

EXPLANATORY STATEMENT

Issued by the Minister for Home Affairs

Migration Act 1958

Migration Amendment (Visa Application Charges) Regulations 2021

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.

In addition, regulations may be made pursuant to the provisions listed in Attachment A.

The purpose of the *Migration Amendment (Visa Application Charges) Regulations 2021* (the Regulations) is to amend the *Migration Regulations 1994* (the Migration Regulations) to make changes to visa application charges (VACs) for certain visas as a consequence of the 2017-18 Budget Measure *Indexation of visa application charges*, and 2020-21 Budget Measure *Migration Program – changes to the Business Innovation and Investment Program*.

In particular, the Regulations amend the Migration Regulations to increase VACs for a number of visas by the forecast consumer price index (CPI), consistent with the 2017-18 Budget Measure *Indexation of visa application charges*. 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 the affected VACs are increased from their 2020-21 baseline amounts by the 2021-22 forecast CPI as published in the 2021-22 Budget Paper No.1, rounded to the nearest \$5. It is intended that these indexation amendments will continue to be made on an annual basis.

In addition, consistent with the 2020-21 Budget Measure *Migration Program – changes to Business Innovation and Investment Program*, visa application charges for most Business Innovation and Investment Program (BIIP) visas are also increased by 11.345 percent (cumulatively with VAC indexation). This coincides with the closure of three streams of visas with effect from 1 July 2021: the Subclass 132 (Business Talent) permanent visa (with two streams) is being repealed, and the Premium Investor stream of the Subclass 188 (Business Innovation and Investment (Provisional)) visa is being closed to new applications from 1 July 2021.

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 B.

Details of the Regulations are set out in Attachment C.

The Office of Best Practice Regulation (the OBPR) has been consulted in relation to the amendments made by the Regulations. No Regulation Impact Statement is required. The OBPR consultation reference is 26022.

Public consultation was not considered necessary or appropriate due to the changes being implemented as a result of existing Budget measures. The amendments do not substantially alter existing arrangements. This accords with subsection 17(1) of the *Legislation Act 2003* (the Legislation Act) which requires that appropriate and reasonably practicable consultation be undertaken.

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

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

The Regulations commence on 1 July 2021 and will align with updates to Department systems.

AUTHORISING PROVISIONS

Subsection 504(1) of the *Migration Act 1958* (the Migration Act) relevantly provides that the Governor-General may make regulations, not inconsistent with the Migration Act, prescribing all matters which by the Migration Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to the Migration Act.

In addition, the following provisions of the Migration Act may apply:

- section 45A of the Act, which provides that a non-citizen who makes an application for a visa is liable to pay a visa application charge if, assuming the charge were paid, the application would be a valid visa application;
- subsection 45B(1) of the Act, which provides that the amount of the visa application charge is the amount, not exceeding the visa application charge limit, prescribed in relation to the application. The visa application charge limit is determined under the VAC Act; and
- section 45C of the Act, which deals with regulations about the visa application charge. In particular:
 - subsection 45C(1) of the Act, which provides that the *Migration Regulations 1994* (the Regulations) may provide that the visa application charge may be payable in instalments, and specify how those instalments are to be calculated and when instalments are payable; and
 - paragraph 45C(2)(a) of the Act, which relevantly provides that the Regulations may make provision for and in relation to various matters, including the recovery of the visa application charge in relation to visa applications and the way, including the currency, in which visa application charge is to be paid.

The following provisions of the *Migration (Visa Application) Charge Act 1997* may also apply:

- section 4, which imposes a visa application charge payable under section 45A of the Act; and
- section 5, which limits the visa application charge and provides the formula to calculate the charge limit for later financial years.

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 2021

ADJUSTMENT OF VISA APPLICATION CHARGES

This Disallowable Legislative Instrument, entitled the *Migration Amendment (Visa Application Charges) Regulations 2021* (the Regulations) 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 2021* (the Regulations) is to amend the *Migration Regulations 1994* (the Migration Regulations) to make changes to visa application charges (VACs) for certain visas as a consequence of the 2017-18 Budget Measure *Indexation of visa application charges*, and 2020-21 Budget Measure *Migration Program – changes to the Business Innovation and Investment Program*.

In particular, the Regulations amend the Migration Regulations to increase VACs for a number of visas by the forecast consumer price index (CPI), consistent with the 2017-18 Budget Measure *Indexation of visa application charges*. 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 the affected VACs are increased from their 2020-21 baseline amounts by the 2021-22 forecast CPI as published in the 2021-22 Budget Paper No.1, rounded to the nearest \$5. It is intended that these indexation amendments will continue to be made on an annual basis.

In addition, consistent with the 2020-21 Budget Measure *Migration Program – changes to Business Innovation and Investment Program*, visa application charges for most Business Innovation and Investment Program (BIIP) visas are also increased by 11.345 percent (cumulatively with VAC indexation). This coincides with the closure of three streams of visas with effect from 1 July 2021: the Subclass 132 (Business Talent) permanent visa (with two streams) is being repealed, and the Premium Investor stream of the Subclass 188 (Business Innovation and Investment (Provisional)) visa is being closed to new applications from 1 July 2021.

Human rights implications

The Regulations do not engage any of the applicable rights or freedoms.

Conclusion

The Regulations are 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* as they do not raise any human rights issues.

The Hon. Karen Andrews, MP
Minister for Home Affairs

Details of the Migration Amendment (Visa Application Charges) Regulations 2021

Section 1 – Name

This section provides that the name of the instrument is the *Migration Amendment (Visa Application Charges) Regulations 2021* (the Regulations).

Section 2 – Commencement

This section provides for the commencement of the instrument. The whole of the instrument commences on 1 July 2021.

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 for how the amendments in the Regulations operate.

Schedule 1 – Amendments

Part 1 – Increases of visa application charges

Part 1 of Schedule 1 to the Regulations gives effect to two existing Government decisions, consistent with the 2017-18 Budget Measure *Indexation of visa application charges* and also the 2020-21 Budget Measure: *Migration Program – changes to Business Innovation and Investment Program*.

The *Indexation of visa application charges* measure increases VACs by the forecast CPI, as set out in **2021-22 Budget Paper No.1 Table 1.2: Major economic parameters**. A number of visa application charges (VACs) are indexed by 1.75 percent, rounded to the nearest \$5.

The *Migration Program – changes to Business Innovation and Investment Program (BIIP)* measure increases visa application charges for most BIIP visas by an additional 11.345 percent. That is, the 11.345 percent is applied cumulatively with the VAC indexation for these visas.

Visas impacted by the BIIP changes are as follows:

Subject to BIIP 11.345 percent uplift and VAC indexation

- Subclass 188 Business Innovation stream
- Subclass 188 Investor stream
- Subclass 188 Significant Investor stream
- Subclass 188 Business Innovation Extension stream
- Subclass 188 Significant Investor Extension stream

- Subclass 888 (all streams)

Only subject to VAC indexation

- Subclass 188 Entrepreneur stream

Only CPI was applied to the Entrepreneur stream, as this stream caters to startup entrepreneurs who are not required to have the same level of financial history as the other streams.

Subject to neither

- Subclass 188 Premium Investor (this stream is closed to new applications from 1 July 2021)

The direct to permanent streams within the BIIP (the Significant Business History stream and the Venture Capital Entrepreneur stream of Subclass 132 (Business Talent)) have a higher initial VAC than other BIIP streams. Due to the 1 July 2021 repeal of Subclass 132, along with the closure, to new applications, of the Premium Investor stream of Subclass 188 (Business Innovation and Investment (Provisional)), the loss of revenue from the higher initial VAC for those streams is to be offset by the 11.345 percent “uplift”. Therefore, the VACs on the remaining BIIP streams are subject to the uplift.

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 if the amount 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.

Due to the above methodology, in some instances the VAC indexation has not triggered a price change.

The amount of the increase in these items does not exceed the applicable charge limit set out in the *Migration (Visa Application) Charge Act 1997*.

Part 2 – Application of amendments

Migration Regulations 1994

Item [186] - In the appropriate position in Schedule 13

This item inserts new Part 98 into Schedule 13 to the Migration Regulations. Schedule 13 provides for the application and transitional provisions that apply to amendments to the Migration Regulations.

Clause 9801 Operation of Part 1 of Schedule 1

This clause provides that the amendments made by Schedule 1 apply to visa applications made on or after 1 July 2021.