

EXPLANATORY STATEMENT

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

Migration Act 1958

Migration Regulations 1994

Migration (Class of persons for Temporary Skill Shortage (Class GK) visa nil VAC) Instrument (LIN 21/006) 2021

- 1 The instrument, Departmental reference LIN 21/006, is made under subregulation 2.07(5) of the *Migration Regulations 1994* (the Migration Regulations) for the purpose of subparagraph 1240(2)(a)(iii) of Schedule 1 to the Migration Regulations.
- 2 The instrument commences on 27 February 2021, and is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

Purpose

- 3 The purpose of the instrument is to specify that certain former visa holders can apply for a new visa with a nil visa application charge (VAC) where their travel to and, or stay in, Australia has been affected by the COVID-19 pandemic.
- 4 Former holders of a Subclass 482 (Temporary Skill Shortage) visa (Subclass 482 visa) or Subclass 457 (Temporary Work (Skilled)) visa (Subclass 457 visa) will be able to apply for a Temporary Skill Shortage (Class GK) visa (Class GK visa) with a nil visa application charge (VAC) where they are within the circumstances specified in the instrument.
- 5 The instrument follows changes to the Migration Regulations by the *Migration Amendment (2021 Measures No. 1) Regulations 2021* (the Amendment Regulations). The Amendment Regulations relevantly insert subparagraph 1240(2)(a)(iii) into Schedule 1 to the Migration Regulations, providing that a nil VAC is payable where the visa applicant is in a class of persons specified in an instrument made by the Minister for that purpose under subregulation 2.07(5). The instrument specifies a class of persons for this purpose.

Consultation

- 6 The Department of the Treasury was consulted on, and agrees to, the measures introduced by the *Migration Amendment (2021 Measures No. 1) Regulations 2021*. No specific consultation was undertaken in relation to the instrument, as the instrument is necessary to give effect to the changes introduced by the Amendment Regulations. No public consultation was undertaken in relation to the instrument.
- 7 The Office of Best Practice Regulation (OBPR) was also consulted in relation to the amendment Regulations. OBPR assessed the changes to the Migrations Regulations to allow a nil VAC amount for the Class GK visa would likely have nil regulatory impacts, with the result being that a regulatory impact statement is not required. The OBPR reference number is 43194.

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 27 February 2021. This date aligns with Department system updates and the commencement of the Amendment Regulations. Any retrospective application of the instrument is permitted as the instrument confers a benefit of applying for a visa without having to pay VAC to the specified class of persons (see subsections 12(1A) and (2) of the Legislation Act).
- 10 Section 3 sets out definitions of terms used in the instrument.
- 11 Section 4 sets out, for subparagraph 1240(2)(a)(iii) of Schedule 1 to the Migration Regulations, the kind of applicants for a Class GK visa who are in a class of persons for a nil VAC.
- 12 Subsection 4(1) sets out that a primary applicant for a Class GK visa will have a nil VAC amount where they apply for a Class GK visa while outside of Australia, between 27 February 2021 and 31 December 2022, they formerly held a Subclass 482 visa or Subclass 457 visa and that visa ceased to be in effect between 1 February 2020 and 31 December 2021.
- 13 Subsection 4(2) provides that an application for a Class GK visa that is combined with an application made by a person who makes an application under subsection 4(1) will also receive a nil VAC amount.

Parliamentary scrutiny etc.

- 14 The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because instruments made under Schedule 2 of the Migration Regulations are prescribed in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015* (see paragraph 44(2)(b) of the Legislation Act).
- 15 The instrument was made by Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, in accordance with subregulation 2.07(5) of the Migration Regulations.