



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

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I, Alan Tudge, Minister for Citizenship and Multicultural Affairs, make the following instrument.

Dated 9 August 2018

Alan Tudge

THE HON ALAN TUDGE MP  
Minister for Citizenship and Multicultural Affairs

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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.

### 2 Commencement

This instrument commences on the later of the following:

- (a) the day after it is registered on the Federal Register of Legislation;
- (b) immediately after the commencement of Schedule 1 to the *Migration Amendment (Skilling Australians Fund) Act 2018*.

### 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

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- (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* is:

- (a) an occupation 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:
  - (i) a sport; or
  - (ii) academia and research; or
  - (iii) top-talent chef; or
- (b) an occupation 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) an occupation that is held by an existing holder of a Temporary Skill Shortage (Subclass 482) visa or a Temporary Work (Skilled) (Subclass 457) visa for which a new nomination has been lodged solely because:
  - (i) the annual earnings that will apply to the nominee have changed; or
  - (ii) a change in business structure has resulted in the nominee's employer lodging a new application to be approved as a standard business sponsor; or
- (d) an occupation for which the annual earnings of the occupant will be equal to or greater than \$250,000.00 AUD; or
- (e) an occupation 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) an occupation within ANZSCO Unit Group 4111 - Ambulance Officers and Paramedics.

*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 that is held by an existing holder of a Temporary Skill Shortage (Subclass 482) visa or a Temporary Work (Skilled) (Subclass 457) visa for which a new nomination has been lodged solely because:
- (i) the annual earnings that will apply to the nominee have changed; or
  - (ii) a change in business structure has resulted in the nominee's employer lodging a new application to be approved as a standard business sponsor; 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.

## 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 1—Repeals**

*Migration (IMMI 18/059: Period within which labour market testing is required to be undertaken) Instrument 2018 (F2018L00293)*

### **The whole of the instrument**

Repeal the instrument.

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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.