

EXPLANATORY STATEMENT

Issued by the Minister for Home Affairs

Migration Act 1958

Migration Amendment (Graduate Visas No. 2) Regulations 2024

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

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

The Subclass 485 (Temporary Graduate) visa (the Subclass 485 visa) provides international students who recently graduated with qualifications from an Australian institution the opportunity to live and work in Australia temporarily following the completion of their studies.

The Government's Migration Strategy, which was released on 11 December 2023, built on the findings of the 'Review of the Migration System' report, led by Dr Martin Parkinson AC, PSM (the Migration Review) and the 'Rapid Review into the Exploitation of Australia's Visa System' (the Nixon Review). The Migration Strategy announced a suite of broader structural reforms to ensure Australia's most highly skilled international graduates drive long-term prosperity by transitioning to permanent visas as soon as possible. Key objectives of the Migration Strategy reforms are to build stronger communities and reduce migrant worker exploitation by reducing the number of migrants who are 'permanently temporary'.

The *Migration Regulations 1994* (the Migration Regulations) were amended on 1 July 2024 to give effect to the Australian Government's intention to:

- implement the policy commitments of the Migration Strategy to simplify the Temporary Graduate visa program; and
- combined with other policy measures, help return migration to near pre-pandemic levels by next financial year as outlined in the Migration Strategy.

The *Migration Amendment (Graduate Visas No. 2) Regulations 2024* (the Amending Regulations) amend the Migration Regulations to ensure the Subclass 485 visa criteria operate as intended following the 1 July 2024 changes to the Subclass 485 visa's Post Higher Education Work (PHEW) stream, including by establishing an express definition of 'degree' specifically for the purposes of the Subclass 485 visa.

Changes to the Subclass 485 (Temporary Graduate) visa in the Post-Higher Education Work Stream

The Subclass 485 (Temporary Graduate) visa in the Post-Higher Education Work stream

Previous settings

Applicants seeking to satisfy the primary criteria (see subdivisions 485.21 and 485.23 of Schedule 2 to the Migration Regulations) for a grant of an initial Subclass 485 (Temporary Graduate) visa (the Subclass 485 visa) in the Post-Higher Education Work (PHEW) stream must hold or have held a student visa (see subparagraph 1229(3)(1) of Schedule 1). The PHEW stream was only available to international students who had recently graduated (6 months immediately before the day the application for that initial visa was made) with an eligible specified higher education degree from a specified education institution, regardless of their field of study (see subclauses 485.231 (1)-(3) of Schedule 2).

An applicant seeking to satisfy the primary criteria for the grant of a subsequent Subclass 485 visa in the PHEW stream must hold an initial Subclass 485 visa in the PHEW stream (see subparagraph 1229(3)(1a)(i) of Schedule 1).

Holders of a second or a subsequent Subclass 485 visa in the PHEW stream visa must live (if relevant, work and study) only in regional areas that correspond to the visa criteria (see subclauses 485.232, 485.233, 485.234 and 485.235 of Schedule 2).

Amendments to clauses 485.111 and 485.231 of Schedule 2 to the Migration Regulations

The Amending Regulations replace the previous definition of ‘degree’ (as it related to the definition of that term, currently found in subregulation 2.26AC(6) to the Migration Regulations) in clause 485.111 of Schedule 2, with a new definition of ‘degree’ specifically for the purposes of Subclass 485. The new definition of ‘degree’ will enable an applicant for an initial Subclass 485 visa in the PHEW stream (see subparagraph 1229(3)(1) of Schedule 1) to meet the relevant requirements of Subdivisions 485.21 and 485.23 of Schedule 2 for the purposes of satisfying the relevant primary criteria in clause 485.231 of that Schedule for a successful grant of that visa.

The Amending Regulations also introduce a new provision into clause 485.231 of Schedule 2 to the Migration Regulations. The new subclause 485.231(1B) of Schedule 2 provides for the academic requirements an initial Subclass 485 visa in the PHEW stream applicant must meet in order to satisfy the relevant criteria for the successful grant of that visa. This new provision is similar to the existing academic requirements for the Subclass 485 visa in the Post-Vocational Work (PVEW) stream (see clause 485.221 of Schedule 2). The purpose of the amendments to clause 485.231 of Schedule 2 to the Migration Regulations is to give effect to the policy intent, which is to streamline, simplify and to clarify the relevant academic criteria that must be satisfied by eligible applicants for a successful grant of an initial Subclass 485 visa in the PHEW stream.

For the purposes of the new subclause 485.231(1B) of Schedule 2 to the Migration Regulations, the new definition of ‘degree’ under clause 485.111 of that Schedule applies.

The Amending Regulations also make consequential amendments to clauses 485.111 and 485.231 Schedule 2 to the Migration Regulations to give effect to the policy intent which is to ensure that there is no inconsistency between the new definition of ‘degree’ as it relates to the Subclass 485 visa program, (specifically the PHEW stream), and the definition of ‘degree’ in subregulation 2.26AC(6) as it relates to the ‘Australian Study Requirement’ (see regulations 1.03 and 1.15F) and the previous subclause 485.231(3) of Schedule 2 to the Migration Regulations requirements.

The abovementioned amendments to clauses 485.111 and 485.231 of Schedule 2 to the Migration Regulations will ensure the changes to the Subclass 485 visa’s PHEW stream made on 1 July 2024 operate as intended.

Application of amendments

The amendments made by the Amending Regulations do not apply to an application for a Subclass 485 visa in the PHEW stream validly made and not finally determined on or before the day after the Amending Regulations are registered on the Federal Register of Legislation.

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

The matters dealt with in the Amending Regulations are appropriate for implementation in regulations rather than Parliamentary enactment. It has been the consistent practice of the Government of the day to provide for detailed visa criteria and conditions in the Migration Regulations rather than the Migration Act itself. The Migration Act expressly provides for these matters to be prescribed in regulations, as can be seen in the authorising provisions in Attachment A. These include, for example, subsection 31(3), which provides that the Migration Regulations may prescribe criteria for a visa or visas of a specified class.

The current Migration Regulations have been in place since 1994, when they replaced regulations made in 1989 and 1993. Providing for these details to be in delegated legislation rather than primary legislation gives the Government the ability to effectively manage the operation of Australia’s visa program and respond quickly to emerging needs.

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 Migration Regulations are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Statement is at Attachment B.

The Office of Impact Analysis (OIA) have been consulted in relation to the amendments of the Migration Regulations. No Impact Analysis is required. The OIA consultation reference number is OIA24-08458.

Consultation has been previously undertaken as part of the 1 July 2024 changes to the Migration Regulations with relevant government agencies and peak body representatives. Consultation was also previously undertaken in relation to post study work arrangements with a wide variety of groups through the Migration Review. That review found that generous Temporary Graduate visa arrangements were one of the key drivers of visa applicants becoming ‘permanently temporary’ and longer periods of stay in Australia did not usually result in better labour market outcomes. Consultation was also previously undertaken through the Council for International Education that includes relevant Commonwealth Ministers and expert members from Universities, Vocational Education and Training providers, peak bodies and State and Territory Governments. Members provided input on issues and possible policy solutions in relation to the abovementioned post study work rights.

The Department has also previously consulted with external Commonwealth agencies, including the Department of Prime Minister and Cabinet, the Department of Finance, the Treasury, the Department of Foreign Affairs and Trade, the Department of Education, the Department of Employment and Workplace Relations and regulators, the Tertiary Education Qualification and Standards Agency and the Australian Skills Quality Authority.

The Department previously engaged key international education sector stakeholders, including non-government peak bodies, states and territories, business representatives and unions, and other Australian Government agencies through the Education Visa Consultative Committee to discuss the then, proposed changes to the graduate work right arrangements. Previous discussions were held on 8 June 2023, 14 September 2023, 13 December 2023 and 8 May 2024. At those meetings the Department previously advised members of the then, proposed changes to the Temporary Graduate visa program, including policy updates, implementation processes and timeframes.

The abovementioned consultation was conducted in relation to 1 July changes to the Migration Regulations. This accords with the consultation requirements of the *Legislation Act 2003* (the Legislation Act). No additional consultation was undertaken for these Amending Regulations as the amendments operate to support and clarify the intent and effect of the 1 July 2024 amendments.

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

Further details of the Amending Regulations are set out in [Attachment C](#).

The Amending Regulations amend the Migration Regulations, which are exempt from sunseting under table item 38A of section 12 of the *Legislation (Exemptions and other Matters)*

Regulations 2015. The Migration Regulations are exempt from sunseting on the basis that the repeal and remaking of the Migration Regulations:

- is necessary as the Migration Regulations are regularly amended numerous times each year to update policy settings for immigration programs;
- would require complex and difficult to administer transitional provisions to ensure, amongst other things, the position of the many people who hold Australian visas, and similarly, there would likely be a significant impact on undecided visa and sponsorship applications; and
- would demand complicated and costly systems, training and operational changes that would impose significant strain on Government resources and the Australian public for insignificant gain, while not advancing the aims of Legislation Act.

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

AUTHORISING PROVISIONS

Subsection 504(1) of the *Migration Act 1958* (the Migration Act) relevantly provides that the Governor-General may make regulations prescribing matters required or permitted to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Migration Act.

In addition, the following provisions of the Migration Act may also be relevant:

- subsection 31(1), which provides that the Migration Regulations may prescribe classes of visas;
- subsection 31(3), which provides that the Migration Regulations may prescribe criteria for a visa or visas of a specified class;
- subsection 31(4), which provides that the Migration Regulations may prescribe whether visas of a class are visas to travel to and enter Australia, or to remain in Australia, or both;
- subsection 31(5), which provides that the Migration Regulations may specify that a visa is a visa of a particular class;
- section 40, which provides that the Migration Regulations may provide that visas or visas of a specified class may only be granted in specified circumstances;
- subsection 41(1) which provides that the Migration Regulations may provide that visas, or visas of a specified class, are subject to specified conditions;
- subsection 45(1), which provides that subject to the Migration Act and the Migration Regulations, a non-citizen who wants a visa must apply for a visa of a particular class;
- paragraph 46(1)(b), which provides that the Migration Regulations may prescribe the criteria and requirements for making a valid application for a visa;
- subsection 46(3), which provides that the Migration Regulations may prescribe criteria that must be satisfied for an application for a visa of a specified class to be a valid application;
- subsection 46(4), which provides that, without limiting subsection 46(3), the Migration Regulations may prescribe:
 - (a) the circumstances that must exist for an application for a visa of a specified class to be a valid application; and
 - (b) how an application for a visa of a specified class must be made; and
 - (c) where an application for a visa of a specified class must be made; and
 - (d) where an applicant must be when an application for a visa of a specified class is made;
- subsection 504(2) of the Migration Act, which provides that section 14 of the Legislation Act does not prevent regulations whose operation depends on a country or other matter being specified or certified by the Minister in an instrument in writing made under the regulations after the commencement of the regulations.

Statement of Compatibility with Human Rights

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

Migration Amendment (Graduate Visas No. 2) Regulations 2024

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

Overview of the Disallowable Legislative Instrument

Australia provides international students with an opportunity to gain temporary access to the Australian labour market, and obtain practical work experience to accompany their qualification, without the need to have a sponsoring employer. Although there is no requirement to work in specific areas or sectors linked to their qualification, graduates can work in their field of study with a view of progressing to permanent residence if eligible.

The Subclass 485 (Temporary Graduate) visa (Subclass 485 visa) provides international students who recently graduated with qualifications from an Australian educational institution the opportunity to live and work in Australia temporarily following the completion of their studies.

The Migration Strategy, which was released on 11 December 2023, built on the findings of the ‘Review of the Migration System’ report, led by Dr Martin Parkinson AC, PSM (the Migration Review) and the ‘Rapid Review into the Exploitation of Australia’s Visa System’ (the Nixon Review). The Migration Strategy announced a suite of broader structural reforms to ensure Australia’s most highly skilled international graduates drive long term prosperity by transitioning to permanent visas as soon as possible. Key objectives of the Migration Strategy reforms are to build stronger communities and reduce migrant worker exploitation by reducing the number of migrants who are ‘permanently temporary’.

The *Migration Regulations 1994* (the Migration Regulations) were amended on 1 July 2024 to give effect to the Australian Government’s intention to:

- implement the policy commitments of the Migration Strategy to simplify the Temporary Graduate visa program; and
- combined with other policy measures, help return migration to near pre-pandemic levels by next financial year as outlined in the Migration Strategy.

The *Migration Amendment (Graduate Visas No. 2) Regulations 2024* (the Amending Regulations) amend the Migration Regulations to ensure the amendments of the Subclass 485 visa framework in the Migration Regulations made on 1 July 2024 operate as intended, including by establishing a clear definition of ‘degree’ specifically for the purposes of the Subclass 485 visa criteria.

These amendments are described in more detail below.

Subclauses 485.231(1) and 485.231(3) of Schedule 2 to the Migration Regulations require applicants in the Post-Higher Education Work (PHEW) stream to hold a degree or degrees specified by the Minister in an instrument and that the applicant's study for the degree or degrees satisfied the Australian study requirement (ASR) in the period of 6 months immediately before the day the application was made.

The amendments on 1 July 2024 included graduate certificates as a 'degree' for the purposes of subclause 485.231(1). Prior to the amendments being made by the Amending Regulations, Subclass 485 visa applicants in the PHEW stream using a graduate certificate to meet subclause 485.231(1) were unable to satisfy the ASR under subclause 485.231(3). This is because graduate certificates are unable to meet the definition of 'degrees' in subregulation 2.26AC(6) of the Migration Regulations, as the definition of degrees includes a 'postgraduate diploma', which does not clearly capture graduate certificate. To address this, and ensure clarity in relation to the criteria for the Subclass 485 visa, the Amending Regulations establish a specific definition of 'degree' for the purposes of the Subclass 485 visa criteria. A graduate certificate is not included in this definition.

The amendments made by the Amending Regulations change clauses 485.111 of Schedule 2 to the Migration Regulations to introduce an equivalent provision to subregulation 2.26AC(6) of the Migration Regulations for the PHEW stream. The Amending Regulations amend clause 485.111 to insert a reference to 'degree' in the definition of 'completed' as well as the note underneath that definition, repeal and substitute the definition of 'degree' for the purposes of the Subclause 485 visa. 'Note 1' in clause 485.111 is repealed. Amendments to clause 485.231 decouple the Subclass 485 visa from the ASR and specify study requirements specific to the Subclass 485 visa.

This provides clarity regarding PHEW stream eligibility for graduate certificate and graduate diploma holders. The updated definition of 'degree' for the PHEW stream makes certain that a graduate certificate is not an eligible qualification for a Subclass 485 visa. This removes confusion for applicants and corrects the current issue where the ASR cannot be met using this qualification under subclause 485.231(3).

The updated definition of 'degree' for the Subclass 485 visa PHEW stream also allows graduate diplomas obtained in Australia to only be accepted as an eligible qualification for the PHEW stream when undertaken immediately following a related bachelor or masters degree or a PhD that was obtained in Australia. This recognises that applicants for the PHEW stream who have completed a graduate diploma supplementing their tertiary qualifications show greater leadership in their specific field, have increased capability to contribute to research through their highly specialised knowledge, and can demonstrate improved professional standards.

The amendments maintain that international student graduates, with VET sector qualifications as set out in clause 485.221, are able to apply for the PVEW stream and, if granted, will receive an 18 months stay period as set out in the Migration Strategy.

Human rights implications

This Disallowable Legislative Instrument engages the following right:

- the right to work in Article 6(1) of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR)
- the right to education in Article 13(1) of the ICESCR.

Right to work and the right to education

These amendments engage the rights to work and to study contained in Articles 6(1) and Article 13(1) of the ICESCR.

Article 6(1) of the ICESCR provides that:

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.

Article 13(1) of the ICESCR provides that:

The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

The Amending Regulations implement measures that may result in some non-citizens who are in Australia, who may have been eligible for a Subclass 485 visa had they applied prior to the commencement of the amendments, to no longer be eligible for a Subclass 485 visa. This may affect their ability to continue working or studying in Australia. The ability for a temporary visa holder to remain in Australia beyond the duration of their current visa depends on their ability to meet eligibility requirements for the grant of a further visa. It is open to the Government to change visa settings for new applicants to meet its policy priorities for a well-managed migration program, consistently with its international obligations, that is intended to benefit the Australian community as a whole.

The clear exclusion of graduate certificates from the definition of degree for Subclass 485 visa applicants in the PHEW stream resolves current confusion for applicants seeking to meet the study requirement. International students, who are undertaking or have undertaken a graduate certificate, seeking to apply for a Subclass 485 visa may be able to use their previous study, provided it meets eligibility requirements.

The amendments qualify the circumstances in which a graduate diploma would meet the requirements for a Subclass 485 visa in the PHEW stream. The amendments maintain alignment with the intent of the Migration Strategy, including simplification of the Subclass 485 visa and stay periods. International students who are undertaking or have undertaken a graduate diploma not related to and not following a bachelor or masters degree or a PhD obtained in Australia and are seeking to apply for a Subclass 485 visa may be able to use their previous study, provided it meets eligibility requirements. There are no study restrictions while holding a Subclass 485 visa.

Subclass 485 visa applicants in the PHEW stream wishing to combine a graduate diploma with a VET sector course, such as those used for the PVEW stream, remain eligible to apply for a Subclass 485 visa if their previous study meets eligibility requirements, and undertake further study once the visa is granted. The 18 month stay period for the PVEW stream is less than the two year stay period provided to applicants using graduate diplomas related to a bachelor or masters degree or PhD obtained in Australia. This difference in stay period will have minimal impact, noting the Migration Review found that extra time on a graduate visa does not improve graduates' employment outcomes. Graduates with the ability to contribute to the skilled labour market are likely to be employed soon after graduating and able to move on to different types of skilled temporary or permanent visas regardless of the Subclass 485 visa stream.

While some non-citizens who had been intending to apply for a Subclass 485 may no longer be eligible for grant of the visa, this does not limit their ability to pursue other visa options to enter or remain in Australia for work or study purposes and the amendments do not unduly limit these rights.

Existing applicants using a graduate certificate as their qualifying study may be able to withdraw their application and apply for a refund of their visa application charge. Existing applicants using a graduate diploma as the eligible qualification, including those linked to the VET sector, may be eligible for the grant of a Subclass 485 visa in the PHEW stream if all applicable requirements for the visa are met.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights because, to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate to legitimate aims.

The Hon Tony Burke MP

Minister for Home Affairs

Details of the Migration Amendment (Graduate Visas No. 2) Regulations 2024

Section 1 Name

This section provides that the title of the Regulations is the *Migration Amendment (Graduate Visas No. 2) Regulations 2024* (the **Amending Regulations**).

Section 2 – Commencement

This section provides for the commencement of the Amending Regulations on the day after they are registered on the Federal Register of Legislation.

Section 3 – Authority

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

Section 4 – Schedules

This section provides for how the amendments in the Amending Regulations operate.

Schedule 1 – Amendments

Migration Regulations 1994

Item [1] – Clause 485.111 of Schedule 2 (definition of completed)

Item 1 of Schedule 1 omits ‘associate degree, diploma’ from the definition of ‘completed’ in clause 485.111 of Schedule 2 to the Migration Regulations. This item also substitutes those omitted words with ‘associate degree, degree, diploma’ in its place.

The amended definition of ‘completed’ now reads as follows:

‘completed, in relation to an associate degree, degree, diploma or trade qualification, means having met the academic requirements for its award’.

The previous version of the definition of ‘completed’ in clause 485.111 of Schedule 2 to the Migration Regulations’ reference to an associate degree, diploma or trade qualification meant having met the academic requirements for that qualification’s award.

The effect of item 1’s amendment to the clause 485.111 of Schedule 2 to the Migration Regulations’ definition of ‘completed’ inserts the term ‘degree’ into that definition. Where the term ‘completed’ is used in Division 485 of Schedule 2, as it relates to the term ‘degree’, that qualification means having met the academic requirements for that degree’s award. The term ‘degree’ is defined in the new definition for that term in clause 485.111 of Schedule 2 (see item 3 below).

Item [2] – Clause 485.111 of Schedule 2 (note to the definition of completed)

Item 2 of Schedule 1 repeals the note under the previous version of the definition of ‘completed’ in clause 485.111 of Schedule 2 to the Migration Regulations. This item inserts a new note in its place.

The new note under the definition of ‘completed’ (as amended by item 1 above) in clause 485.111 of Schedule 2 to the Migration Regulations provides for:

‘The academic requirements for the award of an associate degree, degree, diploma or trade qualification do not include the formal conferral of the associate degree, degree, diploma or trade qualification. Therefore, a person can complete an associate degree, degree, diploma or trade qualification, for the purposes of this definition, before the award is formally conferred’.

The previous version of the note under clause 485.111 of Schedule 2 to the Migration Regulations provided for the completion of an associate degree, diploma or trade qualification before that award is formally conferred, for the previous version of the definition of ‘completed’ purpose (see item 1 above).

The effect of item 2’s repeal of the old note and its replacement with a new note under the amended definition of ‘completed’ (by item 1 above) is to confirm that a ‘degree’ (as defined by item 3 below) can be completed, along with an associate degree, diploma or trade qualification, before that award is formally conferred, for the purpose of that amended definition of ‘completed’.

Item [3] – Clause 485.111 of Schedule 2 (definition of degree)

Item 3 of Schedule 1 repeals the previous definition of ‘degree’ in clause 485.111 of Schedule 2 to the Migration Regulations. This item also inserts a new definition of ‘degree’ in its place.

The new definition of ‘degree’ provides for a formal educational qualification, under the Australian Qualifications Framework, awarded by an Australian educational institution as a bachelor degree, a master degree, a doctoral degree or a graduate diploma for which:

- the entry level to the course leading to the qualification is satisfactory completion of (see paragraph (a) of that definition):
 - in the case of a bachelor degree—year 12 in the Australian school system or of equivalent schooling (see paragraph (a)(i) of that definition); and
 - in the case of a master degree—a bachelor degree awarded at an Australian tertiary educational institution or of an equivalent award (see paragraph (a)(ii) of that definition); and
 - in the case of a doctoral degree—a bachelor degree awarded with honours, or a master degree, at an Australian tertiary educational institution or of an equivalent award (see paragraph (a)(iii) of that definition); and
 - in the case of a graduate diploma—a degree (the *preceding degree for the graduate diploma*) to which subparagraph (i), (ii) or (iii) applies (see paragraph (a)(iv) of that definition); and

- in the case of a graduate diploma—the course leading to the qualification (see paragraph (b) of that definition):
 - is a related course of study to the course leading to the award of the preceding degree for the graduate diploma (as defined in paragraph (a)(iv) of the new definition of ‘degree’) (see paragraph (b)(i) of that definition); and
 - is commenced within the same, or the next, academic year as the academic year in which the preceding degree for the graduate diploma was completed (see paragraph (b)(ii) of that definition).

Where the terms ‘completed or complete’, ‘award or awarded’, ‘degree or degrees’ or ‘preceding degree for the graduate diploma’ are used throughout Division 485 of Schedule 2 to the Migration Regulations, those terms have the same meaning as provided for in the amended definition of ‘completed’, the new note under that amended definition, the new definition of ‘degree’ or paragraph (a)(iv) of that definition (respectively) in clause 485.111 of that Schedule (See items 1, 2 and 3 above).

The previous definition of ‘degree’ in clause 485.111 of Schedule 2 to the Migration Regulations provided for ‘degree has the same meaning as in subregulation 2.26AC(6)’.

The effect of item 3’s repeal of the previous definition of ‘degree’ and its replacement with the new definition of ‘degree’ is to give effect to the insertion of new subclause 485.231(1B), the amendments to subclauses 485.231(1) and (2) and the repeal of subclause 485.231(3) of Schedule 2 to the Migration Regulations (See items 5 to 8 below).

Item [4] – Clause 485.111 of Schedule 2 (note 1)

Item 4 of Schedule 2 repeals note 1 under clause 485.111 of Schedule 2 to the Migration Regulations.

The previous note 1 under clause 485.111 of Schedule 2 to the Migration Regulations provided for ‘Regulation 1.03 provides that Australian study requirement has the meaning set out in regulation 1.15F’.

The effect of item 4’s consequential amendment to clause 485.111 of Schedule 2 to the Migration Regulations is to give effect to the removal of the ‘Australian Study Requirement’ (as defined in regulation 1.03 and detailed in regulation 1.15F) from being required to be met by an applicant who is seeking to satisfy the relevant academic requirements for a successful grant of an initial Subclass 485 visa in the PHEW stream.

That requirement was previously required by the repealed subclause 485.231(3) of Schedule 2. That provision of that Schedule was repealed by item 8 (below). This also gives effect to the previous definition of ‘degree’ being repealed by item 3 (above).

The new academic requirements that a person must satisfy for a successful grant of an initial Subclass 485 visa in the PHEW stream are provided for in new clause 485.231(1B) and amended subclauses 485.231(1) and (2) of Schedule 2 to the Migration Regulations (see items 5, 6 and 7 below).

Additionally, the amended definition of ‘completed’, the new note under that definition and the new definition of ‘degree’ can all be used to interpret the requirements as provide for in the new clause 485.231(1B) and amended subclauses 485.231(1) and (2) of Schedule 2 to the Migration Regulations (see items 1, 2 and 3 above).

Item [5] – After subclause 485.231(1A) of Schedule 2

Item 5 inserts a new provision after subclause 485.231(1A) of Schedule 2 to the Migration Regulations. The new provision is subclause 485.231(1A) of Schedule 2.

New subclause 485.231(1A) of Schedule 2 to the Migration Regulations requires an applicant for an initial Subclass 485 visa in the PHEW stream, in the period six (6) months immediately before the application for that visa was made, to have completed one or more degrees for award by an Australian educational institutions as a result of a course or courses:

- that are registered courses (see paragraph 485.231(1B)(a) of Schedule 2); and
- that were completed in a total of at least 16 calendar months (see paragraph 485.231(1B)(b) of Schedule 2); and
- that were completed as a result of a total of at least two (2) academic years study (see paragraph 485.231(1B)(c) of Schedule 2); and
- for which all instruction was conducted in English (see paragraph 485.231(1B)(d) of Schedule 2); and
- that the applicant undertook while in Australia as the holder of a visa authorising the applicant to study (see paragraph 485.231(1B)(e) of Schedule 2).

For the purpose of the new subclause 485.231(1B) of Schedule 2 to the Migration Regulations, the references to ‘completed’ and ‘award’ in that provision of that Schedule have the meaning given to then in the amended definition of ‘completed’ and the new note under that definition (respectively) as provided for in clause 485.111 of Schedule 2 (see items 1 and 2 above).

Additionally, item 5 inserted a note under new subclause 485.231(1B) of Schedule 2 to the Migration Regulations. That new note provides for ‘For the definition of ‘degree’, see clause 485.111’.

The effect of that note is to draw the reader’s attention to the new definition of ‘degree’ in that provision of Schedule 2 to the Migration Regulations (see item 3 above). That note confirms that the reference to ‘one or more degrees’ in new subclause 485.231(1B) of that Schedule has the same meaning as the new definition of ‘degree’ in clause 485.111 of Schedule 2.

Complementary amendments for successful grant of an initial Subclass 485 visa in the PHEW stream can be found in items 6, 7 and 8 below.

Those items’ (along with item 5) amendments to the Migration Regulations give effect to the policy intent to simplify and streamline the Subclass 485 visa in the PHEW stream.

Item [6] – Subclause 485.231(1) of Schedule 2

Item [7] – Subclause 485.231(2) of Schedule 2

Item [8] – Subclause 485.231(3) of Schedule 2

Item 6 omits ‘The applicant holds a degree or degrees’ from subclause 485.231(1) of Schedule 2 to the Migration Regulations. This item substitutes those words with ‘Each degree mentioned in subclause (1B) is held by the applicant, and is a degree’.

The amended subclause 485.231(1) of Schedule 2 to the Migration Regulations provides for ‘Each degree mentioned in subclause (1B) is held by the applicant, and is a degree of a kind specified by the Minister in an instrument in writing for this subclause’.

The effect of item 6’s amendment to subclause 485.231(1) of Schedule 2 to the Migration Regulations is to clarify that where each degree (as defined in the new definition for that term in clause 485.111 of that Schedule (see item 3 above)), mentioned in new subclause 485.231(1B) of Schedule 2 (see item 5 above) is held by an initial Subclass 485 visa in the PHEW stream applicant, that degree is of a kind specified by the Minister in an instrument in writing for that provision of that Schedule.

Item 7 inserts ‘mentioned in subclause (1B)’ after the word ‘degree’ in subclause 485.231(2) of Schedule 2 to the Migration Regulations.

The amended subclause 485.231(2) of Schedule 2 to the Migration Regulations provides for ‘Each degree mentioned in subclause (1B) was conferred or awarded by an educational institution specified by the Minister in an instrument in writing for this subclause’.

The effect of item 7’s amendment to subclause 485.231(2) of Schedule 2 to the Migration Regulations is to clarify that where each degree (as defined in the new definition for that term in clause 485.111 of that Schedule (see item 3 above)), mentioned in new subclause 485.231(1B) of Schedule 2 (see item 5 above) was conferred or awarded by an educational institution specified by the Minister in an instrument in writing for that provision that Schedule.

Item 8 repeals the previous subclause 485.231(3) of Schedule 2 to the Migration Regulations.

The previous subclause 485.231(3) of Schedule 2 to the Migration Regulations provided for ‘The applicant’s study for the degree or degrees satisfied the Australian study requirement in the period of 6 months immediately before the day the application was made’.

The effect of item 8’s amendment to clause 485.231 of Schedule 2 to the Migration Regulations is to remove the ‘Australian Study Requirement’ (as defined in regulation 1.03 and detailed in regulation 1.15F) from being required to be met by an applicant who is seeking to satisfy the relevant academic requirements for a successful grant of an initial Subclass 485 visa in the PHEW stream.

The new academic requirements that a person must satisfy for a successful grant of an initial Subclass 485 visa in the PHEW stream are provided for in new clause 485.231(1B) and amended subclauses 485.231(1) and (2) of Schedule 2 to the Migration Regulations (see items 5, 6 and 7 above).

Additionally, the amended definition of ‘completed’, the new note under that definition and the new definition of ‘degree’ can all be used to interpret the requirements as provide for in the new clause 485.231(1B) and amended subclauses 485.231(1) and (2) of Schedule 2 to the Migration Regulations (see items 1, 2 and 3 above).

Item [9] – In the appropriate position in Schedule 13

Item 9 inserts Part 148 in Schedule 13 to the Migration Regulations. The purpose of Part 148 is to set out the application of the amendments made by the Amending Regulations.

Clause 14801 provides that the amendments to Schedule 2 to the Migration Regulations made by Schedule 1 to the Amending Regulations apply to applications for Subclass 485 visas made on or after the commencement date of those Regulations, being the day after those Regulations are registered on the Federal Register of Legislation.

Unless otherwise indicated in this document, it is Copyright of the Commonwealth of Australia and the following applies:

Copyright Commonwealth of Australia.

This material does not purport to be the official or authorised version. Reproduction and use of this material is subject to a [Creative Commons Attribution-NonCommercial-ShareAlike 3.0 Australia License](#).

You should make independent inquiries and obtain appropriate advice before relying on the information in any important matter.

This document has been distributed by LexisNexis Australia. All queries regarding the content should be directed to the author of this document.