

EXPLANATORY STATEMENT

Select Legislative Instrument 2012 No. 83

Issued by the Minister for Immigration and Citizenship

Migration Act 1958

Australian Citizenship Act 2007

Migration Legislation Amendment Regulation 2012 (No. 2)

Subsection 504(1) of the *Migration Act 1958* (the Migration Act) provides, in part, that the Governor-General may make regulations, not inconsistent with the Migration Act, prescribing all matters which by the Migration Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to the Migration Act.

Section 54 of the *Australian Citizenship Act 2007* (the Citizenship Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Citizenship Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Citizenship Act.

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

The purpose of the Regulation is to amend the *Migration Regulations 1994* (the Migration Regulations) and the *Australian Citizenship Regulations 2007* (the Citizenship Regulations) to strengthen and improve immigration policy.

The Regulation amends the Migration Regulations to increase fees and some visa application charges in line with the Consumer Price Index (CPI) and increase other visa application charges in line with the Contributory Parent Visa Composite Index (CPVCI). The Regulation also amends the Citizenship Regulations to update references to instruments concerning the payment of fees in foreign currencies and countries that are set periodically under subregulation 5.36(1) and subregulation 5.36(1A) of the Migration Regulations.

A Statement of Compatibility with Human Rights has been completed for the Regulation, in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The Statement's overall assessment is that the measures in the Regulation are compatible with human rights because they do not raise any human rights issues. A copy of the Statement is at Attachment B.

Details of the Regulation are set out in Attachment C.

The Migration Act and the Citizenship Act specify no conditions that need to be satisfied before the power to make the Regulation may be exercised.

The Office of Best Practice Regulation (the OBPR) has been consulted in relation to amendments made by all Schedules to the Regulation and advises that the regulations are not likely to have a direct effect, or substantial indirect effect, on business and are not likely to restrict competition. The OBPR consultation references are:

- 13339 (Schedule 1)
- 13374 (Schedule 2)

The amendments made by Schedule 1 to the Regulation are minor or machinery in nature and do not substantially alter existing arrangements and so, consistent with section 18 of the *Legislative Instruments Act 2003*, no substantial consultation was undertaken. The Australian Bureau of Statistics publishes the CPI for each quarter of a financial year on its website and the Department of Immigration and Citizenship (the Department) accessed that information to calculate the CPI figure to be applied to certain fees and visa application charges from 1 July 2012. The CPVCI is calculated, and published by, the Australian Government Actuary (AGA) each year and the Department liaised with the AGA to obtain that figure to be applied to the visa application charges for certain contributory parent visas from 1 July 2012. The AGA also publishes the CPVCI for each financial year on their website.

In relation to the amendments made by Schedule 2, because the amendments are minor and machinery in nature and do not substantially alter existing arrangements, no consultation outside the Department was undertaken.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

POWERS OF DELEGATION

Subsection 504(1) of the *Migration Act 1958* (the Migration Act) provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters which by the Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

In addition, the following provisions of the Migration Act may apply:

- subsection 5(1) of the Migration Act, which provides that “prescribed” means prescribed by the regulations;
- section 45A of the Migration Act, which provides that a non-citizen who makes an application for a visa is liable to pay a visa application charge if, assuming the charge were paid, the application would be a valid visa application;
- subsection 45B(1) of the Migration Act, which provides that the amount of the visa application charge is the amount, not exceeding the visa application charge limit, prescribed in relation to the application. The visa application charge limit is determined under the *Migration (Visa Application) Charge Act 1997*; and
- section 45C of the Migration Act, which deals with regulations about the visa application charge. In particular:
 - subsection 45C(1) of the Migration Act, which provides that regulations may provide that the visa application charge may be payable in instalments, and specify how those instalments are to be calculated and when instalments are payable; and
 - paragraph 45C(2)(a) of the Migration Act, which relevantly provides that the regulations may make provision for and in relation to various matters, including the recovery of the visa application charge in relation to visa applications and the way, including the currency, in which visa application charge is to be paid.

The following provisions of the *Migration (Visa Application) Charge Act 1997* may also apply:

- section 4, which imposes a visa application charge payable under section 45A of the Migration Act;
- section 5, which limits the visa application charge and provides the formula to calculate the charge limit for later financial years; and
- section 6, which sets the charge limit in relation to a visa application for a contributory parent visa and provides a formula to calculate the charge limit for later financial years.

The following provisions of *Australian Citizenship Act 2007* (the Citizenship Act) may also apply:

- section 54, which 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 Citizenship Act;
- paragraph 46(1)(d), which provides that an application made under a provision of the Act must be accompanied by the fee (if any) prescribed by the *Australian Citizenship Regulations 2007*; and
- subsection 46(3), which provides that the regulations may make provision for and in relation to the remission, refund or waiver of any fees of a kind referred to in paragraph 46(1)(d) of the Citizenship Act.

Statement of Compatibility with Human Rights

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

This 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*.

- **Schedule 1 – Amendment of Migration Regulations 1994 – Sponsorship fee and visa application charge**

Overview of the amendments

Schedule 1 to the Regulation amends sponsorship fees, a nomination fee and visa application charges (VACs) specified in the *Migration Regulations 1994* (the Migration Regulations), in line with Government policy to maintain fees and charges in real terms.

The fees and VACs are adjusted according to changes in the Consumer Price Index, with the exception of second instalments of the Contributory Parent VACs which are adjusted according to the Contributory Parent Visa Composite index. The increases do not exceed the applicable charge limits set out in the *Migration (Visa Application) Charge Act 1997*.

Human rights implications

Schedule 1 to the Regulation does not engage any of the applicable rights or freedoms.

Conclusion

Schedule 1 to the Regulation is compatible with human rights.

- **Schedule 2 – Amendment of Australian Citizenship Regulations 2007 - Regulation 12A Fees to Accompany Applications**

Overview

The amendment to regulation 12A of the *Australian Citizenship Regulations 2007* (the Citizenship Regulations) 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*.

Regulation 12A of the Citizenship Regulations relevantly provides for the foreign currencies and countries in which a citizenship application fee may be paid and how exchange rates are to be calculated. Regulation 12A refers to the conversion instrument and the places and currencies instrument that give details of conversion rates and the acceptable foreign currencies and countries. These instruments are made periodically by the Minister under the Migration Regulations, therefore regulation 12A should be amended periodically to substitute the references to the new

instruments. This ensures that citizenship application fees can continue to be charged at the current rate in foreign currencies and countries.

Human rights implications

This amendment to the Citizenship Regulations does not engage any of the applicable rights or freedoms.

Conclusion

This amendment to the Citizenship Regulations is compatible with human rights as it does not raise any human rights issues.

Details of the Migration Legislation Amendment Regulation 2012 (No. 2)

Section 1 – Name of Regulation

This section provides that the title of the Regulation is the *Migration Legislation Amendment Regulation 2012 (No. 2)*.

Section 2 – Commencement

This section provides that the Regulation commences on 1 July 2012.

Section 3 – Amendment of Migration Regulations 1994 and Australian Citizenship Regulations 2007

Subsection 3(1) provides that Schedule 1 to the Regulation amends the *Migration Regulations 1994* (the Migration Regulations).

Subsection 3(2) provides that Schedule 2 to the Regulation amends the *Australian Citizenship Regulations 2007* (the Citizenship Regulations).

Schedule 1 – Amendments of Migration Regulations 1994 relating to charges

Item [1] – Amendments – Sponsorship and Nomination fee increase

This item amends Part 2A (Sponsorship) of the Migration Regulations and regulation 5.37 (Employer nomination fee) in Part 5 of the Migration Regulations to reflect changes to specified Sponsorship and Employer nomination fees by substituting the amended Sponsorship and Employer nomination fees as set out in the table in Item 1.

The purpose of the amendment is to provide for a 3.4 per cent increase to specified fees, in line with changes in the Consumer Price Index.

Item [2] – Amendments – Visa Application Charge (VAC) – Consumer Price Index

This item amends Part 1 of Schedule 1 to the Migration Regulations to reflect adjustments to VACs for Permanent visas by substituting the amended visa application charges as set out in the table in item [2].

This item amends Part 2 of Schedule 1 to the Migration Regulations to reflect adjustments to VACs for Temporary visas by substituting the amended visa application charges as set out in item [2].

The purpose of the amendment is to provide for a 3.4 per cent increase to specified VACs, in line with changes in the Consumer Price Index.

All increases are rounded to a multiple of \$5.00 according to the following methodology:

- if the amount of the charge calculated under this formula is not a multiple of \$5.00, and if the amount exceeds the nearest lower multiple of \$5.00 by \$2.50 or more, the amount is rounded up to the nearest \$5.00;
- in any other case, where the charge calculated under the formula is not a multiple of \$5.00, the amount is rounded down to the nearest lower multiple of \$5.00.

The amount of the increase in these items does not exceed the applicable charge limit set out in the *Migration (Visa Application) Charge Act 1997*.

Item [3] – Amendments – Visa Application Charge – Contributory Parent Visa Composite Index

This item amends Schedule 1 to the Migration Regulations to reflect adjustments to VACs for the Contributory Parent Visa by substituting the amended visa application charges as set out in the table in item [3].

The purpose of the amendment is to provide for a 5.5 per cent increase to the second instalment of specified visa application charges for Contributory Parent visas, in accordance with the Contributory Parent Visa Composite Index.

All increases are rounded to a multiple of \$5.00 according to the following methodology:

- if the amount of the charge calculated under this formula is not a multiple of \$5.00, and if the amount exceeds the nearest lower multiple of \$5.00 by \$2.50 or more, the amount is rounded up to the nearest \$5.00;
- in any other case, where the charge calculated under the formula is not a multiple of \$5.00, the amount is rounded down to the nearest lower multiple of \$5.00.

The amount of the increase in these items does not exceed the applicable charge limit set out in the *Migration (Visa Application) Charge Act 1997*.

Item [4] – Schedule 13 – Transitional arrangements

This item inserts a new Part 2 after Part 1 of Schedule 13 to the Migration Regulations to deal with transitional arrangements in respect of amendments to the Migration Regulations.

The new heading is ‘Part 2 Amendments made by *Migration Legislation Amendment Regulation 2012 (No. 2)*.’

New item 201 provides that the amendments made by Schedule 1 to the *Migration Legislation Amendment Regulation 2012 (No. 2)* apply in relation to a matter for which an obligation to pay a fee or charge is incurred on or after 1 July 2012.

The purpose of new item 201 is to make it clear that Part 2 of Schedule 13 to the Migration Regulations deals with transitional arrangements arising in respect of amendments to the Migration Regulations made by Schedule 1 to the *Migration Legislation Amendment Regulation 2012 (No. 2)*.

Schedule 2 – Amendment of Australian Citizenship Regulations 2007

Item [1] – Before regulation 1, heading

This item inserts a new heading before regulation 1 of the Citizenship Regulations.

The new heading is ‘Part 1 Preliminary’.

The purpose of the new heading is to provide a clearer structure in the text of the Citizenship Regulations.

Item [2] – After regulation 4, heading

This item inserts a new heading after regulation 4 of the Citizenship Regulations.

The new heading is ‘Part 2 Australian citizenship’.

The purpose of the new heading is to provide a clearer structure in the text of the Citizenship Regulations.

Item [3] – After regulation 11, heading

This item inserts a new heading after regulation 11 of the Citizenship Regulations.

The new heading is ‘Part 3 Other matters’.

The purpose of the new heading is to provide a clearer structure in the text of the Citizenship Regulations.

Item [4] – Subregulation 12A(7)

This item substitutes new definitions of “conversion instrument” and “places and currencies instrument” currently in subregulation 12A(7) of the Citizenship Regulations.

New definition of “conversion instrument”

This item provides that “conversion instrument” means the instrument titled *Payment of Visa Application Charges and Fees in Foreign Currencies* (IMMI 12/008), that commences on 1 July 2012.

The definition of “*conversion instrument*” is relevant to provisions in the Citizenship Regulations which allow a person who makes an application under the Citizenship Act to pay the prescribed fee in a foreign currency specified in the conversion instrument.

This item replaces a reference to the current instrument in the definition of “conversion instrument” with a reference to a new instrument made under subregulation 5.36(1A) of the Migration Regulations. The new instrument commences on 1 July 2012 and sets out visa application charge and fee amounts in foreign currencies which correspond to amounts payable in Australian dollars. If the amount of the application fee is mentioned in the conversion instrument, then payment can be made in the corresponding amount in the foreign currency.

By referring to the new instrument made under subregulation 5.36(1A) of the Migration Regulations, application fees and refunds made under the Citizenship Act can continue to be paid in foreign currencies. Without this amendment, it would create hardship for clients making applications at overseas posts.

Due to the operation of section 14 of the *Legislative Instruments Act 2003*, it is not possible to incorporate, by reference, the instrument made under subregulation 5.36(1A) of the Migration Regulations as in force from time to time. Rather, the new instrument would need to be incorporated, by reference, at the time of commencement of the amending Regulation.

Instruments made under the Migration Regulations are incorporated in the Citizenship Regulations because the Citizenship Act does not currently permit the Minister for Immigration and Citizenship to make instruments under the Citizenship Regulations.

New definition of “places and currencies instrument”

This item provides that “places and currencies instrument” means the instrument titled *Places and Currencies for Paying of Fees* (IMMI 12/009), that would commence on 1 July 2012.

The definition of “places and currencies instrument” is relevant to provisions in the Citizenship Regulations which allow a person who makes an application under the Citizenship Act to pay the prescribed fee in a foreign country and a foreign currency specified in the “places and currencies instrument.”

This item replaces a reference to the current instrument in the definition of “places and currencies instrument” with a reference to a new instrument made under subregulation 5.36(1) of the Migration Regulations. The new instrument commences on 1 July 2012 and sets out the places and currencies for paying fees.

By referring to the new instrument made under subregulation 5.36(1) of the Migration Regulations, application fees and refunds made under the Citizenship Act can continue to be paid in foreign countries and foreign currencies. Without this amendment, it would create hardship for clients making applications at overseas posts.

The new definition of “places and currencies instrument” incorporates, by reference, a new instrument titled “Places and Currencies for Paying of Fees” (IMMI 12/009) made under subregulation 5.36(1) of the Migration Regulations. The new instrument commences on 1 July 2012 and sets out the places and currencies for the payment of fees.

Due to the operation of section 14 of the *Legislative Instruments Act 2003*, it is not possible to incorporate, by reference, the instrument made under subregulation 5.36(1) of the Migration Regulations as in force from time to time. Rather, the new instrument has to be incorporated by reference at the time of commencement of the amending Regulation.

Instruments made under the Migration Regulations would be incorporated in the Citizenship Regulations because the Citizenship Act does not currently provide for the Minister for Immigration and Citizenship to make instruments under the Citizenship Regulations.

Item [5] – After regulation 14, heading

This item inserts new Part 4, entitled ‘Part 4 Transitional Arrangements’, after regulation 14 of the Citizenship Regulations. Part 4 includes new sections 20 and 21.

The purpose of inserting new Part 4 is to provide a clearer structure in the text of the Citizenship Regulations and to separate the transitional provisions set out in this item from new Parts 1, 2, and 3 of the Citizenship Regulations.

New section 20 provides that new Part 4 makes transitional arrangements in relation to amendments of the Citizenship Regulations. The purpose is to advise the reader of the purpose of the new Part 4.

New section 21 provides that the amendments of these Regulations made by Schedule 2 to the *Migration Legislation Amendment Regulation 2012 (No. 2)* apply in relation to an application made under Division 2, 3 or 4 of Part 2 of the Act on or after 1 July 2012.

The purpose of new section 21 is to make it clear to which applications the amendment to the Citizenship Regulations made by Schedule 2 of this Regulation applies.