

EXPLANATORY STATEMENT

Issued by the Minister for Immigration, Citizenship and Multicultural Affairs

Migration Act 1958

Migration Amendment (Visa Application Charges) Regulations 2024

The *Migration Act 1958* (the Migration Act) is an Act relating to the entry into, and presence in, Australia of aliens, and the departure or deportation from Australia of aliens and certain other persons.

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

Subsection 45B(1) of the Migration Act provides that the amount of the visa application charge (VAC) is the amount, not exceeding the VAC limit, prescribed by the *Migration Regulations 1994* (the Migration Regulations) in relation to the visa application. The VAC limit is calculated with reference to sections 5 and 6 of the *Migration (Visa Application) Charge Act 1997* (the VAC Act).

The purpose of the *Migration Amendment (Visa Application Charges) Regulations 2024* (the Amendment Regulations) is to amend the Migration Regulations to implement the annual indexation of VACs in line with the forecast Consumer Price Index (CPI) and rounded to the nearest \$5. The Amendment Regulations also implement the 2024-25 Budget Decision *Visa Application Charge Uplift*. The Amendment Regulations increase affected VACs as in force immediately before 1 July 2024 from their 2023-24 baseline amount by the 2024-25 CPI of 2.75% as published in the 2024-25 Budget.

The Amendment Regulations also increase the VAC for the Student (Temporary) (Class TU) visa – including both the Student (Subclass 500) visa and the Student Guardian (Subclass 590) visa – applying a one-off percentage increase, rather than indexation, in accordance with the 2024-25 Budget Decision *Visa Application Charge Uplift*. This increase is intended to better align the cost of the VAC with the value gained by Student visa holders accessing Australia's high-quality education system and access to the Australian labour market, including with limited work rights as a Student visa holder. As of 1 July 2024, the base application charge component of the first instalment of the VAC for Student visas is increased to \$1,600. The additional applicant charge component for any other applicant who is at least 18 is increased to \$1,190, and the additional applicant charge component for any other applicant who is less than 18 is increased to \$390.

The VAC for the Pacific Engagement (Subclass 192) visa and the VAC for secondary applicants for the Temporary Work (International Relations) (Subclass 403) visa in the Pacific

Australia Labour Mobility (PALM) stream have not been indexed as part of the VAC increases on 1 July 2024. The Subclass 192 visa was inserted into the Migration Regulations in March 2024 (inclusive of a prescribed VAC) with applications able to be made from August 2024. Legislative amendments were also made in March 2024 to allow for secondary applicants to apply for a Subclass 403 visa in the PALM stream.

Indexed VACs are calculated from a baseline amount, applying the CPI percentage, and then rounded to the nearest \$5. The Regulations do not impose VACs that exceed the applicable charge limits set out in the VAC Act.

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

The matters dealt with in the Regulations are appropriate for implementation in regulations rather than by Parliamentary enactment. It has been the consistent practice of the Government of the day to provide for detailed visa criteria and conditions in the Migration Regulations rather than in the Migration Act itself. The Migration Act expressly provides for these matters to be prescribed in regulations. The current Migration Regulations have been in place since 1994, when they replaced regulations made in 1989 and 1993. Providing for these details to be in delegated legislation rather than primary legislation gives the Government the ability to effectively manage the operation of Australia's visa program and respond quickly to emerging needs.

A Statement of Compatibility with Human Rights (the Statement) has been completed in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The overall assessment is that the Regulations are compatible with human rights. A copy of the Statement is at Attachment A.

The Office of Impact Analysis (OIA) has assessed that the Regulations do not trigger the Australian Government Impact Analysis Requirements. The OIA references are: OIA24-07573 and OIA24-06930. In relation to annual indexation of VACs, the OIA advised the changes were machinery in nature and a detailed Impact Analysis was not required (OIA24-07573). With respect to the increase to Student visa application charges, the OIA advised the impact is likely to be no more than minor, and a detailed Impact Analysis was not required (OIA24-06930).

Consultation with stakeholders outside Commonwealth agencies in relation to indexation was not considered necessary as the changes implement long-standing Government policy in relation to indexation in line with CPI, as well as Budget measures. Cross-government consultation occurred during the 2024-25 Budget process to inform the Government's decision in relation to increasing the VAC for the Student (Temporary) (Class TU) visa. This accords with consultation requirements in subsection 17(1) of the *Legislation Act 2003* (the Legislation Act).

The amendments commence on 1 July 2024.

Further details of the Amendment Regulations are set out in Attachment B.

The Amendment Regulations amend the Migration Regulations, which are exempt from sunseting under table item 38A of section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*. The Migration Regulations are exempt from sunseting on the basis that the repeal and remaking of the Migration Regulations:

- is unnecessary as the Migration Regulations are regularly amended numerous times each year to update policy settings for immigration programs;
- would require complex and difficult to administer transitional provisions to ensure, amongst other things, the position of the many people who hold Australian visas, and similarly, there would likely be a significant impact on undecided visa and sponsorship applications; and
- would demand complicated and costly systems, training and operational changes that would impose significant strain on Government resources and the Australian public for insignificant gain, while not advancing the aims of the Legislation Act.

The Regulations are a disallowable legislative instrument for the purposes of the Legislation Act.

ATTACHMENT A

Statement of Compatibility with Human Rights

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

Migration Amendment (Visa Application Charges) Regulations 2024

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*.

Overview of the Disallowable Legislative Instrument

The purpose of the *Migration Amendment (Visa Application Charges) Regulations 2024* (the Regulations) is to amend the *Migration Regulations 1994* (the Migration Regulations) to increase the visa application charge (VAC) in line with long-standing Budget measures, including the 2017-18 Budget Measure *Indexation of visa application charges*, as well as the 2024-25 Budget Decision *Visa Application Charge Uplift*.

In particular, the Regulations amend the Migration Regulations to increase the VAC by the forecast consumer price index (CPI), consistent with long-standing Government policy and Budget measures in relation to VAC indexation, as well as a one-off increase to the VAC for the Student (Temporary) (Class TU) visa in accordance with the 2024-25 Budget Decision *Visa Application Charge Uplift*. From 2017-18, annual indexation of the VAC has been in accordance with the forecast CPI published annually in the Budget papers.

In effect, this means that most affected VACs are increased on 1 July 2024 from their 2023-24 baseline amounts by the 2024-25 forecast CPI (2.75%). In line with 2024-25 Budget Decision *Visa Application Charge Uplift*, the base application charge component of the first instalment of the VAC for Student visas is increased to \$1,600. The additional applicant charge component for any other applicant who is at least 18 is increased to \$1,190, and the additional applicant charge component for any other applicant who is less than 18 is increased to \$390 – as a one-off increase, rather than being subject to CPI indexation on 1 July 2024. The new, increased VAC amounts are also rounded to the nearest \$5. The one-off increase to the VAC for Student visas supports the Government's approach to delivering managed, sustainable migration growth and restoring integrity in the international education sector. It is intended that CPI indexation amendments will continue to be made in subsequent years.

Right to Education

Human Rights Implications

This Disallowable Legislative Instrument may engage the following right:

- The right to education in Article 13 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).

In most instances, applicants for a Student visa are outside Australia and the increase in the VAC will not engage the applicable rights and freedoms for these applicants. In circumstances where an applicant is in Australia and makes an application for a Student visa, the VAC increase for these visas may engage the right to education in Article 13 of the ICESCR. However, any limitation of this right is compatible with the nature of the right, as the VAC for the Student (Temporary) (Class TU) visa is and remains a small part of the cost to remain in Australia for the purposes of study, noting that Student visa holders are expected to support themselves with limited work rights.

As the VAC is a small component of the cost of education in Australia as an international student, the VAC increase is unlikely to have a material impact on international students choosing Australia as their country of education and will not impermissibly limit the right to education in Australia. Furthermore, the measure is aimed at promoting the general welfare of Australian society by ensuring managed, sustainable growth in the migration program and restoring integrity in the international education sector.

Conclusion

The Disallowable Legislative Instrument is compatible with human rights because to the extent that it may limit human rights, those limitations are compatible with the nature of the right.

The Hon Andrew Giles MP

Minister for Immigration, Citizenship and Multicultural Affairs

Details of the *Migration Amendment (Visa Application Charges) Regulations 2024*

Section 1 – Name

This section provides that the name of the instrument is the *Migration Amendment (Visa Application Charges) Regulations 2024* (the Regulations).

Section 2 – Commencement

This section provides for the whole of the instrument to commence on 1 July 2024.

Section 3 – Authority

This section provides that the instrument is made under the *Migration Act 1958* (the Migration Act).

Section 4 – Schedules

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.

Schedule 1—Amendments

Part 1—Visa application charge

Migration Regulations 1994

Part 1 of Schedule 1 to the Regulations gives effect to the Government’s 2017-2018 Budget Measure to increase the visa application charge (VAC) by the regular consumer price index (CPI), and the 2024-25 Budget Decision *Visa Application Charge Uplift* to increase the VAC for Student (Subclass 500) and Student Guardian (Subclass 590) visas.

These increases do not exceed the applicable charge limits set out in the *Migration (Visa Application) Charge Act 1997* (the VAC Act).

Items [1] - [159] and [163] - [199]

These items make amendments to relevant items in Schedule 1 to the Migration Regulations to substitute existing VAC amounts with new, increased VAC amounts for the relevant visa. All eligible VACs to which indexing has been applied are increased from their 2023-24 baseline amounts by the 2024-25 forecast CPI of 2.75%.

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 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 VAC Act.

Items [160] - [162]

These items make amendments to Schedule 1 to the Migration Regulations in relation to the Student (Temporary) (Class TU) visa (item 1222 in Schedule 1 to the Migration Regulations).

The base application charge component of the first instalment of the VAC provided for in subparagraph 1222(2)(a)(ii) would increase from \$710 to \$1,600. The additional applicant charge component of the first instalment of the VAC for any other applicant who is at least 18 years of age would increase from \$530 to \$1,190. The additional applicant charge component of the first instalment of the VAC for any other applicant who is less than 18 years of age would increase from \$175 to \$390. The amount of the increase in these items does not exceed the applicable charge limit set out in the VAC Act.

The VAC is a small component of the overall cost of education in Australia as an international student. The VAC increase is aimed at balancing these costs against the value gained by Student visa holders accessing Australia's high quality education system and accessing the Australian labour market, with limited work rights as a Student visa holder. The VAC increases also promote the general welfare of Australian society by ensuring managed, sustainable migration growth and restoring integrity in the international education sector.

Part 2—Application of amendments

Migration Regulations 1994

Item [200] - In the appropriate position in Schedule 13

This item inserts new Part 136 into Schedule 13 to the Migration Regulations. Schedule 13 sets out the application and transitional provisions that apply to amendments to the Migration Regulations.

This item provides that the amendments made by Schedule 1 apply in relation to visa applications made on or after 1 July 2024.