

EXPLANATORY STATEMENT

Select Legislative Instrument No. 124, 2014

Issued by the Assistant Minister for Immigration and Border Protection

Australian Citizenship Act 2007

Australian Citizenship Amendment (Credit Card Surcharge) Regulation 2014

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

In addition, paragraph 46(1)(d) of the Act provides that an application under a provision of the Act must be accompanied by the fee (if any) prescribed by the regulations. Further, subsection 46(3) of the Act 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).

The purpose of the *Australian Citizenship Amendment (Credit Card Surcharge) Regulation 2014* (the Regulation) is to amend the *Australian Citizenship Regulations 2007* (the Citizenship Regulations) to provide for the amount of prescribed fees to include a surcharge (the credit charge surcharge) where the fee is paid, or paid in part, by credit card. This allows the Department of Immigration and Border Protection (the department) to recover administrative fees that are currently charged to the department by credit card issuers and the department's banking service provider on any payment or part payment of a fee associated with a citizenship application.

The credit card surcharge reflects the administrative fees charged on the amount of the fee, if any, that an applicant pays by using a credit card. However, the surcharge will not apply to credit card payments levied against local currency in New Zealand and Singapore, where the application of a credit card surcharge is prevented by the domestic laws in those countries. A credit card payment or part payment made for any other currency will attract the surcharge.

The amendments also ensures where certain refunds are made under the Citizenship Regulations, the amount of the refund will include an amount equivalent to the proportion of the credit card surcharge, if any, that was attracted by the amount of the fee being refunded.

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

Details of the Regulation are set out in Attachment B.

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

The Office of Best Practice Regulation (OBPR) has been consulted in relation to the amendments made by Schedule 1 to the Regulation. OBPR advises that the amendments appear to be machinery in nature and do not impose any regulatory compliance costs on business, community organisations or individuals and notes that a Regulation Impact Statement will not be required. The OBPR consultation reference is 17047.

The Department of Foreign Affairs and Trade has been consulted about the surcharge for the purpose of general comment. They are supportive of the measures but note that there are countries where the surcharge is prohibited. It was stated that other countries operate in a financial sector governed by local business and governance. We may not, therefore be able to impose Australian standards in some countries.

On 12 and 14 March 2014, the department advised the Migration Institute of Australia and the Law Council of Australia of the surcharge as they are key stakeholders and representative organisations in the immigration advice sector. This information was provided for distribution to their members. The surcharge introduction was also discussed at the quarterly Migration Advice and Industry Liaison meeting on 21 March 2014.

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

The Regulation commences on 23 August 2014.

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*.

Overview of the Legislative Instrument

The *Australian Citizenship Amendment (Credit Card Surcharge) Regulation 2014* will amend the *Australian Citizenship Regulations 2007* to introduce a credit card fee (surcharge). The surcharge will apply to credit card payments made by clients when paying a fee that is required to accompany an application under the *Australian Citizenship Act 2007*.

The surcharge will be limited by the Reserve Bank of Australia (RBA) surcharging standards. The standards allow merchants to pass on the cost of credit card transactions to customers via a surcharge. The surcharge is calculated based on the reasonable cost of acceptance methodology, which is defined by the RBA and limited to merchant service fees, system establishment costs and direct costs associated with point of sale terminals.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

Senator The Hon. Michaelia Cash, Assistant Minister for Immigration and Border Protection

ATTACHMENT B

Details of the *Australian Citizenship Amendment (Credit Card Surcharge) Regulation 2014*

Section 1 – Name of Regulation

This section provides that the title of the Regulation is the *Australian Citizenship Amendment (Credit Card Surcharge) Regulation 2014* (the Regulation).

Section 2 – Commencement

This section provides that the Regulation commences on 23 August 2014.

The purpose of this section is to set out when the provisions commence.

Section 3 – Authority

This section provides that the Regulation is made under the *Australian Citizenship Act 2007* (the Act).

The purpose of this section is to set out the Act under which the Regulation is made.

Section 4 – Schedule(s)

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

The purpose of this section is to provide for how the amendments in this Regulation operate.

Schedule 1 – Amendments

Part 1 – Main amendments

Item 1 – Regulation 4

This item amends regulation 4 of Part 1 of the *Citizenship Regulations 2007* (the Citizenship Regulations) to define the terms *credit card surcharge* and *Schedule 3 amount*.

The new definitions provide for both terms to have their respective meanings provided at subregulation 12A(1) of Part 3 of the Citizenship Regulations.

The purpose of this amendment is to facilitate the amendments at item 2 below, which substitutes subregulation 12A(1) to provide that a fee to accompany an application is the sum of a *credit card surcharge* and the *Schedule 3 amount*. This

amendment has the effect of directing the reader to the appropriate provisions under the Citizenship Regulations to understand the circumstances in which the relevant surcharge will apply and the formula used to ascertain the amount payable.

Item 2 – Subregulation 12A(1)

This item repeals and substitutes subregulation 12A(1) of Part 3 of the Citizenship Regulations.

Previously, subregulation 12A(1) only provided for the fee that must accompany a Citizenship application. Substituted subregulation 12A(1) maintains this requirement and includes the requirement for a credit card surcharge, the circumstances in which the surcharge is applicable and the rates used to calculate the amount of the relevant surcharge.

The purpose of this amendment is to set out the credit card surcharge that may be applicable where the fee associated with a citizenship application is paid with a credit card. Where the surcharge is levied against payments made by local currency in New Zealand and Singapore, the relevant surcharge is not applicable because it does not accord with the domestic laws in those countries. This amendment has the effect of providing the formula for which the surcharge amount can be calculated.

Item 3 – Subregulation 12A(2) (note)

This item amends the *note* under subregulation 12A(2) of Part 3 of the Citizenship Regulations to omit the words “paragraph 22(1)(f)” and in its place substitute with “section 2B”.

This is a technical amendment and is made for the purpose of ensuring that the Citizenship Regulations correctly refers to the provision under the *Acts Interpretation Act 1901* (the Interpretation Act), which defines “Foreign country”. This amendment has the effect of reflecting the amendments made by the *Acts Interpretation Amendment Act 2011*, which relocated the definition of ‘Foreign country’ to section 2B of the Interpretation Act.

Item 4 – Paragraph 13(4)(c)

This item amends paragraph 13(4)(c) of Part 3 of the Citizenship Regulations to omit the word “fee” and in its place substitutes with “amount”.

The purpose of this amendment is to reflect the amendments made by item 2 above, which provided for the fee to accompany a citizenship application to include the amount set out in Schedule 3 and a credit card surcharge (if applicable). This amendment has the effect of maintaining the operation of a refund under subregulation 13(4) of the Citizenship Regulations. Similar amendments are made at item 7 below.

Item 5 – Subregulation 13(4)

This item amends subregulation 13(4) of Part 3 of the Citizenship Regulations to insert after “\$20 of the fee”, the words “payable under section 46 of the Act in relation to the application”.

This is a technical amendment and is made for the purpose of clarifying that the fee referred to is a fee payable under section 46 of the Act. This amendment has the effect of distinguishing the Schedule 3 amount from the fee; the Schedule 3 amount is a component of the fee. Similar amendments are made at item 8 below.

Item 6 – After subregulation 13(4)

This item amends regulation 13 of Part 3 of the Citizenship Regulations to insert a new subregulation 13(4A).

The purpose of this amendment is to set out the circumstance for which a portion of the credit card surcharge that was paid as part of the payment of the amount under either table item 14 or 15A of the table in Schedule 3 of the Citizenship Regulations is to be refunded. This amendment has the effect of ensuring that a refund under subregulation 13(4) of Part 3 of the Citizenship Regulations will also cause for the refund of the relevant portion of the credit card surcharge paid.

It is intended that this amendment will enable the Minister to refund a proportion of \$20, in relation to a fee, depending on the type of credit card used. That is, it is intended that this amendment will also enable a proportional refund of the credit card surcharge where the initial payment was made by two or more payment methods including credit card. Similar amendments are made at item 9 below.

Item 7 – Paragraph 13(5)(c)

This item amends paragraph 13(5)(c) of Part 3 of the Citizenship Regulations to omit the word “fee” and its place substitutes with “amount”.

Similar to the amendments at item 4 above, the purpose of this amendment is to reflect the amendments made by item 2, which provides for the fee to accompany a citizenship application to include the amount set out in Schedule 3 and a credit card surcharge (if applicable). This amendment has the effect of maintaining the operation of a refund under subregulation 13(5) of the Citizenship Regulations.

Item 8 – Subregulation 13(5)

This item amends subregulation 13(5) of Part 3 of the Citizenship Regulations to insert after “\$130 of the fee”, the words “payable under section 46 of the Act in relation to the application”.

Similar to the amendments made at item 5 above, this is also a technical amendment and is made for the purpose of clarifying that the fee referred to is a fee payable under section 46 of the Act. This amendment has the effect of distinguishing the Schedule 3 amount from the relevant fee; the Schedule 3 amount is a component of the fee.

Item 9 – After subregulation 13(5)

This item amends regulation 13 of Part 3 of the Citizenship Regulations to insert a new subregulation 13(5A).

Similar to the amendments made at item 6 above, the purpose of this amendment is to set out the circumstance for which a portion of the credit card surcharge that was paid as part of the payment of the amount under either table item 14A or 15B of the table in Schedule 3 of the Citizenship Regulations is to be refunded. This amendment has the effect of ensuring that a refund under subregulation 13(5) of Part 3 of the Citizenship Regulations will also cause for the refund of the relevant portion of the credit card surcharge paid.

It is intended that this amendment will enable the Minister to refund a proportion of \$130, in relation to a fee, depending on the type of credit card used. That is, it is intended that this amendment will also enable a proportional refund of the credit card surcharge where the initial payment was made by two or more payment methods including credit card.

Item 10 – Schedule 3 (heading)

This item repeals and substitutes the heading (not including the note) of Schedule 3 of the Citizenship Regulations so that it reads as “Schedule 3 – Amounts to accompany applications”.

This is a technical amendment and is made for the purpose of facilitating the operation of the amendments made at item 2 above, which provides for the fee to accompany a citizenship application to include the amount set out in Schedule 3 and a credit card surcharge (if applicable). This amendment has the effect of directing interested persons to the amounts that will be part of the relevant fee associated with a citizenship application.

Item 11 – Schedule 3 (table, heading to column headed “Fee”)

This item amends table under Schedule 3 of the Citizenship Regulations to repeal the heading to the column head “Fee” and in its place substitute with “Amount”.

Similar to the amendments above, this is a technical amendment and is made for the purpose of facilitating the operation of the amendments made at item 2, which provides for the fee to accompany a citizenship application to include the ‘Amount’ set out in Schedule 3 and a credit card surcharge amount (if applicable). This amendment has the effect of assisting interested persons to ascertain the “amount”

excluding the credit card surcharge (if any) that must accompany a citizenship application.

Part 2 – Application and transitional provisions

Item 12 – At the end of Part 4

This item amends Part 4 of the Citizenship Regulations to insert a new clause 26, entitled “Amendments made by the Australia Citizenship Amendment (Credit Card Surcharge) Regulation 2014”.

The purpose of this amendment is to set out the citizenship applications to which the amendments will apply.