**EXPLANATORY STATEMENT**

***Consular Fees Amendment (Fees and Indexation) Regulation 2016***

**Purpose and operation of the instrument**

The *Consular Fees Act 1955* (the Act) provides for the charging of fees for consular acts performed by Australian diplomatic and consular officers and designated other officers and employees of the Commonwealth. The consular acts referred to in the Act are notarial services. Fees are not charged for the delivery of consular assistance to Australians overseas.

The *Consular Fees Regulations 1990* (the Principle Regulations) prescribe the fees for specified consular acts.

The purpose of the Regulation is to amend the Principle Regulations to increase the consular fees and index them annually in line with the Consumer Price Index (CPI). The Regulation will commence on 1 July 2017.

**Authority for making the instrument**

Section 6 of the Act provides that the Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this ACT to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act, and, in particular, providing that the prescribed fees are not payable in such cases as are prescribed.

**Basis for fee increase**

The Regulation enacts a budget commitment made by the Government as part of the 2016-2017 Federal Budget.

Notarial fees have not increased since the current regulations came into effect on 1 July 2000. The new fee structure simplifies the current fee structure to facilitate a move to online payment options in the future and better align with notarial fees charged by commercial providers. There were previously 16 consular acts attracting fees; the new regulation has streamlined this to 12. The new fees also account for inflation (with annual increases based on the latest annual CPI published by the Australian Bureau of Statistics).

**Consultation**

The amendment regulation implements a budget measure announced in the 2016-2017 Federal Budget.

The new fee structure has been developed following internal DFAT consultation between the Consular Policy and Training Section, the Consular, Passports and Protocol Law Section, and the External Budget Section.

**Regulatory impact**

The Office of Best Practice and Regulation (OBPR) recommended that a Regulatory Impact Statement (RIS) was not required on the basis that the amendment regulation was not intended to or expected to change behaviour. The OBPR reference number for this inquiry is 21077.

**Statement of Compatibility with the Human Rights**

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*.

**Attachment**

**Details of the proposed *Consular Fees Amendment (Fees and Indexation) Regulation 2016***

Consular Fees Regulations 1990

1 Regulation 1A (definition of *consular act*)

Repeal the definition.

2 Regulation 2

Repeal the regulation, substitute:

2 Consular act

For the purposes of the definition of ***consular act*** in section 2 of the Act, each act described in column 1 of Schedule 1 is a consular act.

3 Subregulation 3(2)

Repeal the subregulation, substitute:

(2) The fee mentioned in column 2 of an item in Schedule 1, as indexed under regulation 6, is imposed for performing the consular act mentioned in the item.

4 Regulation 6

Repeal the regulation, substitute:

6 Indexation of fees

(1) The amount of a fee mentioned in column 2 of Schedule 1 is to be indexed on 1 January each year (the ***indexation day***), commencing from 1 January 2018, in accordance with this regulation. This regulation explains how to work out the amount (the ***indexed amount***) of a fee for the calendar year starting on 1 January 2018 and later calendar years.

Indexation method

(2) The indexed amount of the fee is worked out in accordance with the following formula:



where:

***indexation factor***, for an indexation day, means the number worked out by dividing:

(a) the sum of the index numbers for the quarters of the 12 month period (the ***reference year***) ending on 30 September immediately before the indexation day; by

(b) the sum of the index numbers for the quarters of the 12 month period ending on 30 September in the year immediately before the reference year.

***index number***, for a quarter, means the All Groups Consumer Price Index number (being the weighted average of the 8 capital cities) published by the Australian Statistician for that quarter.

***quarter*** means a period of 3 months ending on 31 March, 30 June, 30 September or 31 December.

(3) The indexation factor is to be calculated to 3 decimal places (rounding up if the fourth decimal place is 5 or more).

(4) The indexed amount is to be rounded to the nearest whole dollar (rounding 50 cents upwards).

(5) The indexed amount is to be worked out:

(a) using only the index numbers published in terms of the most recently published index reference period for the Consumer Price Index; and

(b) disregarding index numbers that are published more than 2 weeks after the original publication in substitution for previously published index numbers (except where the substituted numbers are published to take account of changes in the index reference period).

Indexation method to be used only to increase fees

(6) However, if the indexed amount as worked out under subregulations (2) to (5) for a calendar year (the ***current calendar year***) would be less than the amount of the fee applying immediately before the indexation day, the indexed amount for the current calendar year is the same as the amount of the fee applying immediately before the indexation day.

Application of indexed fee

(7) The indexed amount for a calendar year applies to consular acts performed on or after the indexation day in that calendar year, even if an application or request relating to the consular act was made before that day.

7 Application of amendments made by the *Consular Fees Amendment (Fees and Indexation) Regulation 2016*

The amendments of these Regulations made by Schedule 1 to the *Consular Fees Amendment (Fees and Indexation) Regulation 2016* apply to a consular act performed on or after 1 January 2017, even if an application or request relating to the consular act was made before that day.

5 Schedule

Repeal the Schedule, substitute:

Schedule 1—Fees for consular acts

Note: See regulation 2 and subregulation 3(2).

| Fees for consular acts | | |
| --- | --- | --- |
|  | Column 1 | Column 2 |
| Item | Consular act | Fee |
| 1 | Administering an oath or receiving a declaration or affirmation | $70 |
| 2 | Effecting, or attempting to effect, service of a document and issuing a certificate or affidavit of service or attempted service of a document | $70 |
| 3 | Witnessing a signature or seal on a form or declaration | $70 |
| 4 | Preparing a declaration or other document | $70 |
| 5 | Verifying and certifying a copy of a document or part of a document | $70 |
| 6 | Signing a document, or affixing a seal to a document or other article | $70 |
| 7 | Witnessing the execution of a will | $70 |
| 8 | Transmitting a document or other article through official channels | $70 |
| 9 | Transferring funds through official accounts, other than for the purposes of the realisation of a deceased estate | $70 |
| 10 | Preparation and issue of an Apostille certificate | $80 |
| 11 | Preparation and issue of an Authentication certificate | $80 |
| 12 | Preparation and issue of a Certificate of No Impediment to Marriage | $140 |