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**THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA**

**HOUSE OF REPRESENTATIVES**

**MIGRATION (VISA EVIDENCE) CHARGE BILL 2012**

**EXPLANATORY MEMORANDUM**

(Circulated by authority of the Minister for Immigration and Citizenship,  
the Hon. Chris Bowen MP)

## **Migration (Visa Evidence) Charge Bill 2012**

### **OUTLINE**

The Migration (Visa Evidence) Charge Bill 2012 (“the Bill”) imposes a charge in relation to requests for evidence of visas. The Bill will enable a charge to be payable for the production of prescribed evidence of a visa.

The amendments in the Bill comprise one part of a major reform of Australia’s immigration visa system. This reform transforms the pricing framework for Australia’s visa program. The visa evidence charge is designed to encourage clients to reconsider their need to have visa evidence. The visa evidence charge also allows for greater cost-recovery in respect of immigration processing and generates additional revenue.

Related measures are contained in the Migration (Visa Evidence) Charge (Consequential Amendments) Bill 2012 which will commence on the same day as this Bill. The Migration (Visa Evidence) Charge (Consequential Amendments) Bill 2012 makes consequential amendments to the *Migration Act 1958* (“the Migration Act”) to implement the visa evidence charge and provide a framework within which the visa evidence charge will operate. Further, the Migration (Visa Evidence) Charge (Consequential Amendments) Bill 2012 amends the Migration Act to insert regulation making powers for the *Migration Regulations 1994* (“the Regulations”) to prescribe the actual amount of visa evidence charge that will be payable for each request for evidence of a visa, as well as regulations about matters relating to the visa evidence charge.

In particular, the Bill:

- provides that it extends to an external Territory that is a prescribed Territory (within the meaning of subsection 7(1) of the Migration Act);
- provides for extra-territorial operation;
- imposes a visa evidence charge payable under the Migration Act;
- imposes a visa evidence charge limit for a visa evidence request; and
- enables an annual indexation mechanism to increase the maximum visa evidence charge limit after 30 June 2013 for visa evidence request.

### **FINANCIAL IMPACT STATEMENT**

Financial impact of these amendments is high. The amendments to the Migration Act will result in revenue being raised under the visa evidence charge imposed by the Migration (Visa Evidence) Charge Bill 2012. The introduction of visa evidence charge will increase revenue for the government to support the immigration system more broadly by charging for ongoing visa label work during the transition to label free travel. This package will generate significant additional revenue for the government in the order of \$90 million over three years.

### **REGULATION IMPACT STATEMENT**

The Office of Best Practice Regulation has been consulted and has advised that a regulatory impact statement is not required. The advice reference is 13083.

**STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

A Statement of Compatibility with Human Rights has been completed in relation to the amendments in this Bill and assesses that the amendments are compatible with Australia's human rights obligations. A copy of the Statement of Compatibility with Human Rights is at Attachment A.

**MIGRATION (VISA EVIDENCE) CHARGE BILL 2012****NOTES ON INDIVIDUAL CLAUSES****Clause 1 Short title**

1. Clause 1 provides that the short title by which this Act may be cited is the *Migration (Visa Evidence) Charge Act 2012*.

**Clause 2 Commencement**

2. Subclause 2(1) provides that each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Further, any other statement in column 2 has effect according to its terms.
3. Table item 1 provides that sections 1 and 2 of this Act and anything in this Act not elsewhere covered by the table will commence on the day on which this Act receives the Royal Assent.
4. Table item 2 provides that sections 3 to 7 of this Act will commence on a single day to be fixed by Proclamation. It also provides that if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.
5. The note in subclause 2(1) makes clear that the table relates only to the provisions of this Act as originally enacted. The table will not be amended to deal with any later amendments of this Act.
6. Subclause 2(2) provides that any information in column 3 of the table is not part of this Act. It provides that information may be inserted or edited in any published version of this Act.

**Clause 3 External Territories**

7. Clause 3 provides that this Act extends to an external Territory that is a prescribed Territory (within the meaning of subsection 7(1) of the Migration Act).
8. The purpose of this clause is to ensure that the Act operates consistently with the Migration Act and extends to a prescribed Territory in the same way as the Migration Act.

**Clause 4 Extra-territorial operation**

9. Clause 4 provides that visa evidence charge is payable in relation to a request for evidence of a visa whether the request is made inside Australia or outside Australia.
10. The effect of this clause is that a visa evidence charge is payable in relation to a request for visa evidence regardless of whether a request is made inside or outside Australia.

## **Clause 5 Definitions**

11. Clause 5 provides that:

- *indexation factor* has the meaning given by new subsection 7(3) of the Act;
- *Migration Act* means the *Migration Act 1958*;
- *visa evidence charge limit* for a visa evidence request has the meaning given by subsections 7(1) and 7(2) of the Act; and
- *visa evidence request* means a request made under new section 70 of the Migration Act.

12. The purpose of this clause is to insert defined terms for the purposes of the *Migration (Visa Evidence) Charge Act 2012*.

## **Clause 6 Imposition of visa evidence charge**

13. Clause 6 provides for the imposition of a visa evidence charge payable under section 71 of the Migration Act.

14. This is the central provision of the Bill. It imposes a visa evidence charge by reference to section 71 of the Migration Act, as amended by item 3 in Schedule 1 to the Migration (Visa Evidence) Charge (Consequential Amendments) Bill 2012 which commences on the same day as this Bill.

15. Substituted section 71 of the Migration Act provides that a person who makes a request under section 70 for evidence of a visa is liable to pay visa evidence charge and provides that the amount of visa evidence charge is the prescribed amount which must not exceed the visa evidence charge limit for the request. Substituted section 71 of the Migration Act further allows regulations made for the purposes of prescribing the amount of visa evidence charge to do any one or more of the following:

- specify a different amount of visa evidence charge for different prescribed forms of evidence of a visa;
- specify a different amount of visa evidence charge in relation to different classes of visas;
- specify a different amount of visa evidence charge for different methods of payment of the charge;
- specify a different amount of visa evidence charge where the person elects to have the request dealt with expeditiously;
- specify a different amount of visa evidence charge for requests made in different circumstances;
- specify circumstances in which the amount of the visa evidence charge is nil;
- specify a way for working out the amount of visa evidence charge.

16. The purpose and intended effect of substituted sections 70 and 71 are explained in the Explanatory Memorandum to the Migration (Visa Evidence) Charge (Consequential Amendments) Bill 2012.

## **Clause 7 Visa evidence charge limit**

17. Subclause 7(1) provides that the *visa evidence charge limit* for a visa evidence request made in the financial year ending on 30 June 2013 is \$250.

18. The purpose of this subclause is to specify that \$250 is the maximum amount of visa evidence charge that may be prescribed with respect to a request for evidence of a visa in the financial year ending on 30 June 2013.
19. Subclause 7(2) provides that the *visa evidence charge limit* for a visa evidence request made in a later financial year is the amount worked out by multiplying the limit for the immediately preceding financial year by the greater of 1 or the indexation factor.
20. The purpose of subclauses 7(2) is to enable an annual indexation mechanism to increase the maximum visa evidence charge limit after 30 June 2013, without the need for an Act amendment.
21. While the actual amount to be charged for various types of visa evidence would be prescribed in the Regulations, the upper charge limit specified in subclause 7(1) and 7(2) is the potential maximum amount that the Regulations could prescribe now or in the future for any variety of visa evidence, in the absence of an Act amendment. The amount of visa evidence charge that is payable with respect to any request for evidence of a visa would be prescribed in the Regulations. This is explained in the Explanatory Memorandum to the Migration (Visa Evidence) Charge (Consequential Amendments) Bill 2012.
22. Subclause 7(3) provides that the indexation factor is the number worked out using the formula in subclause 7(3). Subclause 7(3) also defines of the terms *CPI quarter* and *index number* to work out the formula.
23. *CPI quarter* means a period of 3 months ending on 31 March, 30 June, 30 September or 31 December. *Index number* means the All Groups Consumer Price Index number (being the weighted average of the 8 capital cities) published by the Australian Statistician.
24. The purpose of subclause 7(3) is to provide the mechanism by which the charge limit will be indexed each financial year according to upwards movements in the Consumer Price Index (CPI) during the preceding calendar year. Calendar year movements in the CPI are used in the formula so as to ensure that the necessary regulations can be made before the commencement of each new financial year. The charge limit is not affected by falls in the CPI.
25. Subclause 7(4) provides that the indexation factor is to be calculated to 3 decimal places (rounding up if the fourth decimal place is 5 or more).
26. The purpose of subclause 7(4) is to control rounding of the indexation factor to 3 decimal places.
27. Subclause 7(5) provides that in working out the indexation factor:
  - use only the index numbers published in terms of the most recently published reference base for the Consumer Price Index; and
  - disregard index numbers published in substitution for previously published index numbers (except where the substituted numbers are published to take account of changes in the reference base).
28. The purpose of subclause 7(5) is to ensure that consistent CPI figures are used to index the charge limit from one year to the next.

29. Subclause 7(6) provides if the amount worked out under subsection 7(2) is not a multiple of \$5, the amount is to be rounded as follows:
- if the amount exceeds the nearest lower multiple of \$5 by \$2.50 or more – round the amount up to the nearest higher multiple of \$5;
  - otherwise – round the amount down to the nearest lower multiple of \$5.
30. The purpose of subclause 7(6) is to provide that the charge limit is to be rounded to the nearest multiple of \$5 when it is indexed each financial year.