

EXPLANATORY STATEMENT

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

Migration Regulations 1994

Migration (Class of persons for Visitor (Class FA) visa nil VAC) Repeal (LIN 23/069) Instrument 2023

- 1 The instrument, departmental reference LIN 23/069, is made under subparagraph 1236(2)(a)(iv) of Schedule 1 to the *Migration Regulations 1994* (the Migration Regulations).
- 2 The instrument repeals *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* (the Acts Interpretation Act). 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 the day after registration on the Federal Register of Legislation (FRL). The instrument is a legislative instrument for the purposes of the *Legislation Act 2003* (the Legislation Act).

Purpose

- 4 Subitem 1236(2) of Schedule 1 to the Migration Regulations sets out the amount of the visa application charge (VAC) payable by an applicant for a Visitor (Class FA) visa. Under subparagraph 1236(2)(a)(iv) of Schedule 1 to the Migration Regulations, in relation to an application for a Subclass 600 (Visitor) visa that is not in the Frequent Traveller stream, the Minister may, in an instrument in writing, specify a class of persons for whom the first instalment of the VAC is nil. There is no second instalment for an application for a Visitor (Class FA) visa.
- 5 LIN 21/021 specifies that certain former Subclass 600 (Visitor) visa holders could apply for a new Subclass 600 visa with a nil VAC, where their travel to Australia was affected by the COVID-19 Pandemic. The specified period within which Subclass 600 (Visitor) visa applicants could make a valid application without paying a VAC ended on 31 December 2022.
- 6 The purpose of LIN 23/069 is to repeal LIN 21/021, as the instrument is spent, and no longer required.

Consultation

- 7 The Office of Impact Analysis (OIA) was consulted and considered that the measures in this instrument are unlikely to have more than a minor impact, as LIN 21/021 is spent. Therefore an Impact Analysis is not required. The OIA reference number is OIA23-05310.

Parliamentary scrutiny etc.

- 8 The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because it is an instrument made under subparagraph 1236(2)(a)(iv) of Schedule 1 to the Migration Regulations. An instrument made under Schedule 1 to the Migration Regulations is exempt from disallowance under subitem 20(b) of the table in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.

- 9 As the instrument is exempt from disallowance, a Statement of Compatibility with Human Rights is not required.
- 10 Section 48A of the Legislation Act relevantly provides for the automatic repeal of amending and repealing instruments in certain circumstances. The only legal effect of LIN 23/069 is to repeal the legislative instrument LIN 21/021, and without making any application, saving or transitional provisions relating to the repeal of LIN 21/021. Subsection 48A(1) of the Legislation Act therefore operates to repeal LIN 23/069, with subsections 48A(2) and (3) of the Legislation Act providing for the time and effect of this repeal.
- 11 The instrument was made by a delegate of the Minister, in accordance with subparagraph 1236(2)(a)(iv) of Schedule 1 to the Migration Regulations.