

EXPLANATORY STATEMENT

Migration Regulations 1994

MIGRATION (LIN 18/138: SPECIFICATION OF INCOME THRESHOLD AND EXEMPTIONS FOR SUBCLASS 189 (SKILLED – INDEPENDENT) VISA (NEW ZEALAND STREAM)) INSTRUMENT 2018

(Subclause 189.233(2))

1. The instrument, LIN 18/138, is made under subclause 189.233(2) of the *Migration Regulations 1994* (Regulations).
2. The instrument repeals IMMI 17/035 (F2017L00723) in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*, which states 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. This instrument operates to specify the minimum amount of taxable income for the corresponding income years for a Subclass 189 (Skilled – Independent) visa applicant in the New Zealand stream (the applicant). An applicant's taxable income must be no less than the specified amount, unless they fall within a class of exempt applicants. This instrument also specifies the class of applicants who are exempt from the requirement to have earned at least the minimum amount of taxable income in each income year and the evidence they must provide supporting their claim that they are a member of the exempt class of applicant.
4. The purpose of this instrument is to specify the minimum amount of taxable income for income year 2017-2018 by inserting item 7 into the table in section 6. The minimum amount of taxable income for income year 2017-2018 remains unchanged from the previous income year 2016-2017 at \$53,900.
5. The minimum amount of taxable income for income year 2017-2018 has not changed from income years 2013-2014, 2014-2015, 2015-2016 and 2016-2017. Applicants relying on the table in section 6 have continued to reference \$53,900 as the minimum amount of income for applications made before the date of registration.

6. Section 7 has been redrafted for the purpose of clarity of language. This change does not alter the prior intention of the instrument. Under section 15AC of the *Acts Interpretation Act 1901*, where an Act or instrument has expressed an idea in a particular form of words and a later Act or instrument appears to have expressed the same idea in a different form of words for the purpose of using a clearer style, the ideas shall not be taken to be different merely because different forms of words were used.
7. The instrument therefore does not alter the existing operation of the Temporary Skilled Migration Income Threshold (TSMIT) regime. The instrument does not impact any rights, privileges, obligations or liabilities acquired, accrued or incurred under the previous instrument.
8. In accordance with subsection 17(1) of the *Legislation Act 2003*, consultation was undertaken with the Australian Bureau of Statistics in reviewing the TSMIT.
9. The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is not required (OBPR Reference: 23996).
10. 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.
11. This instrument commences on the day after registration on the Federal Register of Legislation.