EXPLANATORY STATEMENT

Issued by authority of the Minister for Immigration, Citizenship, Migrant Services and
Multicultural Affairs

*Migration Act 1956*

*Migration Regulations 1994*

***Migration (Class of persons for Visitor (Class FA) visa nil VAC) Instrument (LIN 21/021) 2021***

1. The instrument, Departmental reference LIN 21/021, is made under subparagraph 1236(2)(a)(iv) of Schedule 1 to the *Migration Regulations 1994* (the Migration Regulations).
2. The instrument repeals the *Migration (LIN 20/045: Class of persons for Visitor (Class FA) visa applications) Instrument 2020* (F2020L00157) (LIN 20/045) in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (the Acts Interpretation Act). That subsection provides that where an Act confers a power to make a legislative instrument, the power includes a power to amend or repeal that instrument, subject to any conditions that apply to the initial instrument-making power.
3. Paragraph 13(1)(a) of the *Legislation Act 2003* (the Legislation Act) provides that subsection 33(3) of the Acts Interpretation Act applies to an instrument-making power in the Migration Regulations as if the Migration Regulations were an Act. This means that subparagraph 1236(2)(a)(iv) of Schedule 1 to the Migration Regulations also includes a power to amend or repeal an instrument made under that provision.
4. The instrument commences on 27 February 2021, and is a legislative instrument for the Legislation Act.

***Purpose***

1. The purpose of the instrument is to specify that certain former Subclass 600 (Visitor) visa (Subclass 600 visa) holders can apply for a new Subclass 600 visa with a nil visa application charge (VAC) where their travel to or stay in Australia (or both) has been affected by the COVID-19 pandemic.
2. Under subparagraph 1236(2)(a)(iv) of Schedule 1 to the Migration Regulations, the Minister may specify a class of persons who are applicants with a nil VAC amount for Visitor (Class FA) visas, which includes Subclass 600 visas. The instrument specifies that nil VAC is payable for applicants for a Subclass 600 visa in the Tourist, Sponsored Family, Business Visitor and Approved Destination streams, where those applicants meet criteria specified in the instrument. Applicants in the Frequent Traveller stream are excluded from this measure. This is because an application in the Frequent Traveller stream is excluded under paragraph 1236(2)(a) of Schedule 1 to the Migration Regulations, which provides the instrument making power.

***Consultation***

1. Consultation was undertaken before the instrument was made with, and agreed to by, the following Departments, as part of a whole of government decision process: Treasury, Finance, Foreign Affairs and Trade, Educations, Skills and Employment and Prime Minister and Cabinet. No public consultation was undertaken, as the instrument is minor and machinery in nature.
2. The Office of Best Practice Regulation (OBPR) was also consulted and considered that the instrument would likely have nil regulatory impact, with the result being that a regulatory impact statement is not required. The OBPR reference number is 42822.

***Details of the instrument***

1. Section 1 sets out the name of the instrument.
2. Section 2 provides for the commencement of the instrument on 27 February 2021. This date aligns with updates to Departmental systems.
3. Section 3 sets out definitions of terms used in the instrument.
4. Section 4 sets out, for subparagraph 1236(2)(a)(vi) of Schedule 1 to the Migration Regulations, the kind of applicants for a Subclass 600 visa who will be in a class of persons for a nil VAC.
5. Section 4 provides that an applicant for a Subclass 600 visa will not pay a VAC if all of the following circumstances apply:
* the applicant is outside of Australia when they apply for the visa (paragraph (a));
* they apply for the visa between 27 February 2021 and 31 December 2022 (paragraph (b));
* before 21 March 2021 they were previously granted a Subclass 600 visa while outside of Australia (this excludes visas granted in the Frequent Traveller stream) (paragraph (c));
* the previous visa they held expired, or will expire between 20 March 2020 and 31 December 2021 (paragraph (d));
* the previous visa was either a multiple entry visa or a single entry visa that was not used to enter Australia (paragraph (e));
* if they have made a previous application under the instrument, a visa was not granted or refused to be granted in relation to that application (paragraph (f)).
1. Paragraph 4(c) limits the class of persons to applicants whose previous visa was granted while they were outside of Australia. An applicant that held a previous visa that was granted while the applicant was inside Australia will not be in the class of persons for a nil VAC.
2. Paragraph 4(d) provides that an applicant will be able to make a nil VAC application if they held a visa that has expired or that will expire between 20 March 2020 and 31 December 2021. This allows applicants whose visas will expire on or before 31 December 2021 who make an application for a new visa before it expires to not pay a VAC for that application. This ensures that if a visa is about to expire and the applicant wants to travel to Australia in the days after it has expired, they can make an application before the visa expires to enable that travel and pay nil VAC.
3. Paragraph 4(e) limits the class of persons to those who had a right to enter Australia when their visa expired, as it excludes visa holders with single entry visas who had entered Australia. Those with multiple entry visas who had entered and departed Australia (or not yet entered) are captured in the instrument.
4. Paragraph 4(f) provides that if a person has made a previous application after the commencement of the instrument for a Subclass 600 visa, they will only receive a nil VAC if a visa was not granted or refused to be granted in relation to that application.
5. This means that if the nil VAC application results in a visa being granted or refused to be granted, an applicant will not qualify for an additional nil VAC application. An applicant will be in a class of persons for an additional nil VAC application if the first application was withdrawn or was invalid.
6. For clarity, if an application is made in accordance with the instrument that is invalid or withdrawn, the applicant may make a second application and will be entitled to the nil VAC for that application, as long as they continue to meet the other elements of the class of persons.
7. Section 5 provides that LIN 20/045is repealed. This instrument is repealed as the time period for an applicant specified as being in a class of persons in the instrument to make an application and receive a nil VAC has ended.

***Parliamentary scrutiny etc.***

1. The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because instruments made under Schedule 1 of the Migration Regulations are prescribed as exempt in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.
2. The instrument was made by a delegate of the Minister, Senior Executive Service Band One, Immigration Programs Division, in accordance with subparagraph 1236(2)(a)(iv) of Schedule 1 to the Migration Regulations. The Senior Executive Service Band One was delegated the power to make the instrument by *Migration (Ministerial Instrument-making Powers) Delegation 2020/252*.