EXPLANATORY STATEMENT

Issued by the Minister for Immigration and Multicultural Affairs

Migration Act 1958

Migration Amendment (Differential Student Visa Application Charge) Regulations 2025

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).

Section 45C of the Migration Act provides for matters for which the regulations may provide in relation to the VAC. Paragraph 45C(2)(b) of the Migration Act provides that the regulations may provide for the remission, refund or waiver of the VAC or an amount of the VAC.

Division 2.2A of the *Migration Regulations 1994* (the Migration Regulations) deals with the VAC and related matters. Regulation 2.12C prescribes the amount of VAC in relation to an application for a visa of a class to which an item of Schedule 1 relates. Regulation 2.12FA deals with partial refunds of the first instalment of the VAC to certain applicants.

The purpose of the *Migration Amendment (Differential Student Visa Application Charge) Regulations 2025* (the Regulations) is to amend the Migration Regulations to repeal existing partial refund provisions and reduce the VAC payable for an application for a Subclass 500 (Student) and Subclass 590 (Student Guardian) visa for applicants seeking to satisfy the primary criteria in Schedule 2 to the Migration Regulations for the grant of the visa and who are holders of a valid passport issued by a specified country in the Pacific or Timor-Leste. The Regulations also operate to provide a reduced VAC for secondary applicants who make a combined application with the primary applicant, or are a member of the family unit of a person who both holds a Student (Temporary) (Class TU) visa granted on the basis of satisfying the primary criteria for that visa, and a valid passport issued by a country specified.

The Regulations follow previous amendments made to the Migration Regulations in relation to the VAC payable by these applicants. The *Migration Amendment (Visa Application Charges) Regulations 2024* (the VAC Regulations) increased the VAC for Student (Temporary) (Class TU) visas, including both the Subclass 500 (Student) visa and the Subclass 590 (Student Guardian) visa, from 1 July 2024. To offset the impact of the increased VAC for passport holders from specified countries in the Pacific or Timor-Leste, the *Migration Amendment (Visa Application Charge Refund) Regulations 2024* (the Partial Refund Regulations) commenced on 20 August 2024 as an interim measure to facilitate a partial refund of the VAC for eligible applicants until the Department's IT systems could support implementation of the Regulations.

The effect of the VAC Regulations and Partial Refund Regulations meant applicants who lodged their application on or after 1 July 2024, were required to pay the full VAC ($1,600 for the primary applicant, $1,190 for an additional applicant aged 18 years or older; $390 for an additional applicant under 18 years of age). Where the primary applicant held a valid passport issued by a specified country in the Pacific or Timor-Leste, the person who paid the VAC could subsequently seek a partial refund of the VAC paid, under regulation 2.12FA of the Migration Regulations. The amount refunded was the difference between the VAC paid, and the VAC that was applicable on 30 June 2024 ($710 for the primary applicant, $530 for an additional applicant aged 18 years or older; $175 for an additional applicant under 18 years of age).

The Regulations repeal the refund provision and specify a differential (lower) VAC for Subclass 500 (Student) and Subclass 590 (Student Guardian) visa applications for eligible applicants from 22 March 2025 onwards. Despite the repeal of the refund provision, eligible persons who made an application for a Student (Temporary) (Class TU) visa between 1 July 2024 and 21 March 2025, will have a period of three months (until 22 June 2025) to seek a partial refund.

The Regulations reflect the importance of deepening Australia's connections with countries in the Pacific region by supporting wider education opportunities within the region, thereby contributing to Pacific economies and providing opportunities for cultural, educational and skills exchange.

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 OIA24-06930.

The Department of Home Affairs (the Department) consulted with the Department of Foreign Affairs and Trade and other Commonwealth agencies during and after the 2024-25 Budget process to support the Government's decision to provide a reduced VAC for Student (Temporary) (Class TU) applicants who are holders of a valid passport issued by a specified country in the Pacific or Timor-Leste. The Department also consulted with Education peak bodies at the Education Visa Consultative Committee meeting on 25 September 2024 and members were broadly supportive of this measure. This accords with consultation requirements in subsection 17(1) of the *Legislation Act 2003* (the Legislation Act).

Advice in relation to the changes made by the Regulations will be provided for clients and other stakeholders on the Department's website and through other communication channels including via DFAT channels.

The Regulations commence on 22 March 2025.

Further details of the Regulations are set out in Attachment B.

The Regulations amend the Migration Regulations, which are exempt from sunsetting under table item 38A of section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*. The Migration Regulations are exempt from sunsetting 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 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 Regulations will automatically repeal, they do not engage the sunsetting framework under Part 4 of the Legislation Act.

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

ATTACHMENT A

Statement of Compatibility with Human Rights

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

Migration Amendment (Differential Student Visa Application Charge) Regulations 2025

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

International education is a huge national asset for Australia – economically, socially and diplomatically. However, in the last two years, unmanaged growth in this sector has threatened the sector's reputation and quality of its educational offerings. To ensure the integrity of our international education sector, the government implemented a number of measures. One of these measures increased the visa application charge (VAC) for all applicants applying for a Subclass 500 (Student) visa or Subclass 590 (Student Guardian) visa, which came into effect on 1 July 2024.

On 1 August 2024 it was agreed by the Prime Minister (via exchange of letters with the Minister of Foreign Affairs and Minister of Home Affairs) to legislate a reduced VAC for Student and Student Guardian visa applications where the primary applicant (that is, the person seeking to satisfy the primary criteria for the grant of the visa) is the holder of a valid passport issued by a specified country in the Pacific or Timor-Leste. Implementing a reduced VAC for these applicants (i.e. primary applicants from the Pacific or Timor-Leste, along with any members of a primary applicant's family unit and/or dependents as secondary applicants) is intended to mitigate any impact an increased VAC would otherwise pose for these applicants. This reduced VAC also recognises the importance of education to economic development in the Pacific, of which study in Australia is an important component.

The *Migration Amendment (Differential Student Visa Application Charge) Regulations 2025* (the Regulations) repeal interim arrangements which provided a partial VAC refund to eligible applicants. The Regulations instead prescribe a differential (lower) VAC for Subclass 500 (Student) and Subclass 590 (Student Guardian) visa applications where the primary applicant is the holder of a valid passport issued by one of the following countries:

- Federated States of Micronesia;
- Fiji;
- Kiribati;

- Nauru;
- Palau;
- Papua New Guinea;
- Republic of the Marshall Islands
- Samoa;
- Solomon Islands;
- Timor-Leste;
- Tonga;
- Tuvalu;
- Vanuatu.

Human rights implications

This Disallowable Legislative Instrument engages the following rights:

- The right to education in Article 13(1) of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), read with Article 2(2) of the ICESCR
- The right to non-discrimination in Article 26 of the *International Covenant on Civil and Political Rights* (ICCPR)

Articles 2(2) and 13(1) of the ICESCR and Article 26 of the ICCPR may be engaged by establishing a differential (lower) VAC for Student and Student Guardian visa applications where the primary applicant holds a passport issued by specific countries, at the exclusion of other applicants who will not be eligible for a differential VAC.

Article 2(2) of 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.*

Article 13(1) of the ICESCR relevantly states:

> *The States Parties to the present Covenant recognize the right of everyone to education.*

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.*

Similarly, in its General Comment 18 on Article 26 of the ICCPR, 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].*

In most instances, Pacific and Timor-Leste applicants for a Student or Student Guardian visa are outside Australia and the increase in the VAC for those applicants will not engage the applicable rights and freedoms.

Where applicants are in Australia, the increase to the VAC may engage the right to education. By providing for a differential (lower) VAC, the Regulations will promote the right to education by removing a potential barrier for primary applicants from the Pacific and Timor-Leste. International education is a key support that Australia provides to the Pacific and Timor-Leste, providing opportunities to increase skills to bring home to their countries.

However, to the extent that the differential (lower) VAC will only be available to applicants where the primary applicant is the holder of a valid passport issued by a Pacific country or Timor-Leste, the measure will limit the right to non-discrimination in the right to education for primary applicants, as it is discriminating on the basis of national origin. This limitation is compatible with the nature of the right and is solely for the purpose of promoting general welfare in a democratic society. To the extent that the Regulations differentiate on the basis of nationality or citizenship, this is reasonable and proportionate to the meeting of a legitimate government objective. This is because providing a differential (lower) VAC to Student and Student Guardian visa applicants, where the primary applicant is the holder of a passport issued by a Pacific country or Timor-Leste, is aimed at deepening Australia's connection with those countries and

supporting wider education opportunities within the region, thereby contributing to Pacific economies and providing opportunities for cultural, educational and skills exchange, in support of a peaceful, prosperous and resilient Pacific region.

To the extent that Student and Student Guardian visa applicants are not eligible for a lower VAC because the primary applicant holds a passport issued by another country, any differential treatment is reasonable and objective. As the VAC is a small component of the cost of education in Australia, the unavailability of a lower VAC is unlikely to have a material impact on primary applicants from other countries choosing Australia as their country of education and will not impermissibly limit the right to education in Australia. As such, the unavailability of a lower VAC is unlikely to impact on the accessibility of Student and Student Guardian visas for other cohorts. The amendments to provide a lower VAC for visa applications where the primary applicant is the holder of a valid passport issued by a Pacific country or Timor-Leste are directed to supporting educational opportunities for students from these countries who want to undertake education in Australia.

Conclusion

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

The Hon Tony Burke MP

Minister for Immigration and Multicultural Affairs

ATTACHMENT B

Details of the *Migration Amendment (Differential Student Visa Application Charge) Regulations 2025*

Section 1 – Name

This section provides that the title of the instrument is the *Migration Amendment (Differential Student Visa Application Charge) Regulations 2025* (the Regulations).

Section 2 – Commencement

This section provides for the Regulations to commence on 22 March 2025.

Section 3 – Authority

This section provides that the Regulations are 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

Item [1] - Subregulation 2.12F(9)

This item repeals subregulation 2.12F(9) which makes reference to regulation 2.12FA which is repealed by item 2 below.

Item [2] - Regulation 2.12FA

This item repeals regulation 2.12FA. Regulation 2.12FA was inserted by the *Migration Amendment (Visa Application Charge Refund) Regulations 2024.* Regulation 2.12FA was established as a temporary measure, providing for a partial refund of the VAC in certain circumstances, until a differential VAC arrangement could be implemented in departmental systems and given effect by these Regulations.

Prior to this amendment, regulation 2.12FA allowed for applicants from specified countries (being certain countries in the Pacific, as well as Timor-Leste) to seek a partial refund of the visa application charge paid in relation to an application for a Student (Temporary) (Class TU)

visa. The refundable amount was, in effect, the difference between the visa application charge paid on or after 1 July 2024 and the amount that would have been payable if the application had been made on 30 June 2024.

As the visa application charge payable by this cohort of visa applicants is now set at the amount payable as at 30 June 2024 (per item 5 below), regulation 2.12FA is no longer required. The amendment in item 7 provides for transitional arrangements for persons who have paid the higher VAC since 1 July 2024 and have not yet sought a partial refund before the Regulations commenced, allowing for partial refund requests to continue to be made and processed until 22 June 2025.

Item [3] - Regulations 2.12K and 2.12L

This item omits the references to regulations 2.12FA contained in regulations 2.12K and 2.12L as a consequential amendment to item 2 (above) which repeals regulation 2.12FA.

Item [4] - Subparagraph 1222(2)(a)(i) of Schedule 1

This item makes a technical amendment to subparagraph 1222(2)(a)(i) of Schedule 1 to remove the "and" at the end of the paragraph. This is a consequential amendment to the insertion of new subparagraph 1222(2)(a)(ia) at item 5 below.

Item [5] - After subparagraph 1222(2)(a)(i) of Schedule 1

This item would make amendments to item 1222 of Schedule 1 to the Migration Regulations in relation to the first instalment of the visa application charge payable for a Student (Temporary) (Class TU) visa application for certain visa applicants, where the prospective international student (the ***primary applicant***) holds a valid passport issued by a specified country from the Pacific or Timor-Leste. The amendments would also provide for the lower VAC to be payable in circumstances where a member of the family unit of a Subclass 500 (Student) visa holder applies as a subsequent entry dependant to join the visa holder in Australia (ie. where the family unit member did not make a combined application with the student).

Specifically, this item would insert proposed subparagraph 1222(2)(a)(ia), which would provide that:

- for an applicant (the *primary applicant*) who seeks to satisfy the primary criteria for the grant of a Student (Temporary) (Class TU) visa and who holds a valid passport issued by a country specified in subitem 1222(5A), the VAC payable is: the base application charge of $710;

- for an applicant who makes or seeks to make a combined application with the primary applicant, the additional applicant charge for an applicant who is:
    - at least 18 years of age is $530;
    - less than 18 years of age is $175;
- for an applicant who applies as a subsequent entrant for a Student visa, as a member of the family unit of a person who holds both:
    - a Student (Temporary) (Class TU) visa on the basis of satisfying the primary criteria for the grant of that visa; and
    - a valid passport issued by a country specified in subitem 1222(5A);

  the base application charge of $710 is payable for the first applicant included in the application, and the applicable additional applicant charge is payable for any additional dependent applicants (dependent on the age of the additional applicant).

The effect of this amendment would be that an applicant who seeks to satisfy the primary criteria for the grant of a Student (Temporary) (Class TU) visa, as set out in Schedule 2 to the Migration Regulations for each subclass of Student visa (Subclass 500 (Student) and Subclass 590 (Student Guardian)) would be eligible to pay the lower VAC prescribed under subparagraph 1222(2)(a)(ia) if they hold a valid passport issued by a specified country in the Pacific or Timor-Leste.

An applicant whose visa application is combined, as a member of the family unit, with a primary applicant would also be liable for the lower VAC (the relevant "additional applicant charge") on the basis the primary applicant holds a passport issued by a specified country. Of note, paragraph 1222(3)(e) permits members of the family unit to make either:

- a combined application with an applicant seeking to satisfy the primary criteria for a Subclass 500 (Student) visa; or
- a subsequent application where they are a member of the family unit of a Subclass 500 (Student) visa holder (ie. applying for a visa as a subsequent entrant to join the student in Australia).

In contrast, paragraph 1222(3)(f) provides that an application by a person claiming to be a member of the family unit of a person who is seeking to satisfy the primary criteria for the grant of a Subclass 590 (Student Guardian) visa *must* be made at the same time as, and combined with, the application by that person. It is not possible for a person to apply as a subsequent entrant to join a Subclass 590 visa holder in Australia. This means that proposed sub-subparagraph 1222(2)(a)(ia)(C) would only apply in relation to members of the family unit of a Subclass 500 (Student) visa holder, as paragraph 1222(3)(f) only permits combined applications for the Subclass 590 (Student Guardian) visa.

Item [6] - After subitem 1222(5) of Schedule 1

This item would insert proposed subitem 1222(5A), which would specify, for the purposes of paying the relevant visa application charge under subparagraph 1222(2)(a)(ia), the following countries:

- Federated States of Micronesia;
- Fiji;
- Kiribati;
- Nauru;
- Palau;
- Papua New Guinea;
- Republic of the Marshall Islands;
- Samoa;
- Solomon Islands;
- Timor-Leste;
- Tonga;
- Tuvalu;
- Vanuatu.

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

This item inserts new Part 150 into Schedule 13 to the Migration Regulations. Schedule 13 sets out the application and transitional provisions that apply to amendments of the Migration Regulations.

Clause 15001 inserts two definitions into Schedule 13. In this Part, a reference to ***amending regulations*** means the *Migration Amendment (Differential Student Visa Application Charge) Regulations 2025*. A reference to the ***commencement day*** means 22 March 2025.

Subclause 15002(1) provides that despite the amendments of regulations 2.12F, 2.12FA, 2.12K and 2.12L made by Schedule 1 to the amending regulations, those provisions, as in force

immediately before the commencement day, continue to apply on or after the commencement day until 22 June 2025 in relation to an amount that has been paid by way of first instalment of the visa application charge paid before the commencement day, as if those amendments had not been made. This means that where a person has paid the VAC for an affected application for a Subclass 500 (Student) or Subclass 590 (Student Guardian) visa between 1 July 2024 and 21 March 2025, they have until 22 June 2025 to seek and obtain a partial refund under regulation 2.12FA on the visa application charge they paid.

Subclause 15002(2) provides that the amendments made by items 5 and 6 of Schedule 1 to the amending regulations apply in relation to a visa application made on or after 22 March 2025.