

EXPLANATORY STATEMENT

Issued by the Minister for Immigration and Multicultural Affairs

Migration (Visa Pre-application Process) Charge Act 2023

Migration (Visa Pre-application Process) Charge Amendment (Mobility Arrangements for Talented Early-professionals Scheme) Amendment Regulations 2024

The *Migration (Visa Pre-application Process) Charge Act 2023* (the Charge Act) is an Act relating to the imposition of a charge on the registration of a person as a registered participant in a visa pre-application process.

Section 11 of the Charge Act provides that the Governor-General may make regulations, prescribing matters required or permitted to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Charge Act.

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

The Charge Act imposes a charge on the registration of a person as a registered participant in a visa pre-application process (commonly known as a ballot). The amount of charge imposed on the registration of a person as a registered participant in a particular ballot process is the amount prescribed by the *Migration (Visa Pre-application Process) Charge Regulations 2024* (the Charge Regulations). The Charge Act also establishes \$100 as the maximum charge amount that may be prescribed for a particular ballot, which is automatically indexed by the annual Consumer Price Index.

On 23 May 2023, the Governments of Australia and the Republic of India entered into the 'Migration and Mobility Partnership Arrangement' (the MMPA), a bilateral framework that supports and promotes two-way migration and mobility between the two countries. Through this bilateral agreement, the Australian Government agreed to establish the 'Mobility Arrangements for Talented Early-professionals Scheme' (MATES).

The *Migration (Visa Pre-application Process) Charge Amendment (Mobility Arrangements for Talented Early-professionals Scheme) Amendment Regulations 2024* (the amending Regulations) amend the Charge Regulations to prescribe a charge of \$25.00 for each registration for the visa pre-application process for the newly established Subclass 403 (Temporary Work) (International Relations)) visa in the Mobility Arrangement for Talented Early-professionals Scheme stream (the MATES stream visa).

The amending Regulations are consequential to the *Migration Amendment (Mobility Arrangements for Talented Early-professionals Scheme) Regulations 2024*'s amendments to the *Migration Regulations 1994* to establish the MATES program, which allows Indian graduates and early career professionals with knowledge and skills in targeted fields of study to live and work in Australia for up to two years. Australian industry sectors and businesses will also benefit from their access to India's talented graduates with in-demand knowledge and skills. Eligible fields include renewable energy, mining, engineering, information and communications technology, artificial intelligence, financial technology, and agricultural technology. As agreed under the MMPA, there will be 3,000 temporary visa places available under the MATES each program year.

The implementation of the new MATES stream visa gives effect to Australia's commitment under the MMPA to establish the MATES program, as well as the Australian Government's announcement during the budget 2024-25.

The amending Regulations commence the day after registration on the Federal Register of Legislation or the day the *Migration Amendment (Mobility Arrangements for Talented Early-professionals Scheme) Regulations 2024* commences, whichever is later. However, the amending Regulations do not commence if the *Migration Amendment (Mobility Arrangements for Talented Early-professionals Scheme) Regulations 2024* do not commence.

The matters dealt with in the amending Regulations are appropriate for implementation in regulations rather than by Parliamentary enactment. The Charge Act expressly provides for these matters to be prescribed in regulations. The Charge Act was necessary due to the possibility the charges may amount to a tax rather than a fee for service, as it is not possible to determine the relationship between the amount of the charge and the cost of conducting the ballot. This is because it is not known how many participants there will be in any ballot. Accordingly, it was appropriate to legislate the charge on the basis that it is, or may be, a tax. Under section 55 of the Constitution, a law imposing taxation must not deal with any other matter.

A Statement of Compatibility with Human Rights (a Statement) has been completed in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The overall assessment is that the Charge Regulations are compatible with human rights because, to the extent that they may limit human rights, those limitations are reasonable, necessary and proportionate to legitimate aim. A copy of this Statement is at [Attachment B](#).

The Office of Impact Analysis (OIA) was consulted and considered that the instrument (the amending Regulations) to have a minor impact and no regulatory impact statement was required. This assessment was informed by OIA's understanding that there are only 3,000 places (noting dependents are not counted towards the annual cap) available under the MATES Scheme per program year, and only a small number of participants will arrive in Australia each year. The OIA reference number is OIA24-07566.

The amending Regulations are a legislative instrument for the purposes of the *Legislation Act 2003* (the Legislation Act). Section 17 of that Act provides that the rule-maker must be satisfied that any consultation that is appropriate and reasonably practicable has been undertaken before making a legislative instrument. The Department of Home Affairs has undertaken consultation with relevant external government agencies and peak body representatives.

External consultation has occurred with the Department of Education, the Department of Finance, Treasury, the Department of the Prime Minister and Cabinet, the Indian Ministry of External Affairs, the Indian Ministry of Education and the Indian High Commission. This consultation accords with subsection 17(1) of the Legislation Act.

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

The instrument was made by the Governor-General, in accordance with section 11 of the Charge Act.

AUTHORISING PROVISIONS

Section 11 of the *Migration (Visa Pre-application Process) Charge Act 2023* (the Charge Act) relevantly provides that the Governor-General may make regulations (the Charge Regulations), prescribing matters required or permitted to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Charge Act.

In addition, the following provisions of the Charge Act may also be relevant:

- section 6, which imposes a charge on the registration of a person as a registered participant in a visa pre-application process under subsection 46C(1) of the *Migration Act 1958*;
- subsection 8(1), which provides the amount of charge imposed on the registration of a person as a registered participant in a visa pre-application process is the amount prescribed by the Charge Regulations;
- subsections 8(2) and (3), which provide the Charge Regulations may prescribe different amounts in relation to different visa pre-application processes; or different classes of visa pre-application process; or different classes of persons.

Statement of Compatibility with Human Rights

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

Migration (Visa Pre-application Process) Charge Amendment (Mobility Arrangements for Talented Early-professionals Scheme) Regulations 2024

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 *Migration (Visa Pre-application Process) Charge Amendment (Mobility Arrangements for Talented Early-professionals Scheme) Regulations 2024* (the Charge Amendment Regulations) amend the *Migration (Visa Pre-application Process) Charge Regulations 2024* (the Charge Regulations), which were made under the *Migration (Visa Pre-application Process) Charge Act 2023* (the Charge Act), to prescribe an amount of charge for the registration of a person as a registered participant in a visa pre-application process to be conducted under subsection 46C(1) of the *Migration Act 1958* in respect of a new stream within the Temporary Work (International Relations) (Subclass 403) visa called the Mobility Arrangement for Talented Early-professionals Scheme (MATES) stream.

Subsection 46C(1) of the Migration Act was inserted by the *Migration Amendment (Australia's Engagement in the Pacific and Other Measures) Act 2023* (the Amendment Act) and empowers the Minister to conduct a visa pre-application process (referred to generally as a 'ballot'), involving the random selection of registered participants who will then be permitted to lodge an application for a relevant visa. The amendments made by the Amendment Act, along with the Charge Act, set up the legislative framework for the visa pre-application process.

The Charge Amendment Regulations are part of the legislative package that implements the new MATES stream of the existing Subclass 403 visa for Indian nationals, including a ballot process for the new visa stream, to provide fair and equitable access to the MATES program where the visa demand is expected to be significantly high. The legislative package implements the Australian Government's commitment under the Migration and Mobility Partnership Arrangement (MMPA), entered into with the Government of India, to implement MATES, and will support the Government's migration priorities by attracting some of India's most talented graduates with in-demand knowledge and skills to Australia. As agreed to under the MMPA, the MATES program will provide a two year mobility pathway for 3,000 young Indian professionals per program year with targeted qualifications to help them expand their skills and networks in Australia in the sectors of identified demand.

Under the Charge Act, the visa pre-application registration charge is subject to a maximum charge amount of AUD100. The maximum charge amount is indexed in accordance with the formula provided in the Charge Act, which ensures that the maximum charge updates annually to reflect changes in the Consumer Price Index.

The Charge Amendment Regulations prescribe that the amount of charge payable for each registration of a person as a registered participant in the Subclass 403 MATES stream visa pre-application process is AUD25 payable at the time of registration. If the charge is not paid at that time, the person is taken to never have been registered as a registered participant in the visa pre-application process. There are no provisions for remissions, refunds, waivers or exemptions to the AUD25 registration charge in the MATES pre-application process. This is consistent with other visa programs that utilise a ballot process.

The reason for imposing a charge for the registration in the applicable Subclass 403 MATES stream visa pre-application process is that it will assist in managing integrity of registrations and is appropriate to ensure that those who register are genuine and have given serious consideration to their capacity to apply for, and take up, a Subclass 403 MATES stream visa, should they be successful in being selected in the visa pre-application process. Without this charge, ballots may become inundated with participants who do not follow through by applying for the relevant visa. This would result in an inefficient process that may not deliver the MATES program as agreed to between Australia and India. Additionally, without a charge, ballots could be at greater risk of disingenuous registrations jeopardising the integrity of the ballot process.

Human rights implications

The Charge Amendment Regulations may engage the following rights:

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

Article 2(2) of the 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 18, the UN 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].

Similarly, 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.

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.

Eligibility to apply for a Subclass 403 MATES stream visa is limited to those who register and are successfully selected in the applicable ballot process, which requires them to pay the AUD25 registration charge at the time of registration in that process. This may engage the rights to non-discrimination, including in relation to the ability of a person who wishes to obtain a Subclass 403 MATES stream visa that would allow them to enter and work in Australia as a holder of that visa.

The visa pre-application framework is aimed at promoting equitable access to the MATES program, where there are limited places that will be in high demand. The Statement of Compatibility with Human Rights that accompanies the *Migration Amendment (Mobility Arrangements for Talented Early-professionals Scheme) Regulations 2024* explains why the use of the visa pre-application process is reasonable and proportionate for the MATES program.

As noted above, the AUD25 visa pre-application charge is aimed at ensuring the integrity of the registration process and is not expected to have a significant impact on the ability of a person to register for a visa pre-application process if they wish to participate in the MATES program or adversely affect the rights of equality and non-discrimination of such persons. The Charge Act establishes that the maximum amount that can be prescribed in the Charge Regulations may vary from nil to AUD100 per registration in a visa pre-application process. The AUD25 visa pre-application registration charge implemented by the Charge Amendment Regulations is at the lower end of this cap and is aimed at ensuring only genuine applicants who wish to apply for a Subclass 403 MATES stream visa register in the visa pre-application process.

The imposition of an AUD25 registration charge for the purposes of the MATES visa pre-application process is therefore considered to be reasonable, necessary and proportionate to provide fair and

equitable access for places under the MATES program as demand is likely to exceed the available places.

Conclusion

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

The Hon Tony Burke MP
Minister for Immigration and Multicultural Affairs

Details of the Migration (Visa Pre-application Process) Charge Amendment (Mobility Arrangements for Talented Early-professionals Scheme) Amendment Regulations 2024

Section 1 – Name of Regulations

This section provides that the title of these Regulations is the *Migration (Visa Pre-application Process) Charge Amendment (Mobility Arrangements for Talented Early-professionals Scheme) Regulations 2024* (the **amending Regulations**).

Section 2 – Commencement

This section provides for the commencement of these amending Regulations (the instrument).

Subsection 2(1) provides that each provision of the instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table.

Table item 1 provides that the entire instrument commences on the latter of:

- the day after the instrument is registered on the Federal Register of Legislation (see paragraph (a) of that table); and
- the day the *Migration Amendment (Mobility Arrangements for Talented Early-professionals Scheme) Regulations 2024* commences (see paragraph (b) of that table). However, this instrument will not commence if the *Migration Amendment (Mobility Arrangements for Talented Early-professionals Scheme) Regulations 2024* do not commence, as provided for in paragraph (b) of that table.

The note below the table covered by subsection 2(1) makes it clear that the table relates only to the provisions of the instrument as originally made. The table will not be amended to deal with any later amendments of the instrument.

Subsection 2(2) provides that any information in column 3 of the table is not part of the instrument. Information may be inserted in this column, or information in it may be edited, in any published version of the instrument. Column 3 of the table confirms only that the date of commencement of the instrument, as the day after this instrument is registered and the day the instrument mentioned in paragraph (b) of item 1 of the table in section 2 of this instrument commences.

The effect of this item is that the amending Regulations commence on the same day as the *Migration Amendment (Mobility Arrangements for Talented Early-professionals Scheme) Regulations 2024*, unless the amending Regulations are registered on a later date.

Section 3 - Authority

This section provides that the instrument is made under the *Migration (Visa Pre-application Process) Charge Act 2023*.

Section 4 - Schedules

This section provides for how the amendments in these amending Regulations operate.

Schedule 1 – Amendments

Migration (Visa Pre-application Process) Charge Regulations 2024

Item [1] – At the end of Part 2

This item inserts a new provision at the end of Part 2 of the *Migration (Visa Pre-application Process) Charge Regulations 2024* (the Charge Regulations), being section 6B.

New Section 6B of the Charge Process Regulations sets out the amount of charge payable for each registration of a person as a registered participant in a visa pre-application process in relation to a Subclass 403 (Temporary Work (International Relations)) visa in the Mobility Arrangement for Talented Early-professionals Scheme stream (the MATES stream visa). The charge is \$25.00.

This item also inserts a note under new section 6B of the Charge Regulations. That new note confirms that if the above charge (\$25.00) is not paid by the person at the time of registration in the relevant visa pre-application process for the MATES stream visa, that person is taken never to have been registered in that process in accordance with subsection 46C(22) of the *Migration Act 1958*.

Item [2] – At the end of Division 2 of Part 3

This item inserts a new provision at the end of Division 2 of Part 3 of the Charge Regulations, being new section 9.

New section 9 of the Charge Regulations is an application provision, titled ‘Subclass 403 (Temporary Work (International Relations)) visa in the Mobility Arrangement for Talented Early-professionals Scheme stream’. This new provision provides for new section 6B to apply to a person who registers as a registered participant in the MATES stream visa pre-application process on or after commencement of these amending Regulations (see section 2 above).