

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 Visitor (Class FA) visa nil VAC) Amendment Instrument (LIN 21/033) 2021

- 1 The instrument, Departmental reference LIN 21/033, is made under 1236(2)(a)(iv) of Schedule 1 to the *Migration Regulations 1994* (the Migration 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* (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 The instrument commences on 27 February 2021 retrospectively, and is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

Purpose

- 4 The purpose of the instrument is to clarify the types of former Subclass 600 (Visitor) visa (Subclass 600 visa) holders who can apply for a new Subclass 600 visa with a nil visa application charge (VAC) where their travel to Australia has been affected by the COVID-19 pandemic.
- 5 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 amends LIN 21/021 to clarify the applicants for a Subclass 600 visa who are in a class of person for a nil VAC.

Consultation

- 6 The Office of Best Practice Regulation (OBPR) was 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 42822.
- 7 Consultation was not done for this instrument. This is because the changes are minor and machinery in nature and do not substantially alter the existing arrangements.

Details of the instrument

- 8 Section 1 sets out the name of the instrument.
- 9 Section 2 provides that the instrument is taken to have commenced on 27 February 2021. 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 provides the LIN 21/021 is amended as set out in Schedule 1 to the instrument.
- 11 Section 4 of LIN 21/021 provides that an applicant for a Subclass 600 visa will not pay a VAC if all the circumstances specified in that section apply to the applicant.
- 12 Item 1 of Schedule 1 to the instrument amends paragraph 4(c) of LIN 21/021. That paragraph provides that for an applicant to receive a nil VAC they must have been granted a Subclass 600 visa while outside of Australia before 21 March 2020. This excluded visas granted in the Frequent Traveller stream.
- 13 Item 1 of Schedule 1 to the instrument amends paragraph 4(c) of LIN 21/021 to remove the limitation on former Subclass 600 visa holders in the Frequent Traveller steam from being eligible for a nil VAC when making an application in accordance with LIN 21/021. Former visa holders in the Frequent Traveller stream must meet all other elements specified in LIN 21/021 to receive a nil VAC.

Parliamentary scrutiny etc.

- 14 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*.
- 15 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 the Minister for Home Affairs.