

EXPLANATORY STATEMENT

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

Migration Regulations 1994

Migration (Nil VAC for Work and Holiday and Working Holiday visas) Instrument (LIN 22/042) 2022

- 1 The instrument, Departmental reference LIN 22/042, is made under subregulation 2.07(5) of the *Migration Regulations 1994* (the Regulations).
- 2 The instrument repeals *Migration (Class of persons: Nil VAC for Work and Holiday and Working Holiday visas) Instrument (LIN 21/043) 2021* (LIN 21/043) in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*. 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. This means that subregulation 2.07(5) of the Regulations also include a power to amend or repeal an instrument made under that provision.
- 3 The instrument commences on 5 March 2022, and is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

Purpose

- 4 The Working Holiday Maker (WHM) program consists of two visa subclasses, the Working Holiday (Subclass 417) visa (subclass 417 visa) and the Work and Holiday (Subclass 462) visa (subclass 462 visa). The *Migration Amendment (Subclass 417 and 462 Visas) Regulations 2022* (the Amendment Regulations) amends the Regulations to provide concessional arrangements for certain WHMs in Australia affected by the COVID-19 pandemic.
- 5 The Amendment Regulations insert two new defined terms to the definition of *COVID-19 affected visa* in regulation 1.03 of the Regulations, being *offshore COVID-19 affected visa* and *onshore COVID-19 affected visa*.¹ The establishment of the new term *onshore COVID-19 affected visa* establishes a cohort that may be eligible, in certain circumstances, for a 'nil' visa application charge (VAC) concession.
- 6 The purpose of the instrument is to specify the class of persons for whom the base application charge (payable at the time a visa application is made) for a subclass 417 visa or subclass 462 visa is nil, for subparagraph 1224A(2)(a)(i) and 1225(2)(a)(i) of Schedule 1 to the Regulations.
- 7 An applicant for a subclass 417 visa or a subclass 462 visa is in the class of persons for nil VAC if they are not an excluded applicant,² and either:
 - last held an offshore COVID-19 affected visa and applies for a subclass 417 visa or a subclass 462 visa outside Australia; or
 - last held an onshore COVID-19 affected visa and applies for a subclass 417 visa or a subclass 462 visa in Australia.

¹ Subregulation 1.15P(2A) of the *Migration Amendment (Subclass 417 and 462 Visas) Regulations 2022* provides that a subclass 417 visa or subclass 462 visa is an *onshore COVID-19 affected visa* if certain requirements are met.

² *excluded applicant* is defined in section 3 of the instrument.

- 8 This extends the ‘nil’ VAC concession introduced by LIN 21/043, which is available to certain WHM visa applicants who apply outside Australia, subject to meeting eligibility requirements. The expanded class includes working holiday makers who were unable to come to Australia or had to leave early due to COVID-19, as well as working holiday makers who remained in Australia but were unable to take advantage of their visa due to significant disruptions in employment and travel opportunities.

Consultation

- 9 The policy measure supported by the instrument was announced on 22 June 2021 by the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, following approval from the Prime Minister and with the support of key ministerial colleagues including the then Minister for Trade, Tourism and Investment.
- 10 The Office of Best Practice Regulation (OBPR) was consulted and considered that the instrument dealt with matters of a machinery nature and no regulatory impact statement was required. The OBPR reference number is 44225.
- 11 No further specific consultation was undertaken for the instrument. This is because the matters implemented by the instrument follow changes made to the Regulations by the Amendment Regulations. Consultation undertaken in relation to the concessional arrangements for WHMs generally is set out in the Explanatory Statement for the Amendment Regulations.

Details of the instrument

- 12 Section 1 sets out the name of the instrument.
- 13 Section 2 provides for the commencement of the instrument on 5 March 2022.
- 14 Section 3 sets out the definitions of terms used in the instrument. Under this section, ***excluded applicant*** means an applicant who has applied for a subclass 417 visa or a subclass 462 visa with nil VAC and:
- the applicant has been granted the visa; or
 - the applicant has been refused the visa; or
 - the application is not finalised.
- 15 These criteria capture WHMs whose visas were affected by COVID-19, so that they can apply for another subclass 417 visa or subclass 462 visa without needing to pay a VAC. Additionally, the class of persons is limited so that an applicant for a subclass 417 visa or a subclass 462 visa 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.
- 16 Section 4 provides that the VAC amount is nil for subclass 417 visa applicants captured in subsections 4(2) and (3).
- 17 Section 5 provides that the VAC amount is nil for subclass 462 visa applicants captured in subsections 5(2) and (3).

- 18 Section 6 repeals *Migration (Class of persons: Nil VAC for Work and Holiday and Working Holiday visas) Instrument (LIN 21/043) 2021*.

Parliamentary scrutiny etc.

- 19 The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because it is an instrument made under subregulation 2.07(5) of the Regulations, which is exempt from disallowance under paragraph (b) of item 20 in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.
- 20 The instrument was made by a delegate of the Minister, in accordance with subregulation 2.07(5) of the Regulations.