

## **EXPLANATORY STATEMENT**

*Migration Regulations 1994*

### **Migration (Income Threshold and Exemptions for Subclass 189 Visa (New Zealand Stream))**

#### **Instrument (LIN 20/170) 2020**

*(Subclause 189.233(2))*

1. The instrument, LIN 20/170, is made under subclause 189.233(2) of the *Migration Regulations 1994* (the Regulations).
2. The instrument repeals *Migration (LIN 19/191: Specification of Income Threshold and Exemptions—Subclass 189 Visa (New Zealand Stream)) Instrument 2019* (LIN 19/191) (F2019L01378) made under subclause 189.233(2) of the Regulations, in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (the AIA). Subsection 33(3) of the AIA states that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.
3. The instrument operates, for the purposes of paragraph 189.233(1)(a) of Schedule 2 to the Regulations, to specify under paragraph 189.233(2)(a) of Schedule 2 to the Regulations, the minimum amount of taxable income for an income year that an applicant for a Subclass 189 (Skilled—Independent) visa in the New Zealand stream (Subclass 189 visa) must meet to satisfy the primary criteria for that visa. The instrument also operates, for the purposes of paragraph 189.233(1)(b) of Schedule 2 to the Regulations, to specify under paragraph 189.233(2)(b) of Schedule 2 to the Regulations, the circumstances in which an applicant for a Subclass 189 visa is a member of a class of applicants exempt from the minimum amount of taxable income specified and the evidence in relation to a class.
4. The purpose of the instrument is to specify the minimum amount of taxable income for the income year 2019-2020. The amount is \$53,900 which is specified in the table in section 7 of the instrument. This minimum amount of income is the same as the minimum amount of income specified in the instrument for income years 2013-2014, 2014-2015, 2015-2016, 2016-2017, 2017-2018 and 2018-2019.

5. The minimum amount of income for the income years 2011-2012, 2012-2013, 2013-2014, 2014-2015, 2015-2016, 2016-2017, 2017-2018 and 2018-2019 continue to be specified in the instrument and have not changed from the amounts specified in the previous instrument, LIN 19/191. Therefore as the instrument does not alter the minimum amount of taxable income and adds to the classes of exempt applicants, the instrument is not detrimental to applicants who have made an application which has not been finally determined before the instrument commences.
6. The instrument clarifies the circumstances in which an applicant will be a member of a class of exempt applicants. The instrument includes as a class of exempt applicant in item 1 of the table in Schedule 1, an applicant who is a party to a parenting plan agreed to by the parents which assigns primary care of a child to the applicant. The instrument also clarifies and simplifies in item 1 of the table in Schedule 1 that a parenting order may be made by any Australian court, which differs from the previous instrument LIN 19/191. LIN 19/191 only specified an order made by the Family Court of Australia or the Federal Circuit Court of Australia. This change reflects that various Australian courts can make parenting orders and provides flexibility to applicants regarding which court can make their order.
7. In accordance with paragraph 15J(2)(e) of the *Legislation Act 2003*, consultation was not necessary. The Instrument is of a minor or machinery nature and does not substantially alter existing arrangements.
8. The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is not required (OBPR Reference Number: 42657).
9. Under section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*, the instrument is exempt from disallowance and therefore a Statement of Compatibility with Human Rights is not required.
10. The instrument commences on the day after it is registered on the Federal Register of Legislation.