

EXPLANATORY STATEMENT

Issued by authority of the Minister of Home Affairs

Migration Regulations 1994

Migration (Class of persons: Nil VAC for Work and Holiday and Working Holiday visas) Instrument (LIN 21/043) 2021

- 1 The instrument, Departmental reference LIN21/043, is made under subregulation 2.07(5) and subparagraphs 1224A(2)(a)(i) and 1225(2)(a)(i) of Schedule 1 to the *Migration Regulations 1994* (the Regulations).
- 2 The instrument commences on 1 July 2021, and is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

Purpose

- 3 The Working Holiday Maker (WHM) program consists of two visa subclasses, the Working Holiday (Subclass 417) visa and the Work and Holiday (Subclass 462) visa (WHM visas). The key differences between the two visa subclasses are that Subclass 462 (Work and Holiday) visa arrangements have caps on the number of first visas granted annually (except for the United States of America) and include additional eligibility requirements such as a minimum education level, English language proficiency and letters of support from a partner country government. Subclass 417 (Working Holiday) visa arrangements are uncapped with no limit on the annual number of visa grants.
- 4 WHM visas are granted with a 12-month stay period. There are incentives for working holiday makers (WHMs) to work in locations and industries with critical work shortages, referred to as 'specified work'. While WHMs are not required to work at all, they can work in any area, occupation or industry. WHMs can be granted a second or third WHM visa if they have carried out prescribed minimum periods of specified work on their previous WHM visa.
- 5 LIN 21/043 is being made to accompany changes to applications for the WHM visas made to the Regulations by the *Home Affairs Legislation Amendment (2021 Measures No. 1) Regulation 2021* (the Amendment Regulations).
- 6 The Amendment Regulations insert new regulation 1.15P. The purpose of regulation 1.15P is to describe the visas that are COVID-19 affected visas. A WHM visa is a COVID-19 affected visa if all of the following requirements are met under subregulation 1.15P(1):
 - the visa was in force during the travel restrictions resulting from the COVID-19 pandemic. This is defined as meaning that the visa was granted before 20 March 2020 and ceased to be in effect on or after that day (paragraphs 1.15P(1)(a) and (b)); and
 - the visa expired, or was cancelled at the request of the visa holder, by 31 December 2021, at a time when the visa holder was outside Australia; or the visa, if still in effect, will expire by 31 December 2021 (paragraphs 1.15P(1)(e) and (f)); and
 - the holder or former holder of the visa is outside Australia and applies for another WHM visa, between 1 July 2021 and 31 December 2022 (paragraphs 1.15P(1)(c) and (d)).

- 7 New subregulation 1.15P(2) provides that the Minister may, by legislative instrument, specify kinds of WHM visas for the purposes of the definition of COVID-19 affected visa in regulation 1.03, which was also a new definition inserted by the Amendment Regulations.
- 8 The Amendment Regulations also relevantly insert new subparagraphs 1224A(2)(a)(i) and 1225(2)(a)(i). The purpose of this instrument is to specify under subparagraphs 1224A(2)(a)(i) and 1225(2)(a)(i) that a nil visa application charge (VAC) will apply to a class of persons who hold or held a WHM visa, as described in subregulation 1.15P(1).
- 9 An applicant will be in a class of persons (as set out in sections 4 and 5 of the instrument) to whom a nil VAC will apply if they meet both of the following criteria:
 - the applicant's last held visa is a COVID-19 affected visa of a kind mentioned in subregulation 1.15P(1);
 - the applicant has not made any other nil VAC application for a WHM visa that is not finalised, or was refused.
- 10 These criteria capture WHMs whose visas were affected by COVID-19, so that they can apply for another WHM visa with a nil VAC. Additionally, the class is limited so that an applicant can only be granted one nil VAC visa, and cannot make repeat applications if it is refused. However, an applicant who withdraws a nil VAC application can reapply.

Consultation

- 11 Consultation was undertaken before the instrument was made with, and agreed to by, the following Departments, as part of a whole of government decision process: Treasury, Finance, Foreign Affairs and Trade, Education, Skills and Employment and Prime Minister and Cabinet. Public consultation was undertaken with Hospitality and Tourism industry peak bodies through the Department's Tourism Visa Advisory Group to communicate the change.
- 12 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 42822.

Details of the instrument

- 13 Section 1 sets out the name of the instrument.
- 14 Section 2 provides for the commencement of the instrument on 1 July 2021.
- 15 Section 3 sets out definitions of terms used in this instrument.
- 16 Section 4 sets out, for subregulation 2.07(5) and subparagraph 1225(2)(a)(i) of Schedule 1 of the Regulations, the kind of applicants for a Subclass 417 (Working Holiday) visa who will be in a class of persons for a nil VAC.
- 17 Section 5 sets out, for subregulation 2.07(5) and subparagraph 1224A(2)(a)(i) of Schedule 1 to the Regulations, the kinds of applicants for a Subclass 462 (Work and Holiday) visa who will be in a class of persons for a nil VAC.

Parliamentary scrutiny etc.

- 18 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*.
- 19 The instrument was made by a delegate of the Minister, A/g Senior Executive Service Band One, Immigration, Integrity, Assurance and Policy Division, acting under subregulation 2.07(5) of the Migration Regulations for the purposes of subparagraphs 1224A(2)(a)(i) and 1225(2)(a)(i) of Schedule 1 to the Migration Regulations. The Senior Executive Service Band One was delegated the power to make the instrument by *Migration (Minister—Instrument-making powers for Department and Australian Border Force) Delegation 2021*.