



LIN 21/018

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

I, Alex Hawke, Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, make this instrument under subclause 189.233(2) of Schedule 2 to the *Migration Regulations 1994*.

Dated 13 May 2021

Alex Hawke

Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

1 Name

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

2 Commencement

This instrument commences on the later of:

- (a) the day after registration; and
- (b) **31 May 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.

4 Repeal

Migration (Income Threshold and Exemptions for Subclass 189 Visa (New Zealand Stream)) Instrument (LIN 20/170) 2020 (F2020L01553) is repealed.

5 Application

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

- (a) made on or after the commencement of this instrument; or
- (b) 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

Item	Income year	Amount (\$)
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 income year; and
 - (ii) is in the class mentioned in item 4 of Schedule 1; and
 - (iii) provides the evidence mentioned in the item.
- (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	<p>The applicant:</p> <ul style="list-style-type: none"> (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. 	<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> <ul style="list-style-type: none"> (a) a parenting order; (b) a registered parenting plan; (c) a written parenting plan; (d) a consent order.
2	<p>The applicant:</p> <ul style="list-style-type: none"> (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. 	<p>Any of the following documents:</p> <ul style="list-style-type: none"> (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	<p>The applicant:</p> <ul style="list-style-type: none"> (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. 	<p>Any of the following documents:</p> <ul style="list-style-type: none"> (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	<p>The applicant:</p> <ul style="list-style-type: none"> (a) would have likely met the minimum amount of the income requirement for the 2019–20 income year if not for the effect of the COVID-19 pandemic on the Australian economy; and (b) could not meet the minimum 	<p>(a) either:</p> <ul style="list-style-type: none"> (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 income year to demonstrate that

Item	Classes of exempt applicants	Evidence
	amount of the income requirement for the 2019–20 income year because of the effect of the COVID-19 pandemic on the Australian economy.	<p>the applicant was likely to meet the income threshold in the 2019–20 income year; and</p> <p>(b) any of the following documents:</p> <p>(i) a statutory declaration by the applicant's employer acknowledging the applicant's 2019–20 taxable income has reduced, due to:</p> <p>(A) reduced availability of shifts/hours resulting in a drop in income; or</p> <p>(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</p> <p>(C) medically directed orders to self-isolate, preventing the applicant from working and resulting in a drop in income; or</p> <p>(D) caring responsibilities as a result of COVID-19 pandemic shutdowns (e.g., schools, childcare centres) that prevented the applicant from working and resulted in a drop in income;</p> <p>(ii) if the applicant's employment was terminated, then 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;</p> <p>(iii) documentation proving that the applicant had access to the JobKeeper Wage Subsidy for a period in 2019–20 income year including either:</p> <p>(A) employee nomination form; other statements or documents provided by the ATO demonstrating that the applicant had access to the JobKeeper Wage Subsidy; or</p> <p>(B) alternative statements provided by the ATO at the applicant's request;</p> <p>(iv) Services Australia-Centrelink letters showing the applicant claimed and received the JobSeeker payments for a period in 2019–20 income year.</p>

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.