

EXPLANATORY STATEMENT

Minister for Immigration and Multicultural Affairs

Migration Act 1958

Migration Amendment (Temporary Graduate Visa Application Charge) Regulations 2024

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 by the *Migration Regulations 1994* (the Migration Regulations) in relation to the visa application. The VAC limit is calculated with reference to sections 5 and 6 of the *Migration (Visa Application) Charge Act 1997* (the VAC Act).

The purpose of the *Migration Amendment (Temporary Graduate Visa Application Charge) Regulations 2024* (the Amendment Regulations) is to amend the Migration Regulations to apply an uplift of 14.75% to the Subclass 485 (Temporary Graduate) visa application charge (VAC).

Indexed VACs are calculated from a baseline amount, applying the relevant uplift, and then rounded to the nearest \$5. The Regulations do not impose VACs that exceed the applicable charge limits set out in the VAC Act.

The one-off increase to the VAC for the Subclass 485 visa supports the Australian Government's approach to delivering managed, sustainable migration growth and restoring integrity in the international education sector. It is intended that CPI indexation amendments will be made in subsequent years.

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 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 Regulations do not trigger the Australian Government Impact Analysis Requirements. The OIA reference is OBPR22-03270.

Consultation was undertaken with the Department of the Prime Minister and Cabinet, Treasury and the Department of Finance. More broadly, cross-government consultation occurred during the 2024-25 Budget process to inform the Government’s decision in relation to increasing the VAC by the uplift. This accords with consultation requirements in subsection 17(1) of the *Legislation Act 2003* (the Legislation Act).

The amendments commence on 1 February 2025.

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

The Amendment 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 Amendment Regulations will be repealed by operation of Division 1 of Part 3 of Chapter 3 of the Legislation Act. Specifically, that Division (under section 48A) operates to automatically repeal a legislative instrument that has the sole purpose of amending or repealing another instrument. As the Amendment Regulations will automatically repeal, they do not engage the sunseting framework under Part 4 of the Legislation Act.

The Regulations are a disallowable 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 (Temporary Graduate Visa Application Charge) 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 purpose of the *Migration Amendment (Temporary Graduate Visa Application Charge) Regulations 2024* (the Regulations) is to amend the *Migration Regulations 1994* (the Migration Regulations) to increase the visa application charge (VAC) in line with the 2024-25 Budget Decision *Visa Application Charge Uplift*.

In particular, the Regulations amend the Migration Regulations to increase the VAC as a one-off increase to the VAC for the Temporary Graduate (subclass 485) visa (Subclass 485 visa) in accordance with the 2024-25 Budget Decision *Visa Application Charge Uplift*.

In effect, this means that affected VACs are increased on 1 February 2025 from their current 2023-24 baseline amounts. In line with the 2024-25 Budget Decision *Visa Application Charge Uplift*, the base application charge component of the VAC for an initial Subclass 485 visa primary applicant is increased to \$2,235. The additional initial applicant charge component for any other applicant who is at least 18 is increased to \$1,115, and the additional initial applicant charge component for any other applicant who is less than 18 is increased to \$560.

For applicants who hold a Subclass 485 visa in the Post-Study Work stream, the Post-Higher Education Work stream or the Replacement stream, and are applying for a subsequent Subclass 485 visa in the Post-Higher Education Work stream the VAC is increased to \$880. The additional subsequent applicant charge component for any other applicant who is at least 18 is increased to \$440, and the additional subsequent applicant charge component for any other applicant who is less than 18 is increased to \$225.

The increased VAC amounts are also rounded to the nearest \$5. The one-off increase to the VAC for the Subclass 485 visa supports the Australian Government's approach to delivering managed, sustainable migration growth and restoring integrity in the international education sector.

Right to Education

Human Rights Implications

This Disallowable Legislative Instrument may engage the following rights:

- the right to work in Article 6(1) of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR);
- the right to education in Article 13(1) of the ICESCR.

In circumstances where an applicant is in Australia and makes an application for a Subclass 485 visa, the VAC increase for these visas may engage the right to work in Article 6 and the right to education in Article 13 of the ICESCR.

To the extent that increasing the VAC for the Subclass 485 visa limits these rights for applicants in Australia, the limitation is reasonable and proportionate because the VAC for the Subclass 485 visa is and remains a small part of the cost to remain in Australia for the purposes of following the completion of study, noting that Subclass 485 holders are expected to support themselves with work rights. The VAC increase is also necessary to pursue the legitimate objective of promoting the general welfare of Australian society by ensuring managed, sustainable growth in the migration program and restoring integrity in the international education sector. As the VAC is a small component of the cost to live, work and study in Australia following graduation as an international student in Australia, the VAC increase is unlikely to have a material impact on international students choosing Australia as their country of education and residence following completion of study.

Conclusion

The Disallowable Legislative Instrument is compatible with human rights because to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

The Hon Tony Burke MP

Minister for Immigration and Multicultural Affairs

Details of the *Migration Amendment (Temporary Graduate Visa Application Charge) Regulations 2024*

Section 1 – Name

This section provides that the name of the instrument is the *Migration Amendment (Temporary Graduate Visa Application Charge) Regulations 2024* (the Regulations).

Section 2 – Commencement

This section provides for the whole of the instrument to commence on 1 February 2025.

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 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 Regulations 1994

The amendments in Schedule 1 to the Regulations give effect to the 2024-25 Budget Decision *Visa Application Charge Uplift* to apply an uplift of 14.75% to the Temporary Graduate (Subclass 485) visa application charge (VAC). These increases do not exceed the applicable charge limits set out in the Migration (Visa Application) Charge Act 1997 (the VAC Act).

Items [1] – [6]

These items make amendments to Schedule 1 to the Migration Regulations in relation to the Temporary Graduate (Subclass 485) visa (item 1229 in Schedule 1 to the Migration Regulations).

For applicants who hold a Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream, the Post-Higher Education Work stream or the Replacement stream, and are applying for a subsequent Subclass 485 (Temporary Graduate) visa in the Post-Higher Education Work stream the VAC is as follows (subparagraph 1229(2)(a)(i)):

- the base application charge increases from \$765 to \$880;

- the additional applicant charge for an applicant who is at least 18 years of age (secondary applicant) increases from \$385 to \$440;
- the additional applicant charge for an applicant who is less than 18 years of age (secondary applicant) increases from \$195 to \$225.

For any other applicant provided for in subparagraph 1229(2)(a)(ii), the VAC is as follows:

- the base application charge increases from \$1,945 to \$2,235;
- the additional applicant charge for an applicant who is at least 18 years of age (secondary applicant) increases from \$975 to \$1,115;
- the additional applicant charge for an applicant who is less than 18 years of age (secondary applicant) increases from \$490 to \$560.

The increased charge resulting from the amendment in each of these items does not exceed the applicable charge limit set out in the VAC Act. The VAC increases promote the general welfare of Australian society by ensuring managed, sustainable migration growth and restoring integrity in the international education sector.

Item [7] – In the appropriate position in Schedule 13

This item inserts new Part 144 into Schedule 13 to the Migration Regulations. Schedule 13 sets out the application and transitional provisions that apply to amendments to the Migration Regulations.

This item provides that the amendments made by Schedule 1 apply in relation to an application for a visa made on or after 1 February 2025.