

## EXPLANATORY STATEMENT

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

*Migration Regulations 1994*

### ***Migration (VAC refunds for certain Prospective Marriage visas) Amendment Instrument (LIN 21/071) 2021***

- 1 The instrument, Departmental reference LIN 21/071, is made under subparagraph 2.12F(1)(a)(ii) of the *Migration Regulations 1994* (the 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*. 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, and 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 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 (subparagraph 2.12F(1)(a)(ii) of the Regulations); and
  - the Minister receives a request for a refund, generally from the person who paid the VAC (paragraph 2.12F(1)(b) of the Regulations).
- 5 The purpose of the instrument is to amend LIN 21/007 to specify additional circumstances under these provisions to allow refunds of the first instalment of a VAC. Refunds are being made available to certain persons who continue to be adversely impacted by COVID-19 related travel difficulties and hold, or have held, a Subclass 300 Prospective Marriage (Temporary) visa (Prospective Marriage visa).
- 6 The instrument specifies two additional circumstances in which the first instalment VAC for Prospective Marriage visa holders or former holders (visa holders) may be refunded.
- 7 The circumstances specified for VAC refunds in LIN 21/007 have not changed.

#### ***Consultation***

- 8 Consultation has been undertaken with and agreed to by the Treasury, Department of Prime Minister and Cabinet and Department of Finance as part of the 2020-21 Budget. The changes proposed to be made by this instrument have been informed by feedback received from a number of stakeholders, including affected visa holders, who have raised concerns about the impacts of ongoing COVID-19 related travel difficulties.

9 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***

10 Section 1 sets out the name of the instrument.

11 Section 2 provides for the commencement of the instrument on the day after registration.

12 Section 3 states that Schedule 1 to the instrument amends LIN 21/007.

13 Item 1 of Schedule 1 amends subsection 5(2) of LIN 21/007, to provide that new subsections 5(4A) and (7) specify a circumstance.

14 Item 2 of Schedule 1 inserts, after subsection (4), new subsection 5(4A), which specifies a new circumstance under which the Minister may refund the first instalment of a VAC for a Prospective Marriage visa. New subsection 5(4A) provides that the Minister may refund a VAC in relation to a Prospective Marriage visa if:

- the visa was in effect on 10 September 2021; and
- the visa holder entered Australia when the visa was in effect; and
- the visa holder was unable to marry their sponsor before the visa ceased because of restrictions imposed by COVID-19 pandemic; and
- a refund is requested on or before 31 December 2022; and
- at the time of the request the visa had ceased to be in effect.

15 New subsection 5(4A) provides a VAC will not be refunded, if the visa holder did not marry their sponsor because of restrictions imposed as a result of the COVID-19 pandemic that restricted the number of guests able to attend the proposed wedding, prevented guests or particular guests from attending, or prevented the wedding from taking place at a preferred time or location of the visa holder and visa holder's sponsor (see subsection 5(5) of LIN 21/007).

16 Item 3 of Schedule 1 omits reference to paragraph 4(d) in subsection 5(5) of LIN 21/007 and inserts new references to subsections 5(4) and (4A). This amendment makes clear that a VAC will not be refunded under the circumstances specified in subsection 5(4) or (4A), if subsection 5(5) applies.

17 Item 4 of Schedule 1 inserts, after subsection 5(6), new subsection 5(7), which specifies a new circumstance under which the Minister may refund the first instalment of a VAC for a Prospective Marriage visa. New subsection 5(7) provides that the Minister may refund a VAC in relation to a Prospective Marriage visa if:

- the visa was in effect on 15 September 2021; and
- the visa holder was outside Australia on 15 September 2021 and did not enter Australia after 15 September 2021 as a holder of that visa; and

- a refund is requested on or before 31 December 2022; and
- at the time of request for refund, the visa ceased to be in effect because the visa holder had requested the Minister to cancel the visa in accordance with paragraph 2.43(1)(g) or (h) of the Regulations.

18 Consistent with the general circumstances set out in paragraphs 5(1)(a) and (b) of LIN 21/007, VAC refunds are not available for visa holders under new subsections 5(4A) and (7) if:

- before the refund request, the visa holder or their sponsor notified the Minister that they no longer intend to marry; or
- at any time after their visa was granted, the visa holder applied for a Subclass 801 (Partner) visa and paid a reduced VAC under subparagraphs 1124B(2)(a)(v) or 1124B(2)(a)(vi) of Schedule 1 to the Regulations.

***Parliamentary scrutiny etc.***

19 The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because instruments made under Part 2 of the Regulations are prescribed in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015* (see paragraph 44(2)(b) of the Legislation Act).

20 The instrument was made by the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, in accordance with subparagraph 2.12F(1)(a)(ii) of the Regulations.

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