

EXPLANATORY STATEMENT

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

Migration Regulations 1994

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

- 1 The instrument, Departmental reference LIN 21/018, is made under subclause 189.233(2) of the *Migration Regulations 1994* (the ***Migration Regulations***).
- 2 The instrument repeals *Migration (Income Threshold and Exemptions for Subclass 189 Visa (New Zealand Stream)) Instrument (LIN 20/170) 2020* (F2020L01553) (the ***repealed instrument***) made under subclause 189.233(2) of the *Migration Regulations*, in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*. The effect of that subsection is to include a power in the *Migration Regulations* to make, amend or repeal an instrument made under the *Migration Regulations*.
- 3 The instrument commences on the later of:
 - the day after it is registered on the Federal Register of Legislation; and
 - 31 May 2021.
- 4 The instrument is a legislative instrument for the *Legislation Act 2003* (the ***Legislation Act***).

Purpose

- 5 The instrument operates, for paragraph 189.233(1)(a) of Schedule 2 to the *Migration Regulations*, to specify under paragraph 189.233(2)(a) of Schedule 2 to the *Migration 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.
- 6 The instrument also operates, for paragraph 189.233(1)(b) of Schedule 2 to the *Migration Regulations*, to specify under paragraph 189.233(2)(b) of Schedule 2 to the *Migration Regulations* the circumstances under 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 required for the class.
- 7 The purpose of the instrument is to add a new class of applicants who are exempt from the minimum amount of taxable income requirements, which is a primary criterion for the grant of the Subclass 189 visa, and to add the evidence required for the new class of exempt applicants.
- 8 Under new item 4 of Schedule 1 to the instrument, an applicant is a member of a class of exempt applicants, if the applicant:
 - a. does not meet the income requirement for the 2019–20 income year because the applicant has been affected by the COVID-19 pandemic; and

- b. provides the evidence mentioned in item 4 of Schedule 1 to the Department to support the claim.
- 9 A further purpose of the instrument is to specify in section 6 the minimum amount of taxable income for the income year 2020–21 as \$53 900.00. This is the same as the minimum amount of income specified in the instrument for each income year from 2013–14 to 2019–20.
- 10 The minimum amounts of income for each income year from 2011–12 to 2019–20 continue to be specified in the instrument and have not changed from the amounts specified in the previous instrument, LIN 20/170. 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.
- 11 The instrument provides an income exemption to New Zealand citizen applicants who might have otherwise met the income threshold requirements for the 2019–20 income year, but are now unable to do so due to loss of, or reduction in, employment and income caused by the COVID-19 pandemic. This instrument ensures that New Zealand citizen temporary visa holders, who were on a pathway to permanent residence prior to 1 February 2020, continue to maintain eligibility to apply for a Subclass 189 visa.

Consultation

- 12 This was a government initiative implemented by the portfolio Minister. Both Department of Finance and Treasury confirmed no budget cost. Internal consultation was undertaken with the finance, systems and program management areas within the Department.
- 13 External consultation was undertaken before the instrument was made with the following :
 - a. Department of the Prime Minister and Cabinet;
 - b. Prime Minister’s office;
 - c. Department of the Treasury;
 - d. Department of Finance.
- 14 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 43435.

Details of the instrument

- 15 Section 1 sets out the name of the instrument.
- 16 Section 2 provides the commencement of the instrument, which is on the later of:
 - the day after it is registered on the Federal Register of Legislation; and
 - 31 May 2021.
- 17 Section 3 sets out definitions of terms used in the instrument.

- 18 Section 4 states that the instrument repeals *Migration (Income Threshold and Exemptions for Subclass 189 Visa (New Zealand Stream)) Instrument (LIN 20/170) 2020 (F2020L01553)*.
- 19 Section 5 provides that the instrument applies to both applications made on or after the instrument has commenced, and applications made but not finally determined before the instrument commenced.
- 20 Section 6 sets out the minimum income amount for each income year from 2011–12 to 2020–21.
- 21 Section 7 sets out the class of exempt applicants, and the evidence required for each class.
- 22 Schedule 1 sets out the details of the circumstances in which an applicant will be a member of a class of exempt applicants, and the evidentiary documents required for that class.

Parliamentary scrutiny etc.

- 23 The instrument is exempt from disallowance under section 42 of the *Legislation Act 2013*. This is because of paragraph (b) of item 20 of the table in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.
- 24 The instrument was made by Alex Hawke, Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, in accordance with subclause 189.233(2) of Schedule 2 to the Migration Regulations.