

OFFICIAL**POLICY ADVICE RECORD**

s. 22(1)(a)(ii) in [REDACTED]

s. 22(1)(a)(ii)

Date: 13 May 2024 (EL2 cleared)

Subject: Compliance with regional visa conditions by subclass 489, 491 or 494 visa holders working in Australia's transport industry and travelling between a DRA/SRA and outside a DRA/SRA in the course of their duties

Updated Policy Advice

Under policy and by exception, transport industry workers travelling between a designated regional area (DRA) or a specified regional area (SRA) and outside a DRA/SRA in the course of their duties may substantially comply with Condition 8579 requirements for Skilled Work Regional (Provisional) subclass 491 and Skilled Employer Sponsored Regional (Provisional) subclass 494 visas, and conditions 8539 and 8549 for the Skilled Regional (Provisional) subclass 489 visa.

- To avoid any doubt, it would be acceptable for a subclass 489, subclass 491 or subclass 494 visa holder who lives and works in a DRA/SRA to travel outside of the DRA/SRA in their course of usual duties as a transport worker, such as a driver of a passenger vehicle or goods delivery vehicle, and return to their place of residence at the end of their duties.

Note: This treatment of transport industry workers is unique to existing policy interpretation s. 22(1)(a)(ii) which excludes routine or frequent work by skilled regional provisional holders in metropolitan areas.

Relevant background:

Compliance with Conditions 8579, 8539 and 8549 has been met where visa holders:

- where the employer is based outside of a DRA/SRA, provide evidence that remuneration is paid to the visa holder in Australia and income tax is payable in Australia, and/or
- where the employer is an approved business sponsor in a DRA, the employer has shown a genuine vacancy in a nominated occupation.

To support the claim that the applicant lives at a residential address in a DRA/SRA, case officers should consider as evidence as to where applicant has been living (this list not exhaustive):

- rental agreements or utility bills specifying residential address
- mortgage documents or title deeds
- school reports or tertiary education academic records

To support the claim that the applicant is required to travel between a DRA/SRA and outside a DRA/SRA in the course of their transport work, case officers should consider as evidence of the requirement of their employment (this list not exhaustive):

- Current contract of employment, or Labour agreement
- Letter of support from employer
- Payslips
- Notices of Assessment issued by the Australian Taxation Office

Clearance Date	13 May 2024
Authority	s. 22(1)(a)(ii), AS Skilled Visa Branch
Policy Clearance	s. 22(1)(a)(ii), Director Employer Sponsored Policy (16 February 2024)
	s. 22(1)(a)(ii), Director Independent Skills Talent and Business (14 May 2024)

s. 22(1)(a)(ii)



OFFICIAL

Minute

Timing

1. By Tuesday 23 May 2023, to advise departmental stakeholders, clients and migration agents.

Purpose

2. To seek your approval of a clarified policy interpretation of Visa Condition 8579 "Live, work and study in a Designated Regional area" (DRA) to include new modes of remote working in a DRA which have become available due to the COVID-19 pandemic, excluding routine or frequent work in a metropolitan area.

Background

3. The policy intent of the Skilled Work Regional (Provisional) (subclass 491) and Skilled Employer Sponsored Regional (Provisional) (subclass 494) visas is to retain the economic contribution of skilled migrants and members of their family unit within regional Australia (see **Attachment A**).
Visa Condition 8579 is a condition applied to these two visas.
4. The Procedural Instruction [Regional Conditions – subclass 491 and 494 Policy Instruction](#) (PI) was prepared in November 2019, just prior to the commencement of these visas and the COVID-19 pandemic. Visa Condition 8579 "*...while in Australia, must live, work and study only in a part of Australia that was a designated regional area (DRA) at the time the visa was granted...*" is one of several conditions applied to these visas.
5. The current policy interpretation of Condition 8579 does not differentiate between time spent by the visa holder outside of a DRA for personal matters and for work commitments, and recommends scrutiny of extended absences from a DRA which exceed a total of 90 days a year or any 60 consecutive days.

Issues

6. The policy intent and the priorities of state and territory governments to attract skilled workers to regional areas need to be balanced in the context of current legislative settings. These legislative settings do not:
 - a. require the visa holder to work for an employer whose headquarters, regional office or traditional workplace is located in the same DRA as where the person lives;
 - b. require the visa holder to work for an employer whose headquarters, regional office or traditional workplace is located in a DRA;
 - c. exclude the visa holder from living in a DRA and working in that location for a metropolitan-located employer, or an overseas-based employer, and other variations of this scenario; and
 - d. restrict the visa holder from leaving their original employer, or the DRA where they live and work, for a new employer or new DRA even if in another jurisdiction provided they

OFFICIAL

- continue to meet all legislative requirements while holding the same skilled regional provisional visa.
7. The current PI imposes homogenous 90 and 60 day guidelines for absences outside of a DRA, which is not consistent with legislative settings. Assessing compliance with the 90 and 60 day guidelines is complex for decision makers and does not support efficient visa processing.
 8. The PI does not distinguish between the personal matters of skilled regional visa holders, for example, frequent domestic or overseas holiday travel which is not restricted under legislation - and work matters (noting work routinely and frequently undertaken outside of a DRA does not meet Condition 8579).
 9. The PI should also consider changes to modes of working influenced by the COVID-19 pandemic, and requires clarification of reasonable circumstances which emerged during the pandemic (refer to examples in **Attachment B**) where a skilled regional visa holder lives and usually works in a DRA for an employer located in a metropolitan or overseas location. These new modes of working may be considered compliant with Condition 8579.
 10. Remote working has been normalised, and impacts on skilled regional visa holders who are subject to both regional work and regional residency conditions. Compliance with these visa conditions determines their eligibility for the Permanent Residence Skilled Regional visa (subclass 191).
 11. Updating this policy would support skilled regional visa holders contributing to regional development beyond just working locally through personal spending, investment and community participation. It is intended to provide for visa holders who usually perform work remotely from a location in a DRA, including from a home office, on behalf of an employer - even if the employer has no regional presence in Australia, and is headquartered in a metropolitan area of Australia or overseas location.
 12. Noting the current approach to remote working, that is that skilled regional visa holders continue to support the regional community and economy, and the potential impact on a permanent pathway for skilled regional visa holders, it is proposed that the policy interpretation of Condition 8579 be clarified as outlined below.
 13. Compliance with Condition 8579 is **met** where subclass 491 or subclass 494 visa holders:
 - a. always live at a residential address which is located in a DRA, and usually spend work hours routinely performing usual work duties on behalf of the employer from a work location which is in a DRA, and
 - b. where the employer is foreign owned or based overseas, provide evidence that remuneration is paid to the visa holder in Australia and income tax is payable in Australia.
 14. Compliance with Condition 8579 is **not met** where subclass 491 or subclass 494 visa holders:
 - a. live at a residential address which is in a DRA, but do not usually spend work hours routinely performing usual work duties in a DRA (*no change*),
 - b. live at a residential address which is in a DRA, and while usual work duties are frequently and routinely performed from a location in a DRA, work duties are also frequently and routinely performed outside a DRA (*proposed clarification to policy interpretation*),
 - c. do not live at a residential address in a DRA, but usually spend work hours routinely performing usual work duties from a work location that is in a DRA (*no change*),
 - d. do not live at a residential address in a DRA, and usually spend work hours routinely performing usual work duties from one or more work locations that are in a DRA and also are not in a DRA (*no change*).

OFFICIAL

OFFICIAL

15. In order to support streamlined processing, it is proposed to include the words "frequently and routinely" in the PI, instead of referring to an arbitrary timeframe of 60 consecutive days or any 90 days within a 12 month period.
16. Pending your approval, the Regional Conditions – Subclass 491 and 494 Policy Instruction will be updated.

Consultation

17. Internal consultation as per details in **Attachment A**.

Recommendation

That you approve clarifying the policy interpretation of Visa Condition 8579 "Live, work and study in a Designated Regional area" (DRA) to include new modes of remote working in a DRA, without routine or frequent work in a metropolitan area, which have become available due to the COVID-19 pandemic.

Agreed / Not Agreed / Please Discuss

Karin Maier
Assistant Secretary
Skilled Visas Branch

s. 22(1)(a)(ii)

23 May 2023

Jodie Bjerregaard
A/g First Assistant Secretary
Immigration Programs Division

26 May 2023

s. 22(1)(a)(ii)

Contact Officer: s. 22(1)(a)(ii), Acting Director, Regional Mobility Policy, s. 22(1)(a)(ii)

Division/branch Immigration Programs Division/Skilled Visa Branch

OFFICIAL

OFFICIAL

Attachment A – Background and consultation

Background

- The subclass 491 and subclass 494 visas were part of a strategic population package announced by the former Government in the 2019-20 budget, commencing 16 November 2019.
- The intention of these visas is to promote:
 - population growth by encouraging skilled migrants to settle in DRAs, and
 - economic development in regional communities.
- The subclass 491 is a points tested visa category open to skilled applicants under 45 years of age who are either nominated by a State/Territory Government or sponsored by a family relative who resides in a DRA.
- The subclass 494 is open to skilled applicants under 45 years of age who are sponsored by a regional employer for whom they may only work, or under the terms of a Labour Agreement, in a nominated skilled occupation and in a DRA.
- Applicants must declare (at the time of application) that they, and members of their family unit included in the application, have a genuine intention to live, work and study in a DRA.
- Under the *Migration Regulations 1994* (the Regulations), Visa Condition 8579 (and Conditions 8578, 8580, 8581) form the regional compliance framework attached to the subclass 491 and subclass 494 visas. A visa holder subject to Condition 8579 "*...while in Australia, must live, work and study only in a part of Australia that was a designated regional area (DRA) at the time the visa was granted...*".
- The Department's [Regional Conditions – subclass 491 and 494 Policy Instruction](#) (PI) was prepared at the commencement of these visas in November 2019. Recent internal consultation indicates the PI would be improved if it were more consistent with other skilled visa policy settings (for example the Skilled Regional Permanent Residence subclass 887 visa); compliance with regional visa conditions from a work perspective was more clearly separated from the residential perspective; and clarification of the policy interpretation to include new modes of remote work.
- Clarification of the policy position would enable consistent, accurate advice to be provided to agents and clients in relation to compliance with visa condition 8579 including remote working scenarios (such as regional visa holders working at home in a DRA for employers that are located in metropolitan areas of Australia or overseas). This would also support decision makers' assessment of compliance with visa condition 8579, and support efficient processing of visa applications.

Consultation

- General Skilled Migration Program Management, Merits Review and Detention Policy, Employer Sponsored Program Management, and Business and Industry Regional Outreach officers.
- This Minute was initially provided to then FAS Michael Willard (23 June 2022) through acting AS Skilled Visa Branch Paul Denman. FAS Willard requested further clarification of one point relating to allowing elements of work in a metropolitan area, which has now been addressed in points 6, 7 and 13 of this Minute.

OFFICIAL

OFFICIAL**Attachment B – Scenarios - Regional Visa Condition 8579 Compliance****Scenarios**

- whether a current subclass 491 or subclass 494 visa holder who is living in a DRA and working from a home office which is not the employer's headquarters nor a regional office or workplace would be compliant with Condition 8579, or if the employer shifted their office to another regional area of Australia.
- whether a current subclass 491 or subclass 494 visa holder living and working in a DRA for a regional employer at their regional office would be compliant with Condition 8579 if they secured *new employment with a new metropolitan-based or overseas employer* while living in the DRA and working from a home office.
- whether a skilled migrant with the intent to apply to the subclass 491 or subclass 494 visa could work for an employer headquartered or based in a metropolitan area of Australia or overseas, if living in a DRA, and working remotely from a home office.
- whether a subclass 491 or subclass 494 visa holder with an intent to apply for a subclass 191 visa would be eligible to do so if their employment involved a 'working from home' arrangement while living in a DRA for at least three years.

Example one: enquiry from Subclass 491 visa holder (May 2022)

Hi, I am living and working in Toowoomba city (post code 4350). My enquiry is, Can I work from home in a designated regional area for a company which do not have a physical office in a designated regional area or who is situated outside Queensland or overseas. As I am looking for better career opportunities most of the companies are physically situated in Brisbane and some of them are happy to offer work from home arrangement. Hence if I work for Brisbane situated company will it hinder my ability to apply for 191 visa in future?

Example two: enquiry from Subclass 491 visa holder (August 2022)

According to the 489 to 887 clause, it is very clear that remote work is allowed as one of the types of work in the regional area, but the 491 visa, as the successor of 489, does not give very clear hints on remote work. This has left many people with 491 visas confused about whether they can work remotely or not. If you can work remotely, what are the criteria of the immigration office? Also, 494 visa holder is allowed to work remotely, I can't tell there are many differences between 491 visa and 494 visa.... As long as the 491 visa holders physically work in the regional area, they have more income to help the economic recovery of the remote areas, and they don't have to put too much strain on the public facilities by moving into the big cities, which is beneficial in all aspects. In fact, there are not many types of jobs that can accept remote work, and most of them are IT and other jobs that are in short supply in Australia. Lifting the restrictions on remote work is beneficial to the Australian government and people from any point of view.

Example three: Enquiry from Agent (February 2023)

We have a client living in a regional area and working-from-home in that regional area, for a company based in a non-regional area, such as Melbourne. We notice that is quite a common situation nowadays and would like to have clarification whether this could be counted as "working in a regional area". Similarly, we have a client that has been working for a company that is

OFFICIAL

OFFICIAL

overseas, that pays him in AUD to an Australian bank account. He is living in a regional area and working from home in that regional area. Is this regional work?

Example four: Referral from State MP (February 2023)

[Client name] has been living in Hobart on this visa for 9 months and her nominated occupation is external auditor. She tells us it has been difficult to get work and she has been offered a position in the same area but for Automation Test Engineer/Quality Assurance. However, the company is based in Brisbane and does not have a physical office in Hobart. Therefore, she would be working from home in Hobart and is required to travel interstate every week. She would like to know if working from home in Hobart for an international company where the main branch is located in Brisbane will breach her visa condition.

OFFICIAL