



LIN 18/036

**Migration (LIN 18/036: Period, manner and evidence of labour market testing) Instrument 2018**  
**made under the *Migration Act 1958***

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This compilation was prepared by the Department of Home Affairs on 4 July 2022 taking into account amendments up to *Migration (Labour market testing) Amendment Determination (LIN 22/064) 2022*.

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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.

***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

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

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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) 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 for the purposes of subsection 7(1).

#### *Language*

- (2) 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) The nominated position must be advertised:
  - (a) on the Australian Government *Workforce Australia* website (<https://www.workforceaustralia.gov.au>); and
  - (b) in at least 2 advertisements on or in one or more of the following:
    - (i) a recruitment website with national reach in Australia (other than the website mentioned in paragraph (a));
    - (ii) print media with national reach in Australia;
    - (iii) radio with national reach in Australia;
    - (iv) if the approved sponsor is an accredited sponsor—the approved sponsor’s website.
- (3A) Each advertisement of the nominated position for the purposes of subsection (3) must be commissioned or authorised by the approved sponsor.
- (4) Each advertisement of the nominated position for the purposes of subsection (3) must include the following details of the position:
  - (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;

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- (d) the salary for the position, if the intended annual earnings for the nominated position are lower than \$96,400.00 AUD.

***Duration***

- (5) Applications or expressions of interest for an advertised position must be accepted for at least 4 weeks from when an advertisement for the position is first published in accordance with subsections (2) to (4) on or in 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 140GB(3) and subsection 140GB(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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## Part 3 Application, saving and transitional provisions

### 10 Application of this instrument

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

### 11 Saving of IMMI 18/059

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.

### 12 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.

### 13 Application of amendments made by LIN 20/156

- (1) The amendments of section 8 made by Schedule 1 to the *Migration (LIN 20/156: Jobactive - Period, manner and evidence of labour market testing) Amendment Instrument 2020* 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 that is made after the end of the period of 28 days beginning on the day that instrument commences.
- (2) Despite the amendments of section 8 made by Schedule 1 to the *Migration (LIN 20/156: Jobactive - Period, manner and evidence of labour market testing) Amendment Instrument 2020*, that section, as in force immediately before the commencement of that instrument, continues to 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 that is made within the period of 28 days after that commencement.

### 14 Amendments made by *Migration (Labour market testing) Amendment Determination (LIN 22/064) 2022*

An advertisement on the Jobactive website (<http://www.jobactive.gov.au>) before 4 July 2022 is taken to meet the requirement in paragraph 8(3)(a).

## Notes

This compilation comprises *Migration (LIN 18/036: Period, manner and evidence of labour market testing) Instrument 2018* amended as indicated in the following tables.

### Table of instruments

Name	Registration	Number	Commencement	Application, saving or transitional provisions
<i>Migration (LIN 18/036: Period, manner and evidence of labour market testing) Instrument 2018</i>	10 August 2018	F2018L01108	12 August 2018	-
<i>Migration (LIN 19/268: Period, Manner and Evidence of Labour Market Testing) Amendment Instrument 2019</i>	13 November 2019	F2019L01450	16 November 2019	Part 3
<i>Migration (LIN 20/156: Jobactive – Period, manner and evidence of labour market testing) Amendment Instrument 2020</i>	2 September 2020	F2020L01123	3 September 2020	sections 10, 11,12 and 13
<i>Migration (Labour market testing) Amendment Determination (LIN 22/064) 2022</i>	1 July 2022	F2022L00936	4 July 2022	section 14

### Table of amendments

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
section 2 .....	rep. <i>Legislation Act 2003</i> , section 48D
section 4 .....	am. F2019L01450 am. F2020L01123 am. F2022L00936
section 5 .....	rep. F2022L00936
section 7 .....	am. F2020L01123
section 8 .....	am. F2020L01123 am. F2022L00936
Schedule 1 .....	rep. <i>Legislation Act 2003</i> , section 48C
Schedule 2 (heading).....	rep. F2020L01123
Part 1 (heading) .....	rep. F2020L01123
section under Part 1 .....	am. F2020L01123
Part 2 (heading) .....	rep. F2020L01123
section under Part 2 .....	am. F2020L01123
Part 3 (heading) .....	rep. F2020L01123
section under Part 3 .....	ad. F2019L01450 am. F2020L01123
Part 3 (heading) .....	ad. F2020L01123
section 13 .....	ad. F2020L01123



