



## **Migration (Income Threshold and Exemptions for **Subclass 189 Visa (New Zealand Stream)** Instrument (LIN 20/170) 2020**

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I, Alan Tudge, Minister for Population, Cities and Urban Infrastructure, make the following instrument.

Dated: 1 December 2020

Alan Tudge  
Minister for Population, Cities and Urban Infrastructure  
on behalf of the Minister for Immigration, Citizenship, Migrant Services and Multicultural  
Affairs

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## Part 1—Preliminary

### 1 Name

- (1) This instrument is the *Migration (Income Threshold and Exemptions for Subclass 189 Visa (New Zealand Stream)) Instrument (LIN 20/170) 2020*.
- (2) This instrument may be cited as LIN 20/170.

### 2 Commencement

This instrument commences **on the day after it is registered** on the Federal Register of Legislation.

### 3 Authority

This instrument is made under subclause 189.233(2) of Schedule 2 to the *Migration Regulations 1994*.

### 4 Definitions

In this instrument:

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

**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 Repeal

This instrument repeals *Migration (LIN 19/191: Specification of Income Threshold and Exemptions—Subclass 189 Visa (New Zealand Stream)) Instrument 2019* (F2019L01378), in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*.

### 6 Application

This instrument applies to the following:

- (a) an application for a Subclass 189 visa made on or after the commencement of this instrument;
- (b) an application for a Subclass 189 visa made but not finally determined before the commencement of this instrument.

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## Part 2—Minimum income amount and exempt applicants

### 7 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 column 1 for an item of the following table, is specified in column 2 for that item.

<b>Item No.</b>	<b>Column 1 Income year</b>	<b>Column 2 Minimum amount</b>
1	2011-2012	\$49,330
2	2012-13	\$51,400
3	2013-14	\$53,900
4	2014-15	\$53,900
5	2015-16	<b>\$53,900</b>
6	2016-17	<b>\$53,900</b>
7	2017-18	<b>\$53,900</b>
8	2018-19	<b>\$53,900</b>
9	2019-20	<b>\$53,900</b>

### 8 Exempt applicants

- (1) For subparagraph 189.233(1)(b)(i) of Schedule 2 to the Regulations, an applicant is a member of a class of exempt applicants if the applicant:
  - (a) could not meet the income requirement for any period in the 5 years immediately before the date of application; and
  - (b) is of a kind mentioned in an item in column 1 of the table in Schedule 1.
- (2) For subparagraph 189.233(1)(b)(ii) of Schedule 2 to the Regulations, the evidence mentioned in column 2 of an item in the table in Schedule 1, is specified in relation to the class of exempt applicants for that item.

## Schedule 1—Class of exempt applicants and evidence in relation to that class

Item No.	Column 1 Class of <b>exempt applicants</b>	Column 2 Evidence for the class
1	<p>The applicant:</p> <p>(a) was prevented from leaving Australia to return to New Zealand because of an Australian court order which assigned primary care of the child to the applicant and placed restrictions on, or restricted the applicant from, removing the child from Australia; or</p> <p>(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.</p>	<p>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:</p> <p>(a) a parenting order;</p> <p>(b) a registered parenting plan;</p> <p>(c) a written parenting plan;</p> <p>(d) a consent order.</p>
2	<p>The applicant:</p> <p>(a) was receiving compensation for an injury that prevented the applicant from earning at, or above the income threshold; and</p> <p>(b) would have ongoing rehabilitation or compensation discontinued if the applicant returned to New Zealand.</p>	<p>Any of the following documents:</p> <p>(a) a statutory declaration by the applicant setting out the applicant’s personal circumstances;</p> <p>(b) a statutory declaration by the applicant’s employer stating a return to work date and the applicant’s income amount;</p> <p>(c) a medical certificate for the applicant;</p> <p>(d) official compensation documentation relating to the applicant;</p> <p>(e) official rehabilitation documentation relating to the applicant.</p>
3	<p>The applicant:</p> <p>(a) was on an approved period of parental (including maternity or paternity) or carer’s leave from the applicant’s usual employment; and</p> <p>(b) immediately before the period of leave, had an annual income that was at least the minimum amount mentioned in the table in section 7 for the income year; and</p> <p>(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 7.</p>	<p>Any of the following documents:</p> <p>(a) a statutory declaration by the applicant setting out the applicant’s personal circumstances;</p> <p>(b) a statutory declaration by the applicant’s employer stating a return to work date and the applicant’s income amount;</p> <p>(c) a birth certificate for the applicant’s child;</p> <p>(d) a medical certificate for carer responsibilities;</p> <p>(e) notice of approved parental leave.</p>

## **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.