

## EXPLANATORY STATEMENT

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

*Migration Regulations 1994*

### ***Migration (Class of Persons for Nil VAC—CCAMLR) Instrument (LIN 24/036) 2024***

1. The instrument, departmental reference LIN 24/036, is made under the following provisions of the *Migration Regulations 1994* (Migration Regulations):
  - (a) sub-subparagraph 1231(2)(a)(iv)(A) of Schedule 1;
  - (b) subparagraph 1236(2)(a)(iv) of Schedule 1; and
  - (c) subregulation 2.07(5) for the purposes of subparagraph 1237(2)(a)(i) of Schedule 1.
2. The instrument commences on the day after it is registered on the Federal Register of Legislation. It is a legislative instrument for the purposes of the *Legislation Act 2003* (the Legislation Act).

#### ***Purpose***

3. The purpose of this instrument is to specify the classes of persons who do not have to pay the visa application charge (VAC) when applying for a visa to enter Australia on the basis that they have official business with the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR). This includes people who are representatives of a Party and their family members, staff members of CCAMLR and their family members, experts or consultants on missions for CCAMLR, and observers (CCAMLR applicants).
4. To be eligible for the VAC waiver, applicants must be applying for one of the following classes of visa:
  - Subclass 400 – Temporary Work (Short Stay Specialist) visa; or
  - Subclass 600 – Visitor visa (Business Visitor and Tourist streams); or
  - Subclass 408 – Temporary Activity visa (Invited Participant in an event).
5. The Headquarters Agreement between CCAMLR and the Government of Australia entered into force on 8 September 1986. In November 2023, the Government committed to improve the process for CCAMLR applicants. In January 2024, following consultation, the Department determined that this was best achieved by introducing a legislative instrument to facilitate a nil VAC for all CCAMLR applicants.
6. LIN 24/036 facilitates compliance with the Headquarters Agreement between CCAMLR and the Australian Government, by ensuring that all individuals specified in Article 19(1)

are eligible to apply for a visa without paying a VAC. The instrument facilitates the automatic issuance of nil VAC for the required classes of CCAMLR applicants, in accordance with the Headquarters Agreement.

### ***Consultation***

7. The Department consulted with the Attorney-General's Department (AGD), Department of Foreign Affairs and Trade (DFAT), and the Australian Antarctic Division (AAD) of the Department of Climate Change, Energy, the Environment and Water. AGD, DFAT, and AAD supported the policy behind the instrument.
8. The Department also consulted with CCAMLR in the proposal to draft this instrument.

### ***Regulatory Impact Assessment***

9. The Office of Impact Analysis (OIA) determined that a detailed Impact Analysis was not required, as there were few applications for the specified visa subclasses in any one year that would impact Australian businesses, community organisations or individuals. The OIA reference number is OIA24-06970.

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

#### *Introductory material*

10. Section 1 sets out the name of the instrument.
11. Section 2 provides that the instrument commences the day after it is registered on the Federal Register of Legislation.
12. Section 3 provides that the instrument is made under the following provisions of the Migration Regulations:
  - (a) sub-subparagraph 1231(2)(a)(iv)(A) of Schedule 1;
  - (b) subparagraph 1236(2)(a)(iv) of Schedule 1; and
  - (c) subregulation 2.07(5) for the purposes of subparagraph 1237(2)(a)(i) of Schedule 1.

#### *Section 4 – Definitions*

13. Section 4 provides definitions for various terms used in the instrument, including CCAMLR, CCAMLR applicant, Convention, Expert, family member (to recognise more contemporary language and conventions), Migration Regulations, Observer to CCAMLR, Party, Representative of a Party, Scientific Committee, Staff member, subclass 400 visa, subclass 408 visa, subclass 600 visa, and VAC.
14. **CCAMLR** is defined as the Commission for the Conservation of Antarctic Marine Living Resources.

15. The **Convention** is defined as the Convention on the Conservation of Antarctic Marine Living Resources drawn up at Canberra on 20 May 1980, which entered into force on 7 April 1982.
16. A **CCAMLR applicant** is defined as an applicant who has official business with CCAMLR or the subsidiary bodies established by CCAMLR or the Scientific Committee as:
  - (a) a representative of a Party; or
  - (b) a staff member of CCAMLR; or
  - (c) an expert or consultant on missions for CCAMLR; or
  - (d) an observer to CCAMLR.
17. A **family member** means a person who is a member of the family unit of a person mentioned in paragraph (a) or (b) of the definition of **CCAMLR applicant**.
18. **Migration Regulations** means the *Migration Regulations 1994*.
19. An **Observer to CCAMLR** is defined as a person who has been invited by CCAMLR or the Scientific Committee to attend their meetings or the meetings of their subsidiary bodies, and who is representing an organisation, including an intergovernmental or non-governmental organisation.
20. A **Party** refers to a Party to the Convention.
21. A **Representative of a Party** is defined as a representative of a Party to the Convention attending Conferences or meetings convened by CCAMLR or its subsidiary bodies, including delegates, alternates, advisers, technical experts, and secretaries of delegations.
22. The **Scientific Committee** is defined as the Scientific Committee of CCAMLR and its subsidiary bodies.
23. A **staff member** is defined as the Executive Secretary and all persons appointed or recruited for full-time employment with CCAMLR and subject to its staff regulations, excluding experts and persons recruited locally and assigned to hourly rates of pay.
24. **VAC** means visa application charge.

*Section 5 – Subclass 400 – Temporary Work (Short Stay Specialist) visa*

25. The Subclass 400 – Temporary Work (Short Stay Specialist) visa (subclass 400 visa) is a subclass of the Temporary Work (Short Stay Specialist) (Class GA) visa class.
26. Subitem 2 of item 1231 of Schedule 1 of the Migration Regulations sets out the VAC for this visa class.

27. Sub-subparagraph 1231(2)(a)(iv)(A) of Schedule 1 of the Migration Regulations provides that, for a person who is in a class of persons specified by the Minister in an instrument in writing for this subparagraph, the VAC is nil.
28. Section 5 of the instrument specifies that, for sub-subparagraph 1231(2)(a)(iv)(A) of Schedule 1 of the Migration Regulations, the VAC is nil for a CCAMLR applicant or their family members where a person is applying for any stream of the subclass 400 visa.

*Section 6 – Subclass 600 – Visitor visa*

29. The Subclass 600 – Visitor visa (subclass 600 visa) is a subclass of the Visitor (Class FA) visa class.
30. Subitem 2 of item 1236 of Schedule 1 of the Migration Regulations sets out the VAC for this visa class.
31. Subparagraph 1236(2)(a)(iv) of Schedule 1 of the Migration Regulations provides that, for a person who is in a class of persons specified by the Minister in an instrument in writing for this subparagraph, the VAC is nil.
32. Section 6 of the instrument specifies that, for subparagraph 1236(2)(a)(iv) of Schedule 1 of the Migration Regulations, the VAC is nil for a CCAMLR applicant or their family members where a person is applying for either the Business Visitor stream or the Tourist stream of the subclass 600 visa.

*Section 7 – Subclass 408 – Temporary Activity visa*

33. The Subclass 408 – Temporary Activity visa (subclass 408 visa) is a subclass of the Temporary Activity (Class GG) visa class.
34. Subitem 2 of item 1237 of Schedule 1 of the Migration Regulations sets out the VAC for this visa class.
35. Subparagraph 1237(2)(a)(i) of Schedule 1 of the Migration Regulations provides that the VAC is nil for an applicant in a class of persons specified by the Minister in a legislative instrument made for the purposes of the subparagraph under subregulation 2.07(5) of the Migration Regulations.
36. Section 7 of the instrument specifies that, for subparagraph 1237(2)(a)(i) of Schedule 1 of the Migration Regulations, the VAC is nil for:
  - (a) a CCAMLR applicant or their family members where a person is applying for a subclass 408 visa under the *Invited participant in an event* provision in clause 408.221 of Schedule 2 of the Migration Regulations; or

- (b) an applicant who is seeking to satisfy secondary criteria only for the grant of a subclass 408 visa on the basis that they are a family member of a person who already holds a subclass 408 visa that was granted to them as CCAMLR applicant.

***Parliamentary scrutiny etc.***

37. The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because it is a legislative instrument made under Part 2 and Schedule 1 to the Migration Regulations, which is prescribed under paragraph (b) of item 20 of the table in section 10 of *the Legislation (Exemptions and Other Matters) Regulation 2015* as an instrument not subject to disallowance.
38. As the instrument is exempt from disallowance, a Statement of Compatibility with Human Rights is not required.
39. The instrument is made by a delegate of the Minister for Immigration, Citizenship and Multicultural Affairs in accordance with sub-subparagraph 1231(2)(a)(iv)(A), subparagraph 1236(2)(a)(iv) of Schedule 1 and subregulation 2.07(5) for the purposes of subparagraph 1237(2)(a)(i) of Schedule 1 to the Migration Regulations.