

EXPLANATORY STATEMENT

Issued by the Minister for Immigration and Multicultural Affairs

Migration (Skilling Australians Charges) Act 2018

Migration (Skilling Australians Fund) Charges Amendment (Subclass 482 (Skills in Demand) Visa) Regulations 2024

The *Migration (Skilling Australians Fund) Charges Act 2018* (the Skilling Australians Fund Act) is an Act relating to the imposition of a nomination training contribution 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).

The nomination training contribution charge, also known as the Skilling Australians Fund levy, offsets expenditure from the Skilling Australians Fund, a training fund administered by the Department of Employment and Workplace Relations. The purpose of the nomination training contribution charge is for employers to contribute to the broader skills development of Australians. Employers must not pass the charge on to the visa applicant.

Section 10 of the Skilling Australians Fund 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 Skilling Australians Fund Act.

The *Migration (Skilling Australians Fund) Charges Amendment (Subclass 482 (Skills in Demand) Visa) Regulations 2024* (the Amendment Regulations) amend the *Migration (Skilling Australians Fund) Charges Regulations 2018* (the Skilling Australians Fund Regulations) to support amendments of the Migration Regulations made by Part 1 of Schedule 1 to the *Migration Amendment (2024 Measures No. 1) Regulations 2024*. Those Amendment Regulations, among other things, provide that the Subclass 482 (Skills in Demand) visa replaces the Subclass 482 (Temporary Skill Shortage) visa.

The amendments of the Skilling Australians Fund Regulations are necessary to ensure that the nomination training contribution charge that currently applies to the Temporary Skill Shortage visa will apply to the Skills in Demand visa from 7 December 2024.

Employers must pay the nomination training contribution charge if they sponsor overseas workers for a Temporary Skill Shortage (Subclass 482) visa, Employer Nomination Scheme (Subclass 186) visa, Skilled Employer Sponsored Regional (Provisional) (Subclass 494) visa or Regional Skilled Migration Scheme (Subclass 187) visa. The nomination training contribution charge is payable at a rate proportionate to the size of the business and the number of years for which the overseas worker is nominated, and is payable in full at the time of lodging a nomination application. Section 7 of the Skilling Australians Fund Act imposes the nomination training contribution charge payable under section 140ZM of the Migration Act.

The Amendment Regulations do not operate retrospectively. The Amendment Regulations apply to the holder of a Subclass 482 (Skills in Demand) visa granted on or after commencement of the amendments.

A Statement of Compatibility with Human Rights 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 been consulted in relation to the amendments and issued certification to the Secretary of the Department for overarching implementation of the Migration Strategy (OBPR23-04044).

The Department of Home Affairs has consulted with the Department of Employment and Workplace Relations in relation to the proposed Regulations. Industry stakeholders were consulted as part of broader public consultation on the Review of the Migration System. The outcomes of this consultation informed the Australian Government's Migration Strategy, which included outlining that the Skills in Demand visa will replace the Temporary Skills Shortage visa.

The Amendment Regulations commence on 7 December 2024.

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

The Skilling Australians Fund Act specifies no conditions that need to be satisfied before the power to make the proposed Regulations may be exercised.

The Amendment Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*. The Skilling Australians Fund Regulations (the principal legislative instrument) are subject to the operation of section 50 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 (Skilling Australians Fund) Charges Amendment (Subclass 482 (Skills in Demand) Visa) 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

On 11 December 2023, the Australian Government released its *Migration Strategy*, which outlined changes to Australia's temporary and permanent employer sponsored visa programs. As part of this work the department is introducing a new temporary Skills in Demand (subclass 482) visa (SID visa) that replaces the existing Temporary Skill Shortage (subclass 482) visa (TSS visa) through the *Migration Amendment (2024 Measures No. 1) Regulations 2024* (the Migration Amendment Regulations).

The *Migration (Skilling Australians Fund) Charges Act 2018* (the SAF Charges Act) is an Act relating to the 'nomination training contribution charge' payable by employers accessing foreign workers under the employer sponsored skilled work visa programs under the *Migration Act 1958* 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. The *Migration (Skilling Australians Fund) Charges Regulations 2018* (the SAF Charge Regulations) prescribe the amount of the nomination training contribution charge.

The *Migration (Skilling Australians Fund) Charges Amendment (Subclass 482 (Skills in Demand) Visa) Regulations 2024* (the SAF Amendment Regulations) amend the SAF Charges Regulations to support the introduction of the SID visa by:

- extending the SAF provisions that apply to the TSS visa contained in the SAF Charges Regulations to the replacement SID visa.

The new SID visa

The new SID visa is intended to provide clear paths to permanent residence for skilled migrant workers in which all sponsored employment counts towards work experience requirements for permanent residence. Like the TSS visa, the new SID visa enables employers to access a skilled overseas worker if an appropriately skilled Australian worker is unavailable.

The SAF Amendment Regulations come into force at the same time as the associated Migration Amendment Regulations.

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

SAF Levy

The SAF Amendment Regulations apply the relevant SAF provisions to the new SID visa. The nomination training contribution charge in the SAF Charges Regulations is also referred to as the SAF levy.

Since 12 August 2018, employers have been required to pay the SAF levy if they sponsor overseas workers for a TSS visa, Employer Nomination Scheme (subclass 186) visa, Skilled Employer Sponsored Regional (Provisional) (subclass 494) visa or Regional Skilled Migration Scheme (subclass 187) visa.

The SAF levy is payable at a rate proportionate to the size of the business and the number of years for which the overseas worker is nominated. The SAF levy is payable in full at the time of lodging a nomination application.

The purpose of the SAF levy is for employers to contribute to the broader skills development of Australians.

Human rights implications

This Disallowable Legislative Instrument engages the following rights:

- the right to work under Article 6 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).

Article 6(1) of ICESCR provides that:

The States Parties to the present Covenant recognize 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 provides that:

The steps to be taken by a State Party of the present Covenant to achieve the full realization of this right 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 SAF Amendment Regulations engage the right to work for Australian citizens and permanent residents because it extends arrangements for the payment of the nomination training contribution charge (SAF levy) to be paid by employers accessing overseas skilled workers to the SID visa. The amount payable by the nominating employer depends on the type of SID visa sought, the visa period and the size of the nominating employer's business (in terms of annual turnover).

The SAF levy contributes to the provision of training opportunities for Australian citizens and permanent residents. Funding a national training program through the sponsorship and nomination framework of the SID visa is an effective mechanism to promote training across a

broad range of industries and occupations. The SAF levy promotes the right to work because the levy is used to fund initiatives that improve training opportunities and outcomes for Australian citizens and permanent residents.

Conclusion

This legislative instrument is compatible with human rights because it promotes the protection of human rights.

The Hon Tony Burke MP
Minister for Immigration and Multicultural Affairs

Details of the Migration (Skilling Australians Fund) Charges Amendment (Subclass 482 (Skills in Demand) Visa) Regulations 2024

Section 1 – Name of Regulations

This section provides that the title of the Regulations is the *Migration (Skilling Australians Fund) Charges Amendment (Subclass 482 (Skills in Demand) Visa) Regulations 2024* (Amendment Regulations).

Section 2 – Commencement

This section provides for the Amendment Regulations to commence on 7 December 2024.

Section 3 – Authority

This section provides that the *Migration (Skilling Australians Fund) Charges Amendment (Subclass 482 (Skills in Demand) Visa) Regulations 2024* are made under the *Migration (Skilling Australians Fund) Charges Act 2018* (the SAF 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.

Schedule 1 – Amendments

Migration (Skilling Australians Fund) Charges Regulations 2018

Item [1] – After paragraph 5(1)(b)

This item inserts new paragraph 5(1)(ba) to prescribe a holder of a Subclass 482 (Skills in Demand) visa for the purposes of regulation 5 and subsection 8(1) of the SAF Act.

Regulation 5 operates to prescribe the nomination training contribution charge that is payable for nominations in relation to holders of Subclass 457 (Temporary Work (Skilled)) visas (Subclass 457 visa) and holders of, or applicants or proposed applicants for Subclass 482 visas. Holders of the Subclass 457 visa are included because a Subclass 457 holder will require a nomination under the new Subclass 482 visa provisions to change employer or occupation. The previous Subclass 457 nomination provisions were repealed on 18 March 2018.

The definition of ***nomination training contribution charge*** has the same meaning as in the *Migration Act 1958* (Migration Act).

The purpose of this amendment is to ensure that the amount of nomination training contribution charge payable in relation to a nomination of a kind mentioned in subsection 140ZM(1) of the Migration Act applies in relation to a proposed occupation in relation to a holder of a Subclass 482 (Skills in Demand) visa, as the visa replacing the Subclass 482 (Temporary Skill Shortage) visa from 7 December 2024.

Item [2] – Paragraphs 5(1)(c) and 5(3)(a)

This item replaces reference to “Temporary Skill Shortage’ with “Skills in Demand” in paragraphs 5(1)(c) and 5(3)(a), with reference to the matters outlined in Item [1].

The purpose of the amendment of paragraph 5(1)(c) is to ensure that the amount of nomination training contribution charge payable in relation to a nomination of a kind mentioned in subsection 140ZM(1) of the Migration Act applies in relation to a proposed occupation to an applicant or a proposed applicant for a Subclass 482 (Skills in Demand) visa, as the visa replacing the Subclass 482 (Temporary Skill Shortage) visa from 7 December 2024.

Subsection 5(3) provides that the amount of the nomination training contribution charge is nil if the nominated occupation is minister of religion or religious assistant and the nomination is made for the purpose of an application for a Subclass 482 visa in the Labour Agreement stream. Under the former Subclass 457 visa program, religious institutions seeking labour agreements to sponsor ministers of religion or religious assistants were not required to meet the standard training benchmarks for the training of Australian workers. This exemption recognised the specialised recruitment and employment arrangements of religious institutions and the absence of any labour market impact arising from the small number of overseas workers sponsored under these arrangements. The provision of a nil amount for the nomination training contribution charge maintains the status quo for religious institutions, which is also consistent with the fact that religious institutions will not derive any benefit from the Skilling Australians Fund.

The purpose of the amendment of paragraph 5(3)(a) is to ensure that the amount of the nomination training contribution charge remains nil if the nominated occupation is minister of religion or religious assistant and the nomination is made for the purpose of an application for a Subclass 482 (Skills in Demand) visa – as the visa replacing the Subclass 482 (Temporary Skill Shortage) visa from 7 December 2024 – in the Labour Agreement stream.