

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)) Amendment Instrument (LIN 21/048) 2021

- 1 The instrument, Departmental reference LIN 21/048, is made under subclause 189.233(2) of Schedule 2 to the *Migration Regulations 1994* (the Regulations).
- 2 The instrument amends *Migration (Income Threshold and Exemptions for Subclass 189 Visa (New Zealand Stream)) Instrument (LIN 21/018) 2021* (F2021L00596) made under subclause 189.233(2) of Schedule 2 to the 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 Regulations to make, amend or repeal an instrument made under the Regulations.
- 3 The instrument commences on the later of:
 - (a) 1 July 2021; and
 - (b) the day after registration on the Federal Register of Legislation.
- 4 The instrument is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

Purpose

- 5 LIN 21/018 operates, for paragraph 189.233(1)(a) of Schedule 2 to the 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 It 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 this instrument (LIN 21/048) is to amend LIN 21/018 to include an exemption for New Zealand citizens who are unable to meet the income threshold requirements for the 2020-21 income year due to the economic impacts of the COVID-19 pandemic.
- 8 Given the ongoing impact of the COVID-19 pandemic throughout the current 2020-21 income year, the Department of Home Affairs recognises that New Zealand citizen temporary visa holders who would have otherwise been eligible for the New Zealand pathway to permanent residence may not be able to meet the income threshold requirements for the 2020-21 income year due to the economic impacts of the COVID-19 pandemic. As applicants are required to meet the income threshold requirements in the most recently completed income year, these New Zealand citizen applicants may become ineligible for the New Zealand pathway.

- 9 As such, LIN 21/048 provides an income exemption to New Zealand citizen applicants who might have otherwise met the income threshold requirements for the 2020–21 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. The 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.
- 10 New Zealand citizen applicants will only be able to use this COVID-19 concession for one of the required income years. That is, the applicants can only claim income exemptions under this category for either the 2019-20 income year or the 2020-21 income year, but not for both years. This will preserve the policy intention of the program which is to provide a pathway to permanent residence for New Zealand citizens in Australia who have made a demonstrated economic contribution to Australia.
- 11 Also, the policy intention for the amendments is that while applicants can provide evidence in paragraph (a) of item 4 of Schedule 1, from both the 2019-20 and 2020-21 income years, they will only need to provide the evidence in paragraph (b) of item 4 of Schedule 1 for the income year for which they are claiming the exemption. This is because the applicant could have felt the effects of COVID-19 across both years. The impacts may have commenced in 2019-20 even if they are claiming the exemption for 2020-21.

Consultation

- 12 In preparing the instrument, a range of relevant agencies were consulted including the Department of Prime Minister and Cabinet, the Treasury and the Department of Finance. Internal consultation within the Department of Home Affairs was also undertaken with Program areas. These agencies agreed with the concession for the 2020-21 income year being specified in the instrument.
- 13 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 44052.

Details of the instrument

- 14 Section 1 sets out the name of the instrument.
- 15 Section 2 sets out the commencement date of the instrument, which is the later, of the day after registration and 1 July 2021.
- 16 Section 3 provides that *Migration (Income Threshold and Exemptions for Subclass 189 Visa (New Zealand Stream)) Instrument (LIN 21/018) 2021* (F2021L00596) is amended as set out in Schedule 1 to the instrument.
- 17 Item 1 of Schedule 1 to the instrument amends subparagraph 7(1)(b)(i) to extend the income exemptions for the 2019-20 income year to apply to the 2020-21 income year
- 18 Item 2 of Schedule 1 to the instrument amends subparagraph 7(1)(b)(iii), to specify that an applicant may provide the evidence in item 4(a) of Schedule 1 for either the 2019–20 income year or the 2020–21 income year (but not both), but can only provide the evidence in item 4(b) of Schedule 1 for the income year the applicant is seeking an exemption.

- 19 Item 3 of Schedule 1 to the instrument amends item 4 of Schedule 1 in LIN 21/018. Under amended item 4, an applicant is a member of a class of exempt applicants, if the applicant:
- does not meet the income threshold requirements for the 2019–20 or 2020–21 income year because the applicant has been affected by the COVID-19 pandemic; and
 - provides the evidence mentioned in item 4 of Schedule 1 to LIN 21/018 to the Department to support the claim.

Parliamentary scrutiny etc.

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