

EXPLANATORY STATEMENT

Migration Regulations 1994

SPECIFICATION OF INCOME THRESHOLD AND ANNUAL EARNINGS 2015

(Paragraphs 2.72(10)(cc) and 2.79(1A)(b) and subregulation 2.72(10AB))

1. This Instrument is made under paragraphs 2.72(10)(cc) and 2.79(1A)(b) and subregulation 2.72(10AB) of Division 2.17 of Part 2A to the *Migration Regulations 1994* (the Regulations).
2. The Instrument revokes IMMI 13/028 (F2013L01231) under section 33(3) of the *Acts Interpretation Act 1901*.
3. The Instrument operates to specify the *temporary skilled migration income threshold* and *annual earnings* in relation to the Subclass 457 (Temporary Work (Skilled)) Visa programme.
4. Under paragraph 2.72(10)(cc), for a standard business sponsor nomination of a Subclass 457 (Temporary Work (Skilled)) visa to be approved, the Minister must be satisfied that the base rate of pay of an Australian citizen or permanent resident, performing equivalent work at the same location, would be greater than the temporary skilled migration income threshold. Under paragraph 2.72(10)(c), the Minister must be satisfied that the applicant's terms and conditions of employment are no less favourable than that of an Australian citizen or permanent resident performing equivalent work at the same location. Under subregulation 2.72(10AB), the requirements under paragraphs 2.72(10)(cc) and 2.72(10)(c) do not apply if the annual earnings of the visa applicant are equal to or greater than an amount specified by the Minister.
5. Under paragraph 2.79(1A)(b), the requirement that the standard business sponsor ensure that the terms and conditions of employment of the primary sponsored person are no less favourable than that of an Australian citizen or permanent resident performing equivalent work in the same location under subregulation 2.79(2) is not required, if the primary sponsored person's annual earnings are equal to or greater than an amount specified by the Minister.
6. The purpose of the Instrument is to specify that the annual earnings threshold for the purposes of subregulation 2.72(10AB) and paragraph 2.79(1A)(b) is AUD 180,000. In addition, the Instrument retains the temporary skilled migration income threshold, specified in paragraph 2.72(10)(cc) under the previous Instrument, at AUD 53,900.

7. The Instrument is made following an independent review of the Subclass 457 Programme, the 457 Integrity Review, which recommended amending the threshold annual earnings amount to improve the flexibility with which businesses can employ skilled and desirable employees.
8. For the purposes of paragraph 2.72(10)(cc) and subregulation 2.72(10AB), the Instrument applies to nominations of proposed occupations by standard business sponsors made under paragraph 140GB(1)(b) of the *Migration Act 1958* (the Act) that have been lodged on or after the commencement of this Instrument, or lodged prior to the commencement of this Instrument but not finally determined. For the purposes of paragraph 2.79(1A)(b), the Instrument applies to standard business sponsors of a primary sponsored person.
9. Consultation was undertaken before the instrument was made with the independent panel which conducted the 457 Integrity Review. The 457 Integrity Review involved consultation with stakeholders including 140 face-to-face meetings and a review of 180 written submissions from industry representatives.
10. The Office of Best Practice Regulation has advised that a Regulatory Impact Statement is not required (OBPR Ref 18006).
11. Under section 42 of the *Legislative Instruments Act 2003* the Instrument is subject to disallowance and therefore a Human Rights Statement of Compatibility has been provided.
12. This Instrument number IMMI 15/050 commences on 18 April 2015.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Specification of Income Threshold and Annual Earnings 2015

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

This legislative instrument will decrease the salary level exemption that requires approved sponsors in the 457 programme to demonstrate that the nominated salary of a visa holder is the market rate for that occupation. The exemption will be amended from AUD250,000 to AUD180,000, which will have the effect of meaning that any application for nomination of an overseas worker with a salary above AUD180,000 will not have to provide market salary rate evidence.

The purpose of this amendment is to remove red-tape for businesses that are employing highly paid and highly skilled overseas employees, in positions which cannot be filled by the local labour force.

Human rights implications

There are no human rights implications.

Conclusion

This Bill/Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

The Hon. Michaela Cash, Assistant Minister for Immigration and Border Protection