EXPLANATORY STATEMENT

Issued by the Minister for Immigration, Citizenship and Multicultural Affairs

Migration (Skilling Australians Fund) Charges Act 2018

Migration (Skilling Australians Fund) Charges Amendment (Subclass 494 Visa) Regulations 2019

The *Migration (Skilling Australians Fund) Charges Act 2018* (the SAF Charges Act) is an Act relating to the 'nomination training contribution charge' (the charge) payable by persons who are liable to pay the charge under the *Migration Act 1958* (the Migration Act) and the *Migration Regulations 1994* (the Migration Regulations).

Section 10 of the SAF Charges Act relevantly provides that the Governor-General may make regulations prescribing matters required or permitted by the SAF Charges Act to be prescribed. Section 7 imposes the charge payable under 140ZM of the Migration Act. Subsection 8(1) provides that the amount of the charge is the amount prescribed by the regulations, or worked out in accordance with a method prescribed by the regulations. Subsection 8(2) provides that the regulations may prescribe different charges or methods for different kinds of visas or persons. Section 6 provides that the charge can be nil.

The *Migration (Skilling Australians Fund) Charges Regulations 2018* (the SAF Charges Regulations) prescribe the amount of the charge applicable to nominations made from 12 August 2018 in relation to the following visa subclasses: Subclass 482 (Temporary Skill Shortage); Subclass 186 (Employer Nomination Scheme) Subclass 187 (Regional Sponsored Migration Scheme; and Subclass 457 (Temporary Work (Skilled)).

The *Migration (Skilling Australians Fund) Charges Amendment (Subclass 494 Visa) Regulations 2019* (the Regulations) support amendments made by Schedule 2 to the *Migration Amendment (New Skilled Regional Visas) Regulations 2019* (the Migration Amendment Regulations) for commencement on 16 November 2019. Relevantly, the Migration Amendment Regulations:

- close Subclass 187 (except for certain transitional cohorts); and
- create a new Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa (Subclass 494) for employers in regional Australia seeking to sponsor foreign workers.

The Regulations amend the SAF Charges Regulations to prescribe the amount of the charge payable for nominations in relation to the new Subclass 494 visa. Where the nomination relates to an applicant or proposed applicant for a Subclass 494 visa, nominations would incur a charge of AUD 5000 or, for businesses with an annual turnover of less than AUD 10 million, a charge of AUD 3000. Where an employer nominates a Subclass 494 visa *holder* (as opposed to an applicant) the person may have less than 5 years remaining on the visa. As it might be perceived to be unfair to require employers to pay the full amount of the charge in these circumstances, the charge is reduced on a pro rata basis, depending on the number of whole years that have elapsed since the visa was granted.

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The following table summarises the amount of the charge that apply:

Years elapsed	**For businesses with an annual turnover less than AUD 10 million**	**In any other case**
<1	AUD 3000	AUD 5000
1-less than 2	AUD 2400	AUD 4000
2-less than 3	AUD 1800	AUD 3000
3-less than 4	AUD 1200	AUD 2000
4-less than 5	AUD 600	AUD 1000

As an exception to the above, the charge is nil for nominations of an occupation for a Subclass 494 visa in the Labour Agreement stream where the occupation is minister of religion or religious assistant (as listed in the Australian and New Zealand Standard Classification of Occupations). This maintains the current position, in relation to nominations for the purpose of Subclasses 457 and 482, at subsections 5(3) of the SAF Charges Regulations, and Subclasses 186 and 187 at subsection 6(3).

The revenue raised by imposing the charge on nominations made for Subclass 494 will offset expenditure from the Skilling Australians Fund (SAF), a training fund administered by the Department of Education and Training. The SAF provides funding for apprenticeships and traineeships in high demand occupations that currently rely on skilled migration or have future growth potential, including in regional Australia.

Section 17 of the *Legislation Act 2003* (the Legislation Act) requires consultations which are appropriate and reasonably practicable to be undertaken. The Regulations are required to support the Migration Amendment Regulations, which have been the subject of consultation with Government Departments and agencies. OBPR advise that the Migration Amendment Regulations, to implement New Skilled Regional Visas, is non-regulatory/machinery in nature and has zero regulatory cost (OBPR Ref ID 25045).

A Statement of Compatibility with Human Rights has been completed in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*, and is at Attachment A.

Details of the Regulations are set out in Attachment B.

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

The Regulations commence on 16 November 2019.

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

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ATTACHMENT A

Statement of Compatibility with Human Rights

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

Amendments to the Migration (Skilling Australians Fund) Charges Regulations 2018

This 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 Legislative Instrument

The *Migration (Skilling Australians Fund) Charges Act 2018* (the SAF Charges Act) is an Act relating to the 'nomination training contribution charge' (the charge) payable by employers accessing foreign workers under the employer sponsored skilled work visa programs under the *Migration Act 1958* (the Migration Act) and the *Migration Regulations 1994* (the Migration Regulations). The revenue raised by imposing the charge offsets expenditure from the Skilling Australians Fund (SAF), a training fund administered by the Department of Education and Training. The SAF provides funding for apprenticeships and traineeships in high demand occupations that currently rely on skilled migration or have future growth potential, including in regional Australia.

Section 10 of the SAF Charges Act relevantly provides that the Governor-General may make regulations prescribing matters required or permitted by the SAF Charges Act to be prescribed by the regulations. Section 7 imposes the charge payable under section 140ZM of the Migration Act. Subsection 8(1) provides that the amount of the charge is the amount prescribed by the regulations, or worked out in accordance with a method prescribed by the regulations. Subsection 8(2) provides that the regulations may prescribe different charges or methods for different kinds of visas or persons. Section 6 provides that the amount of the charge can be nil.

The *Migration (Skilling Australians Fund) Charges Regulations 2018* (the SAF Charges Regulations), prescribed the amount of the charge applicable to:

- nominations made from 12 August 2018 for the purpose of the Subclass 482 (Temporary Skill Shortage) visa (Subclass 482), the Subclass 186 (Employer Nomination Scheme) visa (Subclass 186) or the Subclass 187 (Regional Sponsored Migration Scheme) visa (Subclass 187); and
- nominations made from 12 August 2018 of holders of the Subclass 457 (Temporary Work (Skilled)) visa (the Subclass 457).

The *Migration (Skilling Australians Fund) Charges Amendment (Subclass 494 Visa) Regulations 2019* (this Instrument) amends the SAF Charges Regulations to support the amendments to the Migration Regulations being made by Schedule 2 to the *Migration Amendment (New Skilled Regional Visas) Regulations 2019* (the Migration Amendment

Regulations) for commencement on 16 November 2019. Relevantly, the Migration Amendment Regulations:

- close the existing Subclass 187 visa, (except to certain transitional cohorts);
- create a new Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa (Subclass 494), for employers seeking to sponsor foreign workers.

A separate Statement of Compatibility with Human Rights has been prepared in relation to the Migration Amendment Regulations.

This Instrument amends the SAF Charges Regulations to prescribe the amount of the charge payable in relation to a nomination made for the purpose of the new Subclass 494 visa.

In most cases nominations relate to an applicant or a proposed applicant for the visa. However, in some cases, an existing visa holder may be nominated, for example where the visa holder has changed employer. Where the nomination relates to an applicant or proposed applicant for a Subclass 494 visa, or where the nomination relates to a holder of a Subclass 494 visa, and less than one year has elapsed between the date of grant of the visa and the day on which the new nomination is made, nominations would incur a charge of AUD 3000 for businesses with an annual turnover of less than AUD 10 million or, in any other case, a charge of AUD 5000. If the nomination relates to a holder of a Subclass 494 visa, and one year or more of the visa period has elapsed, the charge would be reduced. The following table summarises the amount of the charge that would apply:

Years elapsed	**For businesses with an annual turnover less than AUD 10 million**	**In any other case**
<1	AUD 3000	AUD 5000
1-less than 2	AUD 2400	AUD 4000
2-less than 3	AUD 1800	AUD 3000
3-less than 4	AUD 1200	AUD 2000
4-less than 5	AUD 600	AUD 1000

As an exception to the above, the charge would be nil for nominations of a proposed occupation for a Subclass 494 visa in the Labour Agreement stream where the occupation is minister of religion or religious assistant. This maintains the current position, in relation to nominations for the purpose of Subclasses 457 and 482, at subsections 5(3) of the SAF Charges Regulations and Subclasses 186 and 187, at subsection 6(3).

Human rights implications

Right to work

This Instrument contributes, as part of the broader SAF charge framework, to the provision of training opportunities for Australian citizens and permanent residents by prescribing the amount of the nomination training contribution charge payable in relation to a Subclass 494 visa.

The amount payable by the nominating employer varies according to:

- the 'visa elapsed period', which is the number of whole years in the period between the date of grant of the visa and the nomination day, if the nomination relates to an existing visa holder; and
- the annual turnover of the nominating employer's business.

For businesses with an annual turnover of AUD 10 million or more, it is reasonable to charge a marginally higher base amount of the nomination training contribution charge than for smaller businesses with an annual turnover of less than AUD 10 million.

The SAF supports training of Australians and therefore their right to work. This is because the nomination training contribution charge funds initiatives that improve training opportunities and outcomes for Australian citizens and permanent residents. Such initiatives engage Articles 6.1 and 6.2 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). Article 6.1 of ICESCR recognises:

> *The right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.*

Article 6.2 of ICESCR states that:

> *The steps to be taken by a State Party of the present Covenant to achieve the full realization of [the right to work] shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedom to the individual.*

The regulatory framework for the nomination training contribution charge supports the right to work under Article 6.1 in relation to Australian citizens and permanent residents. Funding a national training partnership through the sponsorship and nomination framework is an effective mechanism to promote training across a broad range of industries and occupations. The measure positively engages Articles 6.1 and 6.2 of the ICESCR as it is a mechanism for Australia to comply with these rights.

Freedom of religion

This Instrument may also promote the right to freedom of religion under Article 18 of the ICCPR which states

> *Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.*

This is because the Migration Regulations provide an exemption from the nomination training contribution charge for 'Ministers of Religion' or 'Religious Assistant' where that nomination is in relation to a Subclass 494 visa in the Labour Agreement stream. This assists

organisations to sponsor the entry and stay of Ministers of Religion and Religious Assistants to practice and teach religion.

Conclusion

This Legislative Instrument is compatible with human rights as it promotes the training of Australian citizens and permanent residents in support of Article 6 of the ICESCR and practice and teaching of religion in support of Article 18 of the ICCPR.

The Hon. David Coleman MP

Minister for Immigration, Citizenship and Multicultural Affairs

ATTACHMENT B

Details of the *Migration (Skilling Australians Fund) Charges Amendment (Subclass 494 Visa) Regulations 2019*

Section 1 – Name

This section provides that the name of the instrument is the *Migration (Skilling Australians Fund) Charges Amendment (Subclass 494 Visa) Regulations 2019* (the SAF Charges Amendment Regulations).

Section 2 – Commencement

This section sets out, in a table, the date on which the amendments made by the SAF Charges Amendment Regulations commence.

Table item 1 provides that the whole instrument commences on 16 November 2019.

Section 3 – Authority

This section provides that the SAF Charges Amendment Regulations are made under the *Migration (Skilling Australians Fund) Charges Act 2018* (the SAF Charges 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.

The instrument amended by Schedule 1 to the SAF Charges Amendment Regulations is the *Migration (Skilling Australians Fund) Charges Regulations 2018* (the SAF Charges Regulations).

Schedule 1—Amendments

Migration (Skilling Australians Fund) Charges Regulations 2018

Item 1 – Subsection 5(1)

Under subsection 140ZM(1) of the *Migration Act 1958* (the Migration Act), a person is liable to pay nomination training contribution charge (the charge) to the Commonwealth in relation to a nomination by the person under section 140GB of that Act if the nomination is a nomination of a kind prescribed by the regulations.

Section 7 of the SAF Charges Act imposes the liability to pay the charge under section 140ZM of the Migration Act in relation to a nomination, under section 140GB of the Migration Act, of an applicant or proposed applicant for a prescribed visa.

Subsection 8(1) of the SAF Charges Act provides that the amount of the charge payable by a person in relation to a nomination is the amount prescribed by the regulations, or worked out in accordance with a method prescribed by the regulations.

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Subsection 8(2) provides that, without limiting subsection 8(1), the regulations may prescribe different charges or methods for different kinds of visas or persons. Section 6 provides that the amount of the charge can be nil.

Item 1 of the SAF Charges Amendment Regulations repeals and replaces subsection 5(1) of the SAF Charges Regulations. This change clarifies that section 5 prescribes the charge payable in relation to a nomination of a proposed occupation in relation to:

- a holder of a Subclass 457 (Temporary Work (Skilled)) visa;
- a holder of a Subclass 482 (Temporary Skill Shortage) visa, or
- an applicant or a proposed applicant for a Subclass 482 visa.

This amendment is required because item 2 of the SAF Charges Amendment Regulations, which inserts new section 5A into the SAF Charges Regulations, sets out the amount of the charge payable in relation to a nomination of a proposed occupation in relation to a Subclass 494 ((Skilled Employer Sponsored Regional (Provisional)) visa (Subclass 494).

The new Subclass 494 visa is created by Schedule 2 to the *Migration Amendment (New Skilled Regional Visas) Regulations 2019* and commences on 16 November 2019. New Subclass 494 is a skilled visa which allows employers to sponsor foreign workers.

Items 2 and 3 – Subsection 5(3)

These items make technical amendments to subsection 5(3) to reflect the changes to section 5(1) made by item 1 above, and to clarify that the nomination which attracts the nomination training contribution charge is made in relation to a proposed occupation.

Item 4 – After section 5

Item 4 of the SAF Charges Amendment Regulations amends the SAF Charges Regulations to insert a new section 5A, titled ‘Amount of nomination training contribution charge–Subclass 494’ to prescribe the amount of the charge payable in relation to a nomination made for the purpose of the new Subclass 494 visa, and the method by which that amount is to be calculated.

New subsection 5A(1)

New subsection 5A(1) provides that, for the purposes of subsection 8(1) of the SAF Charges Act, section 5A sets out the amount of charge payable in relation to a nomination, of a kind mentioned in subsection 140ZM(1) of the Migration Act, of a proposed occupation in relation to either of the following: a holder of a Subclass 494 visa, or an applicant or a proposed applicant for a Subclass 494 visa.

New subsection 5A(2)

New subsection 5A(2) sets out the formula by which the charge is calculated if the nomination relates to a *holder* of a Subclass 494 visa. This subsection does not apply where the nomination is of an occupation for a Subclass 494 visa in the Labour Agreement stream, and the occupation is minister of religion or religious assistant (see subsection 5A(4)).

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For nominations covered by this subsection, the charge is the amount worked out using the formula:

$$\text{Base amount} \times \frac{5 - \text{Elapsed years in visa period}}{5}$$

New subsection 5A(2) provides that, for the purpose of this formula, ‘base amount’ means:

- AUD 3000 if the annual turnover for the nomination is less than AUD 10 million; or
- AUD 5000 in any other case.

The term ‘annual turnover’ is defined by section 4 of the SAF Charges Regulations. In summary, if the person liable to pay the charge operates a business in Australia, ‘annual turnover’ means the total ordinary income (within the meaning of the *Income Tax Assessment Act 1997*) the person derived in the most recent income year (within the meaning of that Act) ending before the nomination day. As the person liable to pay the charge in relation to a nomination for a Subclass 494 visa must be a person who operates a business in Australia, this is the only meaning of annual turnover relevant to new section 5A of the SAF Charges Regulations.

New subsection 5A(2) also provides that, for the purpose of this formula, ‘elapsed years in visa period’ is the number of whole years in the period:

- starting on the date of grant of the visa; and
- ending on the nomination day in relation to the nomination.

The term ‘nomination day’ is defined by section 4 of the SAF Charges Regulations to mean, in relation to a nomination, the day on which:

- the nomination is made under section 140GB of the Migration Act; or
- the application for approval of the nomination is made under regulation 5.19 of the Migration Regulations.

The effect of subsection 5(2) of the SAF Charges Amendment Regulations is that, where the nomination relates to a holder of a Subclass 494 visa, and less than one year in the visa period has elapsed, the charge is AUD 3000 (if the annual turnover for the nomination is less than AUD 10 million) or AUD 5000 (in any other case). If more than one year in the visa period has elapsed, the charge is reduced according to the number of years that have elapsed, as summarised in the following table.

Years elapsed	**For businesses with an annual turnover less than AUD 10 million**	**In any other case**
<1	AUD 3000	AUD 5000
1-less than 2	AUD 2400	AUD 4000
2-less than 3	AUD 1800	AUD 3000
3-less than 4	AUD 1200	AUD 2000
4-less than 5	AUD 600	AUD 1000

New subsection 5A(3)

New subsection 5A(3) provides that, unless subsection 5A(4) applies, if the nomination relates to an applicant or a proposed applicant for a Subclass 494 visa, the charge is AUD 3000 (if the annual turnover for the nomination is less than AUD 10 million) or AUD 5000 (in any other case).

This subsection does not apply where the nomination is of a proposed occupation for a Subclass 494 visa in the Labour Agreement stream, and the occupation is minister of religion or religious assistant (see subsection 5A(4)).

New subsection 5A(4)

New subsection 5A(4) operates despite new subsections 5A(2) and (3), and provides that the charge is nil where the nomination is for a Subclass 494 visa in the Labour Agreement stream, and the proposed occupation is minister of religion or religious assistant.

This maintains the current position, in relation to nominations for occupations for the purpose of Subclasses 457 and 482, at subsections 5(3) of the SAF Charges Regulations, and Subclasses 186 and 187, at subsection 6(3).

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