

## EXPLANATORY STATEMENT

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

*Migration Regulations 1994*

### ***Migration (Refund of Visa Application Charge) Amendment Instrument (LIN 22/027) 2022***

- 1 The instrument, Departmental reference LIN 21/027, is made under subparagraph 2.12F(1)(a)(ii) of the *Migration Regulations 1994* (the Regulations).
- 2 The instrument amends the *Migration (Refund of Visa Application Charge) Instrument (LIN 21/007) 2021* (LIN 21/007) 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 19 January 2022 and is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

#### ***Purpose***

- 4 The Minister is required to refund the first instalment of a visa application charge (VAC) paid in relation to an application for a visa if, relevantly, a circumstance specified by the Minister by legislative instrument under subparagraph 2.12F(1)(a)(ii) of the Regulations exists. LIN 21/007, before commencement of the instrument, specified a number of different circumstances where the VAC may be refunded for different temporary visa subclasses where visa holders have been impacted by the COVID-19 pandemic.
- 5 The instrument amends LIN 21/007 to specify an additional circumstance where the first instalment of VAC may be refunded, to encourage visa holders in nominated subclasses to travel to Australia and participate in the Australian economy.
- 6 The instrument provides that Student visa holders who travel to Australia and arrive between 19 January 2022 and 19 March 2022 will be refunded the visa application charge they paid when they applied for their Student visa. The current visa application charge for a Student visa is \$630. Dependent visa applicants will also have their visa application charges refunded if they travel to Australia during this period.
- 7 Working holiday makers who travel to Australia between 19 January 2022 and 19 April 2022 will be refunded the visa application charge they paid when they applied for their Working Holiday Maker program visa. The current visa application charge for a Working Holiday Maker program visa is \$495.
- 8 The instrument specifies that this measures will apply to students and working holiday makers who already have visas, as well as those who are granted new visas, and travel to Australia within this timeframe. Primary and secondary visa holders will be eligible for a refund.

- 9 There are currently approximately 150,000 Student and 23,500 Working Holiday Maker visa holders offshore who may be able to utilise these measures, as well as new visa applicants who are granted a visa and travel to Australia during the specified period.

### ***Consultation***

- 10 No consultation was done for this instrument as it generally confers a benefit and it seeks to have immediate impact.

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

- 11 Section 1 sets out the name of the instrument.
- 12 Section 2 provides for the commencement of the instrument on 19 January 2022.
- 13 Section 3 provides for LIN 21/007 to be amended in accordance with the terms of Schedule 1. Given that the instrument confers a benefit on visa holders, by way of a VAC refund, any retrospective commencement and application of the instrument is supported by subsections 12(1A) and (2) of the Legislation Act.
- 14 Schedule 1 to the instrument has one item, which inserts new section 10 into LIN 21/007.
- 15 Subsection 10(1) provides that section 10 applies only in relation to the application of a first instalment of VAC that has been paid in relation to an eligible student visa (as defined by subsection (4)), a Subclass 417 (Working Holiday) visa and a Subclass 462 (Work and Holiday) visa.
- 16 Subsection 10(2) provides that subsection (3) specifies a circumstance for the purposes of paragraph 2.12F(1)(a)(ii) of the Regulations.
- 17 Subsection 10(3) outlines the circumstance in which a visa holder may be eligible for a VAC refund, which are where:
- if the visa holder has an eligible student visa—the visa holder entered Australia on that visa in the period between 19 January 2022 and 19 March 2022 inclusive (subparagraph 10(3)(a)(i));
  - if the visa holder has a Subclass 417 or Subclass 462 visa—the visa holder entered Australia on that visa in the period between 19 January 2022 and 19 April 2022 inclusive (subparagraph 10(3)(a)(ii)); and
  - in all cases—the application for refund, a requirement under subparagraph 2.21F(1)(b)(i) of the Regulations, is received on or before 31 December 2022 (paragraph 10(3)(b)).
- 18 Whether or not a visa holder is eligible for a refund is not contingent upon when their visa was granted. The circumstance specified in subsection 10(3) includes visas granted before, on or after the commencement of the instrument.
- 19 Subsection 10(4) defines the term ‘eligible student visa’ for the purpose of section 10, to include visas in 7 separate subclasses as a short-hand reference for paragraph 10(1)(a) and subparagraph 10(3)(a)(i). This definition is intended to be distinct from the definition of ‘student visa’ in regulation 1.03 of the Regulations.

***Parliamentary scrutiny etc.***

- 20 The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because the instrument is prescribed in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.
- 21 The instrument was made by the Hon Alex Hawke MP, Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, in accordance with subparagraph 2.12F(1)(a)(ii) of the Regulations.