

## EXPLANATORY STATEMENT

Issued by authority of the Minister

*Migration Regulations 1994*

### ***Migration (Class of persons for Visitor (Class FA) visa nil VAC) Amendment Instrument (LIN 21/097) 2021 (No. 2)***

- 1 The instrument, Departmental reference LIN 21/097, is made under subparagraph 1236(2)(a)(iv) of Schedule 1 to the *Migration Regulations 1994* (the Regulations).
- 2 The instrument amends *Migration (Class of persons for Visitor (Class FA) visa nil VAC) Instrument (LIN 21/021) 2021* (LIN 21/021) in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*. That subsection provides that a power to make a legislative instrument includes a power to amend or repeal that instrument in the same manner, and subject to the same conditions, as the power to make the instrument.
- 3 The instrument commences on 15 December 2021 and is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

#### ***Purpose***

- 4 The purpose of the instrument is to broaden the class of persons who can apply for a Subclass 600 (Visitor) visa (subclass 600 visa) with a nil visa application charge (VAC) by way of subparagraph 1236(2)(a)(iv) of Schedule 1 to the Regulations. LIN 21/021 specifies that certain current or former subclass 600 visa holders can apply for a new subclass 600 visa with nil VAC. The intention of LIN 21/021 is to provide a concession where subclass 600 visa holders' intended travel has not been completed due to the COVID-19 pandemic.
- 5 The instruments amends LIN 21/021 to expand the class of persons who will pay a nil VAC for a new subclass 600 visa by extending the period in which a person's visa expired, or will expire.

#### ***Consultation***

- 6 Consultation on this change was done with the Department of Finance, Department of Foreign Affairs and Trade, Department of Education, Skills and Employment, Department of Prime Minister and Cabinet and the Treasury as part of the whole of Government decision process. These departments agreed with the changes implemented by the instrument.
- 7 The Office of Best Practice Regulation (OBPR) was also consulted and considered that the instrument dealt with matters of a minor nature and no regulatory impact statement was required. The OBPR reference number is 21-01216.

#### ***Details of the instrument***

- 8 Section 1 sets out the name of the instrument.
- 9 Section 2 provides for the commencement of the instrument on 15 December 2021.

- 10 Section 3 provides that LIN 21/021 is amended as set out in Schedule 1 to the instrument.
- 11 Item 1 of Schedule 1 amends paragraph 4(d) of LIN 21/021 by replacing the date of 31 December 2021 with 30 June 2022. This means that an applicant may receive a nil VAC amount if they held a subclass 600 visa that has expired or that will expire between 20 March 2020 and 30 June 2022. Paragraph 4(d) ensures an applicant may receive a nil VAC amount if their visa expires, or if it will expire before 1 July 2022. An applicant must meet the all requirements specified in paragraphs (a) to (f) in section 4 of LIN 21/021 to receive a nil VAC amount.
- 12 Item 2 of Schedule 1 inserts new section 5 into LIN 21/021. Section 5 provides that the amendments made by the instrument apply to an application made for a subclass 600 visa after 26 February 2021. This means that any applicant in the amended class of persons who makes an application for a subclass 600 visa on or after 27 February 2021 may be entitled to a nil VAC. This retrospective application is beneficial to visa applicants, and will enable the repayment of the VAC amount to those applicants in the class of persons who submitted a subclass 600 visa application before the instrument commences.

***Parliamentary scrutiny etc.***

- 13 The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because instruments made under Schedule 1 of the Regulations are prescribed as exempt in paragraph (b) of item 20 of section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.
- 14 The instrument was made by a delegate of the Minister, a Senior Executive Service Band One, in accordance with subparagraph 1236(2)(a)(iv) of Schedule 1 to the Regulations. The Senior Executive Service Band One was delegated the power to make the instrument by the Minister for Home Affairs.