

EXPLANATORY STATEMENT

Migration Act 1958

Migration (LIN 19/268: Period, Manner and Evidence of Labour Market Testing)

Amendment Instrument 2019

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

1. The instrument, LIN 19/268, is made under subsections 140GBA(4), (5) and (6A) of the *Migration Act 1958* (the Act).
2. The instrument amends *Migration (LIN 18/036: Period, manner and evidence of labour market testing) Instrument 2018* (F2018L01108) made under subsections 140GBA(4), 140GBA(5) and 140GBA(6A) of the Act, 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. LIN 18/036 operates to determine the conditions and evidence of labour market testing. In particular, LIN 18/036 operates to specify:
 - a. for the purposes of paragraph 140GBA(3)(a), the period within which labour market testing is required, in relation to a nominated occupation; and
 - b. for the purposes of paragraph 140GBA(3)(aa), the manner in which labour market testing is required to be undertaken, in relation to a nominated position; and
 - c. for the purposes of subparagraph 140GBA(3)(b)(i), the kinds of evidence that must accompany a nomination.
4. LIN 18/036 also specifies certain occupations and positions that are exempt from some of those specified requirements, as contained in the definitions of *select occupation* and *select position* in section 4 of LIN 18/036.

5. The purpose of this instrument is to address the changes to the Regulations by the *Migration Amendment (New Skilled Regional Visas) Regulations 2019*, which among other things, will introduce the Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa (Subclass 494 visa). The instrument amends the current definitions of ***select occupation*** and ***select position*** in section 4 of LIN 18/036.
6. Specifically, it amends the definition of ***select occupation*** to state that a nominated occupation is a ***select occupation*** if the position associated with the occupation is a ***select position***. This amendment is to ensure that the two definitions are closely aligned when changes are made to the definition of ***select position***. It also amends paragraph (c) of the current definition of ***select position*** in section 4 of LIN 18/036 to include positions held by holders of a Subclass 494 visa.
7. The instrument also clarifies the circumstances in which a standard business sponsor, or an associated entity of the standard business sponsor, is considered exempt from meeting certain labour market testing requirements. The exemption will apply if:
 - a. a new nomination has been lodged in relation to a position held by a holder of a Subclass 494 visa, Subclass 482 (Temporary Skill Shortage) visa or Subclass 457 (Temporary Work (Skilled)) visa; and
 - b. that nomination was lodged solely because the visa holder is no longer employed by the standard business sponsor (or an associated entity of the sponsor) due to a change in business structure.
8. The subject of this instrument is part of a package introducing new regional visas designed to deliver a migration program that can respond more effectively to the needs of regional Australia. These changes will also assist with governmental priorities to attract highly skilled migrants to regional areas and ease population pressure in major cities.
9. Pursuant to the frequency and volume of the legislative amendments that are required to maintain a dynamic and responsive immigration program, it has been a consistent practice to include certain criteria and conditions in delegated legislation. The criteria for the new Subclass 494 visa has been included in delegated legislation rather than primary legislation to give the Government oversight and the ability to respond in a timely and transparent manner to emerging situations which may include changes in the

labour market and the economy. In addition, instruments made under delegated legislation are subject to the scrutiny framework out in the *Legislation Act 2003*, and oversight of the amendments is available to the Parliament under the same legislation.

10. Section 17 of the *Legislation Act 2003* requires consultations which are appropriate and reasonably practicable to be undertaken. The following Commonwealth government agencies were consulted in relation to the instrument: the Department of the Prime Minister and Cabinet; the Department of Foreign Affairs and Trade; the Attorney-General's Department; the Department of the Treasury; the Department of Finance; the Department of Social Services; the Department of Education; the Department of Employment, Skills, Small and Family Business; the Department of Industry, Innovation and Science; the Department of Infrastructure, Transport, Cities and Regional Development; the Department of Health; and the Department of Human Services.
11. The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is not required (OBPR Reference 25045).
12. Under paragraph (a) of item 20 of the table in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*, the instrument is exempt from disallowance and therefore a Statement of Compatibility with Human Rights is not required.
13. The instrument commences at the same time as the commencement of Schedule 2 to the *Migration Amendment (New Skilled Regional Visas) Regulations 2019*.