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Subclass 189 (Skilled – Independent) visa

Procedural Instruction

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1. Purpose

This Procedural Instruction (PI) is:

- a companion to the *Migration Act 1958* (“the Act”) and *Migration Regulations 1994* (“the Regulations”) and associated administrative processes
- designed to assist officers to apply migration legislation by providing policy and procedural instruction relevant to the legislation
- written to be read with the legislation
- a Departmental instruction, with status as:
 - an official departmental instruction within the department’s centralised departmental instructions system (CDIS) and
 - operational information as defined in the *Freedom Of Information Act 1982*.

2. Scope

This PI covers the Skilled Independent (Permanent) visa (Subclass 189), which allows invited workers and New Zealand citizens with skills we need, to live and work permanently anywhere in Australia.

This PI is for the use of processing staff for the Subclass 189 and addresses both Schedule 1 requirements and Schedule 2 criteria.

The primary audience of this PI is program management, visa processing and cancellation officers. Other persons reading this PI should keep in mind that they are not the primary audience.

This PI describes how to implement the overarching law and policy in relation to this visa category/categories and is applicable nationally and internationally. It is addressed to officers administering migration law, in particular those officers who are ministerial delegates. Other persons reading PIs should keep in mind that they are not the primary audience and assistance and advice from within the Department or from Departmental Help Desks is only open to Departmental staff.

3. Policy intent

3.1. Strategic Context

The Subclass 189 visa was created as part of the 1 July 2012 SkillSelect reforms.

3.2. Objectives of the program

3.2.1 Points-tested stream

The Points-tested stream provides a permanent visa for skilled workers who want to work and live in Australia.

3.2.2 New Zealand stream

The New Zealand stream of the Subclass 189 visa provides a pathway to permanent residence for long-term New Zealand citizen residents who have demonstrated commitment to Australia, and who have made an economic contribution to Australia’s future.

Applicants must be able to evidence their commitment and contribution to Australia to be eligible for this visa.

Under current regulatory and policy settings the New Zealand stream remains open to eligible applicants who can demonstrate that they were usually resident in Australia for a continuous period of a least 5 years before the date of application and that continuous period of usual residence in Australia started on or before 19 February 2016.

Note: New Zealand citizens whose first arrival in Australia was after 19 February 2016 are not eligible to apply for this pathway.

4. Procedural Instruction

4.1. About Subclass 189

The Subclass 189 visa is the only Subclass of the Skilled Independent (Permanent) (Class SI) visa class.

Both the Points-tested stream and New Zealand stream are designed to enable skilled applicants to live and work in Australia permanently.

4.2. Subclass 189 legislation

The main Subclass 189 visa legislation is in two places:

- Schedule 1 Item 1137 – Skilled Independent (Permanent) (Class SI) sets out the requirements for making a valid application.
- Schedule 2, Part 189 – Subclass 189 Skilled Independent (Permanent) sets out the criteria to be satisfied by a visa applicant.

4.2.1 Schedule 2 Part 189 structure

These criteria are to be satisfied by a person who has made a valid application. Part 189 of Schedule 2 to the regulations is structured as follows:

189.2

The primary criteria is contained in clauses 189.211 to 189.234 and must be satisfied at the time a decision is made on the application. The Primary criteria must be satisfied by at least one member of a family unit.

189.3

Clauses 189.311 to 189.313 are the criteria specific to secondary applicants who are members of the family unit of a person who holds a Subclass 189 visa on the basis of satisfying the primary criteria.

4.3. Subclass 189 – section 499 directions

The processing of Subclass 189 visa applications may be subject to a ministerial “Order of consideration” (or other) direction under section 499 of the Act.

If a section 499 direction is in force, it applies to all unfinalised applications, including applications made before the direction was made.

Applying for a Subclass 189 visa

Migration law provides specific circumstances in which persons in Australia cannot make a valid visa application.

4.4. Section 48 statutory bar on applying in Australia

See section 48 of the Act.

A person in the migration zone who does not hold a substantive visa and:

- after last entering Australia was refused a visa (other than refusal of a bridging visa or visa refusal under certain character provisions of the Act) for which they applied; or
- after last entering Australia held a visa that was cancelled under certain provisions of the Act;

may apply only for visas prescribed in regulation 2.12.

A Subclass 189 visa is **not** a prescribed visa for section 48 purposes, persons who are subject to a section 48 bar will need to be outside Australia to make a valid application for a Subclass 189 visa.

For policy and procedure on the section 48 statutory bar and on making valid applications see LS-1849: GenGuideA - All visas - Visa application procedures.

5. Schedule 1 requirements

5.1. Legislative requirements

To be eligible to be granted a Subclass 189 visa:

- The applicant's application must first meet the requirements of Item 1137 of Schedule 1 to the regulations to be a valid application

5.2. If Schedule 1 requirements are not met

If a Subclass 189 visa application does not meet the requirements in item 1137 of Schedule 1, no valid application for a Skilled Independent (Permanent) (Class SI) visa (Subclass 189) visa has been made. An officer is not to consider an application that is not a valid application. A finding that a visa application is not valid is not merits reviewable and any associated visa application charge (VAC) that has been paid must be repaid.

If it is found that the application for a Skilled Independent (Permanent) (Class SI) visa (Subclass 189) visa is invalid, see:

LS-1849: GenGuideA - All visas - Visa application procedures.

LS-1849: GenGuideA - All visas - Visa application procedures - Valid or invalid applications - Consequences for decision making.

5.3. If primary application is invalid, all 'combined' applications invalid

The requirements of 1137(4) (including the invitation requirement, age requirement and skill-related requirements) operate as valid application requirements in two ways:

- the main applicant must meet the requirements in their own right in order to have a valid Class SI application under that Item **and**
- secondary applicants cannot make a valid Class SI combined application unless the primary applicant has made a valid application - see Item 1137(3)(d).

For example, if the main applicant does not meet the Schedule 1 age requirement (for example, under Item 1137(4) table item (3)), none of the persons included in their application have a valid Class SI application.

However, if a secondary applicant fails a Schedule 1 validity criteria (for instance, the secondary applicant is onshore but does not hold a qualifying visa) the main applicant and other secondary applicants will have made a valid application, but this particular secondary applicant will not have done so.

6. Schedule 1 requirements

6.1. About Item 1137 of Schedule 1

Schedule 1 item 1137:

- prescribes the Skilled Independent (Permanent) (Class SI) visa as a visa class
- sets out the requirements for an application for a Class SI visa to be a valid application.

For policy and procedure on visa application requirements, see PAM3: GenGuideA - All visas - Visa application and related procedures - Applications for visas

6.1.1 – Subclass and streams

Item 1137(5) prescribes the Skilled - Independent (subclass 189) visa as the only subclass of this visa class.

The subclass 189 has two streams

For Schedule 1 requirements specific to the points-tested stream refer to subitem 1137(2)

For Schedule 1 requirements specific to the New Zealand stream refer to subitem 1137(4D)

6.1.2 Application form

Subitem 1137(1) of Schedule 1 provides that the form that must be used to make an application for a Skilled Independent (Permanent) visa, (Subclass 189 visa) is specified in *Migration (LIN 19/029: Arrangements for Certain Skilled and Temporary Graduate Visa Applications) Instrument 2019* made for this provision under subregulation 2.07(5). The place and the manner of making the application is also specified in a legislative instrument under subregulation 2.07(5) – See paragraph 1137(4A)(a) and 1137(4G)(a).

6.1.3 Visa application charge

Subitems 1137(3), 1137(4), 1137(4)(4E) and 1137(4)(4F), of Schedule 1 deals with the VAC payable by an applicant for a Skilled Independent (Permanent) visa, (Subclass 189 visa).

For policy and procedure on all aspects of the VAC, see FM-1209: Div2.2A - Visa application charge

6.1.4 Where Subclass 189 visa applicants must be

For their application to be valid, an applicant in the points tested stream for a Subclass 189 visa may be in or outside Australia, but not in immigration clearance when the application is lodged – See paragraph 1137(4)(4A)(b).

An application by a secondary applicant may be made at the same time, and combined with, an application by a primary points-tested applicant – paragraph 1137(2)(b). However, there is no requirement for applicants to be in the same place when the application is made or for secondary applicants to make an application at the same time as the primary applicant.

A primary applicant in the New Zealand stream for a Subclass 189 visa must hold a Subclass 444 (Special Category) Visa. To hold a Subclass 444 Visa, the applicant must be in Australia.

6.1.5 Qualifying visas

Paragraph 1137(4A)(c) provides that applicants who are in Australia must hold either a substantive visa or a Bridging Visa A, B or C. Although applicants in a combined application do not necessarily have to hold the same visa, each applicant in Australia must hold a qualifying visa at the time of application. Generally, systems will perform this check routinely when the application is lodged but officers should verify that all applicants held a qualifying visa at the time of lodgement.

For the New Zealand stream, paragraph 1137(4G)(c) provides that a primary NZ applicant must hold a Subclass 444 (Special Category) Visa.

6.1.6 No further application conditions – waiver provisions

Together with regulation 2.07AG, sub-regulation 2.05(4AA) and paragraph 2.05(5A)(b) enable conditions 8503 and 8534 to be waived if the person has a genuine intention to apply for a Subclass 189 visa. This applies where the substantive visa held by an onshore applicant is subject to condition 8503 or 8534, which prevents them from making a visa application in Australia except in certain circumstances.

If an onshore applicant is subject to an 8503 condition, the Department's systems will waive the condition automatically to enable lodgement of the Subclass 189 application and grant an associated BVA (if the applicant is otherwise eligible to make a valid application).

If an onshore applicant is subject to an 8534 condition, the Department's systems will allow lodgement of a Subclass 189 application even though the waiver is not automatically granted in every case.

The Department's policy is that the request for a waiver is included with the Subclass 189 application and, a waiver will be granted if the applicant has completed the course for which the visa with the 8534 condition attached was granted. Decision-makers should check that the course was completed and then record the approval of the waiver, and grant the appropriate bridging visa. If the applicant has not completed the relevant course, the Subclass 189 application should be recorded as invalid and procedures initiated to repay the VAC.

If an onshore applicant is subject to an 8534 condition and they hold a Subclass 590 (Student Guardian) visa, under policy, condition 8534 should be waived. This is because the requirement to have completed the course for which the visa was granted does not apply if the visa holder does not have a course of study to complete.

For policy and procedure on the operation of waivers, see VM-3197: Div2.1/reg2.05 - Conditions applicable to visas - SkillSelect-related waivers (8503 and 8534).

Condition 8535 and 8540

Conditions such as 8535 or 8540, which apply to certain student and Work and Holiday visa holders, are waived as part of the application process.

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For policy and procedure on the operation of these conditions, see:

- PAM3: Sch8/8535
- PAM3: Sch8/8540

and references to those conditions in VM-3197: Div2.1/reg2.05 - Conditions applicable to visas - Waiver of "no further application" conditions.

6.1.7 Primary applicant

The primary applicant is the applicant who is seeking to satisfy the primary criteria for the grant of a Subclass 189 visa.

6.1.8 Invitation required

The primary applicant must have been invited, in writing, by the Minister to apply for the Subclass 189 visa. See item 1 of the table at 1137(4B). See 7.1 Invitation

6.1.9 Application must be made within the specified period

The primary applicant must apply for a Subclass 189 visa within the period specified in the invitation (not more than 60 calendar days from the date of invitation issued in SkillSelect). See item 2 of the table at 1137(4B).

6.1.10 Applicant must not have turned 45 at the time of invitation

The primary applicant must not have turned 45 at the time of invitation to apply for the visa via SkillSelect- see item 3 of the table at subitem 1137(4B).

6.1.11 Applicant must nominate a skilled occupation in the application

The primary applicant must nominate a **skilled occupation**:

- that is specified by the Minister in an instrument under item 4 of the table at subitem 1137(4B) as being a skilled occupation at the time of invitation to apply for the visa; and
- that is specified in the invitation as the skilled occupation which the applicant may nominate; and
- for which the applicant declares in the application that their skills have been assessed as suitable by the relevant assessing authority for the skilled occupation and that the assessment is not for a Subclass 485 (Temporary Graduate) visa. See item 4(c) of the table at subitem 1137(4B).

The primary applicant must nominate a skilled occupation in their application and this skilled occupation must be the skilled occupation that was specified in their invitation to apply for a Subclass 189 visa - see paragraph 4(b) in the table in subitem 1137(4B).

The instrument which specifies skilled occupations for the purpose of item 4 of the table in subitem 1137(4B) of Schedule 1 is *Migration (LIN 19/051: Specification of Occupations and Assessing Authorities) Instrument 2019*

- This legislative instrument is known as the *Specification of Occupations and Assessing Authorities*.
- The instrument that applies is the instrument in force at the time the invitation was issued.

The existence of the skills assessment and its suitability are assessed as a Schedule 2 criterion (see clause 189.222).

6.1.12 Nominated skilled occupation cannot later be changed

There are no provisions in migration legislation that enable an applicant or the Minister to change their nominated skilled occupation after their visa application has been lodged.

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If a person has skills in more than one occupation on the SOL, they must decide at the time they enter their details into an expression of interest (EOI) in the SkillSelect database which one of those occupations will be their nominated skilled occupation. They are able to amend the details in this EOI up until they are invited to apply for a visa - see [VM-4988: SkillSelect- Expression of Interest for Skilled Migration](#).

If a person needs to change their occupation or other details in their EOI after being invited to apply for the subclass 189 visa, they will need to let their current invitation lapse, reinvigorate the EOI and adjust the occupation at that point. They will then need to be invited (if otherwise eligible) on the basis of the new occupation to apply for a subclass 189 visa.

6.2. Associated bridging visas

Related instructions: this section must be read with the associated PI 3: Sch2 Bridging visa policy instructions:

- [VM-3142: Bridging visas – Visa application and related procedures](#)
- [VM-961: Sch2Visa010 – Bridging A \(BVA/WA-010\)](#)
- [VM-966: Sch2Visa020 – Bridging B \(BVB/WB-020\)](#)
- [VM-967: Sch2Visa030 – Bridging C \(BVB/WC-030\)](#)

6.3. Applicants in Australia at time of application

A valid application for a Subclass 189 visa by an applicant in Australia at time of application is also an application for a bridging visa. Bridging visa eligibility will depend on the visa applicant's immigration status and circumstances at the time they make an application for a Subclass 189 visa.

6.4. Applicants outside of Australia at time of lodgement

Generally, persons who:

- applied for a Subclass 189 visa while outside Australia; and
- subsequently travel to Australia

are eligible to apply for a BVA if they held a substantive visa at the time they applied for the Class SI visa. A separate BVA application for a bridging visa is required and can be made only in Australia.

Generally, persons who:

- applied for a Subclass 189 visa while outside Australia but
- did **not** hold a substantive visa at time of application

cannot be granted a BVA or BVC associated with their application for a Subclass 189 visa if they subsequently enter Australia (that is, holding a visa granted after their application for a Subclass 189 visa was made). Applicants in this situation who approach the Department about a bridging visa should be counselled on the requirement to maintain their lawful migration status while in Australia.

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6.5. Visa conditions attached to associated bridging visa

No visa conditions apply to a BVA, BVB or BVC visa granted in association with an application for a Subclass 189 visa.

7. Schedule 2 Criteria

The primary criteria for the grant of a Subclass 189 visa include common criteria which must be satisfied by all applicants and specific criteria set out in streams.

For a Subclass 189 visa in the Points-tested stream, the criteria in Subdivisions 189.21 and 189.22 are the primary criteria.

For a Subclass 189 visa in the New Zealand stream, the criteria in Subdivisions 189.21 and 189.23 are the primary criteria.

The other members of the family unit who are applicants for this visa need satisfy only the secondary criteria in Division 189.3.

Criteria for Points-tested stream

7.1. Invitation

To satisfy clause 189.221 of Schedule 2 to the Regulations, the primary applicant must have been invited, in writing by the Minister, to apply for the visa. The online application system – SkillSelect – requires an invitation code for a Subclass 189 application to be made. For more information, see VM-4988: SkillSelect-Expression of Interest for Skilled Migration.

Members of the family unit making a combined application with the primary applicant do not require an invitation.

7.1.1 Invitation date is significant

The time of invitation date is critical for the assessment of whether an applicant satisfies criteria for the grant of a Subclass 189 visa. All of the requirements related to an applicant's indicative points score at time of invitation require the applicant to be able to demonstrate that these requirements were met at time of invitation.

The criteria discussed in the following sections specify that the requirement must have been met at time of **invitation**, decision makers must ensure the documentation or other evidence provided by the applicant satisfy this requirement.

7.2. Suitable skills assessment

7.2.1 Time of invitation requirement

For clause 189.222(1)(a), at the time of invitation to apply for the Subclass 189 visa the relevant assessing authority must have assessed the applicant's skills as suitable for the applicant's nominated skilled occupation. The assessment must not have been made for the purposes of a Subclass 485 (Temporary Graduate) visa (See paragraph 189.222(1)(b)). For more information on relevant assessing authorities – Migration (LIN 19/051: Specification of Occupations and Assessing Authorities) Instrument 2019.

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The criteria against which an assessing authority assesses an applicant's skills is determined by the relevant assessing authority in accordance with relevant professional standards.

See: Reg 2.26B Relevant assessing authorities

The skills assessment must be 'suitable' – paragraph 189.222(1)(a). If the assessment is not suitable, paragraph 189.222(1)(a) is not satisfied.

If the skills assessment is for a trade occupation issued by Trades Recognition Australia for applicants who study in Australia and apply for their visa after January 2011, the assessment should specify whether the applicant has come through the Job Ready Program.

The relevant assessing authority assesses whether the applicant's skills are suitable for the nominated occupation and provides the applicant with written advice as to the outcome of the assessment.

Skills assessments are valid for three years from the date of assessment unless a shorter period is specified on the assessment. See 7.2.6 validity period for skills assessments.

If the skills assessment was made on the basis of a qualification obtained in Australia while the applicant held a Student visa, the qualification must have been obtained as a result of studying a registered course (See subclause 189.222(2)).

As each relevant assessing authority is responsible for setting its own standards, intending Subclass 189 applicants should, before submitting a SkillSelect EOI, directly contact the assessing body relevant to their chosen occupation for advice as to the information they will need to provide for, and fees associated with, obtaining a skills assessment.

7.2.2 Subclass 485 skills assessments are not acceptable

Some assessing authorities issue a provisional or Subclass 485 specific skills assessment for recent graduates of Australian educational institutions who apply for a Subclass 485 visa. As discussed immediately below, a favourable skills assessment for a Subclass 485 visa does not mean a Subclass 189 applicant satisfies the 'suitable skills assessment' for Subclass 189 purposes.

Officers need to be aware that assessing authorities may set different standards for skills assessments for the same occupation. Temporary and permanent visa programs may have differing purposes, and the different standards of skills assessments reflect those purposes. For example, the Subclass 485 visa is aimed at assisting a graduate to gain skilled work experience in Australia, whereas a provisional or permanent visa is aimed at an applicant who already has relevant skilled work experience in the relevant occupation. The standards for a skilled assessment for a provisional and permanent visa will therefore generally be at a higher level.

The criteria by which an assessing authority undertakes different types of skills assessments is determined by the assessing authority in accordance with relevant professional standards. However, the main difference is that, unlike a full or permanent skills assessment, a Subclass 485 skills assessment does not require employment in the applicant's occupation at the skilled level. For this reason a Subclass 485 skills assessment is not acceptable in relation to a Subclass 189 visa application – See subclause 189.222(1)(b).

7.2.2.1 Acceptability of other skills assessments

Skills assessments for the following are suitable for points-tested GSM visa applications:

- Subclass 482 (Temporary Skill Shortage)
- 457 Skills Assessment Program
- Offshore Skills Assessment Program (OSAP)
- Migration Skills Assessment (MSA)
- Job Ready Final Assessment (JRFA)

Applicants who hold a successful Migration Skills Assessment (MSA) outcome have been deemed by TRA to have a qualification comparable to the relevant minimum Australian qualification required for their nominated occupation.

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7.2.3 Medical practitioners

For medical practitioners, the Department accepts evidence of the applicant's:

- full/unconditional/general medical registration; or
- conditional specialist registration – where this registration allows the person to practise in their particular speciality, with no further training or supervision requirements

issued by the relevant assessing authority, Australian Health Practitioner Regulation Agency as evidence of full registration.

7.2.4 Solicitors and Barristers

For solicitors and barristers, the Department accepts evidence of the applicant's:

- admission to the relevant State or Territory Legal Admissions Authority; or
- admission to the Supreme Court of a state or territory

as a suitable skills assessment.

Evidence of admission to the Supreme Court of a state or territory demonstrates that an applicant has been deemed as suitable to practise as a solicitor or barrister in that jurisdiction. Applicants must continue to be on the roll at time of invitation.

7.2.5 Professional membership or registration is not a skills assessment

Evidence of membership of an Australian professional society (for example, membership of the Australian Institute of Management) is of itself a skills assessment and does not meet the time of invitation skill related criteria.

7.2.6 Validity period for skills assessments

See paragraphs 189.222(1)(c) and (d).

Together these paragraphs provide that the validity periods for skills assessments are calculated as follows:

- If no validity period is shown on a skills assessment, the assessment is valid for 3 years from date of issue, or
- If the validity period shown on a skills assessment is less than 3 years, the assessment is valid for the period stated on the assessment, or
- If the validity period shown on a skills assessment is more than 3 years, the assessment is valid for three years from date of assessment.

If the applicant is invited to apply after the stipulated expiry date, the skills assessment will not satisfy paragraph 189.222(1)(c).

If more than 3 years have elapsed between the date the skills assessment was issued and the date on which the applicant was invited to apply for the Subclass 189 visa, the assessment will not satisfy paragraph clause 189.222(1)(d).

7.2.7 Skills assessment made on the basis of a qualification obtained in Australia

For subclause 189.222(2), if the skills assessment was made on the basis of a qualification obtained in Australia while the applicant held a Student visa, the qualification must have been obtained as a result of studying a registered course. 'Registered course' is defined in regulation 1.03

This means that where the applicant undertook study in Australia as the holder of a student visa the course they studied, and relied on to obtain their skills assessment, must have been a registered course.

This requirement is intended to enforce the intention of the Education Services for Overseas Students Act (ESOS Act) to prohibit education providers offering non-registered courses to overseas students studying in Australia.

7.3. English language criterion

7.3.1 Competent English

For clause 189.223, applicants are required to demonstrate that, at the time of invitation to apply for a Subclass 189 visa, the applicant had competent English.

Competent English is defined in regulation 1.15C and requires the applicant to either:

- hold a passport of a type specified in the instrument in writing made for the purpose of subregulation 1.15C(2); or
- have undertaken, in the 3 years immediately before the date of the invitation to apply for a Subclass 189 visa, a language test, specified by the Minister in an instrument in writing for the purpose of paragraph 1.15C(1)(a), in which they achieved the score specified in the instrument.

See: VM-3100: [English proficiency and assessment](#).

7.3.2 Validity period of English language test

Under regulation 1.15C, the language test used to demonstrate that the applicant has competent English must have been undertaken within the 3 years immediately before the date of the invitation to apply.

7.4. Points test

7.4.1 Schedule 6D

For details on the factors assessable under the points test applicable to SkillSelect, see [SM-5006: Sch6D - General points test for General Skilled Migration visas mentioned in subregulation 2.26AC\(1\) – Scoring](#).

The Subclass 189 primary applicant's assessed score:

- must be at least equal to the score stated in the invitation to apply for the Subclass 189 visa – See section [7.4.2 Assessed score must be at least equal to the score stated in the invitation](#);
- and
- must meet the pass mark applicable to the Subclass 189 visa. See section [7.4.3 Assessed score must meet pass mark](#)

7.4.2 Assessed score must be at least equal to the score stated in the invitation

For subclause 189.224(1), the applicant's assessed score must not be less than the score stated in the invitation to apply for the visa.

This is because invitations are ranked and issued on the basis of self-declared skills and attributes included in the intending migrant's EOI. This criterion is designed to preserve the integrity of the invitation process ensuring that those with higher valued attributes and points are invited first and to ensure applicants do not overstate their self-assessed points score in order to obtain an invitation. Hence applicants must demonstrate that the indicative score on which they were invited to apply is not less than their assessed score against points test factors. If the indicative score is less than the assessed score, clause 189.224(1) is not satisfied.

There is no requirement for the individual points test criteria assessed for the application to be identical to those identified by the intending migrant in their EOI when the invitation was issued. The factors that contribute to the assessed score may vary, as the officer assesses each factor before them.

7.4.3 Assessed score must meet pass mark

For subclause 189.224(2), the applicant's assessed score must be at least equal to the qualifying score ('pass mark') for the Subclass 189 visa for which they have been invited to apply.

The pass mark is set by legislative instrument under section 96 of the Act.

For 'assessed score' see SM-5006: Sch6D - General points test for General Skilled Migration visas mentioned in subregulation 2.26AC(1).

7.4.4 Exclusion of Subclass 491 and 494 visa holders

For subclause 189.224A if, at the time of application:

- the applicant is the holder of a Subclass 491 (Skilled Work Regional (Provisional)) visa or a Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa; or
- the last substantive visa held by the applicant was a Subclass 491 (Skilled Work Regional (Provisional)) visa or a Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa;

the applicant must have held that visa for at least 3 years at the time of application unless circumstances specified in an instrument under subclause 189.224A(2) exist.

New Zealand stream

7.5 Primary NZ applicant

The primary NZ applicant is:

- The applicant seeking to satisfy the primary criteria for the grant of the Subclass 189 visa in the New Zealand stream. See clause 189.23.

Note:

In order to have made a valid application for a Skilled – Independent (Permanent) (Class SI) (Subclass 189) visa in the New Zealand stream, the primary NZ applicant must, among other things, hold a Subclass 444 (Special Category) visa - see Item 1137(4G)(c) of Schedule 1.

7.6 Residence requirement

For clause 189.231, the primary applicant must have been usually resident in Australia:

- for a continuous period of at least 5 years immediately before the date of the application; and
- that continuous period of usual residence in Australia started on or before 19 February 2016.

There is no residence requirement for secondary applicants.

Note that applicants may, in some circumstances, be considered as usually resident in Australia even when they are not physically present in Australia (for example fly-in/fly-out workers).

For further clarification, if required, departmental officer enquiries can be referred to

s. 22(1)(a)(ii) [redacted]@homeaffairs.gov.au.

Migration Agent enquiries should be made via the migration agents inquiry form on the Department of Home Affairs website.

7.7 Persons “usually resident” in Australia

The place that a person is 'usually resident' is decided by taking into account their physical residence (where the person eats, sleeps, has a home) and the person's intention to make that place their home.

The primary applicant must have been 'usually resident' in Australia at 19 February 2016, and continuously up to the time of applying for the visa, they need to be living in Australia for 5 years. This is a two stage assessment/criteria check which will rely on movement's records and evidence of residence.

Assessing whether an applicant is 'usually resident' may be seen in a variety of factors, including:

- maintaining a home in Australia
- working in Australia
- owning property, business or other interests in Australia
- having family and other ties in Australia

Note:

Evidence of residence should be considered in conjunction with evidence of income as payment of tax also supports that an applicant has been usually resident.

7.8 The income requirement

Clause 189.232 and clause 189.233 outline the income requirement for the primary NZ applicant.

For applications made before 1 July 2021, the primary applicant must provide copies of a Notice of Assessment (NOA), and of any notices of amended assessments, given to them by the Commissioner of Taxation in relation to **the four** most recently completed income years in the period of five years immediately before the date of application – see subclause 189.232(1).

For applications made on or after 1 July 2021, applicants must provide copies of a NOA, and of any notices of amended assessments, given to them by the Commissioner of Taxation in relation to **three** completed income years during the period of 5 years ending immediately before the date of application – see subclause 189.232(1). One of the income years must be the income year that ended most recently before the date of application - see subclause 189.232(1A)).

The requirement in subclause 189.231(1) will be met in relation to a copy of a notice of assessment even if the copy does not include the applicant's Tax File Number (TFN) – see subclause 189.232(2).

Unless an 'exemption' in paragraph 189.233(1)(b) applies, for each of the completed income years mentioned in subclause 189.232(1), the applicant's taxable income (as shown on the Notices of Assessment or re-assessment) must be no less than the minimum amount specified by the Minister in a legislative instrument for the year under subclause 189.233(2) - see paragraph 189.233(1)(a).

The minimum amount specified by the Minister in a legislative instrument for the purpose of subclause 189.233(2) (the income threshold) is based on the primary applicant's individual taxable income only. It must not include the taxable income of any other person such as their partner, other family members or a business. Note: that business owners will need to provide their own individual notices of assessment from the Australian Taxation Office and cannot provide details of business turnover instead.

For paragraph 189.233(1)(a), the minimum amount of income for income years from 2011-2012 to 2020-2021 are set out in legislative instrument Migration (Income Threshold and Exemptions for Subclass 189 Visa (New Zealand Stream)) Instrument (LIN 21/018) 2021

7.9 Exemption framework for the income requirement

Exemptions to the income requirement are deliberately narrow and will only apply to applicants who hold a Subclass 444 (Special Category) visa and fit into one of the categories set out in the applicable legislative instrument. These categories are as follows in relation to an applicant who is not able to meet the income requirement for any period in the 5 years immediately before the date of application:

1. (a) applicants who are prevented from leaving Australia to return to New Zealand because an Australian court order of the Family Court of Australia has assigned primary care of a child to the applicant and placed restrictions on the applicant from removing the child from Australia; or
1. (b) applicants who have the primary care of a child and the parents have agreed to a parenting plan on the understanding that the child will remain in Australia with access to all parents; or
2. applicants who are receiving compensation for an injury which prevents them earning at or above the income threshold, and if they returned to New Zealand their ongoing rehabilitation and/or compensation would be discontinued; or
3. applicants who are on an approved period of parental (including maternity or paternity) or carer's leave from their usual employment; and immediately prior to the period of leave, had an annual income that was not less than the applicable minimum amount; and have resumed, or intend to resume within a reasonable period, earning an income that is no less than the applicable minimum amount; or
4. applicants who would have likely met the income requirement for the 2019-2020 income year, if not for the effect of the COVID-19 pandemic on the Australian economy, and as a result of the COVID-19 pandemic could not meet the income requirement for the 2019-20 income year.

Note: Exemptions for applicants whose personal circumstances are not addressed by the exemption framework described above cannot be considered for an exemption for the income requirement.

In addition to providing copies of their NOAs (clause 189.232), applicants seeking to meet the exemption criteria must also supply evidence to support their claims which may include one of the following:

1. **(a) and (b) Parenting order / registered parenting plan / written parenting plan / consent order**

Applicants who have primary care of a (minor) child and are prevented from removing the child from Australia by a parenting order or parenting plan will need to provide any of the following documents as evidence that assigns primary care to the applicant, and is signed by all parents, or has a court seal attached:

- a parenting order from an Australian court;
- a registered/written parenting plan signed by both parents; or
- consent order from an Australian court.

2. **Unable to work due to injury**

Applicants who are unable to work due to injury and are receiving compensation and would have ongoing rehabilitation or compensation discontinued if the applicant returned to New Zealand will need to provide any of the following documents as evidence:

- a statutory declaration from the applicant outlining their personal circumstances;
- a statutory declaration from the applicant's employer advising on a return date to work and the applicant's income amount;

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- a medical certificate for the applicant;
- official compensation documentation relating to the applicant; or
- official rehabilitation documentation relating to the applicant.

3. Maternity, paternity or carer's leave

Applicants who have taken maternity, paternity or carer's leave from the applicant's usual employment during one or more of the five financial years immediately prior to the date of applying for the Subclass 189 visa will need to provide any of the following documents as evidence:

- a statutory declaration from the applicant outlining the applicant's personal circumstances;
- a statutory declaration from the applicant's employer advising on a return to work date and the applicant's income amount;
- birth certificate for the applicant's child;
- a medical certificate for carer responsibilities; or
- a notice of approved parental leave

Applicants who have taken maternity, paternity or carer's leave seeking to meet the exemption criteria must meet this requirement in each applicable income year.

4. COVID-19 concession:

Applicants seeking to apply for an income exemption on the basis of having their income negatively impacted by the COVID-19 pandemic must submit either of the following documents as evidence:

- a signed letter written on company letterhead by the applicant's current or former employer stating the applicant's salary before 1 February 2020; or
- the applicant's pay slips, salary advices or employment contracts (stating the applicant's salary) for a period in the 2019–20 income year to demonstrate that the applicant was likely to meet the income threshold in the 2019–20 income year;

AND in addition to one of the documents mentioned above, any one of the following documents:

1. *Statutory declaration – applicant's 2019-20 taxable income has reduced*
 - a statutory declaration by the applicant's employer acknowledging the applicant's 2019–20 taxable income has reduced, due to:
 - i. reduced availability of shifts/hours resulting in a drop in income; or
 - ii. the applicant contracting COVID-19 or having caring responsibilities for a person who contracted COVID-19, preventing the applicant from working and resulted in a drop in income; or
 - iii. medically directed orders to self-isolate, preventing the applicant from working and resulting in a drop in income; or
 - iv. caring responsibilities as a result of COVID-19 pandemic shutdowns (e.g., schools, childcare centres) that prevented the applicant from working and resulted in a drop in income;
2. *Statutory declaration – applicant's employment was terminated*
 - if the applicant's employment was terminated, a statutory declaration by the applicant's former employer stating that the circumstances of the applicant's dismissal were related to the COVID-19 pandemic effects on the business; or

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3. *Documentation of access to JobKeeper Wage Subsidy*

- documentation proving that the applicant had access to the JobKeeper Wage Subsidy for a period in 2019–20 income year including any of the following:
 - i. employee nomination form; or
 - ii. other statements or documents provided by the ATO demonstrating that the applicant had access to the JobKeeper Wage Subsidy; or
 - iii. alternative statements provided by the ATO at the applicant's request; or

4. *Services Australia–Centrelink letters - JobSeeker*

- Services Australia–Centrelink letters showing the applicant claimed and received the JobSeeker payments for a period in 2019–20 income year.

7.10 Subclass 189 – Public interest and special return criteria

7.10.1 Health (New Zealand stream)

In order to maintain Australia's health standards people who want to migrate permanently, or stay in Australia temporarily, must satisfy the health requirement specified in the Migration Regulations. New Zealand citizens on an SCV have only self-declared they are of good health.

New Zealand citizens who live in Australia are covered under the definition of "Australian resident" included in the *Health Insurance Act 1973* and thereby have access to Medicare. A health waiver will be available as New Zealand citizens are already able to access Medicare. The waiver allows the visa decision-maker to waive the health requirement after the visa applicant has been assessed by a Medical Officer of the Commonwealth (MOC) if they are satisfied that granting a visa would not result in:

- 'undue cost to the Australian community', or
- 'undue prejudice to the access to health care or community services of an Australian citizen or permanent resident'.

See Public Interest Criteria 4007.

7.10.2 Health (Points-Tested stream)

See clause 189.225. The primary applicant must satisfy public interest criteria 4005 and 4010.

For applicants in the points-tested stream, standard Schedule 4 health requirements apply. For policy and procedure, see PAM3: Sch4 – Public Interest Criteria instructions.

Common criteria

These criteria are for all applicants seeking to satisfy the primary criteria for a Subclass 189 visa.

7.10.3 Character

Entering or remaining in Australia is a privilege, and it is expected that non-citizens are, and have been, law-abiding. The character requirement is used to identify and prevent people who may pose a threat to the Australian community. Currently, New Zealand citizens on a Subclass 444 (Special Category) visa have self-declared their character. Character is a mandatory criterion as with all other visas, and this is an opportunity to validate their character. See PAM3: Sch4/4001

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7.10.4 National security

National security is a mandatory criterion with all other visas. The provisions in the *Australian Citizenship Act 2007* prohibit the approval of a citizenship applicant who is assessed as a risk to the security of Australia. As this additional pathway leads to Australian citizenship, having the security check happen at permanent residence may simplify their transition to citizenship. See [PAM3: Sch4/4002](#).

7.10.5 Public interest criteria

See clauses 189.211 and clause 189.212. The primary applicant must satisfy public interest criteria 4001, 4002, 4003, 4004, 4020 and 4021. If the primary applicant is at least 18 years of age at the time of application they must also satisfy PIC 4019.

7.10.6 Special return criteria (SRC)

For clause 189.212, the primary applicant and each member of their family unit who is also a Subclass 189 applicant must satisfy SRC 5001, 5002 and 5010 criteria. These SRC operate as a one fails all fail criterion. See [7.10.7 "One fails, all fail" criteria](#).

For policy and procedure on special return criteria, see [PI:Sch5 – Special return criteria](#).

7.10.7 "One fails, all fail" criteria

Certain PICs and special return criteria operate as "one fails, all fail" criteria. That is, the Subclass 189 primary applicant cannot satisfy the primary criteria and be granted a visa unless all members of the family unit members who are Subclass 189 visa applicants (and in some cases, members of their family unit who are not visa applicants) satisfy those criteria. For the Subclass 189 visa under clause 189.211, those PICs are:

- Each member of the family unit of the applicant who is an applicant for a Subclass 189 visa satisfies:
 - PICs 4001, 4002, 4003, 4004, 4020;
 - PIC 4019 if they were at least 18 years of age at the time of application;
 - PICs 4015 and 4016 if they are less than 18 years of age.
- Each member of the family unit of the applicant who is not an applicant for the Subclass 189 visa satisfies:
 - PICs 4001, 4002, 4003, and 4004; and

8. Subclass 189 Family unit members

8.1. Member of the family unit – Time of decision

8.1.1 Relationship

For clause 189.311, at the time of decision, the secondary applicants must be a member of the family unit of a person who holds a Subclass 189 visa on the basis of satisfying the primary criteria for the grant of that visa.

8.1.2 Applying as a secondary applicant

Secondary applicants are those persons seeking to satisfy the secondary criteria for the grant of a Subclass 189 visa whose application is:

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- made as a combined application and lodged at the same time with the application of a primary applicant; or
- sought to be combined with the application of a primary applicant before a decision is made in relation to that application; or
- results from the operation of regulation 2.08 in respect of a child born during processing.

Secondary applicants need to satisfy only the secondary criteria for grant of a Subclass 189 visa (See clauses in 189.311 to 189.313).

A person may be added to an application for a Skilled-Independent (Permanent)(Class SI)(Subclass 189) visa that has been made but not finalised if they meet the requirements of regulation 2.08A see: PAM3: Div2.2/reg2.08A - Addition of certain applicants to certain applications for permanent visas.

Under regulation 2.08, a newborn child is an applicant for a Subclass 189 visa if they are born after the application has been made but before it is decided – See PI 3: Div2.2/reg2.08 – Application by newborn child.

In this circumstance the newborn child's application is taken to be combined with the application of the primary applicant at the time he or she was born.

8.1.3 Relationship to primary applicant

To meet the criteria in clause 189.311, a secondary applicant must be a member of the family unit of a person (the primary applicant) who holds a Subclass 189 visa on the basis of satisfying the primary criteria. Member of the family unit is defined in regulation 1.12.

Secondary applicants are not required to prove their relationship to the primary applicant in order to make a valid application for a Subclass 189 visa. Secondary applicants need only **claim** to be a **member of the family unit** of the primary applicant.

In a combined application, it is sufficient that the person be listed as "migrating family" in the primary applicant's application.

It is a Schedule 2 criterion (See clause 189.311) that secondary applicants satisfy the officer that the applicant is a **member of the family unit** of the primary applicant. This is assessed, having regard to the documentation provided at time of decision.

Note:

- It is not necessary for a person to have been included in the primary applicant's EOI in SkillSelect to be able to make a valid combined application with the primary applicant.

For policy and procedure on establishing the family relationship, see:

VM-3067: Div1.2/reg1.12 – Member of the family unit.

VM-3052: Div1.2/reg1.04 - Adoption.

Visa applicants are required (under section 104 of the Act) to inform an officer if circumstances change so that an answer to a question on their visa application form is incorrect in the new circumstances, such as a change in the composition of their family unit as a result of a birth, death or change in relationship status.

Provided:

- there is no evidence before the Department to the contrary or the applicant has not provided information under section 104 of the Act, to the contrary; and
- no significant time has elapsed since the application was made,

Officers may proceed on the basis that the information provided about the applicant's family unit in their visa application is still current and correct.

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8.1.4 Establishing the partner relationship

Paragraph 1.12(2)(a) prescribes that a spouse or de facto partner of the family head is a MoFU.

For policy and procedure on assessing the definition of 'spouse', refer to:

- VM-3042: Act - Act defined terms - s5F - Spouse and
- VM-3038: Div1.2/reg1.15A - Spouse.

For policy and procedure on assessing the definition of 'de facto partner', refer to:

- VM-3041: Act - Act defined terms - s5CB - De facto partner and
- VM-3037: Div1.2/reg1.09A - De facto partner and de facto relationship and
- VM-1097: Div2.1/reg2.03A - Criteria applicable to de facto partners.

In this and other policy instructions, the generic term "partner" is used, and means, as applicable, spouse or de facto partner.

8.2. Family members PICs

8.2.1 PICs

For policy and procedure on the PICs prescribed in 189.211(3) to (6), 189.212(2), 189.225(2) to (3), 189.226(2), 189.312 and 189.313, see the corresponding LS-1855: Sch4 – Public Interest Criteria instructions.

8.2.2 If a minor

Subclause 189.312(3) provides that if the applicant is under 18 they satisfy PIC 4017 and 4018. For policy and procedure on these "child custody" criteria, see:

VM-3057: Sch4/4015-4018 – Relationships and family members - best interests of minor children.

VM-3066: Sch4/4015-4018 - Relationships and family members – custody (parental responsibility) for minor children

8.3. Special return criteria

Clause 189.212, 189.226 and 189.313 provides that the applicant satisfies special return criteria 5001, 5002 and 5010. For policy and procedure, see PI 3: Sch5 - Special return criteria.

8.4. Primary applicant must be granted a Subclass 189 visa first

Clause 189.311(a), precludes family unit members from being granted their visas unless/until the primary applicant is granted their Subclass 189 visa.

8.5. Non-migrating family members

See clause 189.211(6).

The primary applicant cannot be granted a Subclass 189 visa unless members of their family unit who are not themselves visa applicants satisfy certain public interest criteria.

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In regard to PIC 4005 requirements, See VM-1027: Sch4/4005-4007 - The health requirement - The health of family unit members (including non-migrating dependants).

8.6. Migrating family members

See clauses 189.211(3) to (5) and clause 189.212(2).

The primary applicant cannot be granted a Subclass 189 visa unless each member of their family unit satisfies certain public interest criteria and special return criteria.

For policy and procedure see PAM3:

- LS-1855: Sch4 – Public Interest Criteria instructions and
- PAM3: Sch5 – Special return criteria

8.7. Second Instalment of the VAC Points-Tested Stream – Functional English

Applicants who were at least 18 years of age at time of application and are assessed as not having **functional English** at time of decision must pay the relevant second instalment of the VAC before their visa can be granted.

- The second instalment of the VAC is not payable in respect of an applicant whose application is refused or withdrawn.

See:

- VM-3100: English proficiency and assessment
- Subparagraph s65(1)(a)(iv) of the Act
- Item 1137 of Schedule 1
- regulation 2.12C, and
- FM-1209: Div2.2A - for policy and procedure on the VAC, including procedures for requesting payment of the second instalment.

8.8. Second Instalment of the VAC New Zealand Stream

See Item 1137 (4F). Applicants must pay the second instalment of the VAC before their visa can be granted.

Note:

- The second instalment of the VAC is not payable in respect of an applicant whose application is refused or withdrawn.

See Item 1137(4F) of Schedule 1.

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9. Subclass 189 visa grant

9.1. Where the applicant must be to be granted their visa

Under clause 189.411, to be granted a Subclass 189 visa, the applicant (whether a primary applicant or secondary applicant) may be in or outside of Australia but not in immigration clearance. Applicants do not need to be in the same location as when the application was made as at time of decision. Nor do all members of the family unit need to be in the same location.

9.2. When visa is in effect

See clause 189.51.

If the applicant satisfied the primary criteria the visa has effect for 5 years from the date of grant.

Secondary applicants are granted a Subclass 189 visa which has effect for five years from the date the primary visa holder's visa was granted.

9.3. Order of consideration – section 499 Direction

The processing of a Subclass 189 visa application may be subject to a section 499 “order of consideration” (or other) direction. If a section 499 direction is in force, it applies to all unfinalised applications, including applications made before the direction was made. See Direction 74 – Order of Consideration – Certain Skilled Migration Visas.

10. Subclass 189 visa conditions

10.1. Must enter by “first entry date”

For clause 189.611(a), if the applicant is outside Australia when the visa is granted, first entry must be made before the date specified by the Minister, see VM-1226: Sch8/8504- “First entry date” condition.

Initial Entry Date

Clause 189.611 specifies the conditions that are applicable to a Subclass 189 visa granted to a person who is outside Australia when the visa is granted.

Applicants who are outside Australia at the time of visa grant must make their first entry before a specified date – See paragraph 189.611(a) and VM-1226: Sch8/8504 – “First entry date” condition.

10.2. Secondary applicants – condition 8515

In addition, paragraph 189.611(b) enables condition 8515 to be imposed on secondary visas. It is a discretionary condition.

For policy on this condition – see PI: Sch8/8515- Must not marry or enter into de facto relationship.

11. Accountability and Responsibility

Table 1 – Procedural Instruction roles and responsibilities

Role	Description
Officers delegated as decision-makers including those in the overseas network	Responsible for implementing and applying this instruction to their decision-making as part of making lawful, fair and reasonable decisions
Supervisors and managers	Responsible for ensuring decision-makers are: <ul style="list-style-type: none"> • applying the policy set in this instruction; and • exercising their powers appropriately.
Director, Skilled Program Delivery SA (GSM and BIIP)	Ensure that visa processing is correct and in line with procedural instructions
Director, Skilled and Migration Program Section	Accountable for ensuring that the information contained in this Instruction is up to date, accurate and meets stakeholder requirements.
Director, Skills and Innovation Policy Section	Ensure current, accurate and fit for purpose policy information is included.
Records Management	All records created as a result of this Procedural Instruction must be managed in accordance with the Records Management Policy Statement. Records created as a result of this Procedural Instruction must be saved in TRIM RM8

12. Statement of Expectation

12.1. Policy, Guidance and Recommendations

For all other provisions of PPCF documents, the Secretary and the Commissioner expect all IBP workers to:

- consider whether a proposed departure from any provision set out in PPCF documents is reasonable and justified in the circumstances;
- consider the risks of departing from any provision set out in a PPCF document;
- be responsible and accountable for the consequences of departing from, or not adhering to the content of all PPCF documents, including where such departure or non-adherence results in a breach of any legal or other obligations which leads to adverse outcomes for the Department;
- seek approval and be responsible for documenting the reasons/justification for their decision to depart from, or not adhere to, PPCF documents.

12.2. Exercise of Legislative Powers and Functions

12.2.1

IBP workers who make decisions or who exercise powers or functions under legislation have a duty to make these decisions or exercise these powers or functions in accordance with the requirements of the legislation and legal principles. IBP workers preparing PPCF documents that relate to decision making under legislation should ensure that these only contain guidance and support for decision makers, and do not include any direction purporting to limit a decision maker's discretion.

12.3. What happens if this Policy Statement is not followed?

12.3.1

Directions contained in policy statements issued under the Policy and Procedure Control Framework are lawful and reasonable directions authorised by the Secretary and ABF Commissioner.

12.3.2

Failure to comply with a direction contained in this document may constitute a breach of the APS Code of Conduct, and may result in a sanction, up to and including termination of employment, being imposed under subsection 15(1) of the Public Service Act 1999.

13. Version Control

Version number	Date of issue	Author(s)	Brief description of change
1.0	June 21	Director Skilled and Migration Program Section	Edit and update document Include Stream Migration Amendments for New Zealand stream visa applicants

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Attachment A – Definitions

Term	Acronym (if applicable)	Definition
<i>Migration Act 1958</i>	The Act	The <i>Migration Act 1958</i> refers to the Act that governs immigration to Australia.
Assessed score	N/A	<i>assessed score</i> , in relation to a visa applicant means the total number of points given to the applicant by the officer after assessing the applicant against particular attributes of the Schedule 6D - General Points Test for General Skilled Migration visas mentioned in subregulation 2.26AC(1).
The Department of Home Affairs	The Department	The Department of Home Affairs delivers immigration and customs border policy functions
Expression of Interest	EOI	Intending migrants must have submitted an EOI in SkillSelect to receive an invitation to apply for a Subclass 190 visa.
General Skilled Migration Program	GSM	The General Skilled Migration Program is aimed at skilled workers in particular occupations seeking to migrate to Australia, thereby improving the skills of Australia's workforce.
Immigration Clearance		In accordance with Subsection 172(2) of the Act, a person is in immigration clearance if the person: <ul style="list-style-type: none"> • is with an officer or at an authorised system for the purposes of section 166; and has not been refused immigration clearance.
Integrated Client Service Environment	ICSE	A processing system used to record and process visa, citizenship, sponsorship and nomination applications.
Invitation		Invitations are issued to intending migrants via SkillSelect inviting applicant in writing to apply for a Subclass 190 visa.
Member of the family unit	MoFU	<i>Member of the family unit</i> is defined in regulation 1.12 of Part 1 of the regulations.
Migration Law		The <i>Migration Act 1958</i> , and all delegated legislation including the <i>Migration Regulations 1994</i> .
Nominated occupation		The skilled occupation that the Subclass 190 applicant seeking to satisfy the primary criteria nominates in their application.
Points test		Means the Schedule 6D points test for General Skilled Migration visas mentioned in <u>Subregulation 2.26AC(1)</u> .

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Term	Acronym (if applicable)	Definition
Primary applicant		The applicant seeking to satisfy the primary criteria for the grant of a Subclass 190 visa.
Public interest criterion	PIC	As defined in regulation 1.03 of the regulations, a public interest criterion (PIC) is a criterion set out in a clause of Part 1 of Schedule 4, and a reference to a PIC by number is a reference to the criterion set out in the clause so numbered in that Part.
Registered course		As defined in regulation 1.03 of the regulations means a course of education or training provided by an institution, body or person that is registered, under Division 3 of Part 2 of the <i>Education Services for Overseas Students Act 2000</i> , to provide the course to overseas students.
The Regulations		The <i>Migration Regulations 1994</i>
Relevant assessing authority		<i>relevant assessing authority</i> is defined in regulation 1.03 of the regulations and means a person or body specified under regulation 2.26B.
Secondary applicant		The applicant seeking to satisfy the secondary criteria for the grant of a Subclass 190 visa.
Skilled occupation		<p>skilled occupation is defined in regulation 1.03 of the regulations as having the meaning given by regulation 1.15I. Regulation 1.15I provides that:</p> <p>(1) A skilled occupation, in relation to a person, means an occupation of a kind:</p> <ul style="list-style-type: none"> (a) that is specified by the Minister in an instrument in writing to be a skilled occupation; and (b) if a number of points are specified in the instrument as being available — for which the number of points are available; and (c) that is applicable to the person in accordance with the specification of the occupation. <p>(2) Without limiting subregulation (1), the Minister may specify in the instrument any matter in relation to an occupation, or to a class of persons to which the instrument relates, including:</p> <ul style="list-style-type: none"> (a) that an occupation is a skilled occupation for a class of persons; (b) that an occupation is a skilled occupation for a person who is nominated by a State or Territory government agency.
Skills assessment		A skills assessment is the outcome of the assessment made by a relevant assessing authority of the applicant's skills in relation to their nominated skilled occupation.
SkillSelect		SkillSelect is an online service that enables skilled persons who are seeking to migrate to Australia to submit an EOI that

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Term	Acronym (if applicable)	Definition
		includes information about their skills and other relevant attributes.
Total Records and Information Management	TRIM	TRIM is the Department of Home Affairs Electronic Document and Record Management System that provides the framework to capture, manage and share critical business information.

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Attachment B – Assurance and Control Matrix

1.1. Powers and Obligations

Legislative Provision			Is this a delegable power?	If delegable, list the relevant instruments of delegation
Legislation	Reference (e.g. section)	Provision		
<i>Migration Act 1958</i>	Section 65	Decision to grant or refuse to grant visa	Yes	LIN 19/033 <i>Citizenship and Social Cohesions Group and Immigration and Settlement Services Group (Minister) Instrument 2019</i>
<i>Migration Act 1958</i>	Sections 93-95	Application of the points system including determination of the applicant's score, initial application of points system and applications in pool	Yes	LIN 19/033 <i>Citizenship and Social Cohesions Group and Immigration and Settlement Services Group (Minister) Instrument 2019</i>

1.2. Controls and Assurance

Related Policy	NIL
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<p>Procedures / Supporting Materials</p>	<p>Direction No. 81 - Order of Consideration – Certain Skilled Migration Visas</p> <p>FM-1209: Div2.2A – Visa application charge</p> <p><u>LIN 19/191: Specification of Income Threshold and Exemptions – Subclass 189 Visa (New Zealand Stream) Instrument 2019</u></p> <p>LS-1849: GenGuideA - All visas - Visa application procedures</p> <p>LS-1855 + VM-974: Sch4/4020 - The integrity PIC</p> <p>PI - Div1.2/reg1.15C: Competent English</p> <p>PI - Sch5: Special return criteria.</p> <p>PI - Sch8/8515: Must not marry or enter into de facto relationship.</p> <p>PI - GenGuideG: Student visas - Visa application & related procedures</p> <p>SM-3357: Freedom of Information</p> <p>SM-5006: Sch6D - General points test for General Skilled Migration visas</p> <p>VM-4988: SkillSelect - Expression of Interest for Skilled Migration</p> <p>VM-1027: Sch4/4005-4007 - The health requirement</p> <p>VM-3067: Div1.2/reg1.12 – Member of the family unit</p> <p>VM-1226: Sch8/8504 – “First entry date” condition</p> <p>VM-2916 - Div5.3/Reg5.17 - Prescribed evidence of English language proficiency</p> <p>VM- 3067:Dependent family members</p> <p>VM-3072: Sch2 Visa 461 – New Zealand citizen family relationship (Temporary)</p> <p>VM-3083: GenGuideB - Management of the non-humanitarian migration program</p> <p>VM-3089: Div 2.6 - Prescribed qualifications - Application of points system</p> <p>VM-3095: Division 2.6 - Prescribed qualifications - Application of points system</p> <p>VM-3100: English proficiency and assessment</p> <p>VM-3102: Sch1 item 1138 – Skilled – Nominated (Permanent)</p> <p>VM-3106: Sch2 Visa 190 – Skilled – Nominated (Permanent)</p> <p>VM-3107: Sch2 Visa 489 – Skilled – Regional (Provisional)</p> <p>VM-3159: Div1.2/reg1.15F - Australian study requirement</p> <p>VM-3184: Sch2 Visa 444 – Special Category</p> <p>VM-6395: Sch2 Visa 491 – Skilled – Work Regional (Provisional)</p>
<p>Training/Certification or Accreditation</p>	<p>NIL</p>
<p>Other required job role requirements</p>	<p>NIL</p>

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Other support mechanisms (eg who can provide further assistance in relation to any aspects of this instruction)	Advice can be provided by the Skilled and Migration Program Section.
Escalation arrangements	Escalation of concerns or issues regarding Skilled Migration can be sent to the Director, Skilled and Migration Program Section marked attention of the Director.
Recordkeeping (eg system based facilities to record decisions)	TRIM, ICSE, LEGEND
Control Frameworks (please refer to a specific document outlining QA or QC arrangements)	<p>General Skilled Migration visas are subject to Evidence of Quality in Performance (EQuIP) tool. EQuIP is the system used to record Quality Control and Quality Assurance checks and measures the quality of decision making through comparing the results of data entered against benchmarking standards.</p> <p>Questions are designed to identify whether appropriate or mandated practices and processes have been followed in the course of reaching a reasonable and lawful decision.</p> <p>Further detail on the operation of the EQuIP tool can be found at: ADD2019/4014767.</p>
Job Vocational Framework Role	The Program Management job role is responsible for planning, organising, directing, controlling and coordinating relevant Government programs in line with departmental objectives to support the delivery of a service within the Program Delivery Support Job Family.

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Attachment C – Consultation

1.1. Internal Consultation

- Skills and Innovation Policy Section
- Skilled Program Delivery SA (GSM and BIIP)
- Legal Division
- GSM Visa Processing Network
- Records Management Section
- Integrity and Professional Standards Branch
- Health Policy

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