Home Affairs Legislation Amendment (2018 Measures No. 1) Regulations 2018

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 07 June 2018

Peter Cosgrove
Governor-General

By His Excellency's Command

Peter Dutton
Minister for Home Affairs
Minister for Immigration and Border Protection

OPC63348 - B

Contents

1 Name

This instrument is the *Home Affairs Legislation Amendment (2018 Measures No. 1) Regulations 2018*.

2 Commencement

(1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	**Column 2**	**Column 3**
Provisions	**Commencement**	**Date/Details**
1. The whole of this instrument	1 July 2018.	1 July 2018

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

(2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the following:

(a) the *Australian Citizenship Act 2007*;

(b) the *Customs Act 1901*;

(c) the *Migration Act 1958*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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—Lodgement of partner and parent visa applications

Migration Regulations 1994

1 Subitem 1124(1) of Schedule 1

Repeal the subitem, substitute:

(1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).

2 Paragraphs 1124(3)(a) and (aa) of Schedule 1

Repeal the paragraphs, substitute:

(a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).

3 Subitem 1124A(1) of Schedule 1

Repeal the subitem, substitute:

(1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).

4 Paragraph 1124A(3)(a) of Schedule 1

Repeal the paragraph, substitute:

(a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).

5 Paragraph 1124A(3)(bb) of Schedule 1

Repeal the paragraph.

6 Subitem 1124B(1) of Schedule 1

Repeal the subitem, substitute:

(1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).

7 Paragraph 1124B(3)(a) of Schedule 1

Repeal the paragraph, substitute:

(a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).

8 Paragraph 1124B(3)(ca) of Schedule 1

Repeal the paragraph.

9 Subparagraph 1124B(3)(e)(ii) of Schedule 1

Omit "an approved form 40SP or 40SP (Internet)", substitute "the approved form specified by the Minister in a legislative instrument made for this subparagraph under subregulation 2.07(5)".

10 Subitem 1129(1) of Schedule 1

Repeal the subitem, substitute:

(1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).

11 Paragraphs 1129(3)(a) and (b) of Schedule 1

Repeal the paragraphs, substitute:

(a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).

12 Paragraph 1129(3)(f) of Schedule 1

Repeal the paragraph.

13 Subitem 1130(1) of Schedule 1

Repeal the subitem, substitute:

(1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).

14 Paragraphs 1130(3)(a) and (b) of Schedule 1

Repeal the paragraphs, substitute:

(a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).

15 Paragraph 1130(3)(c) of Schedule 1

Omit all the words after "relevant applicant's", substitute "application may be made at the same time and place as, and combined with, the application made by the other applicant".

16 Subitem 1130A(1) of Schedule 1

Repeal the subitem, substitute:

(1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).

17 Paragraph 1130A(3)(a) of Schedule 1

Repeal the paragraph, substitute:

(a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).

18 Paragraph 1130A(3)(ba) of Schedule 1

Repeal the paragraph.

19 Subitem 1214C(1) of Schedule 1

Repeal the subitem, substitute:

(1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).

20 Paragraph 1214C(3)(b) of Schedule 1

Repeal the paragraph, substitute:

(b) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).

21 Paragraph 1214C(3)(fa) of Schedule 1

Repeal the paragraph.

22 Subitem 1215(1) of Schedule 1

Repeal the subitem, substitute:

(1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).

23 Paragraph 1215(3)(a) of Schedule 1

Repeal the paragraph, substitute:

(a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).

24 Subitem 1220A(1) of Schedule 1

Repeal the subitem, substitute:

(1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).

25 Paragraph 1220A(3)(a) of Schedule 1

Repeal the paragraph, substitute:

(a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).

26 Subitem 1221(1) of Schedule 1

Repeal the subitem, substitute:

(1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).

27 Paragraph 1221(3)(a) of Schedule 1

Repeal the paragraph, substitute:

(a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).

28 Paragraph 1221(3)(d) of Schedule 1

Repeal the paragraph.

29 Subitem 1221A(1) of Schedule 1

Repeal the subitem, substitute:

(1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).

30 Paragraph 1221A(3)(a) of Schedule 1

Repeal the paragraph, substitute:

(a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).

31 Paragraphs 1221A(3)(da) and (e) of Schedule 1

Repeal the paragraphs.

32 In the appropriate position in Schedule 13

Insert:

Part 71—Amendments made by the Home Affairs Legislation Amendment (2018 Measures No. 1) Regulations 2018

7101 Operation of Schedule 1

The amendments of these Regulations made by Schedule 1 to the *Home Affairs Legislation Amendment (2018 Measures No. 1) Regulations 2018* apply in relation to an application for a visa made on or after 1 July 2018.

Schedule 2—Maximum age limit for partner points in the general skilled migration program

Migration Regulations 1994

1 Part 6D.11 of Schedule 6D (table item 6D111, column headed "Qualification", paragraph (c))

Omit "50", substitute "45".

2 At the end of Part 71 of Schedule 13

Add:

7102 Operation of Schedule 2

The amendment of these Regulations made by Schedule 2 to the *Home Affairs Legislation Amendment (2018 Measures No. 1) Regulations 2018* applies in relation to an application for a visa made on or after 1 July 2018 in response to an invitation given by the Minister on or after that day.

Schedule 3—Credit card surcharge

Australian Citizenship Regulation 2016

1 Subparagraph 16(1)(b)(i)

Omit "0.98%", substitute "1.32%".

Customs Regulation 2015

2 Paragraph 150B(2)(a)

Omit "0.98%", substitute "1.32%".

Migration Regulations 1994

3 Paragraph 5.41A(2)(a)

Omit "0.98%", substitute "1.32%".

Schedule 4—Payment of fees

Australian Citizenship Regulation 2016

1 Subsection 16(7)

Repeal the subsection, substitute:

(7) In this section:

conversion instrument means the *Migration (IMMI 18/063: Payment of Visa Application Charges and Fees in Foreign Currencies) Instrument 2018* made for the purposes of paragraph 5.36(1A)(a) of the *Migration Regulations 1994* and as in force on 1 July 2018.

places and currencies instrument means the *Migration (IMMI 18/064: Places and Currencies for Paying of Fees) Instrument 2018* made for the purposes of paragraphs 5.36(1)(a) and (b) of the *Migration Regulations 1994* and as in force on 1 July 2018.

2 In the appropriate position in Part 4

Insert:

21 Application of amendment made by Schedule 4 to the *Home Affairs Legislation Amendment (2018 Measures No. 1) Regulations 2018*

The amendment of section 16 made by Schedule 4 to the *Home Affairs Legislation Amendment (2018 Measures No. 1) Regulations 2018* applies in relation to an application made on or after 1 July 2018.

EXPLANATORY STATEMENT

Issued by the Minister for Home Affairs and Minister for Immigration and Border Protection

Australian Citizenship Act 2007
Customs Act 1901
Migration Act 1958

Home Affairs Legislation Amendment (2018 Measures No.1) Regulations 2018

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.

The *Australian Citizenship Act 2007* (the Citizenship Act) provides for the process of becoming an Australian citizen, the circumstances in which citizenship may cease, and some other matters related to citizenship.

The *Custom Act 1901* (the Customs Act) relates to customs functions and provides, amongst other things, for the importation and exportation of goods, to and from Australia.

Subsection 504(1) of the Migration Act, section 54 of the Citizenship Act, and subsection 270(1) of the Customs Act relevantly provide that the Governor-General may make regulations prescribing matters required or permitted by the relevant Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Migration Act, the Citizenship Act, or the Customs Act.

In addition, regulations may be made pursuant to the provisions of the Migration Act, the Citizenship Act, and the Customs Act listed in Attachment A.

The *Home Affairs Legislation Amendment (2018 Measures No.1) Regulations 2018* (the Regulations) amend the *Migrations Regulations 1994* (the Migration Regulations) to update immigration and citizenship policy.

In particular, Schedules 1 and 2 to the Regulations amend the Migration Regulations to:

- Allow the Minister to make a legislative instrument specifying the form, manner, and place for making a valid application for Parent and Partner classes. The amendments enable greater efficiency and flexibility for making administrative changes to application requirements, such as changes to the location of processing centres for applications and to approved form numbers, and increased provision for online applications.

- Make changes to the circumstances in which an applicant can claim five points for having a skilled partner for the purpose of the general points test for the Subclass 189 (Skilled – Independent) visa in the Points-tested stream, the Subclass 190 (Skilled – Nominated) visa and the Subclass 489 (Skilled – Regional (Provisional)) visa. The amendment means that primary applicants for one of these skilled visas can claim five points under Part 6D.11 ('partner skill qualifications') if their spouse or de facto partner is under 45 years of age (previously under 50) and meets the

requirements under this Part at the time the invitation to apply for the visa was issued. This aligns with the maximum age for applicants to claim points under Part 6D.1 ('age qualifications'), which is also under 45 years of age.

Schedule 3 to the Regulations amends the Migration Regulations, the *Australian Citizenship Regulation 2016* (the Citizenship Regulation), and the *Customs Regulation 2015* (the Customs Regulation) to increase the surcharge applied to payments made using MasterCard and Visa credit cards for certain fees and charges, including visa application charges, sponsorship fees, nomination fees, citizenship-related fees and customs duties. This amendment enables the Department of Home Affairs (the Department) to recover merchant fees from clients.

- Merchant fees are charged to the Department by credit card providers and do not form part of the charges, fees, duties, and taxes paid by clients. The recovery of merchant fees is allowed under the Reserve Bank of Australia (RBA) surcharging standards and is consistent with the cost recovery guidelines issued by the Department of Finance. Recovery of these costs is now commonplace across the Commonwealth. The surcharge is limited by the RBA surcharging standards.

- The increase in the rate of the surcharge to 1.32% allows the Department to recover a greater proportion of the cost of merchant fees. This cost is greater than the amount the Department previously recovered under the previous surcharge rate of 0.98%.

Schedule 4 to the Regulations amends the Citizenship Regulation to provide for citizenship application fees, and refunds of citizenship application fees where appropriate, to be paid in foreign currencies and in foreign countries. These amendments facilitate the lawful collection and refund of citizenship application fees in the specified foreign currencies and foreign countries at the updated exchange rates.

The Office of Best Practice Regulation (the OBPR) has been consulted in relation to the amendments made by the Regulations. The OBPR considers that the following amendments have minor regulatory impacts, and no further analysis in the form of a Regulation Impact Statement is required.

The OBPR consultation references are as follows:

- 22323 and 21350 (Schedule 1)
- 23660 (Schedule 2)
- 23548 (Schedule 3)
- 23305 (Schedule 4)

No further consultation was considered necessary because the amendments do not substantially alter existing arrangements. This accords with subsection 17(1) of the *Legislation Act 2003* (the Legislation Act) which requires consultations to be appropriate and reasonably practicable.

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 B.

The Migration Act, the Citizenship Act, and the Customs Act specify no conditions that need to be satisfied before the power to make the Regulations may be exercised.

Details of the Regulations are set out in Attachment C.

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

The Regulations commence on 1 July 2018. Where relevant, the Regulations apply only to new applications. They do not apply to applications that have already been made, but not yet decided, at the time the Regulations commence.

ATTACHMENT A

AUTHORISING PROVISIONS

Subsection 504(1) of the Migration Act, section 54 of the Citizenship Act, and subsection 270(1) of the Customs Act relevantly provide that the Governor-General may make regulations prescribing matters required or permitted by the relevant Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Migration Act, the Citizenship Act, or the Customs Act.

In addition, the following provisions of the Migration Act may apply:

- paragraph 504(1)(a), which provides that the Governor-General may make regulations:
  - (a) making provision for and in relation to:
    - (i) the charging and recovery of fees in respect of any matter under this Act or the regulations, including the fees payable in connection with the review of decisions made under this Act or the regulations, whether or not such review is provided for by or under this Act;
    - (ii) the charging and recovery of fees in respect of English language tests conducted by or on behalf of the Department;
    - (iii) the way, including the currency, in which fees are to be paid; or
    - (iv) the persons who may be paid fees on behalf of the Commonwealth;
  - (b) making provision for the remission, refund, or waiver of fees of a kind referred to in paragraph (a) or for exempting persons from the payment of such fees;
- subsection 504(2), which provides that section 14 of the Legislation Act does not prevent regulations whose operation depends on a country or other matter being specified by the Minister in an instrument made under the regulations after the commencement of the regulations; and
- subsection 31(3), which provides that the regulations may prescribe criteria for a visa or visas of a specified class.

In addition, the following provisions of the Citizenship Act may apply:

- paragraph 46(1)(d), which provides that an application under a provision of the Citizenship Act must be accompanied by the fee (if any) prescribed by the regulations; and
- subsection 46(3), which provides that the regulations may make provision for and in relation to the remission, refund or waiver of any fees of a kind referred to in paragraph 46(1)(d) of the Citizenship Act.

In addition, the following provisions of the Customs Act may apply:

- subsection 270(1A), which provides that the regulations may make provision for and in relation to:
  - (a) the charging and recovery of fees in respect of any matter under that Act or the regulations;
  - (b) the way in which fees are to be paid;
  - (c) the persons who may be paid fees on behalf of the Commonwealth; and
  - (d) the remission, refund or waiver of fees of a kind referred to in paragraph (a) or the exempting of persons from the payment of such fees.

ATTACHMENT B

Statement of Compatibility with Human Rights

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

Home Affairs Legislation Amendment (2018 Measures No. 1) Regulations 2018

This 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*.

Schedule 1 – Lodgement of partner and parent visa applications

Overview

On 18 April 2015, Schedule 6 to the *Migration Amendment (2015 Measures No. 1) Regulation 2015* inserted subregulation 2.07(5) in the *Migration Regulations 1994* (the Migration Regulations). Subregulation 2.07(5) provides a power for the Minister to make an instrument specifying the form, way, place and any other matter for making an application where Schedule 1 to the Migration Regulations prescribe the matters to be specified in a legislative instrument.

Following this change, the majority of items in Schedule 1 were amended to provide for relevant application matters to be specified in a legislative instrument for many visa classes. However, no amendments were made at that time for the Parent and Partner visa classes. The purpose of the amendments to Schedule 1 to the *Home Affairs Legislation Amendment (2018 Measures No. 1) Regulations 2018* (the Regulations) is to align the Parent and Partner visa classes with amendments made to other visa classes in 2015.

Schedule 1 to the Regulations amends Schedule 1 to the Migration Regulations to vary the requirements for making valid applications for Parent and Partner visas, allowing a number of matters to be specified in a legislative instrument rather than directly in Schedule 1 to the Migration Regulations.

The amendments provide that the approved form required for applying for the Parent and Partner visa, and the place at which and the manner in which an application must be made, are to be specified by the Minister in a legislative instrument.

Enabling these matters to be specified in a legislative instrument allows the Department to quickly and flexibly manage the way the application process is administered. For example, future legislative instruments may allow increased self-service through online lodgement, or by making provision for applicants to post the application to a specified address.

Human rights implications

These amendments do not engage any of the applicable rights or freedoms.

Conclusion

The Schedule is compatible with human rights as it does not raise any human rights issues.

Schedule 2 – Maximum age limit for partner points in the general skilled migration program

Overview
The general points test set out in Schedule 6D to the Migration Regulations is designed to recognise those points tested skilled migration visa applicants who have the skills and other attributes that will allow them to find skilled employment in Australia and settle quickly into the community.

Schedule 2 to the Regulations amends Schedule 6D so that applicants for a skilled migration visa can only claim points in the general points test if their partner is under 45 years of age, rather than under 50 years of age. This enables primary applicants for general skilled migration visas whose spouses and de facto partners are under 45, and are skilled, to claim 5 points in the general points test. This amendment applies to Subclass 189 (Skilled Independent) visas in the Points-tested stream, Subclass 190 (Skilled Nominated) visas, and Subclass 489 (Skilled Regional) visas.

The purpose of this amendment is to rectify an oversight, which occurred when the maximum age at which a primary applicant can claim points on the basis of their age was lowered from under 50 years to under 45 years by Schedule 6 to the *Migration Legislation Amendment (2017 Measures No. 3) Regulations 2017* (this amendment came into effect on 1 July 2017). The intention is that the maximum age at which points can be claimed based on age under the general points test is consistent for primary applicants and their skilled partners.

Human rights implications
These amendments have been assessed against the seven core international human rights treaties.

These amendments engage the following right: freedom from non-discrimination and equality in relation to age under Articles 2(1) and 26 of the International Covenant on Civil and Political Rights (ICCPR).

Article 2(1) of the ICCPR states:
Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 26 of the ICCPR also 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.

The amendments engage Article 2(1) and Article 26 of the ICCPR, and are reasonable, necessary and proportionate to achieve a legitimate objective. The amendments aim to lower the maximum age for claiming points for skilled partners from under 50 to under 45 for visa subclasses 189, 190 and 489. In July 2017 the age eligibility requirement for applicants seeking to satisfy the primary criteria for one of the above visa subclasses was lowered from

under 50 to under 45. The purpose of these amendments is to limit the ability for applicants to claim 5 points in the general points test to those applicants whose skilled partner is under 45.

Australia is able to set requirements for the entry of non-citizens into Australia and conditions for their stay. The aim of the skilled migration programme is to maximise the benefits of migration to the Australian economy. The general points test is therefore designed to identify the applicants that provide the greatest benefit and therefore the parameters of the points test need to be set to achieve this.

The 2016 Productivity Commission Inquiry Report *Migrant intake into Australia* noted that *'permanent immigrants who arrive at a relatively young age, particularly those who are highly educated, generally contribute more tax revenue over their lifetime and make comparatively lower use of government-funded services. In contrast, those who arrive at an older age have lower rates of labour force participation and contribute to higher costs due to their use of government-subsidised health care and other support services'* (Productivity Commission, page 13).

In light of the Productivity Commission's findings, it is appropriate to make amendments to provide that skilled migration visa applicants can only claim points for having a skilled partner if their partner is under 45 years of age. As discussed above, the amendment is consistent with previous amendments which lowered the cut-off age from under 50 to under 45 for claiming points on the basis of 'age qualifications' for skilled visa applicants seeking to meet the primary criteria for those visas.

These amendments do engage in the freedom from non-discrimination and equality in relation to age. As identified above, however, the amendments are reasonable, necessary and proportionate to achieve a legitimate objective.

Conclusion

This Schedule is compatible with human rights. To the extent that the amendments engage Australia's human rights obligations in relation to non-discrimination, they are reasonable, necessary, and proportionate to achieve a legitimate objective.

This objective is to ensure that skilled migration visa applicants can only claim points for having a skilled partner if their partner is under 45 years of age, consistent with the maximum age at which applicants can claim points under the general points test based on their own age.

Schedule 3 – Credit card surcharge

Overview

Schedule 3 to the Regulations amends the Migration Regulations, the *Australian Citizenship Regulation 2016* (the Citizenship Regulation), and the *Customs Regulation 2015* to revise the credit card surcharge amounts applicable to payments made using Visa and MasterCard credit cards for certain fees and charges, including visa application charges, sponsorship fees, nomination fees, citizenship-related fees and customs duties.

The revised surcharge amounts will enable the Department to recover the cost of credit card merchant fees. The recovery of credit card and debit card merchant fees is allowed under the RBA surcharging standards and is consistent with the cost recovery guidelines issued by the Department of Finance.

Human rights implications

This Schedule does not engage any of the applicable rights or freedoms.

Conclusion

The Schedule is compatible with human rights as it does not raise any human rights issues.

Schedule 4 – Payment of fees

Overview

Section 16 of the Citizenship Regulation sets out, amongst other things, in which foreign currencies and countries a citizenship application fee may be paid and how the exchange rate is to be calculated.

The acceptable foreign currencies and countries are set out in legislative instruments made under subregulations 5.36(1) and (1A) of the Migration Regulations. In order to facilitate the lawful collection (and refund where appropriate) of citizenship application fees in foreign currencies, subsection 16(7) of the Citizenship Regulation incorporates by reference instruments made under the Migration Regulations in relation to foreign currencies and countries.

The relevant instruments, *Places and Currencies for Paying of Fees* and *Payment of Visa Application Charges and Fees in Foreign Currencies*, are updated in January and July each year and are given a new instrument number each time.

Consequently, to ensure that citizenship application fees can continue to be paid in foreign currencies and countries, subsection 16(7) of the Citizenship Regulation must be amended to specify the updated instrument numbers.

The only changes to the Citizenship Regulation are the updating of the instrument numbers in subsection 16(7). These changes are technical in nature and there are no changes to the substantive content of the instrument.

Human rights implications

This Schedule has been assessed against the seven core international human rights treaties and does not engage any of the applicable rights or freedoms.

Conclusion

This Schedule is compatible with human rights as it does not raise any human rights issues

The Hon Peter Dutton MP
Minister for Home Affairs
Minister for Immigration and Border Protection

ATTACHMENT C

Details of the *Home Affairs Legislation Amendment (2018 Measures No. 1) Regulations 2018*

Section 1 – Name

This section provides that the title of the Regulations is the *Home Affairs Legislation Amendment (2018 Measures No. 1) Regulations 2018* (the Regulations).

Section 2 – Commencement

Subsection 2(1) provides that each provision of the Regulations specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms. The table states that the whole of this instrument commences on 1 July 2018. A note clarifies that this table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

Subsection 2(2) provides that any information in column 3 of the table is not part of the Regulations. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument. Column 3 of the table provides the date/details of the commencement date.

The purpose of this section is to provide for when the amendments made by the Regulations commence.

Section 3 – Authority

This section provides that the Regulations are made under the *Australian Citizenship Act 2007* (the Citizenship Act), the *Customs Act 1901* (the Customs Act), and the *Migration Act 1958* (the Migration Act).

The purpose of this section is to set out the Acts under which the Regulations are made.

Section 4 – Schedule(s)

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.

The effect of this section is that the *Migration Regulations 1994* (the Migration Regulations) are amended as set out in the applicable items in the Schedules to the Regulations.

The purpose of this section is to provide for how the amendments in these Regulations operate.

Schedule 1 – Lodgement of partner and parent visa applications

Migration Regulations 1994

In April 2015, the majority of items in Schedule 1 to the Migration Regulations were amended to allow for matters relating to the making of a valid visa application to be specified by the Minister in a legislative instrument made under subregulation 2.07(5) of the Migration Regulations. Subregulation 2.07(5) relevantly provides that for an item in Schedule 1, the Minister may, by legislative instrument, specify requirements as to the way and place an application must be made, and the form used. Following this change, the majority of items in Schedule 1 were amended to provide for relevant application matters to be specified in a legislative instrument.

The purpose of the amendments made by Schedule 1 to the Regulations is to vary the requirements for making valid applications for Parent and Partner visas in line with the amendments made in 2015. In doing so, they allow the Minister to make a legislative instrument to specify the approved form to be used to make a valid visa application, as well as the manner and place in which an application is to be made.

The amendments provide flexibility and improved administrative efficiency in responding to changes to the department's visa application caseload.

The instrument would not be disallowable because it is made under Schedule 1 to the Migration Regulations, and therefore is exempt from disallowance by section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015* (see table item 20).

Approved form

Items 1, 3, 6, 9, 10, 13, 16, 19, 22, 24, 26, and 29 – Subitems 1124(1), 1124A(1), 1124B(1), 1124B(3)(e)(ii), 1129(1), 1130(1), 1130A(1), 1214C(1), 1215(1), 1220A(1), 1221(1), and 1221A(1) of Schedule 1

The effect of these items is to remove the previous prescribed forms as the approved form for making a valid visa application, and to instead provide for the approved forms to be specified by the Minister in a legislative instrument made for the items.

Prescribed manner and place of application

Items 2, 4, 7, 11, 14, 17, 20, 23, 25, 27, and 30 – Paragraphs 1124(3)(a), 1124A(3)(a), 1124B(3)(a), 1129(3)(a) and (b), 1130(3)(a), 1130A(3)(a), 1214C(3)(b), 1215(3)(a), 1220A(3)(a), 1221(3)(a), 1221A(3)(a) of Schedule 1

These items repeal provisions which specified the manner and place for making a visa application. The effect of the amendments is to substitute new provisions to provide that an application must be made in the manner and at a place specified by the Minister in a legislative instrument.

Item 15 – Paragraph 1130(3)(c) of Schedule 1

This is a consequential amendment to reflect the amendments made by items 13 and 14 of the Regulations, as described above. The purpose of the amendment is to remove the related criterion prescribing the way an application by a person claiming to be a member of a family unit of another applicant must be made. The criterion is no longer necessary as the manner for making a visa application will be provided for in a legislative instrument. The paragraph continues to provide that an application made by a person claiming to be a member of a family unit of another applicant may be made at the same time and place as, and combined with, the application made by the other applicant.

Items 2, 5, 8, 12, 14, 18, 21, 28, and 31 – Paragraphs 1124(3)(aa), 1124A(3)(bb), 1124B(3)(ca), 1129(3)(f), 1130(3)(b), 1130A(3)(ba), 1214C(3)(fa), 1221(3)(d), 1221A(3)(da) and (e) of Schedule 1

These items repeal provisions which specified the manner and place for making a visa application.

These are consequential amendments to reflect the amendments made by Items 2, 4, 7, 11, 14, 17, 20, 23, 25, 27, and 30 above. It is no longer necessary to prescribe these requirements in the Migration Regulations as the manner and place for making a visa application for the relevant visa classes, will be provided for in a legislative instrument.

Item 32 – In the appropriate position in Part 71 of Schedule 13

This item inserts Part 7101 into Schedule 13 – Transitional Arrangements.
The purpose of the amendments is to provide that the amendments made by Schedule 1 to the Regulations apply to applications for a visa made on or after 1 July 2018.

Schedule 2 – Maximum age limit for partner points in the general skilled migration program

Migration Regulations 1994

Item 1 – Part 6D.11 of Schedule 6D (table item 6D111, column headed "Qualification", paragraph (c))

The general points test set out in Schedule 6D to the Migration Regulations is designed to recognise those points tested skilled migration visa applicants who have the skills and other attributes that will allow them to find skilled employment in Australia and settle quickly into the community.

Table item 6D111 of Schedule 6D sets out the circumstances in which an applicant for a Subclass 189 (Skilled – Independent) visa (Subclass 189 visa), a Subclass 190 (Skilled – Nominated) visa (Subclass 190 visa), or a Subclass 489 (Skilled – Regional (Provisional)) visa (Subclass 489 visa) can claim 5 points in the general points test on the basis of their spouse or de facto partner's qualifications.

This item amends paragraph (c) of the table item to lower the maximum age of the applicant's spouse or de facto partner from 'under 50' years of age to 'under 45' years of age.

This means that an applicant for a Subclass 189 visa, a Subclass 190 visa, or a Subclass 489 visa can claim five points as part of the general points test if their spouse or de facto partner:

a) is under 45 years of age when the applicant is invited to apply for the visa; and
b) meets all other requirements outlined in item 6D111 of Schedule 6D to the Regulations.

Applicants for one of the above visas cannot claim points under Part 6D.1 ('age qualifications') if they are 45 years of age or older. The purpose of this amendment is ensure that Parts 6D.1 and 6D.11 operate consistently.

Item 2 – At the end of Part 71 of Schedule 13

This item amends Schedule 13 to insert Clause 7102 entitled '*Operation of Schedule 2*'. Clause 7102 provides that the amendments made by Schedule 2 apply to an application for a Subclass 189 visa, a Subclass 190 visa, or a Subclass 489 visa made on or after 1 July 2018 in response to an invitation issued by the Minister on or after that day.

Schedule 3—Credit card surcharge

Australian Citizenship Regulation 2016

Item 1 – Subparagraph 16(1)(b)(i)

This item omits the percentage "0.98%" and substitutes the new percentage "1.32%".

The purpose of this amendment is to provide for the collection of a surcharge of 1.32% in relation to amounts paid by MasterCard or Visa credit cards for fees and charges under the Citizenship Act.

The effect of this amendment is to enable the Department to recover the fee charged by the merchant for the use of MasterCard or Visa credit card.

Customs Regulation 2015

Item 2 – Paragraph 150B(2)(a)

This item omits the percentage "0.98%" and substitutes the new percentage "1.32%".

The purpose of this amendment is to provide for the collection of a surcharge of 1.32% in relation to amounts paid by MasterCard or Visa credit cards for fees and charges under the Customs Act.

The effect of this amendment is to enable the Department to recover the fee charged by the merchant for the use of a MasterCard or Visa credit card.

Migration Regulations 1994

Item 3 – Paragraph 5.41A(2)(a)

This item omits the percentage "0.98%" and substitutes the new percentage "1.32%". The purpose of this amendment is to provide for the collection of a surcharge of 1.32% in relation to amounts paid by MasterCard or Visa credit cards for fees and charges under the Migration Act.

The effect of this amendment is to enable the Department to recover the fee charged by the merchant for the use of a MasterCard or Visa credit card.

Schedule 4 – Payment of fees

Australian Citizenship Regulation 2016

Item 1 – Subsection 16(7)

This item repeals and substitutes the previous definitions of "conversion instrument" and "places and currencies instrument" in subsection 16(7) of the Citizenship Regulation.

New definition of "conversion instrument"

This item provides that the "conversion instrument" means the instrument titled *Migration (IMMI 18/063: Payment of Visa Application Charges and Fees in Foreign Currencies) Instrument 2018* made under paragraph 5.36(1A)(a) of the Migration Regulations.

The "conversion instrument" commences on 1 July 2018 and sets out the exchange rates to be used for prescribed foreign currencies in relation to the payment of fees. The conversion instrument allows a person who makes an application under the Citizenship Act to pay an application fee in a foreign currency at an exchange rate specified in the conversion instrument.

New definition of "places and currencies instrument"

This item provides that the "places and currencies instrument" means the instrument titled *Migration (IMMI 18/064: Places and Currencies for Paying of Fees) Instrument 2018* made under paragraphs 5.36(1)(a) and (b) of the Migration Regulations.

The "places and currencies instrument" commences on 1 July 2018 and sets out the places and foreign country currencies in which application fees may be paid.

Purpose for amendment

The "conversion instrument" and "places and currencies instrument" are periodically updated in January and July of each year to reflect changes in exchange rates, specified foreign currencies, and the places where application fees may be paid.

The amendment ensures that persons may make the payment of an application fee in a specified foreign country and in a foreign currency at a defined and updated exchange rate.

The Citizenship Act does not allow for the making of an instrument to specify matters in relation to the collection of application fees in foreign countries and foreign currencies. Instead, the Citizenship Regulation incorporates by reference relevant instruments made under the Migration Regulations to specify the foreign countries where a fee may be paid, the currency that can be accepted in each listed country and the currency exchange rate that must be applied.

Due to the operation of section 14 of the *Legislation Act 2003*, the Citizenship Regulation may not make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force from time to time.
The legislative instruments made under paragraphs 5.36(1A)(a), 5.36(1)(a) and (b) of the Migration Regulations can only be incorporated by reference at the time the Regulations commence.

Item 2 – In the appropriate position in Part 4

This item inserts Section 21 entitled 'Application of amendment made by Schedule 4 to the *Home Affairs Legislation Amendment (2018 Measures No. 1) Regulations 2018*'.

Section 21 of Part 4 provides that these amendments apply to an application made under the Citizenship Act on or after 1 July 2018.