemptions from the qualifying residence requirement can apply in certain circumstances and an individual claiming the Disability Support Pension is not subject to the requirement if they became unable to work or permanently blind while an Australian resident. 32 Australia also has international agreements with a number of countries which allow for periods of work or residency in that country to count towards their qualifying residence period in Australia. 33

**Items 25, 26 and 27** amend the *Social Security Act* to provide that persons who qualify for the Age Pension or Disability Support Pension while they hold a provisional skilled regional visa, and do not complete the pathway to a permanent visa, will cease to qualify for those pensions in the following circumstances:

- if they do not apply for a permanent visa, they will cease to qualify when they cease to be a provisional skilled regional visa holder or

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29. That is, a subclass 491, subclass 494 or any visa determined by the Minister as a visa that meets the definition of provisional skilled regional visa on advice from the Immigration Minister that the subclass 491 or subclass 494 has been, or will be, replaced by a visa intended to provide the same benefit as the replaced visa.

30. *Paid Parental Leave Act 2010* (Cth), subsection 31A(4) and subsection 115CBA(4).


32. Ibid.

33. Department of Social Services (DSS), ‘*Current international social security agreements*’, DSS website, last updated 29 July 2019.
• if they apply for a permanent visa while holding a provisional skilled regional visa holder and the permanent visa is refused, they will cease to qualify when the permanent visa refusal is finally determined, and they no longer hold a provisional skilled regional visa.

The Explanatory Memorandum states that this is to ensure that provisional skilled regional visa holders who do not complete the pathway to permanent residency do not retain ongoing access to social security payments. This is consistent with the policy intention that access to payments for provisional skilled regional visa holders is being provided on the basis that they will eventually become permanent residents. A similar cessation provision is not needed for other payments because eligibility for those payments ceases when a person is no longer an Australian resident—this is not the case for Age Pension and Disability Support Pension.

Disability services

Item 7 amends section 21 of the Disability Services Act, which sets out the citizenship and residency requirements for the provision of rehabilitation programs by the Commonwealth. These are programs provided by disability employment services providers through the Disability Management Service, which provides rehabilitation programs for job seekers with disability, injury or health conditions, who need assistance to find a job and occasional support to keep a job.

Currently, section 21 provides that rehabilitation programs shall only be provided to a person who is an Australian citizen or ‘a person resident in Australia whose continued presence in Australia is not subject to a limitation as to time imposed by or under a law of the Commonwealth’. Item 7 amends this to provide that a person is eligible for these programs if they are an Australian resident as defined in the Social Security Act. The effect of this item, combined with Item 21 (see above), is that provisional skilled regional visa holders will become eligible for these rehabilitation programs.

This provision will have two further consequences. First, it will mean that being an Australian citizen will no longer be sufficient to meet the eligibility criteria for the rehabilitation programs—it will also be necessary to reside in Australia. This is because the definition of Australian resident in the Social Security Act provides that a person must be an Australian citizen, permanent resident or protected SCV holder, and must reside in Australia. The Explanatory Memorandum states that this change in the eligibility criteria requiring the person to be resident in Australia is consistent with established policy.

Secondly, it will have the effect of excluding certain New Zealand citizens residing in Australia on an SCV from eligibility for these programs. The current scope of section 21, as including a resident whose continued presence in Australia ‘is not subject to a limitation as to time …’ would appear to include all New Zealand citizens residing in Australia on an SCV, whether they are a protected SCV holder or not. This is because, while the SCV is classed as a temporary visa, there is no time limitation imposed on the length of stay permitted—a New Zealand citizen may reside in Australia on an SCV indefinitely. By aligning the residence requirement for rehabilitation programs under the Disability Services Act with the residence definition under the Social Security Act, those

34. Explanatory Memorandum, op. cit., p. 10.
35. Ibid., p. 10.
38. Social Security Act 1991 (Cth), subsection 7(2).
programs will be available to SCV holders **only** if they are protected SCV holders. The Explanatory Memorandum does not address this consequence of the amendment, but restricting payments and services to protected SCV holders is also consistent with current policy.

**Item 8** amends the *National Disability Insurance Scheme Act* by inserting **proposed subparagraph 23(1)(b)(iia)**. This provides that a person will meet the residence requirements for participating in the National Disability Insurance Scheme if they are the holder of a provisional skilled regional visa (as defined by the *Social Security Act*). Currently, only Australian residents who are citizens, permanent visa holders or protected SCV holders, satisfy the residence requirements for the Scheme.\(^{41}\)

### Application and transitional arrangements

**Item 30** provides that the amendments to the starting dates of waiting periods for Family Tax Benefit Part A, Parental Leave Pay and Dad and Partner Pay, and Special Benefit, apply in relation to a person who becomes a visa holder before or after commencement of the item. This is to ensure that if the Act does not commence before 16 November 2019 when the new provisional skilled regional visas commence, persons granted a visa between 16 November and commencement of the Act will be considered to have commenced the waiting period on the day they become a holder of the visa.\(^{42}\)

Similarly, **Item 31** is a transitional provision which provides that any period prior to the commencement of the item during which a person was a subclass 491 or subclass 494 visa holder is taken to be a period in which they were an Australian resident for the purposes of the *Social Security Act*, and the newly arrived resident’s waiting period under the *Farm Household Support Act*.

### Schedule 2 – Higher Education

Schedule 2 makes amendments to the *Higher Education Support Act 2003 (HESA)*, to provide that holders of the new provisional skilled regional visas, and potentially any visas that replace them in the future, will have the same access to Commonwealth Supported Places (CSP) and FEE-HELP as Australian permanent residents.

CSPs subsidise higher education course fees for eligible students, typically in undergraduate bachelor degrees at public universities.\(^{43}\) FEE-HELP, part of the Higher Education Loan Program (HELP), allows eligible students to defer their course fees for full-fee-paying courses (that is, courses where a CSP is not available) and repay the cost through the tax system once they earn above a compulsory repayment threshold.\(^{44}\)

**Item 1** amends paragraph 36-10(2)(c) of the HESA to provide that a person meets the citizenship or residency requirements for the purposes of being considered a Commonwealth supported student if they are a ‘provisional skilled regional visa holder’ who will be resident in Australia for the duration of the unit. **Item 3** amends paragraph 104-5(1)(c) of HESA to provide that a person who is a ‘provisional skilled regional visa holder’ will be eligible for FEE-HELP if they are

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41. *National Disability Insurance Scheme Act 2013* (Cth) subsection 23(1).
42. Explanatory Memorandum, op. cit., p. 11.
43. Department of Education (DoE), ‘*Commonwealth Grant Scheme (CGS)*’, DoE website.
44. DoE, ‘**FEE-HELP**’, StudyAssist website; Australian Taxation Office (ATO), ‘*Study and training loan repayment thresholds and rates*’, ATO website, last modified 4 June 2019; An overview of the HELP loans is available in C Ey, *Higher Education Loan Program (HELP) and other student loans: a quick guide*, Research paper series, 2016–17, Parliamentary Library, Canberra, updated 2 May 2017.
undertaking a higher education unit as part of a bridging course for overseas-trained professionals, and will be resident in Australia for the duration of the unit.

The definition of **provisional skilled regional visa holder** is inserted into subclause 1(1) of Schedule 1 of **HESA** by **item 4**, which provides that a person meets this definition if they are the holder of a subclass 491 (Skilled Work Regional (Provisional)) visa, or a subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa, or ‘a visa of a kind determined in an instrument under subclause 1(4)’.

**Proposed subclause 1(4)** is inserted into Schedule 1 of **HESA** by **item 5**. It provides that the Minister may make a legislative instrument to determine a kind of visa for the purposes of the definition of ‘provisional skilled regional visa holder’ under the Act, on the basis of advice from the Immigration Minister that the subclass 491 or subclass 494 has been, or will be, replaced by a visa that is intended to give the same benefit as the replaced visa.

**Item 6** provides that the amendments relating to access to CSP and FEE-HELP for provisional skilled regional visa holders will apply to units of study with a census date on or after the commencement of the item (either 16 November 2019 or the day after Royal Assent, whichever is later).

The effect of these proposed amendments is that holders of the new subclass 491 and subclass 494 visas, and potentially (at the Minister’s discretion) any visas which replace these visas in the future, will meet the citizenship and residency requirements that determine eligibility for a CSP, and FEE-HELP entitlement for bridging courses for overseas-trained professionals. Specific eligibility requirements, which are different from the general requirements to access FEE-HELP, apply to FEE-HELP for bridging studies. This mirrors current entitlements to CSP and FEE-HELP under **HESA** for permanent visa holders. The amendments will not provide provisional skilled regional visa holders with access to HECS-HELP, or FEE-HELP other than for a limited range of bridging courses, as access to these is not currently available to permanent visa holders. As such, a person accessing a CSP under these provisions will not be eligible to access a student loan and will need to pay the non-Commonwealth-subsidised portion of their course fees up front.

**HESA** does not impose any waiting periods for visa holders in relation to these entitlements, so provisional skilled regional visa holders will become eligible for these entitlements immediately, once their visa is in effect and they are resident in Australia.

**Schedule 3 – Fair Entitlements Guarantee**

Schedule 3 amends the **Fair Entitlements Guarantee Act 2012 (FEG Act)** to extend access to the Fair Entitlements Guarantee to holders of the new skilled regional provisional visas, and potentially any visas that replace them in the future.

The Fair Entitlements Guarantee is a legislative safety net scheme provided by the Australian Government under which eligible employees may make a claim for unpaid wages and entitlements if they lose their job due to employer liquidation or bankruptcy.

Currently, only people who are Australian citizens, or who hold a permanent resident visa or an SCV (as discussed above, available only to New Zealand citizens, enabling them to live and work in

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45. DoE, ‘Bridging study’, StudyAssist website.
46. Attorney-General’s Department, ‘Fair Entitlements Guarantee’, Attorney-General’s Department website.
Australia indefinitely) meet the citizenship and residency requirements relating to eligibility for the Fair Entitlements Guarantee.47 

Items 1 and 2 amend the FEG Act to provide that holders of the new subclass 491 and subclass 494 visas, and any future visa determined by the Minister on the basis of advice from the Immigration Minister that the subclass 491 or subclass 494 has been replaced by a new visa intended to provide the same benefits, will also meet the citizenship and residency requirements for entitlement to the Fair Entitlements Guarantee.

Family members of skilled migrants

The amendments in this Bill will extend access to these entitlements not only to the skilled workers who hold a provisional skilled regional visa, but also to their accompanying family members. Under Australia’s Migration Program, skilled migrants are generally eligible to bring family members (spouses and dependent children) to Australia with them, and these family members are granted the same visa as the skilled migrant. Family members are known as ‘secondary visa holders’ while the skilled migrant who qualified for the visa is known as the ‘primary visa holder’. The Explanatory Statement to the Regulation that introduces the new provisional skilled regional visas confirms that this will be the case for these visas:

Both the Subclass 491 and Subclass 494 visas enable members of the family unit to make a visa application at the same time as the primary applicant ... Both Subclass 491 and Subclass 494 visas are granted for 5 years from the date of grant to primary applicants. Secondary applicants granted a Subclass 491 or Subclass 494 visa are granted a visa aligning to the end date of the primary applicant’s visa.48

Hence the family members (spouses and dependent children) of skilled workers who qualify for one of the new provisional skilled regional visas, as well as the skilled workers themselves, will become eligible for access to the payments and services on the terms provided for in this Bill.

47. Fair Entitlements Guarantee Act 2012 (Cth), paragraph 10(1)(g). Unlike social security payments, the Fair Entitlements Guarantee is available to all SCV holders—it is not restricted to protected SCV holders.