

EXPLANATORY STATEMENT

Migration Regulations 1994

MIGRATION (LIN 19/146: INCOME TEST FOR SPONSORSHIP FOR TEMPORARY SPONSORED PARENT VISA) INSTRUMENT 2019

(Paragraphs 2.60W(4)(a) and (b))

1. Instrument LIN 19/146 is made under paragraphs 2.60W(4)(a) and (b) of the *Migration Regulations 1994* (the Regulations).
2. The instrument operates to specify for an applicant the minimum amount of taxable income that is required to pass the income test, and also specifies the income year. The instrument's head of power is provided by the *Migration Amendment (Temporary Sponsored Parent Visa and Other Measures) Regulations 2019*.
3. Paragraph 2.60U(1)(f) of the Regulations provides that a person who applies for approval as a family sponsor in relation to the parent sponsor class (an applicant) must pass the income test. An applicant passes the income test if the applicant's taxable income for a specified income year is at least equal to the amount specified in an instrument.
4. If an applicant's taxable income is combined with other taxable incomes such as the taxable income of the applicant's spouse or de facto partner; or one child of a permitted sponsor that meets the requirements of subregulation 2.60W(3) of the Regulations, and that combined amount is at least equal to the amount specified in an instrument under subregulation 2.60W(4) of the Regulations, the taxable income test is met.
5. The purpose of the instrument is to specify the taxable income amount as not less than \$83,454.80 for the purposes of paragraph 2.60W(4)(a) of the Regulations. This figure is based on the most recent data from the Australian Bureau of Statistics' Average Weekly Earnings survey. The amount specified was calculated from the Full-time Adult Average Weekly Ordinary Time Earnings for November 2018, which was \$1,604.90.

6. The instrument also specifies the income year as the most recently completed income year prior to the date the application for approval as a family sponsor is lodged for the purposes of paragraph 2.60W(4)(b) of the Regulations.
7. Consultation was undertaken before the instrument was made. The department consulted with other relevant government agencies and community stakeholders prior to the Government announcement of 4 May 2017 that it would implement the TSPV as part of the 2017-18 Budget measures. The agencies consulted with include:
 - a. Attorney-General's Department;
 - b. Australian Taxation Office;
 - c. Department of Finance;
 - d. Department of Health;
 - e. Department of Human Services;
 - f. Department of the Prime Minister and Cabinet;
 - g. Department of Social Services; and
 - h. The Treasury.
8. The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement (RIS) is required (OBPR Reference: 21913). The RIS has been provided.
9. Under section 42 of the *Legislation Act 2003*, the instrument is subject to disallowance and therefore a Statement of Compatibility with Human Rights has been provided at **ATTACHMENT A**.
10. The instrument commences on 17 April 2019.

ATTACHMENT A**Statement of Compatibility with Human Rights**

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Migration (LIN 19/146: Income Test for Sponsorship for Temporary Sponsored Parent Visa) Instrument 2019

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Disallowable Legislative Instrument

This Legislative Instrument supports the framework established by *Migration Regulations 1994* (the Regulations) by specifying the income threshold over a given period for approving an applicant as a family sponsor for the new Sponsored Parent (Temporary) (subclass 870) visa for the purposes of subregulation 2.60W(4).

The new instrument making power is provided by the *Migration Amendment (Temporary Sponsored Parent Visa and Other Measures) Regulations 2019* (the Amendment), which requires approval of sponsorship before a valid visa application for a Sponsored Parent (Temporary) (subclass 870) visa can be made.

This Disallowable Legislative Instrument provides clarification on the arrangements for meeting the income test for sponsorship applications for the new Sponsored Parent (Temporary) (subclass 870) visa. The specified income threshold is based on the Australian full-time adult average weekly ordinary time earnings as determined by the Australian Bureau of Statistics.

The Sponsored Parent (Temporary) (subclass 870) visa provides an additional option to a range of visa products already available to families seeking to visit their children in Australia. Australian citizens and permanent residents who do not meet the required income threshold will be able to consider other visa options, which would allow their parents to visit Australia.

Human rights implications

This legislative instrument has been considered against key international treaties. In particular, Article 2 of the International Covenant on Civil and Political Rights (ICCPR), which states:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The Sponsored Parent (Temporary) (subclass 870) visa is an additional visa option which allows a visa holder to remain in Australia for up to five years without the need to depart. The visa also allows multiple entries if a visa holder wishes to depart and re-enter Australia during the visa validity. This visa offers an option of temporary family reunification without the waiting periods experienced in other existing parent visa arrangements. The requirements for a sponsor to meet a minimum income threshold ensures that adult children who sponsor their parents are able to afford the costs of the parent visa holder living in Australia without creating a burden on Australian taxpayers and disadvantaging other members of the community.

If a sponsorship application is refused for failing to meet the income test, this requirement may be seen as discriminatory based on a person's financial status. However, this measure is aimed at protecting the welfare of elderly parents who may be vulnerable if their sponsor does not have sufficient resources to support their stay in Australia, particularly on a long-term basis. This measure also reduces the risks of visa holders imposing a burden on Australian taxpayers or public health system. The income test is based on an objective community standard of the full-time adult average weekly ordinary time earnings as set by the Australian Bureau of Statistics.

As noted above, parents of Australian citizens and permanent residents who do not meet the income test will be able to consider other visa options for visiting their children in Australia.

The human rights engaged by the introduction of the visa subclass are discussed in the Statement of Compatibility with Human Rights for the *Migration Amendment (Temporary Sponsored Parent Visa and Other Measures) Regulations 2019*.

Conclusion

This legislative instrument is compatible with human rights because to the extent that there is a limitation on the prohibition on discrimination in Article 2 of the ICCPR, this is reasonable, necessary, and proportionate to achieve a legitimate objective of ensuring sponsors have sufficient resources for supporting their parents while they remain in Australia on a Sponsored Parent (Temporary) (subclass 870) visa to protect the interest of elderly parents of Australian citizens and permanent residence who may be vulnerable without appropriate financial assistance and to ensure the cost of sponsoring a parent is not a burden on the Australian community.