



# **Migration (IMMI 18/033: Specification of Income Threshold and Annual Earnings and Methodology of Annual Market Salary Rate) Instrument 2018**

made under subregulation 2.72(17) and paragraphs 2.72(15)(b); 2.72(15)(d) and 2.79(1A)(b) of the

*Migration Regulations 1994*

## **Compilation No. 2**

**Compilation date:** 1 July 2023

**Includes amendments up to:** F2023L00921

Prepared by the Department of Home Affairs, Canberra

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## About this compilation

### This compilation

This is a compilation of the *Migration (IMMI 18/033: Specification of Income Threshold and Annual Earnings and Methodology of Annual Market Salary Rate) Instrument 2018* that shows the text of the law as amended and in force on 1 July 2023 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the Register for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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# Part 1—Preliminary

## 1 Name

- (1) This instrument is the *Migration (IMMI 18/033: Specification of Income Threshold and Annual Earnings and Methodology of Annual Market Salary Rate) Instrument 2018*.
- (2) This instrument may also be cited as IMMI 18/033.

## 3 Authority

This instrument is made under subregulation 2.72(17) and paragraphs 2.72(15)(b); 2.72(15)(d) and 2.79(1A)(b) of the Regulations.

## 4 Definitions

In this instrument:

***Australian Worker*** means an employee that is either an Australian citizen or an Australian permanent resident.

***fair work instrument*** has the meaning given by section 12 of the *Fair Work Act 2009*.

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

***Relevant employment documents*** may include, but is not limited to:

- (a) pay slips;
- (b) contract of employment.

***Relevant information*** may include, but is not limited to:

- (a) information published on the Australian Government's Job Outlook website;
- (b) job advertisements from a national recruitment website or national print media that are in English and specify the salary arrangements for the advertised position;
- (c) written advice from registered employer associations and/or unions;
- (d) remuneration surveys generated across the relevant industry by a reputable organisation or body.

***state industrial instrument*** has the meaning given by section 12 of the *Fair Work Act 2009*.

***transitional instrument*** has the meaning given by section 2 of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

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## **Part 2—Income Threshold and Annual Earnings**

### **5 Annual Earnings**

For the purposes of paragraphs 2.72(15)(b) and 2.79(1A)(b) of the Regulations, the specified amount of annual earnings is AUD 250,000.

### **6 Income Threshold**

For the purposes of paragraph 2.72(15)(d) of the Regulations, the temporary skilled migration income threshold is AUD 70,000.

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## **Part 3—Method of determination of Annual Market Salary Rate**

### **7 Method for determining the annual market salary rate where an Australian worker is performing equivalent work**

- (1) For the purposes of subregulation 2.72(17) of the Regulations, where there is a fair work instrument, state industrial instrument or transitional instrument applicable to an Australian worker who is:
  - (a) employed in the same workplace as the nominee; and
  - (b) at the same location as the nominee; and
  - (c) performing equivalent work to the nominee;the annual market salary rate for an equivalent nominated occupation or an occupation in relation to which a position is nominated under regulation 5.19 of the Regulations, is the annual earnings of an Australian worker contained in those instruments.
- (2) Where there is no fair work instrument, state industrial instrument or transitional instrument that is applicable to an Australian worker who is:
  - (a) employed in the same workplace as the nominee; and
  - (b) at the same location as the nominee; and
  - (c) performing equivalent work to the nominee;the annual market salary rate for an equivalent nominated occupation or an occupation in relation which a position is nominated under regulation 5.19 of the Regulations, must be determined by reference to relevant employment documents.

### **8 Method of determining the annual market salary rate where there is not an Australian worker performing equivalent work**

For the purposes of subregulation 2.72(17) of the Regulations, and where section 7 of this instrument does not apply and:

- (a) where there is a fair work instrument, state industrial instrument or transitional instrument applicable to a nominated occupation, the annual market salary rate for a nominated occupation, or an occupation in relation to which a position is nominated under regulation 5.19 of the Regulations, is the annual earnings of an equivalent Australian worker specified in those instruments.
- (b) Where there is no fair work instrument, state industrial instrument or transitional instrument applicable to a nominated occupation, the annual market salary rate for a nominated occupation or an occupation in relation

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to which a position is nominated under regulation 5.19 of the Regulations, is the annual earnings that would apply to an equivalent Australian worker, which must be determined by reference to relevant information.



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## Part 4—Application

### 9 Application

This instrument applies to nominations for a proposed occupation by a standard business sponsor, a person who has applied to be a standard business sponsor, a party to a work agreement (other than the Minister) or a party to negotiations for a work agreement (other than a Minister), made on or after 18 March 2018 in relation to a:

- (a) a holder of a Subclass 457 (Temporary Work (Skilled) visa;
- (b) a holder of a Subclass 482 (Temporary Skill Shortage) visa holder; or
- (c) an applicant or proposed applicant for a Subclass 482 (Temporary Skill Shortage) visa.

Note: This instrument applies to additional visas through operation of the Regulations: see subregulations 2.72C(15) and (16), 2.79A(2) and paragraphs 5.19(5)(o) and 5.19(9)(h) of the *Migration Regulations 1994*.

### 10 Application of the *Migration (Specification of Income Threshold and Annual Earnings and Methodology of Annual Market Salary Rate) Amendment Instrument (LIN 23/045) 2023*.

The amendments made by Schedule 1 to the *Migration (Specification of Income Threshold and Annual Earnings and Methodology of Annual Market Salary Rate) Amendment Instrument (LIN 23/045) 2023* apply to an application for approval of a nomination made after 30 June 2023.

## Endnotes

Endnote 1—About the endnotes

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## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and “(md not incorp)” is added to the amendment history.

**Endnote 2—Abbreviation key**

|   |   |
|---|---|
| ad = added or inserted  | o = order(s)  |
| am = amended  | Ord = Ordinance   |
| amdt = amendment  | orig = original   |
| c = clause(s)   | par = paragraph(s)/subparagraph(s)<br>/sub-subparagraph(s)          |
| C[x] = Compilation No. x  | pres = present  |
| Ch = Chapter(s)   | prev = previous   |
| def = definition(s)   | (prev...) = previously  |
| Dict = Dictionary   | Pt = Part(s)  |
| disallowed = disallowed by Parliament                           | r = regulation(s)/rule(s)   |
| Div = Division(s)   | reloc = relocated   |
| ed = editorial change   | renum = renumbered  |
| exp = expires/expired or ceases/ceased to have effect           | rep = repealed  |
| F = Federal Register of Legislation                             | rs = repealed and substituted                                       |
| gaz = gazette   | s = section(s)/subsection(s)  |
| LA = <i>Legislation Act 2003</i>                                | Sch = Schedule(s)   |
| LIA = <i>Legislative Instruments Act 2003</i>                   | Sdiv = Subdivision(s)   |
| (md) = misdescribed amendment can be given effect               | SLI = Select Legislative Instrument                                 |
| (md not incorp) = misdescribed amendment cannot be given effect | SR = Statutory Rules  |
| mod = modified/modification                                     | Sub-Ch = Sub-Chapter(s)   |
| No. = Number(s)   | SubPt = Subpart(s)  |
|   | <u>underlining</u> = whole or part not commenced or to be commenced |

## Endnotes

### Endnote 1—About the endnotes

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### Endnote 3—Legislation history

| <b>Name</b>   | <b>Registration</b>          | <b>Commencement</b> | <b>Application, saving and transitional provisions</b> |
|---|------------------------------|---------------------|--|
| Migration (IMMI 18/033: Specification of Income Threshold and Annual Earnings and Methodology of Annual Market Salary Rate) Instrument 2018           | 16 Mar 2018<br>(F2018L00284) | 18 Mar 2018 (s 2)   |  |
| Migration (LIN 19/213: Specification of Income Threshold and Annual Earnings and Methodology of Annual Market Salary Rate) Amendment Instrument 2019  | 13 Nov 2019<br>(F2019L01448) | 16 Nov 2019 (s 2)   | s 9  |
| Migration (Specification of Income Threshold and Annual Earnings and Methodology of Annual Market Salary Rate) Amendment Instrument (LIN 23/045) 2023 | 30 Jun 2023<br>(F2023L00921) | 1 Jul 2023 (s 2)    | s 10   |

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**Endnote 4—Amendment history**

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| <b>Provision affected</b> | <b>How affected</b> |
|---------------------------|---------------------|
| s 2 .....                 | rep LA 48D          |
| s 6 .....                 | am F2023L00921      |
| s 9 .....                 | rs F2019L01448      |
| s 10 .....                | ad F2023L00921      |

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