

## **EXPLANATORY STATEMENT**

### *Migration Act 1958*

#### **Migration (LIN 20/156: Jobactive - Period, manner and evidence of labour market testing) Amendment Instrument 2020**

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

1. The instrument, LIN 20/156, is made under subsections 140GBA(4), (5) and (6A) of the *Migration Act 1958* (the Act).
2. In accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (the AIA), the instrument amends the *Migration (LIN 18/036: Period, manner and evidence of labour market testing) Instrument 2018* (F2018L01108). 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 relation to nominated positions by an approved work sponsor, or a person who is a party to negotiations for a work agreement, for certain subclass visas. In particular, LIN 18/036 operates to specify the following:
  - a. for the purposes of paragraph 140GBA(3)(a) of the Act, the period within which labour market testing is required;
  - b. for the purposes of paragraph 140GBA(3)(aa) of the Act, the manner in which labour market testing is required to be undertaken;
  - c. for the purposes of subparagraph 140GBA(3)(b)(i) of the Act, 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 LIN 20/156 is to amend LIN 18/036 to include an additional requirement for the manner in which labour market testing is required to be undertaken. Specifically, LIN 20/156 requires for nominated positions to be advertised on the Government's Jobactive website. This measure would be in addition to advertising in at least two advertisements in one or more of the mediums already outlined in subsection 8(3) of LIN 18/036.
6. The amendment is in response to the COVID-19 pandemic, which has severely disrupted Australia's labour market. Many Australian workers have been stood down or have had their employment terminated. In response to this, the Australian Government has decided to enhance the current labour market testing conditions to ensure that Australian workers are prioritised for job opportunities in Australia.
7. The Government's Jobactive website is a free online jobs website that is accessible via the internet with the objective of connecting job seekers with employers in Australia. As a result of the amendment, businesses that are considering employing overseas skilled workers on Subclass 457 (Temporary Work (Skilled)) visa, Subclass 482 (Temporary Skill Shortage) visa, or Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa, will be required to advertise their vacancies on the Jobactive website. This measure ensures that appropriately skilled Australian citizens and permanent residents are given work opportunities before overseas workers when a business nominates a vacancy.
8. Item 16 of LIN 20/156 inserts an application provision that the new requirement to advertise on the Jobactive website applies to nominations made after 28 days from the commencement of the instrument. For clarification, the 28 day period begins on the day LIN 20/156 commences. Instrument LIN 18/036 as in force immediately before the commencement of LIN 20/156, continues to apply to nominations made on or before the commencement of the 28 day period.
9. LIN 20/156 also makes formatting changes to Schedule 2 of LIN 18/036 to improve the readability for users of the instrument. However, the operation of the existing application provisions in Schedule 2 of LIN 18/036 remain the same.
10. Section 17 of the *Legislation Act 2003* requires consultations which are appropriate and reasonably practicable to be undertaken. This initiative was considered and approved by

Cabinet as part of a package of proposed measures in response to the COVID-19 pandemic. As a whole of government decision, a number of Commonwealth government agencies, including the Department of Education, Skills and Employment, were consulted.

11. The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is not required (OBPR Reference 42536).
12. Under paragraph (a) of item 20 of the table in section 10 of the *Legislation (Exemptions and Other Matters) Regulations 2015*, the instrument is exempt from disallowance and therefore a Statement of Compatibility with Human Rights is not required.
13. The instrument commences on the day after registration on the Federal Register of Legislation.