



# **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*

## **Compilation No. 1**

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Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### This compilation

This is a compilation of the *Migration (LIN 19/216: Exemptions from Skill, Age and English Language Requirements for Subclass 186, 187 and 494 Visas) Instrument 2019* that shows the text of the law as amended and in force on 24 November 2020 (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 Legislation 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 series page on the Legislation 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.

### Editorial changes

For more information about any editorial changes made in this compilation, see 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 series page on the Legislation 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If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.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 (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.

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<b>Exempt occupations</b>		
<b>Item</b>	<b>Column 1 Occupation</b>	<b>Column 2 6-digit ANZSCO code</b>
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*.

**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:

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

**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:

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- (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.

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## 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;
  - (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

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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.

## 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.

### Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

## Endnotes

### Endnote 2—Abbreviation key

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#### 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) /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

## Endnote 3—Legislation history

**Endnote 3—Legislation history**

<b>Name</b>	<b>Registration</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Migration (LIN 19/216: Exemptions from Skill, Age and English Language Requirements for Subclass 186, 187 and 494 Visas) Instrument 2019	31 Oct 2019 (F2019L01404)	16 Nov 2019 (s 2(1) item 1)	
Migration (Exemptions from Skill, Age and English Language Requirements for Subclass 186, 187 and 494 Visas) Amendment Instrument (LIN 20/189) 2020	23 Nov 2020 (F2020L01447)	24 Nov 2020 (s 2(1) item 1)	—

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## Endnotes

### Endnote 4—Amendment history

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#### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
<b>Part 1</b>	
s 2 .....	rep LA s 48D
s 4 .....	rep LA s 48C
s 5 .....	am F2020L01447
s 5A .....	ad F2020L01447
<b>Part 2</b>	
s 6 .....	am F2020L01447
s 7 .....	am F2020L01447
<b>Part 3</b>	
Part 3 heading .....	rs F2020L01447
s 11 .....	ad F2020L01447
Schedule 1 .....	rep LA s 48C

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