



Migration Amendment (Partner Visas) Regulation 2014

Select Legislative Instrument No. 200, 2014

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 regulation.

Dated 11 December 2014

Peter Cosgrove
Governor-General

By His Excellency's Command

Scott Morrison
Minister for Immigration and Border Protection

OPC60951 - A

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1 Name

This is the *Migration Amendment (Partner Visas) Regulation 2014*.

2 Commencement

This instrument commences on **1 January 2015**.

3 Authority

This instrument is made under 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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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—Amendments

Part 1—Main amendments

Migration Regulations 1994

1 Subparagraph 1124B(2)(a)(vii) of Schedule 1 (table item 1)

Omit “\$4 575”, substitute “\$6 865”.

2 Subparagraph 1124B(2)(a)(vii) of Schedule 1 (table item 2)

Omit “\$2 290”, substitute “\$3 435”.

3 Subparagraph 1124B(2)(a)(vii) of Schedule 1 (table item 3)

Omit “\$1 145”, substitute “\$1 720”.

4 Subparagraph 1129(2)(a)(ii) of Schedule 1 (table item 1)

Omit “\$3 085”, substitute “\$4 630”.

5 Subparagraph 1129(2)(a)(ii) of Schedule 1 (table item 2)

Omit “\$1 545”, substitute “\$2 320”.

6 Subparagraph 1129(2)(a)(ii) of Schedule 1 (table item 3)

Omit “\$770”, substitute “\$1 155”.

7 Paragraph 1215(2)(a) of Schedule 1 (table item 1)

Omit “\$3 085”, substitute “\$4 630”.

8 Paragraph 1215(2)(a) of Schedule 1 (table item 2)

Omit “\$1 545”, substitute “\$2 320”.

9 Paragraph 1215(2)(a) of Schedule 1 (table item 3)

Omit “\$770”, substitute “\$1 155”.

Part 2—Application and transitional provisions

Migration Regulations 1994

10 Schedule 13

Insert in its appropriate numerical position:

Part 39—Amendments made by the Migration Amendment (Partner Visas) Regulation 2014

3901 Operation of Part 1 of Schedule 1

The amendments of these Regulations made by Part 1 of Schedule 1 to the *Migration Amendment (Partner Visas) Regulation 2014* apply in relation to an application for a visa made on or after 1 January 2015.

EXPLANATORY STATEMENT

Select Legislative Instrument No. 200, 2014

Issued by the Minister for Immigration and Border Protection

Migration Act 1958

Migration Amendment (Partner Visas) Regulation 2014

Subsection 504(1) of the *Migration Act 1958* (the Migration Act) provides, in part, that the Governor-General may make regulations, not inconsistent with the Migration Act, prescribing all matters which by the Migration Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to the Migration Act.

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

On **24 November 2014**, a whole-of-government decision was made regarding a range of measures to repair the Budget and fund **policy priorities**. One part of that decision is an increase to certain visa application charges (VAC) for three visas in the partner category, for which there is growing and strong demand.

In accordance with the Government's decision, the purpose of the Regulation is to amend the *Migration Regulations 1994* to **increase certain VACs by 50 per cent** for subclasses 100 (Partner (Permanent)), 300 (Prospective Marriage (Temporary)) and 801 (Partner (Permanent)). The VAC increase does not exceed the applicable charge limits set out in the *Migration (Visa Application) Charge Act 1997*. This measure is expected to increase revenue by \$48.6 million for 2014-15, \$102.8 million for 2015-16 and \$108.3 million for 2016-17.

Details of the Regulation are set out in Attachment B.

The Migration Act specifies no conditions that need to be satisfied before the power to make the Regulation may be exercised.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (Legislative Instruments Act).

A Statement of Compatibility with Human Rights (Statement) has been completed for the Regulation, in accordance with *Human Rights (Parliamentary Scrutiny) Act 2011*. The Statement's overall assessment is that the Regulation is compatible with human rights, as it does not limit any human rights. A copy of the Statement is at Attachment B.

Details of the Regulation are set out in Attachment C.

The Office of Best Practice Regulation (the OBPR) was consulted in relation to the amendments made by the Regulation and the Regulation Impact Statement (RIS) requirements have been met. The OBPR consultation reference number is 17621.

Consultation was undertaken by the Department with central agencies. No further consultation was undertaken because the amendments are considered minor and technical in nature consistent with section 18 of the Legislative Instruments Act.

The Regulation is a legislative instrument for the purposes of the Legislative Instruments Act.

The Regulation commences on **1 January 2015**. The amendments made by the Regulation apply in relation to an application for a visa made on or after 1 January 2015.

AUTHORISING PROVISIONS

Subsection 504(1) of the *Migration Act 1958* ('the Act') provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters which by the Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

In addition, the following provisions in the Act may apply:

- section 45A of the Act, which provides that a non-citizen who makes an application for a visa is liable to pay a visa application charge if, assuming the charge were paid, the application would be a valid visa application;
- subsection 45B(1) of the Act, which provides that the amount of the visa application charge is the amount, not exceeding the visa application charge limit, prescribed in relation to the application. The visa application charge limit is determined under the *Migration (Visa Application) Charge Act 1997* ('the VAC Act'); and
- section 45C of the Act, which deals with regulations about the visa application charge. In particular:
 - subsection 45C(1) of the Act, which provides that the *Migration Regulations 1994* ('the Regulations') may provide that the visa application charge may be payable in instalments, and specify how those instalments are to be calculated and when instalments are payable; and
 - paragraph 45C(2)(a) of the Act, which relevantly provides that the Regulations may make provision for and in relation to various matters, including the recovery of the visa application charge in relation to visa applications and the way, including the currency, in which visa application charge is to be paid.

The following provisions of the VAC Act may also apply:

- section 4, which imposes a visa application charge payable under section 45A of the Act; and
- section 5, which limits the visa application charge and provides the formula to calculate the charge limit for later financial years.

Statement of Compatibility with Human Rights

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

Migration Amendment (Partner Visas) Regulation 2014

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*.

Overview of the Legislative Instrument

On 24 November 2014, the Government made a whole-of-government decision regarding a range of measures to repair the Budget and fund policy priorities. One part of that decision is an increase to certain Visa Application Charges (VACs) for three visas in the partner category (subclasses 100, 300, and 801), for which there is growing and strong demand. This Legislative Instrument enacts this element of the Government's decision.

For each of these subclasses, the VAC is paid at the time of application for a visa for individuals who are the spouse, de facto partner or prospective spouse of an Australian citizen, permanent resident, or eligible New Zealand citizen. The Legislative Instrument increases the VAC paid by the majority of applicants for three visas in the partner category. Certain exceptions to paying the full price VAC, which is subject to change in this amendment, are applied to some applicants in particular circumstances. These exemptions can be found in the *Migration Regulations 1994, Schedule 1* at paragraphs 1124B and 1129.

For offshore visa subclasses 100 (Partner (partner permanent)) and 300 (Prospective Marriage (temporary)), this amendment will increase the Base Application Charge from \$3,085 to \$4,630, increase the Additional Applicant Charge for secondary applicants under 18 from \$770 to \$1,155, and for secondary applicants over 18 from \$1,545 to \$2,320.

For the onshore visa subclass 801 (Partner (partner permanent)), this amendment will increase the Base Application Charge from \$4,575 to \$6,865, and increase the Additional Applicant Charge for secondary applicants under 18 from \$1,145 to \$1,720, and for secondary applicants over 18 from \$2,290 to \$3,435.

Increasing these VACs will generate revenue for the Commonwealth Government, in line with the Government's objective to repair the Budget and fund policy priorities.

The VAC increase does not exceed the applicable charge limits set out in the *Migration (Visa Application) Charge Act 1997*.

Human rights implications

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

Conclusion

This Legislative Instrument does not limit any of the rights or freedoms expressed in Australia's international obligations.

**The Hon. Scott Morrison MP,
Minister for Immigration and Border Protection**

Details of the Migration Amendment (Partner Visas) Regulation 2014

Section 1 – Name of Regulation

This section would provide that the title of the Regulation is the *Migration Amendment (Partner Visas) Regulation 2014*.

Section 2 – Commencement

This section would provide that the Regulation commences on 1 January 2015.

Section 3 – Authority

This section would provide that this regulation is made under the *Migration Act 1958* (the Migration Act).

The purpose of this section is to set out the Migration Act under which the regulation is made.

Section 4 – Schedule

This section would provide 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 purpose of this section is to provide for how the amendments in this regulation would operate.

Schedule 1– Visa application charges for partner visas

The Regulation would give effect to the Government’s decision on 24 November 2014 by increasing all visa application charges for visa subclass 100 (Partner (Permanent)), subclass 801 (Partner (Permanent)) and subclass 300 (Prospective Marriage (Temporary)).

On 24 November 2014, the Government made a whole-of-government decision regarding a range of measures to repair the Budget and fund policy priorities. One part of that decision is an increase to certain visa application charges (‘VAC’) for three visas in the partner category, for which there is growing and strong demand.

The amount of the increase in these items does not exceed the applicable charge limit set out in the *Migration (Visa Application) Charge Act 1997*.

Items 1 to 9

Items 1-9, would amend the provisions in Part 1 of Schedule 1 of the Principal Regulations to increase the visa application charges ('VAC') for partner visas.

Columns 1 and 2 of the table below list the visa class and the name of that visa class that would be amended.

Column 3 of the table below lists the provisions that would be amended by this Regulation to increase the VAC. Columns 4 and 5 of the table list the current VAC and the new VAC.

Column 1	Column 2	Column 3	Column 4	Column 5
Visa Class	Visa Name	Provision	Current VAC	New VAC
BS	Partner (partner permanent) (subclass 801)	1124B(2)(a)(vii) table item 1	\$4 575	\$6,865
		1124B(2)(a)(vii) table item 2	\$2 290	\$3,435
		1124B(2)(a)(vii) table item 3	\$1 145	\$1,720
BC	Partner (partner permanent) (subclass 100)	1129(2)(a)(ii) table item 1	\$3 085	\$4,630
		1129(2)(a)(ii) table item 2	\$1 545	\$2,320
		1129(2)(a)(ii) table item 3	\$770	\$1,155
TO	Prospective Marriage (temporary) (subclass 300)	1215(2)(a) table item 1	\$3 085	\$4,630
		1215(2)(a) table item 2	\$1 545	\$2,320
		1215(2)(a) table item 3	\$770	\$1,155

Part 2 – Application and transitional arrangements**Item 10 – Schedule 13**

This item amends Schedule 13 to the Migration Regulations to insert a new Part 39, entitled "Amendments made by the *Migration Amendment (Partner Visas) Regulation 2014*", which contains a new clause 3901.

The new clause 3901 provides that the amendments of the Migration Regulations made by Part 1 of Schedule 1 to the *Migration Amendment (Partner Visas) Regulation 2014* apply in relation to an application for a visa made on or after 1 January 2015.

The purpose and effect of this amendment is to clarify to whom the amendments in Schedule 1 of the Migration Regulations applies.