

EXPLANATORY STATEMENT

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

Migration Regulations 1994

Migration (IMMI 18/033: Specification of Income Threshold and Annual Earnings and Methodology of Annual Market Salary Rate) Amendment (LIN 24/052) Instrument 2024

- 1 The instrument, departmental reference LIN 24/052, is made under paragraph 2.72(15)(d) of the *Migration Regulations 1994* (the Migration Regulations).
- 2 The instrument amends *Migration (IMMI 18/033: Specification of Income Threshold and Annual Earnings and Methodology of Annual Market Salary Rate) Instrument 2018* (IMMI 18/033) in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*. That subsection provides that a power to make a legislative instrument includes a power to amend or repeal that instrument in the same manner, and subject to the same conditions, as the power to make the instrument.
- 3 The instrument commences on 1 July 2024. It is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

Purpose

- 4 The purpose of this instrument is to amend IMMI 18/033 to increase the temporary skilled migration income threshold (TSMIT) from \$70,000 to \$73,150. The increase to the TSMIT is in accordance with the annual Average Weekly Ordinary Times Earnings figure of November 2023 of 4.5 per cent, which was released publicly in March 2024.
- 5 Section 140GB of the *Migration Act 1958* provides that a person who is an approved work sponsor or who is a party to negotiations for a work agreement may nominate a proposed occupation, program or activity, or an applicant for a visa of a prescribed kind in relation to the applicant's occupation or proposed occupation, or the program proposed to be undertaken by the applicant, or the activity to be carried out by the applicant. The Minister must approve the person's nomination if, among other things, the nomination satisfies the prescribed criteria.
- 6 Regulation 2.72 of the Migration Regulations sets out the criteria for approval of a nomination of a proposed occupation in relation to (relevantly) a holder of or applicant for a Subclass 482 (Temporary Skill Shortage) visa. Subregulation 2.72(15) provides that, subject to subregulation 2.72(16), if the occupation is nominated for a Subclass 482 visa in the Short-term or Medium-term streams, and the Minister is not satisfied that the nominee's annual earnings in relation to the occupation will be at least the amount specified by the Minister in an instrument in writing (currently IMMI 18/033), then a criterion for approval of the nomination is that the Minister is satisfied that the annual market salary rate, excluding any non-monetary benefits, for the occupation is not less than the TSMIT specified by the Minister in a legislative instrument in writing.
- 7 The amendments made by this instrument implement an announcement made by the publication of a news item on the Department of Home Affairs' website on 28 May 2024, to ensure skilled

migrant workers are able to sufficiently support themselves while in Australia and to provide a safeguard against exploitation.

- 8 This instrument also inserts an application provision dealing with the amendments made by LIN 24/052 to IMMI 18/033. New section 11 operates to provide that the increased TSMIT of \$73,150 applies in relation to applications for approval of a nomination where the application is made on or after 1 July 2024. All nominations lodged before 1 July 2024, and not yet decided, will continue to be assessed against the TSMIT amount that was in force at the time of the nomination lodgement.

Consultation

- 9 The Department of Home Affairs engaged with external stakeholders on the increase to the TSMIT as part of consultations on the Migration Strategy. The increase to the TSMIT has been informed by the Jobs and Skills Summit in September 2022, and the Ministerial Advisory Council on Skilled Migration (MACSM) which was held in November 2022. All representatives supported increasing the TSMIT.
- 10 Further consultation was undertaken in March 2023 with the Australian Trade and Investment Commission; Department of the Prime Minister and Cabinet; Attorney General's Department; Department of Agriculture, Fisheries and Forestry; Department of Education; Department of Finance; Department of Foreign Affairs and Trade; Department of Health and Aged Care; Department of Industry, Science and Resources; Department of Infrastructure, Transport, Regional Development, Communications and the Arts; Digital Transformation Agency; and Treasury. The outcomes of this consultation process informed the increase to the TSMIT.
- 11 The Office of Impact Analysis (OIA) was consulted on the proposed increase to the TSMIT as a part of the broader Review of Australia's Migration System. The OIA determined that detailed analysis is not required as the legislative change is a routine indexation of the TSMIT. The OIA reference number is OIA24-07624.

Details of the instrument

- 12 Section 1 sets out the name of the instrument.
- 13 Section 2 provides for the commencement of the instrument on 1 July 2024.
- 14 Section 3 provides that the instrument is made under paragraph 2.72(15)(d) of the Migration Regulations.
- 15 Section 4 provides that *Migration (IMMI 18/033: Specification of Income Threshold and Annual Earnings and Methodology of Annual Market Salary Rate) Instrument 2018* is amended as set out in Schedule 1 to the instrument.
- 16 Item 1 of Schedule 1 to the instrument amends section 6 of IMMI 18/033, to increase the TSMIT from \$70,000 to \$73,150.
- 17 Item 2 of Schedule 1 to the instrument inserts new section 11 in IMMI 18/033. Section 11 provides that the amendments made by Schedule 1 to the instrument apply to an application for approval of a nomination made on or after 1 July 2024. Alongside this, current section 10 of IMMI 18/033 operates to provide that any nomination application that is lodged between

1 July 2023 and 30 June 2024, but not decided when LIN 24/052 commences on 1 July 2024, will be assessed against the TSMIT of \$70,000. Prior to this, the TSMIT amount was \$53,900.

Parliamentary scrutiny etc.

- 18 The instrument is subject to disallowance under section 42 of the Legislation Act. A Statement of Compatibility with Human Rights has been prepared in relation to the instrument, and provides that it is compatible with human rights as it promotes the right to fair conditions at work for both skilled migrant workers and Australian workers and the right to an adequate standard of living for skilled migrant workers. The Statement is included at **Attachment A** to this explanatory statement
- 19 The instrument was made by the Minister for Immigration, Citizenship and Multicultural Affairs in accordance with paragraph 2.72(15)(d) of the Migration Regulations.

Statement of Compatibility with Human Rights

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

Migration (IMMI 18/033: Specification of Income Threshold and Annual Earnings and Methodology of Annual Market Salary Rate) Amendment (LIN 24/052) Instrument 2024

This Disallowable 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

The migration legislation includes mechanisms which are aimed at ensuring that visa applicants for certain skilled temporary and permanent visas are provided with remuneration and employment conditions that are at least equivalent to what is, or would be, provided to an Australian worker performing the same work at the same location.

In order to approve an employer's nomination of a non-citizen for one of these visas, the Minister must be satisfied that the monetary benefits for an equivalent Australian worker are at least the amount of the Temporary Skilled Migration Income Threshold (TSMIT), that the nominated skilled migrant worker (nominee) will be paid at least the same as an equivalent Australian worker, and that the nominee's guaranteed annual earnings, excluding any non-monetary benefits, will not be less than the TSMIT. In practice, this means that any non-monetary benefits included in the nominee's salary package (such as accommodation, clothing, meals, travel etc.) must be additional amounts, over and above the TSMIT.

The TSMIT was introduced in 2009 and indexed annually until 2013, when it was set at \$53,900. In 2023, the *Migration (Specification of Income Threshold and Annual Earnings and Methodology of Annual Market Salary Rate) Amendment Instrument (LIN 23/045) 2023* raised the TSMIT amount for the first time in 10 years, to \$70,000.

This Disallowable Legislative Instrument, the *Migration (IMMI 18/033: Specification of Income Threshold and Annual Earnings and Methodology of Annual Market Salary Rate) Amendment (LIN 24/052) Instrument 2024*, amends the *Migration (IMMI 18/033: Specification of Income Threshold and Annual Earnings and Methodology of Annual Market Salary Rate) Instrument 2018* to raise the TSMIT to from \$70,000 to \$73,150 for all new nominations lodged on or after 1 July 2024. All nominations lodged before 1 July 2024 will be assessed against the TSMIT amount that was in force at the time of the nomination lodgement, being \$53,900 for nominations lodged between 1 July 2013 and 30 June 2023 and \$70,000 for nominations lodged between 1 July 2023 and 30 June 2024.

Increasing and annually indexing the TSMIT received broad consensus at both the Jobs and Skills Summit in September 2022, and the Ministerial Advisory Council on Skilled Migration (MACSM) held in November 2022.

This measure directly aligns with the Government's priorities and commitments to increase Australia's place as a country and employer of choice for highly skilled migrants when competing on

the world stage, by ensuring skilled migrant workers are able to support themselves in Australia, are less vulnerable to exploitation and do not find themselves in difficult financial circumstances.

Increasing the TSMIT ensures that the skilled visa program retains its original intent as being limited to skilled occupations. The increase to the TSMIT through indexation is considered necessary to provide sufficient income for skilled migrant workers to better support themselves financially in Australia due to higher costs of living and to reduce vulnerability to exploitation.

Research of hospitality workers, shows that before TSMIT was frozen in 2013, positive wage growth occurred, but after TSMIT was frozen, wages for Australian workers continued to increase while it flat lined for temporary skilled visa holders.¹ Indications from all representatives at both the Jobs and Skills Summit and the MACSM were that TSMIT should be higher, with a single TSMIT providing clear messaging to all employers and migrants.

The Migration Strategy 2023 included a commitment that income thresholds would be indexed annually in line with annual movements in Average Weekly Ordinary Time Earnings (AWOTE). The increase to the TSMIT made by this Disallowable Legislative Instrument is in accordance with the annual AWOTE figure of November 2023 of 4.5 per cent, which was released publicly in March 2024. Increasing the TSMIT in accordance with the AWOTE allows indexation to maintain the real value of the TSMIT and its relative position in the Australian wage stack, while also providing employers with enough notice of upcoming increases.

The skilled visa program is designed to be flexible and responsive to labour market conditions, and many industries have already started offering increased salaries to attract workers. Not indexing the TSMIT could put skilled migrants at risk of exploitation, through lack of wage growth and greater gaps between their wages and those of Australian workers.

Human rights implications

This Disallowable Legislative Instrument positively engages:

- the right to fair conditions of work under Article 7 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), and
- the right to an adequate standard of living under Article 11(1) of the ICESCR.

Fair conditions of work

Article 7 of the ICESCR provides:

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

¹ Grattan Institute, *the Goldilocks wage threshold for temporary skilled migrants*

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

Indexing the TSMIT is aimed at ensuring that skilled migrant workers are fairly remunerated for their work and in line with increases to the AWOTE. By extension, this also helps to ensure that migrant workers are not undercutting the Australian labour market. Ensuring employers commit to paying their workers at least the increased TSMIT also helps to address risks of worker exploitation. The measure in this Disallowable Legislative Instrument therefore promotes the right to fair conditions of work for under Article 7 of the ICESCR for both skilled migrant and Australian workers.

Adequate standard of living

Article 11(1) of the ICESCR provides:

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

Indexing the TSMIT is also aimed at ensuring that skilled migrant workers are remunerated sufficiently by their employers in order to maintain an adequate standard of living, including in line with increases to the AWOTE. This helps promote the right to an adequate standard of living under Article 11(1) of the ICESCR for skilled migrant workers.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights as it promotes the right to fair conditions at work for both skilled migrant workers and Australian workers and the right to an adequate standard of living for skilled migrant workers.

The Hon Andrew Giles MP
Minister for Immigration, Citizenship and Multicultural Affairs