

EXPLANATORY STATEMENT*Migration Regulations 1994***Migration (IMMI 18/055: Visas attracting a subsequent temporary application charge)****Instrument 2018***(Paragraphs 2.12C(5)(a) and 2.12C(5)(c))*

1. Instrument IMMI 18/055 is made under paragraphs 2.12C(5)(a) and 2.12C(5)(c) of the *Migration Regulations 1994* (the Regulations).
2. The instrument repeals IMMI 16/098 (F2016C01021) under paragraphs 2.12C(5)(a) and 2.12C(5)(c) of the Regulations and in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (Interpretation Act). Subsection 33(3) of the Interpretation Act states that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.
3. Subregulation 2.12C(5) of the Regulations provides that a subsequent temporary application charge (STAC) is payable by an applicant if:
 - a. the applicant applies for a visa specified by the Minister in an instrument for the purposes of paragraph 2.12C(5)(a) of the Regulations, and the applicant is in Australia at the time of application; and
 - b. the applicant holds, or the last substantive visa the applicant held was, a visa specified by the Minister in an instrument for the purposes of 2.12C(5)(c) of the Regulations, and the applicant was in Australia at the time of application for that visa; and
 - c. the visa that the applicant holds, or the last substantive visa the applicant held, was not granted in circumstances prescribed in paragraph 2.12C(5)(e) of the Regulations.
4. The amount of the STAC is prescribed in subregulation 2.12C(6) of the Regulations.

5. The operation of the instrument is to specify visas for the purposes of paragraphs 2.12C(5)(a) and 2.12C(5)(c) of the Regulations.
6. The purpose of the instrument is to address changes occurring as a result of the *Migration Legislation Amendment (Temporary Skill Shortage Visa and Complementary Reforms) Regulations 2018*. In particular, for the purposes of paragraphs 2.12C(5)(a) the Subclass 482 (Temporary Skill Shortage) visa is specified and Subclass 457 (Temporary Work (Skilled)) visa is no longer specified and for the purposes of 2.12C(5)(c) of the Regulations Subclass 482 (Temporary Skill Shortage) visa is specified.
7. The instrument only applies to visa applications for the relevant visas lodged on or after the 18 March 2018.
8. The subject of this instrument is part of a broad package of reforms for the employer sponsored skilled visa programs, announced by the Government on 18 April 2017. The reforms include replacing the Subclass 457 (Temporary Work (Skilled)) visa with the Subclass 482 (Temporary Skill Shortage) visa. The Department of Home Affairs has engaged with external stakeholders since the announcement in developing the policy settings and considered feedback received. Some settings of the existing framework have been carried over to the Subclass 482 visa without amendment, and have not been the subject of consultation.
9. These reforms were also informed by earlier reviews including: the 2014 Independent Review into the Integrity of the Subclass 457 programme; the 2016 Productivity Commission Inquiry Report: Migrant Intake into Australia; the 2016 Review of the Temporary Skilled Migration Income Threshold; and the 2016 Senate Inquiry A National Disgrace: The Exploitation of Temporary Work Visa Holders. These reviews were subject to extensive consultation processes, including: individuals; academics; bodies and businesses who use the employer sponsored skilled visa programs; migration agents; representatives of foreign governments; the Ministerial Advisory Council on Skilled Migration; and government departments and agencies.
10. A Regulation Impact Statement has been prepared in accordance with advice from the Office of Best Practice Regulation (OBPR). The OBPR Reference number is 21946.

11. Under section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*, the instrument is exempt from disallowance and therefore a Statement of Compatibility with Human Rights is not required.
12. The instrument commences on 18 March 2018.