EXPLANATORY STATEMENT

Issued by the Minister for Immigration and Citizenship

Migration Act 1958

Migration Amendment (Visa Application Charges) Regulations 2025

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).

Subregulation 2.12C(1) of the Migration Regulations prescribes that for subsection 45B(1) of the Migration Act, the VAC (if any) is the sum of the first and second instalments in relation to an application for a visa of a class to which an item of Schedule 1 relates. Schedule 1 to the Migration Regulations sets out the requirements to apply for a visa of a particular class, including the VAC payable. An application for a visa must meet the requirements in Schedule 1 for the application to be valid (see subsection 46(1) of the Migration Act and regulation 2.07 of the Migration Regulations).

The purpose of the *Migration Amendment (Visa Application Charges) Regulations 2025* (the Amendment Regulations) is to amend the Migration Regulations to implement the annual indexation of VACs in line with the long-standing annual Budget Measure, *Indexation of visa application charges*. The Amendment Regulations index VACs in accordance with the Consumer Price Index (CPI) of 3.00% as published in the 2025-26 Budget Paper No 1.

The proposed Regulations would also increase the VAC for certain Student (Subclass 500) and Student Guardian (Subclass 590) visa applications by applying an additional increase, rather than indexation, in accordance with the Government's election commitment as part of its Building Australia's Future agenda. This increase supports the Government's approach to strengthening the integrity and sustainability of the Student visa program and the international education sector. In line with the Government's election commitment, the base application charge component of the first instalment of the VAC for certain Student and Student Guardian visa applications would be increased from $1,600 to $2,000.

Pacific Island and Timor-Leste applicants will retain access to concessional VACs, and will not be subject to the uplift. The concessional VACs will be indexed by CPI as part of the annual visa indexation process, consistent with the indexation of VACs for other visas provided for by the Amendment Regulations.

The VAC for the Pacific Engagement (Subclass 192) visa in the Treaty Stream (subparagraph 1140(2)(a)(ii) in Schedule 1 to the Migration Regulations) has not been indexed as part of the VAC increases on 1 July 2025. The Treaty Stream of the Pacific Engagement visa was inserted into the Migration Regulations on 1 May 2025 (inclusive of a prescribed VAC) following the commencement of the *Migration Amendment (Australia Tuvalu Falepili Union Treaty Visa) Regulations 2025*. As applications for the Treaty Stream visa are subject to a ballot process, the first applications are anticipated to be made in the second half of 2025.

Indexed VACs are calculated from their 2024-25 baseline amount, applying the CPI percentage of 3.00%, and then rounded to the nearest $5. The Amendment 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 under subsection 504(1) of the Migration Act.

The matters dealt with in the Amendment Regulations are appropriate for implementation in the Migration 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.

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 2025-26 Budget process to inform the Government's decision in relation to increasing the VAC. This accords with consultation requirements in subsection 17(1) of the *Legislation Act 2003* (the Legislation Act).

The amendments commence on 1 July 2025.

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

The Amendment Regulations amend the Migration Regulations, which are exempt from sunsetting under table item 38A of section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015.* The Migration Regulations are exempt from sunsetting 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 Amendment Regulations are a disallowable legislative instrument for the purposes of section 42 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 2025

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 2025* (the Amendment Regulations) is to amend the *Migration Regulations 1994* (the Migration Regulations) to increase visa application charges (VACs) for certain visas. From 2017-18, annual indexation of certain VACs has been in accordance with the forecast Consumer Price Index (CPI) published annually in the Budget papers.

The Amendment Regulations amend the Migration Regulations to increase VACs for a number of visas, resulting in the affected VACs increasing from their 2024-25 rates by the 2025-26 forecast CPI of 3.00 per cent, published in the 2025-26 Budget Paper No.1. The indexed VAC amounts are also rounded to the nearest $5.

This amendment to the Migration Regulations is consistent with Government policy to annually index the VAC amounts in line with CPI, and implements a long-standing Budget Measure.

The Amendment Regulations also amend the Migration Regulations to effect an additional increase to the VAC for Student and Student Guardian visas which is higher than a CPI increase, in accordance with the Government's election commitment from the Building Australia's Future Agenda.

The base application charge component of the first instalment of the VAC for certain Student (Subclass 500) and Student Guardian (Subclass 590) visas is increased from $1,600 to $2,000 for primary applicants. This increase to the VAC for Student and Student Guardian visas supports the Government's approach to delivering managed, sustainable growth and restoring integrity in the international education sector. It is intended that CPI indexation amendments will continue to be made in subsequent years.

Under the amendments, Pacific Island and Timor-Leste applicants retain access to concessional VACs, and are not subject to the additional increase of the base application charge component for Student and Student Guardian Visas. The concessional VAC was introduced by the *Migration Amendment (Differential Student Visa Application Charge) Regulations 2025*. The concessional VACs for Pacific Island and Timor-Leste applicants are indexed by the CPI as part of the annual visa indexation process. Maintaining a lower VAC for certain Student and Student Guardian visa applications (i.e. primary applicants from the Pacific or Timor-Leste, along with any members of a primary applicant's family unit and/or dependents as secondary applicants) is intended to continue to mitigate any impact an increased VAC would otherwise pose for these applicants. Maintaining the lower VAC is in continued recognition of the importance of education to economic development in the Pacific, of which study in Australia is an important component.

Human Rights Implications

This Disallowable Legislative Instrument may engage the following rights:

- The right to education in Article 13 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).
- The right to non-discrimination in Article 2(2) of the ICESCR and Article 26 of the *International Covenant on Civil and Political Rights* (ICCPR).

In most instances, applicants for a Student or Student Guardian visa are outside Australia and the measures will not engage the applicable rights and freedoms for these applicants.

Right to Education – higher VAC increase for Student and Student Guardian visas

In circumstances where an applicant is in Australia and makes an application for a Student or Student Guardian visa, the higher VAC increase for these visas may engage the right to education in Article 13 of the ICESCR because it may create an additional barrier to accessing education in Australia.

Article 13(1) of the ICESCR relevantly states:

> *The States Parties to the present Covenant recognize the right of everyone to education…*

The higher VAC increase for Student and Student Guardian visas has a legitimate objective of promoting the general welfare of Australian society by ensuring managed, sustainable growth in the migration program and restoring integrity in the international education sector.

This measure has a rational connection to its objective because placing visa-related requirements, including a higher VAC, for the access of foreign students to education in Australia, assists in delivering sustainable and steady growth in migration and the education sector.

The measure is therefore reasonable, necessary and proportionate to achieving its objective as the VAC for the Student and Student Guardian visas 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, the VAC increase is unlikely to have a material impact on the students choosing Australia as their country of education and the guardians who support them, and does not impermissibly limit the right to education in Australia.

Right to education – lower VAC increase for Pacific and Timor-Leste applicants

Maintaining a differential (lower) VAC for Pacific and Timor-Leste applicants for Student and Student Guardian visas may promote the right to education by removing a potential barrier for these applicants. International education is a key support that Australia provides to the Pacific and Timor-Leste, providing opportunities to increase skills to bring home to their countries.

Right to non-discrimination – lower VAC increase for Pacific and Timor-Leste applicants

Article 2(2) of the ICESCR and Article 26 of the ICCPR may be also be engaged by maintaining a differential (lower) VAC for Pacific and Timor-Leste applicants for Student and Student Guardian visas because this measure differentiates on the basis of citizenship in providing a benefit to some applicants for Student and Student Guardian visas and not to others.

Article 2(2) of ICESCR states:

> *The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

Article 26 of the ICCPR states:

> *All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any*

ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

In its General Comment on Article 2 of the ICESCR, the United Nations Committee on Economic Social and Cultural Rights has stated that:

Differential treatment based on prohibited grounds will be viewed as discriminatory unless the justification for differentiation is reasonable and objective. This will include an assessment as to whether the aim and effects of the measures or omissions are legitimate, compatible with the nature of the [ICESCR] rights and solely for the purpose of promoting the general welfare in a democratic society. In addition, there must be a clear and reasonable relationship of proportionality between the aim sought to be realized and the measures or omissions and their effects.

Similarly, in its General Comment 18 on Article 26 of the ICCPR, the United Nations Human Rights Committee (UNHRC) stated that:

The Committee observes that not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the [ICCPR].

Neither the ICCPR nor the ICESCR give a right for non-citizens to enter Australia for the purposes of seeking residence or employment. The UNHRC, in its General Comment 15 on the position of aliens under the ICCPR, stated that:

The [ICCPR] does not recognize the right of aliens to enter or reside in the territory of a State party. It is in principle a matter for the State to decide who it will admit to its territory. However, in certain circumstances an alien may enjoy the protection of the [ICCPR] even in relation to entry or residence, for example, when considerations of non-discrimination, prohibition of inhuman treatment and respect for family life arise.

Consent for entry may be given subject to conditions relating, for example, to movement, residence and employment. A State may also impose general conditions upon an alien who is in transit. However, once aliens are allowed to enter the territory of a State party they are entitled to the rights set out in the [ICCPR].

As such, Australia is able to set requirements for the entry of non-citizens into Australia, and does so on the basis of reasonable and objective criteria.

Maintaining a differential (lower) VAC to Student and Student Guardian visa applicants, where the primary applicant is the holder of a passport issued by a Pacific country or Timor-Leste, has a legitimate objective of deepening Australia's connection with those countries and supporting wider education opportunities within the region, thereby contributing to Pacific economies and

providing opportunities for cultural, educational and skills exchange, in support of a peaceful, prosperous and resilient Pacific region.

This measure has a rational connection to this objective because the amendments to provide a lower VAC for visa applications where the primary applicant is the holder of a valid passport issued by a Pacific country or Timor-Leste are directed to supporting educational opportunities for students from these countries who want to undertake education in Australia.

To the extent that the measure differentiates on the basis of nationality or citizenship, this is reasonable, necessary and proportionate to meeting the legitimate objective of providing a benefit to applicants from Pacific countries and Timor-Leste and does not impermissibly limit the right to non-discrimination of other applicants.

Conclusion

The Amendment Regulations are compatible with human rights because to the extent that they may limit human rights, those limitations are reasonable, necessary and proportionate.

The Hon Tony Burke MP

Minister for Immigration and Citizenship

ATTACHMENT B

Details of the *Migration Amendment (Visa Application Charges) Regulations 2025*

Section 1 – Name

This section provides that the name of the instrument is the *Migration Amendment (Visa Application Charges) Regulations 2025* (the Regulations).

Section 2 – Commencement

This section provides for the whole of the instrument to commence on 1 July 2025.

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 long-standing annual Budget Measure to increase the visa application charge (VAC) by the regular consumer price index (CPI) and increase the base application charge component of the first instalment of the VAC for Student (Subclass 500) and Student Guardian (Subclass 590) visas in accordance with the election commitment in Building Australia's Future Agenda.

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

Items [1] - [166] and [168] - [212]

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 2024-25 baseline amounts by the 2025-26 forecast CPI of 3% in line with the 2025-26 Budget Paper No. 1.

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.

Item167

This item amends 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) is increased from $1,600 to $2,000.

This increase supports the Government's approach to strengthening the integrity and sustainability of the Student visa program and Australia's international education sector. 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 increase also promotes 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 [213] - In the appropriate position in Schedule 13

This item inserts new Part 154 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 2025.