

EXPLANATORY STATEMENT

Issued by the Minister for Immigration, Citizenship and Multicultural Affairs

Migration Act 1958

Migration Amendment (Visa Application Charges) Regulations 2023

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 in relation to the application. The VAC limit is determined under the *Migration (Visa Application) Charge Act 1997* (the VAC Act).

The purpose of the *Migration Amendment (Visa Application Charges) Regulations 2023* (the Regulations) is to amend the *Migration Regulations 1994* (the Migration Regulations) to increase VACs for the majority of visas. The amendments implement the Government's decision to index the VACs in accordance with the Consumer Price Index (CPI) and to implement the *Migration – Uplift of Visa Application Charges* Budget measure. The increased revenue generated will fund costs associated with improving visa processing including ensuring the timeliness of visa processing.

The affected VACs are increased from their 2022-23 baseline amounts by the 2023-24 forecast CPI of 3.25%. Select visitor and temporary visas are increased by a further 21% in addition to CPI. This includes visitor, working holiday, work and holiday, training, temporary activity, and temporary work (short stay specialist) visas. Business innovation and investment visas are increased by a further 46% in addition to CPI. The remaining visas are increased by 6% in addition to CPI. The exception to this additional increase is the Subclass 403 (Temporary Work (International Relations)) visa in the Pacific Australia Labour Mobility (PALM) stream which has been indexed in line with CPI only, as a reflection of the Government's commitment to building ties with the nations of the Pacific and Timor-Leste. These measures were published in the 2023-24 Budget Paper No 1. The new VAC amounts are also rounded to the nearest \$5.

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

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 amending 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 VAC indexation and uplift do not trigger the Australian Government Impact Analysis Requirements. The OIA references are OIA-26022 and OIA23-04793. Consultation with federal Government agencies was undertaken on the VAC uplift, including with the Treasury, Department of Finance, Department of Education, Department of Employment and Workplace Relations and the Department of Foreign Affairs and Trade. Incorporation of feedback included exempting the PALM visa from the additional uplift. Public consultation 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. This accords with consultation requirements in subsection 17(1) of the Legislation Act 2003 (the Legislation Act).

The amendments commence on 1 July 2023.

Further details of the Regulations are set out in [Attachment B](#).

The amending 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 legislative instrument for the purposes of the Legislation Act.

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 2023

ADJUSTMENT OF VISA APPLICATION CHARGES

This Disallowable Legislative Instrument, entitled the *Migration Amendment (Visa Application Charges) Regulations 2023* (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 Regulations is to amend the *Migration Regulations 1994* (the Migration Regulations) to increase visa application charges (VACs) for certain visas as a consequence of the 2017-18 Budget Measure *Indexation of visa application charges* and 2023-24 Budget Measure *Uplift of Visa Application Charges*.

In particular, the Regulations amend the Migration Regulations to increase VACs for a number of visas by the forecast consumer price index (CPI) and a one-off percentage point uplift, consistent with the 2017-18 Budget Measure *Indexation of Visa Application Charges* and 2023-24 Budget Measure *Uplift 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 2022-23 baseline amounts by the 2023-24 forecast CPI (3.25%). Select visitor and temporary visa subclasses are increased by a further 21% in addition to CPI. This includes visitor, working holiday, work and holiday, training, temporary activity, and temporary work (short stay specialist) visas. Business innovation and investment visas are increased by a further 46% in addition to CPI. The remaining visas are increased by 6% in addition to CPI. The exception to this additional increase is the Subclass 403 (Temporary Work (International Relations)) visa in the Pacific Australia Labour Mobility (PALM) stream which has been indexed in line with CPI only, as a reflection of the Government's commitment to building ties with the nations of the Pacific and Timor-Leste. These measures were published in the 2023-24 Budget Paper No 1. The new VAC amounts are also rounded to the nearest \$5. It is intended that CPI indexation amendments will continue to be made in subsequent years.

Right to Protection of the Family

The right to respect for the family is protected by Articles 17 and 23 of the *International Covenant on Civil and Political Rights* (ICCPR) and Article 10 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).

It may be argued that the 6 % VAC increase for family related visas engages the aforementioned rights. However, the government is of the view that this measure to provide a modest uplift to VAC is compatible with these rights as the VAC is and remains a small part of the cost to come to Australia.

Some visitors to Australia, which may include travel to Australia for the purpose of maintaining a connection with family in Australia, are subject to a higher VAC increase of 21%. As the VAC is a small component of cost of travel to Australia under this visa stream, the VAC increase is unlikely to have a material impact on the visitors travelling to Australia, and therefore will not interfere with the right to respect for the family.

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. Andrew Giles, MP

Minister for Immigration, Citizenship and Multicultural Affairs

Details of the *Migration Amendment (Visa Application Charges) Regulations 2023*

Section 1 – Name

This section provides that the name of the instrument is the *Migration Amendment (Visa Application Charges) Regulations 2023* (the Regulations).

Section 2 – Commencement

This section provides for the whole of the instrument to commence on 1 July 2023.

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 made by the Regulations operate.

Schedule 1 – Amendments

Part 1 – Amendments

Migration Regulations 1994

Part 1 of Schedule 1 to these Regulation gives effect to the Government’s Budget Measure to increase visa application charges (VACs) by the regular consumer price index (CPI), in addition to further increases. All eligible VACs are increased from their 2022-23 baseline amounts by the 2023-24 forecast CPI of 3.25%. Additionally, select visitor and temporary visa subclasses are increased by a further 21% in addition to CPI. This includes visitor, working holiday, work and holiday, training, temporary activity, and temporary work (short stay specialist) visas. Business innovation and investment visas are increased by a further 46% in addition to CPI. The remaining visas are increased by 6% in addition to CPI. The exception to this additional increase is the Subclass 403 (Temporary Work (International Relations)) visa in the Pacific Australia Labour Mobility (PALM) stream which has been indexed in line with CPI only, as a reflection of the Government’s commitment to building ties with the nations of the Pacific and Timor-Leste. These measures were published in the 2023-24 Budget Paper No 1. These increases do not exceed the applicable charge limits set out in the *Migration (Visa Application) Charge Act 1997*.

Items [1] - [195] and [197] - [225]

These items make amendments to relevant items in Schedule 1 to the Migration Regulations to substitute existing VAC amounts with new VAC amounts for the relevant visa.

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 *Migration (Visa Application) Charge Act 1997*.

Item [196] – After subparagraph 1234(2)(a)(ii) of Schedule 1

This item inserts new subparagraph 1234(2)(a)(iia) in Schedule 1 to the Migration Regulations.

New subparagraph 1234(2)(a)(iia) provides that the first instalment base application charge of the VAC for an applicant seeking to meet the primary criteria for a Subclass 403 (Temporary Work (International Relations)) visa in the Pacific Australia Labour Mobility (PALM) stream is \$335.

The first instalment of VAC for most other primary applicants for a Subclass 403 visa are increased to \$355 (see item 197), unless the applicant is in a class of persons specified by the Minister in a legislative instrument or for an applicant whose application is combined with an application made by a person referred to in subparagraph 1234(2)(a)(i), where the VAC is nil. The figure of \$355 includes indexation by the CPI and in addition a 6% increase.

The figure of \$335 for applicants in the PALM stream includes only indexation by the CPI. This aligns with the Australian Government's commitment to build a stronger Pacific family and ensure that Pacific labour visas are seen as mutually beneficial across the Pacific region.

Part 2 – Application of amendments

Migration Regulations 1994

Item [226] - In the appropriate position in Schedule 13

This item inserts new Part 110 into Schedule 13 to the Migration Regulations. Schedule 13 provides for the application and transitional provisions that apply to amendments to the Migration Regulations.

This item provides that the amendments made by Schedule 1 apply to visa applications made on or after 1 July 2023.