

## EXPLANATORY STATEMENT

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

*Migration Act 1958*

*Migration Regulations 1994*

### ***Migration (Refund of Visa Application Charge) Instrument (LIN 21/007) 2021***

- 1 The instrument, Departmental reference LIN 21/007, is made under subparagraph 2.12F(1)(a)(ii) of the *Migration Regulations 1994* (the Migration Regulations).
- 2 The instrument commences on the day after it is registered on the Federal Register of Legislation, and is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

#### ***Purpose***

- 3 The Minister is relevantly required under subregulation 2.12F(1) of the Migration Regulations to refund the first instalment of the visa application charge that has been paid in relation to an application for a visa if:
  - a circumstance specified by the Minister in a legislative instrument exists (subparagraph 2.12F(1)(a)(ii)); and
  - the Minister receives a request for a refund from the person who paid the visa application charge (or another person in limited circumstances prescribed in subregulation 2.12F(2A)) (paragraph 2.12F(1)(b)).
- 4 The purpose of the instrument is to specify circumstances under these provisions to allow refunds of the first instalment of visa application charge. Refunds are being made available in respect of visa holders and former visa holders who have been impacted due to COVID-19 pandemic travel restrictions introduced on 20 March 2020 and hold, or have held, the following visas:
  - Subclass 300 Prospective Marriage (Temporary) visa (section 5 to the instrument);
  - Subclass 403 Temporary Work (International Relations) visa in the Pacific Labour Scheme stream (PLS visas) (section 6);
  - Subclass 403 Temporary Work (International Relations) visa in the Seasonal Worker Program stream (SWP visas) (section 7);
  - Subclass 417 Working Holiday (Temporary) visa (section 8); and
  - Subclass 462 (Work and Holiday) visa (section 9).
- 5 Additional circumstances also need to be met in relation to each visa type before the Minister refunds the visa application charge, as detailed under separate headings below.

## **Prospective Marriage visa (Subclass 300 visa)**

- 6 The instrument specifies that the visa application charge for Prospective Marriage (Subclass 300) visa holders may be refunded if one of three circumstances apply to them.
- The visa ceased to be in effect between 20 March 2020 and 5 October 2020 while the visa holder was outside Australia and a refund is requested on or before 31 December 2022 (see subsection 5(3) of the instrument).
  - The visa ceased to be in effect between 20 March 2020 and 5 October 2020 while the visa holder was in Australia, but the visa holder was unable to marry their sponsor before the visa ceased because of restrictions imposed by COVID-19 pandemic, such as quarantine requirements or restrictions on interstate travel, and the visa holder made a request for a refund on or before 31 December 2022 (subsection 5(4)).
  - The visa was in effect between 6 October 2020 and 10 December 2020, the visa holder was outside Australia on 10 December 2020 and did not enter after that date on that visa, and the visa holder requested a refund on or before 31 December 2022 (subsection 5(6)). This circumstance only applies when, at the time the visa holder requests the refund, the visa had either ceased to be in effect or, if the visa had not ceased to be in effect at the time of a request to refund, the visa holder had already asked the Minister to cancel the visa before the application for refund (see paragraph 5(6)(d) in particular).
- 7 A visa application charge will not be refunded to a Subclass 300 visa holder under subsection 5(4), if the visa expired while they were in Australia, and they did not marry the sponsor only because of restrictions imposed as a result of the COVID-19 pandemic; which restricted the number of guests able to attend the proposed wedding, prevented guests or particular guests from attending, or prevented the wedding from taking place at a preferred time or location of the visa holder and visa holder's sponsor.
- 8 More generally, the Minister will not refund a visa application charge for a Subclass 300 visa holder if they fall under any of the three specified circumstances if:
- before their visa ceased to be in effect, the visa holder or sponsor notified the Minister that they no longer intended to marry (see paragraph 5(1)(a) of the instrument);
  - the visa was cancelled by the Minister (other than on the ground prescribed by paragraph 2.43(1)(g) or (h) of the Migration Regulations) (paragraph 5(6)(d)); or
  - at any time after the Subclass 300 visa was granted the visa holder applied for a Subclass 801 (Partner) visa and paid the first instalment of the visa application charge for the visa (paragraph 5(1)(b)). These people are excluded from the ability to claim a refund because they are able to apply for a Subclass 801 (Partner) visa with a reduced rate of visa application charge on the basis that they are a holder of a Subclass 300 visa (see paragraph 1124B(2)(a)(v) or 1124B(2)(a)(vi) of Schedule 1 to the Migration Regulations).

## **PLS visas**

- 9 The instrument specifies that the Minister may refund a visa application charge in relation to a PLS visa if all the following apply:
- the PLS visa was granted before 20 March 2020, but the person was not able to enter Australia on or before the date specified by the Minister on the visa (see paragraphs 6(3)(a) and (b) of the instrument);
  - a refund is requested on or before 31 December 2021 and, at the time of decision on the request for a refund, the visa was no longer in effect (paragraphs 6(3)(c) and (d)); and
  - if the visa ceased to be in effect because it was cancelled—the cancellation only occurred because the visa holder requested the Minister to cancel the visa in accordance with paragraph 2.43(1)(g) of the Migration Regulations (paragraph 6(3)(e)).
- 10 Under paragraph 2.43(1)(g) of the Migration Regulations, a person who holds a temporary visa (which includes all of the visas considered by this instrument) can request in writing that the Minister cancels the visa. A PLS visa holder seeking to access superannuation accumulated while previously working in Australia, must meet the eligibility requirements of the Australian Taxation Office for the Departing Australia Superannuation Payment. This includes (but is not limited to) the requirement that the person no longer holds a valid temporary Australian visa. If the PLS visa was cancelled on any other grounds, the circumstances will not apply and a refund of the visa application charge will not be available.

## **SWP visas**

- 11 The instrument specifies that the Minister may refund a visa application charge in relation to a SWP visa if all of the following apply:
- the SWP visa was granted before 20 March 2020 but the person was not able to enter Australia on or before the date specified by the Minister on the visa (see paragraphs 7(3)(a) and (b) of the instrument);
  - a refund is requested on or before 31 December 2021 and, at the time of decision on the request for a refund, the visa was no longer in effect (paragraphs 7(3)(c) and (d)); and
  - if the visa ceased to be in effect because it was cancelled—the cancellation only occurred because the visa holder requested the Minister to cancel the visa in accordance with paragraph 2.43(1)(g) of the Migration Regulations (paragraph 7(3)(e), see further explanation in relation to PLS visas above).

## **Working Holiday (Subclass 417) visa**

12. The instrument specifies the Minister may refund a visa application charge in relation to a Subclass 417 visa holder or former holder if all of the following apply:
- the visa was granted before 20 March 2020 and either the person did not enter Australia under the visa, or they departed Australia between 20 March 2020 and 31 December 2021 and did not re-enter Australia on that visa (see paragraphs 8(3)(a) and (b) of the instrument);

- the Subclass 417 visa ceased to be in effect between 20 March 2020 and 31 December 2021 while the person was outside of Australia (paragraph 8(3)(c));
  - if the visa ceased to be in effect because it was cancelled—the cancellation only occurred because the relevant person requested the Minister to cancel the visa in accordance with paragraph 2.43(1)(g) of the Migration Regulations (paragraph 8(3)(d)). If the Subclass 417 visa was cancelled on any other grounds, the circumstance will not apply and a refund of visa application charge will not be available;
  - the person has not applied for another Subclass 417 visa (paragraph 8(3)(e));
  - the person is unable to be granted another Subclass 417 visa because they do not satisfy the age requirements specified in paragraph 417.211(2)(b) of Schedule 2 to the Migration Regulations (paragraph 8(3)(f)); and
  - the refund is requested on or before 31 December 2022 (paragraph 8(3)(g)).
13. This circumstance is intended to capture visa holders and former visa holders who had been granted a Subclass 417 visa, and could not enter or re-enter Australia between 20 March 2020 and 31 December 2021 and are unable to be granted a further Subclass 417 visa as they exceed the upper age limit requirements (either 30 or 35 years, depending on the person’s nationality). This circumstance does not apply to persons who are under the upper age limit requirements to apply for a Subclass 417 visa.

#### **Work and Holiday (Subclass 462) visa**

14. The instrument specifies that the Minister may refund a Subclass 462 (Work and Holiday) visa holder or former holder the visa application charge if all of the following apply:
- the visa was granted before 20 March 2020 and either the person did not enter Australia under the visa, or they departed Australia between 20 March 2020 and 31 December 2021 and did not re-enter Australia on that visa (see paragraphs 9(3)(a) and (b) of the instrument);
  - the visa ceased to be in effect between 30 March 2020 and 31 December 2020 while the relevant person was outside of Australia (paragraph 9(3)(c));
  - if the visa ceased to be in effect because it was cancelled—the cancellation only occurred because the relevant person requested the Minister to cancel the visa in accordance with paragraph 2.43(1)(g) of the Migration Regulations (paragraph 9(3)(d)). If the Subclass 462 visa was cancelled on any other grounds, the circumstances will not apply and a refund of visa application charge will not be available;
  - the person has not applied for another Subclass 462 visa (paragraph 9(3)(e)); and
  - the person is unable to be granted another Subclass 462 visa because they do not satisfy the age requirements specified in clause 462.212 of Schedule 2 to the Migration Regulations (paragraph 9(3)(f)); and
  - the refund is requested on or before 31 December 2022 (paragraph 9(3)(g)).

15. This circumstance is intended to capture visa holders and former visa holders who had been granted a Subclass 462 visa, could not enter or re-enter Australia between 20 March 2020 and 31 December 2021, and are unable to be granted a further Subclass 462 visa as they exceed the upper age limit requirements. This circumstance does not apply to persons who are under the upper age limit requirements to apply for a Subclass 462 visa.

### ***Consultation***

16. On 23 September 2020 as part of the 2020-21 Budget, the Government announced measures to assist certain visa applicants and holders adversely affected by COVID19 and to support the attraction of visitors and workers to Australia. This will be achieved by offering refunds or by waiving the visa application charge (VAC) for certain temporary visas. Internal consultation was undertaken with the Legislation Branch, Migration and Citizenship Law Branch, Skilled and Family Visa Program Branch, Visa Business Optimisation Branch, Visa, Citizenship and Digital Systems Branch, Performance, Governance and Inquiries Branch and External Budget and Revenue Branch. External consultation was undertaken with the following departments as part of the whole of Government decision process:
- The Treasury
  - Department of Finance
  - Department of Foreign Affairs and Trade
  - Department of Education, Skills and Employment
  - Department of Prime Minister and Cabinet
17. The measures in this instrument have been informed by feedback received from a number of stakeholders, including affected visa holders and former holders, who have raised concerns about the impacts of ongoing COVID-19 related travel restrictions on these cohorts.
18. The Office of Best Practice Regulation (OBPR) was consulted and advised that no regulatory impact statement was required. The OBPR reference number is 42822.

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

19. Section 1 sets out the name of the instrument.
20. Section 2 provides for the commencement of the instrument, which is on the day after it is registered on the Federal Register of Legislation.
21. Section 3 sets out the authority under which the instrument is made, which is subparagraph 2.12F(1)(a)(ii) of the Migration Regulations.
22. Section 4 sets out the definition of terms used in the instrument. Notably, 'COVID-19 pandemic' is defined by reference to mean the pandemic declared by the World Health Organization on 11 March 2020, caused by the coronavirus COVID-19.
23. Section 5 prescribes the relevant circumstances under which the Minister may refund the first instalment of the visa application charge for a Subclass 300 Prospective Marriage visa (see paragraphs 6-8 above).

24. Section 6 prescribes the circumstances under which the Minister may refund the first instalment of the visa application charge for a PLS visa (see paragraphs 9-10 above).
25. Section 7 prescribes circumstances under which the Minister may refund the first instalment of the visa application charge for a SWP visa (see paragraph 11 above).
26. Section 8 prescribes circumstances under which the Minister may refund the first instalment of the visa application charge for a Subclass 417 visa (see paragraphs 12-13 above).
27. Section 9 prescribes the circumstances under which the Minister may refund the first instalment of the visa application charge for a Subclass 462 visa (see paragraphs 14-15 above).

***Parliamentary scrutiny etc.***

28. 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).
29. The instrument was made by the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, in accordance with subparagraph 2.12F(1)(a)(ii) of the Migration Regulations.