

**EXPLANATORY STATEMENT**

*Migration Act 1958*

**Migration (IMMI 18/059: Period within which labour market testing is required to be undertaken) Instrument 2018**

*(Subsection 140GBA(4))*

1. The Instrument, IMMI 18/059, is made under subsection 140GBA(4) of the *Migration Act 1958* (Act).
2. The instrument repeals IMMI 13/136 (F2013L01953) under subsection 140GBA(4) of the Act and in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (Interpretation Act). Subsection 33(3) of the Interpretation Act states that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.
3. The instrument operates to specify, for the purposes of paragraph 140GBA(3)(a) of the Act, the period within which labour market testing is required to be undertaken.
4. The purpose of the instrument is to specify that:
  - a. for nomination applications lodged before 18 June 2018, the period in which labour market testing is required to be undertaken is the 12 month period immediately before the nomination application form is lodged; and
  - b. for a nomination applications lodged on or after 18 June 2018, the period in which labour market testing is required to be undertaken is the 6 month period immediately before the nomination application form is lodged.
5. This instrument only applies to nomination applications lodged on or after 18 March 2018.
6. The subject of this instrument is part of a broad package of reforms for the employer sponsored skilled visa programs, announced by the Government on 18 April 2017. The

Department of Home Affairs has engaged with external stakeholders since the announcement in developing the policy settings and considered feedback received.

7. These reforms were also informed by earlier reviews including: the 2014 Independent Review into the integrity of the 457 programme; the 2016 Productivity Commission Inquiry Report: Migrant Intake into Australia; the 2016 Review of the Temporary Skilled Migration Income Threshold; and the 2016 Senate Inquiry: A National Disgrace: The Exploitation of Temporary Work Visa Holders. These reviews were subject to extensive consultation processes, including: individuals; academics; bodies and businesses who use the employer sponsored skilled visa programs; migration agents; representatives of foreign governments; the Ministerial Advisory Council on Skilled Migration; and government departments and agencies.
8. A Regulation Impact Statement has been prepared in accordance with advice from the Office of Best Practice Regulation (OBPR). The OBPR Reference number is 21946.
9. Under section 10 of the *Legislation (Exemption and Other Matters) Regulations 2015* this instrument is not subject to disallowance and therefore a Statement of Compatibility with Human Rights is not required.
10. The instrument commences on 18 March 2018.