

## EXPLANATORY STATEMENT

Issued by authority of the Minister for Immigration Citizenship and Multicultural Affairs

*Migration Regulations 1994*

### ***Migration (Credit Card Surcharge) Instrument (LIN 24/024) 2024***

- 1 The instrument, departmental reference LIN 24/024, is made under paragraph 5.41A(1)(b) of the *Migration Regulations 1994* (the Migration Regulations).
- 2 The instrument repeals *Migration Regulations 1994 - Types of Fees or Charges - IMMI 14/053* (F2014L00895), in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (the Acts Interpretation Act). That subsection provides that a power to make a legislative instrument includes a power to amend or repeal that instrument in the same manner, and subject to the same conditions, as the power to make the instrument.
- 3 The instrument commences on the day after the instrument is registered. It is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

#### ***Purpose***

- 4 The purpose of LIN 24/024 is to ensure credit card surcharges apply to payments of fees and charges paid by credit card. Subsection 5.41A(1) provides that a person is liable to pay a credit card surcharge if the person pays a fee or charge, or part of a fee or charge, which is of a kind specified by the Minister in a legislative instrument and the payment is made by credit card. The instrument operates to specify that a credit card surcharge is payable for payments made in relation to nomination applications, sponsorship applications, visa evidence, visa applications and visa pre-application process fees and charges where these payments are paid by credit card.
- 5 The instrument repeals *Migration Regulations 1994 - Types of Fees or Charges - IMMI 14/053* (F2014L00895), to allow an additional payment type, visa pre-application process fees and charges, to also be specified as a type of payment for which a person may be liable to pay a surcharge if the payment is made by credit card.

#### ***Background***

- 6 The *Migration Amendment (Australia's Engagement in the Pacific and Other Measures) Act 2023* (the Amendment Act) commenced on 29 March 2024 and empowers the Minister to conduct a visa pre-application process (referred to as a ballot) which involves the random

selection of registered participants who will then be permitted to lodge an application for a relevant visa.

- 7 The *Migration (Visa Pre-application Process) Charge Act 2023* (the Charge Act) imposes a charge on the registration of a person as a registered participant in a visa pre-application process.
- 8 This instrument will ensure that when an applicant registers to participate in the ballot and makes payment for registration in the ballot by credit card, the applicant will be liable to pay the credit card surcharge. The instrument retains existing arrangements for the payment of credit card surcharges in relation to other types of fees and charges.

### ***Consultation***

- 9 Consultation was previously undertaken with the Department of Foreign Affairs and Trade, the Department of Finance, the Migration Institute of Australia and the Law Council of Australia before *Migration Regulations 1994 - Types of Fees or Charges - IMMI 14/053* was made. Consultation in relation to the Amendment Act and the Charge Act was undertaken with the Department of Foreign Affairs and Trade. No further consultation was considered necessary as the instrument is of a minor or machinery nature and does not substantially alter existing arrangements. This consultation accords with subsection 17(1) of the Legislation Act.
- 10 The Office of Impact Analysis (OIA) was also consulted and considered that all impact analysis requirements have been acquitted. No further regulatory impact statement was required. The OIA reference number is OBPR22-02320.

### ***Details of the instrument***

- 11 The instrument repeals the *Migration Regulations 1994 - Types of Fees or Charges (IMMI 14/053)* (F2014L00895).
- 12 The instrument also specifies the types of fees or charges for the purposes of paragraph 5.41A(1)(b). Subsection 5.41A(1) provides that a person is liable to pay a credit card surcharge if the person pays a fee or charge, or part of a fee or charge, which is of a kind specified by the Minister in a legislative instrument and the payment is made by credit card. The kinds of fees and charges specified in section 2 of the instrument are:
  - nomination fees or charges;
  - sponsorship fees or charges;
  - visa evidence fees or charges;
  - visa application fees or charges;
  - visa pre-application process fees or charges.

13 The instrument commences on the day after the instrument is registered.

***Parliamentary scrutiny etc.***

14 The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because instruments made under Part 5 of the Migration Regulations are prescribed as being exempt from disallowance under paragraph 44(2)(b) of the Legislation Act. See table item 20 in regulation 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*. As the instrument is exempt from disallowance, a Statement of Compatibility with Human Rights is not required.

15 The instrument was made by the Minister for Immigration, Citizenship and Multicultural Affairs, in accordance with paragraph 5.41A(1)(b) of the Migration Regulations.