

EXPLANATORY STATEMENT

Issued by authority of the Minister for Immigration and Multicultural Affairs

Migration Regulations 1994

Migration (Refund of Visa Application Charge) Amendment (Business Innovation and Investment Program) Instrument (LIN 24/062) 2024

- 1 The instrument, departmental reference LIN 24/062, is made under subparagraph 2.12F(1)(a)(ii) of the *Migration Regulations 1994* (the Migration Regulations).
- 2 The instrument amends *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 the day after registration. It is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

Purpose

- 4 The Minister is relevantly required under subregulation 2.12F(1) of the Migration Regulations to refund the first instalment of the visa application charge (VAC) that has been paid in relation to an application for a visa if:
 - a circumstance specified by the Minister in a legislative instrument exists in accordance with subparagraph 2.12F(1)(a)(ii) of the Migration Regulations; and
 - the Minister receives a request for a refund, from the person who paid the VAC (or another person in prescribed circumstances) in accordance with paragraph 2.12F(1)(b) of the Migration Regulations.
- 5 The purpose of the instrument is to amend LIN 21/007 to specify additional circumstances where the first instalment of a VAC may be refunded, following the closure of the Subclass 132 (Business Talent (Permanent)) visa, and the Subclass 188 (Business Innovation and Investment (Provisional)) visa. The Subclass 132 visa and Subclass 188 visa closed to new applications on 1 July 2021 and 31 July 2024 respectively.
- 6 The instrument provides that the first instalment of the VAC for an application made for a Subclass 132 visa or a Subclass 188 visa in the Business Innovation, Investor, Significant Investor, or Entrepreneur streams, where the application has not been finally determined and where the applicant has requested to withdraw the application on or after 31 July 2024, must be refunded.

Consultation

- 7 Consultation was undertaken with the Department of the Prime Minister and Cabinet, the Department of the Treasury, the Department of Finance, and Austrade, where each were consulted on the closure of

the BIIP. Relevant state and territory government counterparts were also notified of the government's intention to close the BIIP.

- 8 The Office of Impact Analysis (OIA) was consulted and considered that the instrument dealt with matters of a minor or machinery nature and no impact analysis was required. The OIA reference number is OIA24-0708484.

Details of the instrument

- 9 Section 1 sets out the name of the instrument.
- 10 Section 2 provides for the commencement of the instrument the day after registration.
- 11 Section 3 provides that the instrument is made under subparagraph 2.12F(1)(a)(ii) of the Migration Regulations.
- 12 Section 4 provides that each instrument specified in a Schedule to the instrument is amended or repealed as set out in the Schedule, and that any other item in a Schedule to the instrument has effect according to its terms.
- 13 Item 1 of Schedule 1 to the instrument inserts new section 11 in the principal instrument LIN 21/007.
- 14 Subsection 11(1) provides that section 11 applies in relation to a refund of the amount paid by way of the first instalment of the VAC that has been paid in relation to an application for a Subclass 132 visa or a Subclass 188 visa in the Business Innovation, Investor, Entrepreneur, or Significant Investor streams.
- 15 Subsection 11(2) provides that subsection 11(3) specifies the circumstances for a refund of the first instalment of a VAC refund for a Subclass 132 visa and a Subclass 188 visa, in the relevant streams.
- 16 Subsection 11(3) specifies the circumstance in which an applicant for a Subclass 132 visa or a Subclass 188 visa in the Business Innovation, Investor, Entrepreneur or Significant Investor streams may be eligible for a VAC refund. The circumstance is that each of the criteria set out in paragraphs 11(3)(a), (b), (c) and (d) must apply.
- 17 Paragraph 11(3)(a) provides that the application may have been made at any time. Paragraph 11(3)(b) provides that the application must not have been finally determined. Paragraph 11(3)(c) provides that the Minister must have received a written request to withdraw the visa application, and paragraph 11(3)(d) provides that the request to withdraw the application must have been made in writing on or after 31 July 2024.

Parliamentary scrutiny etc.

- 18 The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because instruments made under Part 2 of the Migration Regulations are prescribed by paragraph (b) of item 20 of section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.
- 19 The instrument was made by a delegate of the Minister for Immigration and Multicultural Affairs in accordance with subparagraph 2.12F(1)(a)(ii) of the Migration Regulations.