

Latest Australian immigration news

187 and 489 visas to be replaced on 16 Nov 2019; new permanent 191 regional visa available from 16 Nov 2022; GSM points test changes

The regulations for the government's initiative for new regional visas have been written and [released](#), with two current visas closing, two new *regional provisional visas* to be introduced in their place, and a third permanent visa for both these visas holders to transition to should they comply with visa conditions and meet minimum income threshold requirements. There are also amendments to the General Skilled Migration (GSM) visa points test to the benefit of being nominated or sponsored in a regional area and for partner skills or lack of a partner.

Subclass 489 – Skilled - Regional (Provisional) visas will close to new applicants from 16 November 2019 and be replaced by the new Subclass 491 – Skilled Work Regional (Provisional) visa. The *permanent* Subclass 187 – Regional Sponsored Migration Scheme visa will also close on 16 November 2019 except for people subject to transitional arrangements and be replaced by the *provisional* Subclass 494 – Skilled Employer Sponsored Regional (Provisional) visa. And lastly, there will be a **third** new visa, the Subclass 191 – Permanent Residence (Skilled Regional) visa, available from 16 November 2022 for either 491 or 494 visa holders.

New definitions and transitional arrangements for 187 visa applications

To start with, there will be some important new definitions inserted into the regulations to apply to visa conditions and criteria:

- *designated regional area* – to apply to visa conditions and criteria which should initially exclude Melbourne, Sydney, Brisbane, Gold Coast, and Perth;
- *transitional 457 worker* – which is a person who, on 18 April 2017 held a Subclass 457 – Temporary Work (Skilled) visa; or was an applicant for a 457 visa that was subsequently granted. This definition mimics the [instrument](#) for transitional provisions for Subclass 186 – Employer Nomination Scheme visas; and

- *transitional 482 worker* – will be a person who on 20 March 2019 held a Subclass 482 (Temporary Skill Shortage) visa in the Medium-term stream; or was an applicant for a Subclass 482 (Temporary Skill Shortage) visa in the Medium-term stream that was subsequently granted. This is the date of the proposed announcement of this regional visa.

People defined as either a transitional 457 worker or a transitional 482 worker will be able to apply for a 187 visa after 16 November 2019 under the Temporary Residence Transition stream only. On that date, all other applications will close.

Subclass 489 visas replaced by Subclass 491 – Skilled Work Regional (Provisional) visas

From 16 November 2019, 489 visas will be closed to new applicants and a new 491 visa will take its place. This new visa will be classified as a GSM visa. They have a lot of similarities.

Major features for this visa include:

- Applicants in Australia must hold either a substantive visa or a Bridging visa A, B, or C;
- It will be subject to the GSM points test and applicants must be invited to apply for this visa and must apply within a certain time;
- A minimum of 65 points will be required as per all other GSM points-tested visas;
- Applicants must nominate a skilled occupation;
- Sponsors can be a State or Territory or a relative who is either an Australian citizen, an Australian permanent resident, or eligible New Zealand citizen or either the applicant or their spouse or de facto partner similar to the current *eligible relative* for a 489 visa;
- Sponsors who are relatives must be usually resident in a designated regional area;
- All applicants must declare they have a genuine intention to live, work and study in a designated regional area; and
- Other visas, including partner, business skills, GSM visas, and 186 visas will require a 491 visa holder to have held that visa for at least 3 years and have substantially complied with the conditions for this visa unless certain exceptional circumstances apply.

New conditions must be imposed on *all* visa holders, including:

- Condition 8578 – Notify Immigration within 14 days of any change to the visa holder’s residential address, email address, phone number, passport details, address of employer, or address or location of a position where they are employed;
- Condition 8579 – Must live work and study only in a designated regional area listed at the time the visa was granted;
- Condition 8580 – If requested, provide evidence to Immigration within 28 days after the date of request of any or all of their: residential address, address of each employer, address of each location of each position employed, or address of an education institution they are attending;
- Condition 8581 – If requested, attend an interview with Immigration.

This will be a five-year visa if granted.

GSM points test changes

The Federal Budget gave a glimpse of the changes to the GSM points test. These amendments will come into effect on 16 November 2019. Changes include:

- Studying in a regional area for 5 points will change to be studying in a designated regional area with the applicant to have lived in a designated area, the location of the campus of study was in a designated regional area and none of the study was undertaken through distance education. The applicant must also meet the Australian study requirement;
- Partner points will increase from 5 to 10. Ten points will be awarded for applicants without a partner or their partner is an Australian citizen or Australian permanent resident. Five points will be awarded for partners of applicants who is an applicant for the same visa, and is not an Australian citizen or Australian permanent resident, and at the time of invitation has competent English; and
- Points for being sponsored for a 491 visa, either by a State or Territory or an eligible relative will increase from 10 to 15 points.

Subclass 494 – Skilled Employer Sponsored Regional (Provisional) visa

This visa will run in parallel to the Subclass 482 – Temporary Skill Shortage visa, and it may be that the Regional Occupation List for a 482 visa will be abolished in the future. Perhaps as a surprise, people with a genuine intention to apply for this visa in Australia can see any no

further stay visa condition (visa condition 8503 and 8534), which restricts the visas able to be lodged waived.

The 494 visa comes under the same sponsorship framework as 482 visas, which requires businesses becoming a standard business sponsor or labour agreement holder, a nomination application, a visa application and sponsor obligations.

There will be two streams for the nomination and visa applications: the Employer Sponsored stream and the Labour Agreement stream.

The nomination criteria are similar to 482 nominations, however, there are some differences, including:

- There can only be full-time positions and they must be likely to exist for at least 5 years;
- The Skilling Australia Fund Levy will apply and operate similar to the current 187 visa. The [instrument](#) specifies that it will be either AUD 3000 if the business's annual turnover is less than \$10 million or AUD 5000 otherwise. Importantly, for any existing 494 visa holder, where they have less than 5 years remaining on their visa, each year that has elapsed on their visa will reduce the levy by \$600 per year for businesses whose turnover is less than \$10 million or \$1000 per year otherwise. The levy will not apply to nominations made under the Labour Agreement stream for Ministers of Religion or Religious Assistants;
- The employment agreement submitted must not include any express exclusion of the possibility of extending the period of employment. Exemptions for a direct employer-employee relationship will continue to exist for independent contractor approved occupations (medical practitioners and general managers);
- There will be exemptions to the annual earnings being below the Temporary Skilled Migration Income Threshold (TSMIT) but only in very limited circumstances, such as where there is a significant accommodation component for remote locations;
- Nominations will need to go through a prescribed body, most likely a Regional Certifying Body, similar to a 187 nomination under the Direct Entry stream; and
- For labour agreements, there will be a distinction between positions available under a labour agreement for 482 visas and 494 visas. Parties to a labour agreement will not be able to lodge a 482 nomination for a labour agreement approved for 494 visas and vice versa.

As 494 business sponsors must be standard business sponsors, they will come under the same sponsor obligations as the 482 visa program.

The visa application's major requirements include:

- If lodging in Australia, holding either a substantive visa or a Bridging visa A, B, or C;
- Matching their nomination to the stream and occupation of their related nomination application;
- Having either a full skill assessment or be exempt. This is likely to operate the same way as 482s visa which requires certain applicants to have at least lodged a skill assessment to validly apply for their visa. If required, they must hold either a full skill assessment which is still valid, or if they held either a 457 visa or a 482 visa they are nominated in the same occupation and they had obtained a full skill assessment to be approved that visa. In both cases if their skill assessment was made on the basis of a qualification obtained in Australia, that qualification was obtained when the applicant held a student visa;
- Having a genuine intention to perform the nominated occupation and the position associated with the occupation is also genuine;
- Be less than 45 years old at the time of applying or be exempt;
- Having at least 3 years of full-time work experience at the required skill level in their nominated occupation at the time of applying, unless exempt;
- Having at least competent English unless exempt.

As with the 491 visa, this is a 5-year visa with the same conditions being imposed: 8578, 8579, 8580, 8581. There will be an additional visa condition 8608 imposed on the primary visa holder which will require them to not cease employment with their sponsor for more than 90 days among other things. This is effectively the same as visa condition 8607 which applies to primary 482 visa holders.

For visa condition 8579, if an existing 494 visa holder is nominated by a second employer, the requirement they must live and work in a designated regional area will only take into effect for them and any secondary visa holders once they begin employment to not inadvertently breach this condition if the definition of designated regional area changes.

Subclass 191 – Permanent Residence (Skilled Regional) visas

Lastly, there is the permanent 191 visa available from 16 November 2022. The delay in its introduction is because no applicants will be eligible until at least that date.

With greatly reduced visa application charges, and no second visa application charge for applicants who are at least 18 with less than functional English (this already applied to 491 and 494 visa applications), to make a valid application, primary applicants must have held a regional provisional visa (491 or a 494 visa) for at least 3 years. Any secondary applicants must make a combined with the primary visa applicant.

If a combined application has been made, only one applicant must satisfy the primary criteria, which means partners of the original primary 491 or 494 visa holders can step in to meet the primary criteria if needed.

There are effectively two major requirements:

- Substantial compliance with the visa conditions of the regional provisional visa or any subsequent bridging visa, and unless exempt, compliance with condition 8579; and
- The taxable income of the person seeking to meet the primary criteria for at least 3 years is above a certain threshold that will be known closer to the date of implementation. Evidence will be by way of their Notice of Income Tax Assessment for each income year.

Secondary applicants must also have complied with their visa conditions including condition 8579.

If granted, as with all permanent visas, this will be a 5-year visa with no restrictions.

Importantly, unlike 187 visas, a 191 visa does not require a preceding nomination by a business. Therefore, 494 visa holders will not be at the behest of their sponsor and may apply with or without their consent.

Of course, for all the above visas, a general battery of public interest criteria must also be met and it would be prudent to consider this criteria closer to the date of introduction when further instruments are released.