



**Australian Government**  

---

**Department of Home Affairs**

LIN 19/216

**Migration (LIN 19/216: Exemptions from Skill, Age and English Language Requirements for Subclass 186, 187 and 494 Visas) Instrument 2019**

**made under the *Migration Regulations 1994* (the Regulations)**

---

Compilation no. 2

Compilation date 1 July 2022

This compilation was prepared by the Department of Home Affairs on 1 July 2022 taking into account amendments up to *Migration (Age exemption for subclass 186 (Employer Nomination Scheme) visa) Amendment Instrument (LIN 22/047) 2022*.

---

## Contents

<b>Part 1</b>	<b>Preliminary</b>	<b>3</b>
1	Name	3
3	Authority	3
5	Definitions	3
5A	Coronavirus employment change	6
<b>Part 2</b>	<b>Exemptions from skill, age and English language requirements</b>	<b>7</b>
6	Subclass 186 visas	7
7	Subclass 187 visas—Temporary Residence Transition stream	7
8	Subclass 494 visas—Employer Sponsored stream	8
<b>Part 3</b>	<b>Application and transitional provisions</b>	<b>9</b>
9	Application of this instrument	9
10	Transitional provision—designated regional areas	9
11	Operation of Schedule 1 to the Migration (Exemptions from Skill, Age and English Language Requirements for Subclass 186, 187 and 494 Visas) Amendment Instrument (LIN 20/189) 2020	9

---

## Part 1 Preliminary

### 1 Name

- (1) This instrument is the *Migration (LIN 19/216: Exemptions from Skill, Age and English Language Requirements for Subclass 186, 187 and 494 Visas) Instrument 2019*.
- (2) This instrument may be cited as LIN 19/216.

### 3 Authority

This instrument is made under the following provisions of the *Migration Regulations 1994*:

- (a) paragraph 186.221(b) of Schedule 2;
- (b) paragraph 186.231(b) of Schedule 2;
- (c) subclause 186.234(3) of Schedule 2;
- (d) paragraph 187.221(b) of Schedule 2;
- (e) paragraph 187.222(b) of Schedule 2;
- (f) subclause 494.223(2) of Schedule 2;
- (g) subclause 494.224(7) of Schedule 2;
- (h) subclause 494.225(2) of Schedule 2.

### 5 Definitions

*Note* A number of expressions used in this instrument are defined in the Regulations, including the following:

- (a) ANZSCO;
- (b) designated regional area;
- (c) earnings;
- (d) the Act.

In this instrument:

***academic applicant***, in relation to an application for a visa, means a person in relation to whom all of the following paragraphs apply:

- (a) the nomination to which the visa application relates was made by an Australian university;
- (b) the nominated position to which the visa application relates is for an academic classified as Level A, B, C, D or E;
- (c) the nominated occupation to which the visa application relates, and its corresponding 6-digit code, correspond to an occupation and its corresponding 6-digit ANZSCO code specified in an item of the following table.

---

**Exempt occupations**

Item	Column 1 Occupation	Column 2 6-digit ANZSCO code
1	faculty head	134411
2	university lecturer	242111

**concession period** means the concession period mentioned in subregulation 1.15N(1) of the Regulations.

**coronavirus employment change**: see section 5A.

**high income threshold** has the meaning given by section 333 of the *Fair Work Act 2009*.

**legacy 457 worker**, for a subclass 186 visa application, means a person who:

- (a) held a subclass 457 visa on or after 18 April 2017; and
- (b) was in Australia for at least 12 months between 1 February 2020 and 14 December 2021.

**medical practitioner** means an occupation that:

- (a) is listed in ANZSCO; and
- (b) has ANZSCO occupation minor group code 253 (medical practitioners).

**nominated occupation**, in relation to an application for a visa, means:

- (a) if the visa application is for a Subclass 186 (Employer Nomination Scheme) visa or a Subclass 187 (Regional Sponsored Migration Scheme) visa—the occupation that relates to the position to which the visa application relates; or
- (b) if the visa application is for a Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa—the occupation nominated by the nomination to which the visa application relates.

**nominated position**, in relation to an application for a visa, means:

- (a) if the visa application is for a Subclass 186 (Employer Nomination Scheme) visa or a Subclass 187 (Regional Sponsored Migration Scheme) visa—the position to which the visa application relates; or
- (b) if the visa application is for a Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa—the position that relates to the nominated occupation that relates to the visa application.

**nomination**, in relation to an application for a visa, means:

- (a) if the visa application is for a Subclass 186 (Employer Nomination Scheme) visa or a Subclass 187 (Regional Sponsored Migration Scheme) visa—an application under regulation 5.19 of the Regulations for approval of the nomination of the position to which the visa application relates; or
- (b) if the visa application is for a Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa—the nomination under paragraph 140GB(1)(b) of the Act identified in the visa application.

---

**pro-rata threshold**, in relation to a person's earnings for a year, means the amount worked out using the following formula:

$$\frac{\text{high income threshold (as applying at the end of the year)}}{52} \times \left( 52 - \begin{array}{l} \text{number of weeks in the year when the} \\ \text{person's employment was affected} \\ \text{by a coronavirus employment change} \end{array} \right)$$

**regional medical practitioner applicant**, in relation to an application for a visa, means a person in relation to whom all of the following paragraphs apply:

- (a) the nominated position to which the visa application relates is located in a designated regional area;
- (b) at all times during the 3 years ending immediately before the day the visa application was made, the person was employed as a medical practitioner;
- (c) during those 3 years, the person spent at least 2 years (whether made up of a continuous period or 2 or more non-consecutive periods) employed, as a medical practitioner, at a place or places that, at the time, were located in a designated regional area;
- (d) at almost all times during those 3 years, the person held:
  - (i) a Subclass 457 (Temporary Work (Skilled)) visa; or
  - (ii) a Subclass 482 (Temporary Skill Shortage) visa.

**Regulations** means the *Migration Regulations 1994*.

**science applicant**, in relation to an application for a visa, means a person in relation to whom all of the following paragraphs apply:

- (a) the person is any of the following relating to science:
  - (i) researcher;
  - (ii) scientist;
  - (iii) technical specialist;
- (b) the nomination to which the visa application relates was made by a science organisation;
- (c) the ANZSCO skill level of the nominated occupation to which the visa application relates is level one or two.

**science organisation** means:

- (a) a science agency of the Commonwealth or of a State or Territory; or
- (b) an Australian university.

**Subclass 444/461 worker**, in relation to an application for a visa, means a person in relation to whom both of the following paragraphs apply:

- (a) during the 3 years ending immediately before the day the visa application was made, the person spent at least 2 years (whether made up of a continuous period or 2 or more non-consecutive periods) working:
  - (i) for the employer who made the nomination to which the visa application relates; and
  - (ii) in the nominated occupation to which the visa application relates;
- (b) at almost all times during those 3 years, the person held:
  - (i) a Subclass 444 (Special Category) visa; or
  - (ii) a Subclass 461 (New Zealand Citizen Family Relationship (Temporary)) visa.

---

**Subclass 457/482 coronavirus concession worker**, in relation to an application for a visa, means a person in relation to whom all of the following paragraphs apply:

- (a) at all times during the 3 years ending immediately before the day the visa application was made, the person was employed:
  - (i) by the employer who made the nomination to which the visa application relates; and
  - (ii) in the nominated occupation to which the visa application relates;
- (b) the person's employment was affected by a coronavirus employment change;
- (c) for each of those 3 years that did not include any part of the concession period, the person's earnings for the year were equal to or greater than the high income threshold (as applying at the end of the year);
- (d) for each of those 3 years that included any part of the concession period, the person's earnings for the year (excluding any earnings in a week when the person's employment was affected by a coronavirus employment change) were equal to or greater than the pro-rata threshold;
- (e) at almost all times during those 3 years, the person held:
  - (i) a Subclass 457 (Temporary Work (Skilled)) visa; or
  - (ii) a Subclass 482 (Temporary Skill Shortage) visa.

**Subclass 457/482 worker**, in relation to an application for a visa, means a person in relation to whom all of the following paragraphs apply:

- (a) at all times during the 3 years ending immediately before the day the visa application was made, the person was employed:
  - (i) by the employer who made the nomination to which the visa application relates; and
  - (ii) in the nominated occupation to which the visa application relates;
- (b) for each of those 3 years, the person's earnings for the year were equal to or greater than the high income threshold (as applying at the end of the year);
- (c) at almost all times during those 3 years, the person held:
  - (i) a Subclass 457 (Temporary Work (Skilled)) visa; or
  - (ii) a Subclass 482 (Temporary Skill Shortage) visa.

**transitional 457 worker under 50**, in relation to an application for a visa (the **new visa**), means a person who:

- (a) on 18 April 2017:
  - (i) held a Subclass 457 (Temporary Work (Skilled)) visa; or
  - (ii) was an applicant for a Subclass 457 (Temporary Work (Skilled)) visa that was subsequently granted; and
- (b) on the day the application for the new visa was made, had not turned 50.

**working**: a person is not **working** for an employer at a time if the person is on unpaid leave at that time.

## 5A Coronavirus employment change

A person's employment is affected by a **coronavirus employment change** at a time if:

- (a) the time occurs during the concession period; and

- 
- (b) at that time, the person is, because of the coronavirus known as COVID-19:
- (i) required to work at a reduced salary; or
  - (ii) required to work reduced hours; or
  - (iii) required to work part-time; or
  - (iv) unable to work full-time; or
  - (v) stood down.

## **Part 2 Exemptions from skill, age and English language requirements**

### **6 Subclass 186 visas**

#### *Temporary Residence Transition stream—exemption from age requirement*

- (1) For the purposes of paragraph 186.221(b) of Schedule 2 to the Regulations, the following classes of persons are specified:
- (a) academic applicants;
  - (aa) legacy 457 workers;
  - (b) regional medical practitioner applicants;
  - (c) science applicants;
  - (d) Subclass 457/482 workers;
  - (da) Subclass 457/482 coronavirus concession workers;
  - (e) transitional 457 workers under 50.

#### *Direct Entry stream—exemption from age and skills requirements*

- (2) For the purposes of paragraph 186.231(b) and subclause 186.234(3) of Schedule 2 to the Regulations, the following classes of persons are specified:
- (a) academic applicants;
  - (b) science applicants;
  - (c) Subclass 444/461 workers.

### **7 Subclass 187 visas—Temporary Residence Transition stream**

#### *Exemption from age requirement*

- (1) For the purposes of paragraph 187.221(b) of Schedule 2 to the Regulations, the following classes of persons are specified:
- (a) academic applicants;
  - (b) regional medical practitioner applicants;
  - (c) science applicants;
  - (d) Subclass 457/482 workers;
  - (da) Subclass 457/482 coronavirus concession workers;
  - (e) transitional 457 workers under 50.

#### *Exemption from English language requirement*

- (2) For the purposes of paragraph 187.222(b) of Schedule 2 to the Regulations, a class of persons is specified in relation to an application for a Subclass 187 (Regional Sponsored Migration Scheme) visa if, on the day the visa application was made, the persons had completed at least 5 years of full-time study in a

---

secondary or higher education institution where all tuition was delivered in English.

## **8 Subclass 494 visas—Employer Sponsored stream**

### *Exemption from age requirement*

- (1) For the purposes of subclause 494.223(2) of Schedule 2 to the Regulations, applicants are not required to have been under 45 for the purposes of Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visas in the Employer Sponsored stream in any of the following circumstances:
  - (a) the applicants are academic applicants;
  - (b) the applicants are regional medical practitioner applicants;
  - (c) the applicants are science applicants;
  - (d) the applicants are Subclass 444/461 workers;
  - (e) the applicants are Subclass 457/482 workers.

### *Exemption from skills and employment history requirements*

- (2) For the purposes of subclause 494.224(7) of Schedule 2 to the Regulations, the requirements of subclauses 494.224(2) to (5) of that Schedule are not required to have been met for the purposes of Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visas in the Employer Sponsored stream in either of the following circumstances:
  - (a) the applicants are academic applicants;
  - (b) the applicants are Subclass 444/461 workers.
- (3) For the purposes of subclause 494.225(2) of Schedule 2 to the Regulations, applicants are not required to have been employed as mentioned in paragraph 494.225(1)(a) of that Schedule for the purposes of Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visas in the Employer Sponsored stream in either of the following circumstances:
  - (a) the applicant is an academic applicant;
  - (b) the applicant is a Subclass 444/461 worker.



---

## **Part 3            Application and transitional provisions**

### **9            Application of this instrument**

This instrument applies in relation to an application for a visa made on or after 16 November 2019.

### **10          Transitional provision—designated regional areas**

For the purposes of this instrument, an area that was located in regional Australia (within the meaning of subregulation 5.19(16) of the Regulations) at a time occurring before 16 November 2019 is taken to have been located in a designated regional area at that time.

### **11          Operation of Schedule 1 to the *Migration (Exemptions from Skill, Age and English Language Requirements for Subclass 186, 187 and 494 Visas) Amendment Instrument (LIN 20/189) 2020***

The amendments of this instrument made by items 3 and 4 of Schedule 1 to the *Migration (Exemptions from Skill, Age and English Language Requirements for Subclass 186, 187 and 494 Visas) Amendment Instrument (LIN 20/189) 2020* apply in relation to applications made on or after the commencement of those items.

---

## Notes

This compilation comprises *Migration (LIN 19/216: Exemptions from Skill, Age and English Language Requirements for Subclass 186, 187 and 494 Visas) Instrument 2019* amended as indicated in the following tables.

### Table of instruments

Name	Registration	Number	Commencement	Application, saving or transitional provisions
<i>Migration (LIN 19/216: Exemptions from Skill, Age and English Language Requirements for Subclass 186, 187 and 494 Visas) Instrument 2019</i>	31 October 2019	F2019L01404	16 November 2019	section 9, section 10
<i>Migration (Exemptions from Skill, Age and English Language Requirements for Subclass 186, 187 and 494 Visas) Amendment Instrument (LIN 20/189) 2020</i>	23 November 2020	F2020L01447	24 November 2020	section 11
<i>Migration (Age exemption for subclass 186 (Employer Nomination Scheme) visa) Amendment Instrument (LIN 22/047) 2022</i>	4 April 2022	F2022L00515	1 July 2022	-

### Table of amendments

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
section 2 .....	rep. <i>Legislation Act 2003</i> , s. 48D
section 4 .....	rep. <i>Legislation Act 2003</i> , s. 48C
section 5 .....	am. F2020L01447 am. F2022L00515
section 5A .....	ad. F2020L01447
section 6 .....	am. F2020L01447 am. F2022L00515
section 7 .....	am. F2020L01447
Part 3 heading.....	rs. F2020L01447
section 11 .....	ad. F2020L01447
Schedule 1 .....	rep. <i>Legislation Act 2003</i> , s. 48C