

EXPLANATORY STATEMENT*Migration Act 1958***MIGRATION (LIN 18/036: PERIOD, MANNER AND EVIDENCE OF LABOUR MARKET TESTING) INSTRUMENT 2018**

(Subsections 140GBA(4), 140GBA(5) and 140GBA(6A))

1. This instrument, LIN 18/036, is made under subsections 140GBA(4), 140GBA(5) and 140GBA(6A) of the *Migration Act 1958* ('the Act').
2. The instrument repeals IMMI 18/059 (F2018L00293) in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (the AIA). Subsection 33(3) of the AIA 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 determine the period, the manner, and the kinds of evidence of labour market testing. In particular the instrument:
 - a. determines a period within which labour market testing is required in relation to a nominated occupation;
 - b. determines the manner in which labour market testing in relation to a nominated position must be undertaken; and
 - c. determines, for the purposes of subparagraph 140GBA(3)(b)(i), the kinds of evidence that must accompany a nomination.
4. The instrument also specifies select positions and select occupations that are exempt from the specified requirements relating to the period, the manner, and the kinds of evidence required for labour market testing.
5. The instrument provides that, for occupations or positions exempted from the period and manner requirements, the nominator must make a written submission in order to satisfy the Minister that labour market testing in relation to the select position or the select occupation has been conducted. The nominator for a select position or select occupation may make a written submission providing reasons why there is not a suitably qualified and experienced Australian citizen, Australia permanent resident or eligible temporary visa holder readily available to fill the position or occupation.

6. The purpose of this instrument is to support changes to the Act made by the *Migration Amendment (Skilling Australians Fund) Act 2018*.
7. Consultation was undertaken before the instrument was made. 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 ('the Department') has engaged with external stakeholders since the announcement in developing the policy settings and considered feedback received.
8. 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.
9. The Department consulted with 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. The consultation accords with subsection 17(1) of the *Legislation Act 2003* which requires the rule maker to be satisfied that consultation has been undertaken where appropriate and reasonably practicable.
10. The Office of Best Practice Regulation has advised that a Regulatory Impact Statement is required (OBPR Reference 21946).
11. The instrument is made under Part 2 of the *Migration Act 1958*. Accordingly, under section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*, the instrument is exempt from disallowance and a Statement of Compatibility with Human Rights is not required.
12. This instrument commences on the later of the following days: the day after the instrument is registered on the Federal Register of Legislation; or immediately after the commencement of Schedule 1 to the *Migration Amendment (Skilling Australians Fund) Act 2018*.