

LIN 21/018

Migration (Income Threshold and Exemptions for Subclass 189 Visa (New Zealand Stream)) Instrument (LIN 21/018) 2021

made under the *Migration Regulations 1994*

Compilation no. 1

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This compilation was prepared by the Department of Home Affairs on 17 November 2021 taking into account amendments up to *Migration (Income Threshold and Exemptions for Subclass 189 Visa (New Zealand Stream)) Amendment Instrument (LIN 21/048) 2021.*

1 Name

This instrument is the *Migration (Income Threshold and Exemptions for Subclass 189 Visa (New Zealand Stream)) Instrument (LIN 21/018) 2021*.

3 Definitions

In this instrument:

***COVID‑19 pandemic*** means the pandemic declared by the World Health Organization on 11 March 2020, caused by the coronavirus COVID***‑***19.

***employer*** has the same meaning as in the *Fair Work Act 2009.*

***income year*** has the same meaning as in the *Income Tax Assessment Act 1997*.

***jobkeeper payment*** has the same meaning as in the *Fair Work Act 2009*.

***jobseeker payment*** has the same meaning as in the Budget 2017–18 Welfare Reform.

***medical certificate*** has the same meaning as in the *Fair Work Act 2009.*

***Regulations*** means the *Migration Regulations 1994*.

***Subclass*** ***189 visa*** means a Subclass 189 (Skilled–Independent) (New Zealand stream) visa.

5 Application

This instrument applies to an application for a Subclass 189 visa:

1. made on or after the commencement of this instrument; or
2. made but not finally determined before the commencement of this instrument.

6 Minimum income amount

For paragraph 189.233(1)(a) of Schedule 2 to the Regulations, the minimum amount of income for an income year mentioned in the following table is the amount mentioned in the table for the income year (the ***income requirement***).

| Item | Income year | Amount ($) |
| --- | --- | --- |
| 1 | 2011–12 | 49 330.00 |
| 2 | 2012–13 | 51 400.00 |
| 3 | 2013–14 | 53 900.00 |
| 4 | 2014–15 | 53 900.00 |
| 5 | 2015–16 | 53 900.00 |
| 6 | 2016–17 | 53 900.00 |
| 7 | 2017–18 | 53 900.00 |
| 8 | 2018–19 | 53 900.00 |
| 9 | 2019–20 | 53 900.00 |
| 10 | 2020–21 | 53 900.00 |

7 Exempt applicants

(1) For subparagraph 189.233(1)(b)(i) of Schedule 2 to the Regulations, an applicant is an exempt applicant if:

(a) the applicant:

(i) is not able to meet the income requirement for any period in the 5 years immediately before the date of application; and

(ii) is in a class mentioned in item 1, 2 or 3 of Schedule 1; and

(iii) provides the evidence mentioned in the item; or

(b) the applicant:

(i) is not able to meet the income requirement for the 2019–20 or 2020–21 income year, and seeks to be an exempt applicant for one of those income years; and

(ii) is in the class mentioned in item 4 of Schedule 1; and

(iii) provides the evidence mentioned in paragraph (a) of item 4 of Schedule 1 for the 2019-20 or 2020-21 income years; and

(iv) provides the evidence mentioned in paragraph (b) of item 4 of Schedule 1 for the income year for which the applicant is not able to meet the income requirement.

(2) For subparagraph 189.233(1)(b)(ii) of Schedule 2 to the Regulations, the evidence mentioned in an item of Schedule 1 is specified for each class of exempt applicants mentioned in the item.

Schedule 1 Exempt applicants and evidence

(section 7)

| Item | Classes of exempt applicants | Evidence |
| --- | --- | --- |
| 1 | The applicant:  (a) was prevented from leaving Australia to return to New Zealand because of an Australian court order which assigned primary care of a child to the applicant and placed restrictions on, or restricted the applicant from, removing the child from Australia; or  (b) has primary care of a child and the parents have agreed to a parenting plan on the understanding that the child will remain in Australia with access to all parents. | Any of the following documents that assigns primary care of a child to the applicant and is signed by all parents, or has a court seal attached:  (a) a parenting order;  (b) a registered parenting plan;  (c) a written parenting plan;  (d) a consent order. |
| 2 | The applicant:  (a) was receiving compensation for an injury that prevented the applicant from earning at or above the income threshold; and  (b) would have ongoing rehabilitation or compensation discontinued if the applicant returned to New Zealand. | Any of the following documents:  (a) a statutory declaration by the applicant setting out the applicant’s personal circumstances;  (b) a statutory declaration by the applicant’s employer stating a return to work date and the applicant’s income amount;  (c) a medical certificate for the applicant;  (d) official compensation documentation relating to the applicant;  (e) official rehabilitation documentation relating to the applicant. |
| 3 | The applicant:  (a) was on an approved period of parental (including maternity or paternity) or carer’s leave from the applicant’s usual employment; and  (b) immediately before the period of leave, had an annual income that was at least the minimum amount mentioned in the table in section 6 for the income year; and  (c) has resumed, or is expected to resume within a reasonable period, earning an income that is at least the minimum amount mentioned in the table in section 6. | Any of the following documents:  (a) a statutory declaration by the applicant setting out the applicant’s personal circumstances;  (b) a statutory declaration by the applicant’s employer stating a return to work date and the applicant’s income amount;  (c) a birth certificate for the applicant’s child;  (d) a medical certificate for carer responsibilities;  (e) notice of approved parental leave. |
| 4 | The applicant:  (a) would have likely met the minimum amount of the income requirement for the 2019–20 or 2020–21 income year if not for the effects of the COVID‑19 pandemic on the Australian economy; and  (b) could not meet the minimum amount of the income requirement for the 2019–20 or 2020–21 income year because of the effects of the COVID‑19 pandemic on the Australian economy. | (a) either:  (i) a signed letter written on a company letterhead by the applicant's current or former employer stating the applicant’s salary before 1 February 2020; or  (ii) the applicant’s pay slips, salary advices or employment contracts (stating the applicant’s salary) for a period in the 2019–20 or 2020–21 income year to demonstrate that the applicant was likely to meet the income threshold in the 2019–20 or 2020–21 income year; and  (b) any of the following documents:  (i) a statutory declaration by the applicant’s employer acknowledging the applicant’s 2019–20 or 2020–21 taxable income has reduced, due to:  (A) reduced availability of shifts/hours resulting in a drop in income; or  (B) the applicant contracting COVID-19 or having caring responsibilities for a person who contracted COVID-19, preventing the applicant from working and resulted in a drop in income; or  (C) medically directed orders to self-isolate, preventing the applicant from working and resulting in a drop in income; or  (D) caring responsibilities as a result of COVID-19 pandemic shutdowns (eg schools, childcare centres) that prevented the applicant from working and resulted in a drop in income;  (ii) if the applicant’s employment was terminated—a statutory declaration by the applicant’s former employer stating that the circumstances of the applicant’s dismissal were related to the COVID-19 pandemic effects on the business;  (iii) documentation proving that the applicant had access to the JobKeeper Wage Subsidy for a period in the 2019–20 or 2020–21 income year including:  (A) employee nomination form or other statements or documents provided by the Australian Taxation Office demonstrating that the applicant had access to the JobKeeper Wage Subsidy; or  (B) alternative statements provided by the Australian Taxation Office at the applicant’s request;  (iv) Services Australia-Centrelink letters showing the applicant claimed and received JobSeeker payments for a period in the 2019–20 or 2020–21 income year. |

Notes

This compilation comprises *Migration (Income Threshold and Exemptions for Subclass 189 Visa (New Zealand Stream)) Instrument (LIN 21/018) 2021* amended as indicated in the following tables.

Table of instruments

| Name | Registration | Number | Commencement | Application, saving or transitional provisions |
| --- | --- | --- | --- | --- |
| *Migration (Income Threshold and Exemptions for Subclass 189 Visa (New Zealand Stream)) Instrument (LIN 21/018) 2021* | 19 May 2021 | F2021L00596 | 31 May 2021 | section 5 |
| *Migration (Income Threshold and Exemptions for Subclass 189 Visa (New Zealand Stream)) Amendment Instrument (LIN 21/048) 2021* | 12 November 2021 | F2021L01544 | 13 November 2021 | - |

Table of amendments

|  |  |
| --- | --- |
| ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted | |
| Provision affected | How affected |
| section 2 | rep. *Legislation Act 2003*, s 48D |
| section 4 | rep. *Legislation Act 2003*, s 48C |
| subparagraph 7(1)(b)(i) | am. F2021L01544 |
| subparagraph 7(1)(b)(iii) | rs. F2021L01544 |
| subparagraph 7(1)(b)(iv) | ad. F2021L01544 |
| Schedule 1, item 4 | rs. F2021L01544 |