



# **Migration (LIN 18/036: Period, manner and evidence of labour market testing) Instrument 2018**

made under subsections 140GBA(4), 140GBA(5) and 140GBA(6A) of  
the

*Migration Act 1958*

## **Compilation No. 1**

|                                   |                  |
|-----------------------------------|------------------|
| <b>Compilation date:</b>          | 16 November 2019 |
| <b>Includes amendments up to:</b> | F2019L01450      |
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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 18/036: Period, manner and evidence of labour market testing) Instrument 2018* that shows the text of the law as amended and in force on 16 November 2019 (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If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.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 18/036: Period, manner and evidence of labour market testing) Instrument 2018*.
- (2) This instrument may also be cited as LIN 18/036.

### 3 Authority

This instrument is made under subsections 140GBA(4), 140GBA(5) and 140GBA(6A) of the Act.

### 4 Definitions

Note: A number of expressions used in this instrument are defined in:

- (a) regulation 1.03 of the Regulations including:
  - (i) ***standard business sponsor***;
- (b) subsection 5(1) of the Act including:
  - (i) ***approved sponsor***;
  - (ii) ***Australia***;
- (c) subsection 140GBA(7) of the Act including:
  - (i) ***associated entity***;
  - (ii) ***Australian permanent resident***;
  - (iii) ***eligible temporary visa holder***;
  - (iv) ***labour market testing***.

In this instrument:

***accredited sponsor*** means a standard business sponsor with accredited status.

***accredited status*** means current approval given by the Department that:

- (a) standard sponsorship requirements are met, including but not limited to:
  - (i) lawful operation of the sponsor's business; and
  - (ii) having no relevant adverse information against the sponsor, or the sponsor's business; and
- (b) additional characteristics are met, including that the sponsor has:
  - (i) maintained good dealings with the Department of Home Affairs;
  - (ii) complied with relevant laws; and
  - (iii) lodged decision-ready applications.

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*Act* means the *Migration Act 1958*.

*earnings* has the meaning given by regulation 2.57A of the Regulations.

*Regulations* means the *Migration Regulations 1994*.

***select occupation***: a nominated occupation is a ***select occupation*** if the position associated with the nominated occupation is a select position.

***select position*** is:

- (a) a position in a profession, or in any of the following fields, which requires its occupant to have an internationally recognised record of exceptional and outstanding achievement in the relevant profession or field:
  - (iv) a sport; or
  - (v) academia and research; or
  - (vi) top-talent chef; or
- (b) a position that is to be filled by a person who is:
  - (i) employed by a company operating an established business overseas; and
  - (ii) nominated by a standard business sponsor who is an associated entity of that company, mentioned in subparagraph (i), operating in Australia; or
- (c) a position held by a holder of a Subclass 457 (Temporary Work (Skilled)) visa, Subclass 482 (Temporary Skill Shortage) visa or Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa (the ***visa holder***) and for which a new nomination has been lodged solely because:
  - (i) the annual earnings for the position held by the visa holder have changed; or
  - (ii) the business structure of the standard business sponsor (or an associated entity of that sponsor) who most recently nominated the occupation in relation to the visa holder has changed and, as a result, the visa holder, while not changing positions, is no longer employed by the standard business sponsor or associated entity; or
- (d) a position for which the annual earnings will be equal to or greater than \$250,000.00 AUD; or
- (e) a position within ANZSCO Minor Group 253 - Medical Practitioners, that is not:
  - (i) ANZSCO 253111 - General Medical Practitioner; or
  - (ii) ANZSCO 253999 - Medical Practitioners nec; or

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- (f) a position within ANZSCO Unit Group 4111 - Ambulance Officers and Paramedics.

## **5 Schedules**

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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## Part 2 – Period, manner and evidence of labour market testing

### 6 The period within which labour market testing is required

- (1) For the purposes of paragraph 140GBA(3)(a) and subsection 140GBA(4) of the Act, the period within which labour market testing is required to be undertaken in relation to a nominated occupation is the period of 4 months ending on the day on which the nomination form in relation to the nominated application is lodged.
- (2) Subsection (1) does not apply to a *select occupation*.

Note: Subsection 140GBA(4A) of the Act deals with requirements for labour market testing where there have been redundancies or retrenchments as mentioned in subparagraph 140GBA(3)(b)(ii) of the Act.

### 7 The manner in which labour market testing in relation to a nominated position must be undertaken

- (1) Under subsection 140GBA(5) and for the purposes of paragraph 140GBA(3)(aa) of the Act, the nominated position must be advertised in Australia in accordance with the requirements under section 8.
- (2) Subsection (1) does not apply to a *select position*.

### 8 The advertisement of a nominated position

- (1) This section is made under subsection 140GBA(5) of the Act.

#### *Language*

- (2) For the purposes of paragraph 140GBA(3)(aa) and subsection 140GBA(6) of the Act, the language to be used for any advertising (paid or unpaid) of a position, and any similar positions, commissioned or authorised by the approved sponsor is English.

#### *Method*

- (3) For the purposes of paragraph 140GBA(3)(aa) and subsection 140GBA(6) of the Act, the nominated position must be advertised in at least two advertisements that are commissioned or authorised by the approved sponsor and which meet the requirements of this section:
  - (a) on a recruitment website with national reach in Australia; or
  - (b) in print media with national reach in Australia; or
  - (c) on radio with national reach in Australia; or



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- (d) if the approved sponsor is an accredited sponsor - on the approved sponsor's website.

(4) The following details of the position must all be included in the advertisement:

- (a) the title or a description of the position;
- (b) the skills or experience required for the position;
- (c) the name of the approved sponsor or, if the approved sponsor has engaged a recruitment agency for the purposes of the labour market testing, the name of the recruitment agency;
- (d) the salary for the position, if the intended annual earnings for the nominated position are lower than \$96,400.00 AUD.

*Duration*

(5) For the purposes of paragraph 140GBA(3)(aa) and subsection 140GBA(6) of the Act, applications or expressions of interest for an advertised position must be accepted for at least 4 weeks from when the advertisement is first published for any of the following:

- (a) print media;
- (b) radio;
- (c) website.

## **9 Kinds of evidence in relation to labour market testing that must accompany a nomination**

(1) This section is made for the purposes of subparagraph 140GBA(3) and subsection 140GBA(6A) of the Act.

(2) The kind of evidence that must accompany a nomination for a ***select occupation***, or a ***select position*** is a written submission made by the nominator that provides reasons why a suitably qualified and experienced Australian citizen or Australian permanent resident, or suitably qualified and experienced eligible temporary visa holder, is not readily available to fill the nominated position.

(3) The kind of evidence that must accompany any other nomination is a copy of the advertising material used to advertise the position.

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## **Schedule 2—Savings, transitional and other provisions**

### **Part 1 – Application of the instrument**

#### **Application of the instrument**

This instrument applies to a nomination made on or after the commencement date of the instrument.

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## Part 2 – Application of repeal

### Application of repeal

Despite the repeal of the *Migration (IMMI 18/059: Period within which labour market testing is required to be undertaken) Instrument 2018* (F2018L00293) by Schedule 1, IMMI 18/059 as in force immediately before the commencement of Schedule 1, continues to apply in relation to a nomination mentioned in IMMI 18/059 if that nomination was made before the commencement of this instrument.

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## Part 3—Application of amendments

### Application of amendments made by LIN 19/268

The amendments made by items 1 and 2 in Schedule 1 to LIN 19/268 apply in relation to a nomination for a Subclass 457 (Temporary Work (Skilled)) visa, Subclass 482 (Temporary Skill Shortage) visa or Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa, made on or after 16 November 2019.

## 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)<br>/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<br>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<br>effect               | SLI = Select Legislative Instrument                                    |
| (md not incorp) = misdescribed amendment<br>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<br>commenced or to be commenced |

## Endnote 3—Legislation history

## Endnote 3—Legislation history

| Name   | Registration                 | Commencement      | Application, saving and transitional provisions |
|--|------------------------------|-------------------|---|
| Migration (LIN 18/036: Period, manner and evidence of labour market testing) Instrument 2018           | 10 Aug 2018<br>(F2018L01108) | 12 Aug 2018 (s 2) |   |
| Migration (LIN 19/268: Period, Manner and Evidence of Labour Market Testing) Amendment Instrument 2019 | 13 Nov 2019<br>(F2019L01450) | 16 Nov 2019 (s 2) | —   |

## Endnotes

### Endnote 4—Amendment history

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#### Endnote 4—Amendment history

| Provision affected | How affected   |
|--------------------|----------------|
| <b>Part 1</b>      |                |
| s 2 .....          | rep LA s 48D   |
| s 4 .....          | am F2019L01450 |
| Schedule 1 .....   | rep LA s 48C   |
| <b>Schedule 2</b>  |                |
| <b>Part 3</b>      |                |
| Part 3 .....       | ad F2019L01450 |