

EXPLANATORY STATEMENT

Issued by authority of the Minister for Immigration, Citizenship and Multicultural Affairs

Migration Act 1958

Migration (Labour market testing) Amendment Determination (LIN 22/064) 2022

- 1 The instrument, Departmental reference LIN 22/064, 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* (LIN 18/036) in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*. That subsection provides that a power to make a legislative instrument includes a power to amend or repeal that instrument in the same manner, and subject to the same conditions, as the power to make the instrument.
- 3 The instrument commences on 4 July 2022, and is a legislative instrument for the purposes of the *Legislation Act 2003* (the Legislation Act).

Purpose

- 4 LIN 18/036 specifies the labour market testing (LMT) conditions for subsection 140GBA(3) of the Act. LMT is defined in subsection 140GBA(7) of the Act. It requires businesses to test the Australian labour market to demonstrate whether a position could be readily filled by a suitably qualified and experienced Australian citizen or permanent resident. The following are required to satisfy the LMT conditions and are specified by legislative instrument:
 - the period of LMT (paragraph 140GBA(3)(a) and subsection 140GBA(4) of the Act);
 - the manner of LMT (paragraph 140GBA(3)(aa) and subsections 140GBA(5), (6), (6AA), (6AB), (6B) and (6C));
 - evidence LMT has occurred (subparagraph 140GBA(3)(b)(i) and subsections 140GBA(6A) and (6C)).
- 5 The purpose of the instrument is to amend LIN 18/036 to update the manner by which businesses advertise positions. The amendment removes the Jobactive website (<http://www.jobactive.gov.au>) as the mandatory manner for advertisement, and replaces it with the Workforce Australia website (<https://www.workforceaustralia.gov.au>).
- 6 The Jobactive website will be decommissioned on 4 July 2022 and the Workforce Australia website will be launched. Advertisements on the Jobactive website before 4 July 2022 will automatically migrate to the Workforce Australia website. This ensures businesses are not disadvantaged by the change.

Consultation

- 7 No consultation was done for this instrument. This is because the instrument does not substantially alter LIN 18/036.

- 8 The Office of Best Practice Regulation (OBPR) was consulted and advised that the amendments are likely to have no more than minor regulatory impacts on business, individuals and organisations. A regulation impact statement is not required. The OBPR reference number is OBPR22-02394.

Details of the instrument

- 9 Section 1 sets out the name of the instrument.
- 10 Section 2 provides for the commencement of the instrument on 4 July 2022.
- 11 Section 3 provides that LIN 18/036 is amended as set out in Schedule 1.
- 12 Item 1 of Schedule 1 amends section 4 of LIN 18/036. This amendment omits the definition of ‘Employment Department’, as the term is no longer used in the instrument.
- 13 Item 2 omits section 5 of LIN 18/036, as the provision is redundant.
- 14 Item 3 substitutes paragraph 8(3)(a) of LIN 18/036. The amendment substitutes the Jobactive website with the Workforce Australia website. From 4 July 2022 businesses are required to advertise positions on the Workforce Australia website.
- 15 Item 4 inserts section 14. Section 14 provides that advertisements listed on the Jobactive website before 4 July 2022 are taken to meet the requirements of new paragraph 8(3)(a). This ensures businesses are not required to readvertise to meet the 4 week time period specified in subsection 8(5) of LIN 18/036, subsection 140GBA(6) of the Act.

Parliamentary scrutiny etc.

- 16 This instrument is exempt from disallowance under section 42 of the Legislation Act. This is because the instrument is made under Part 2 of the Act, which is prescribed in paragraph (a) of item 20 of the table in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.
- 17 The instrument was made by the Minister, in accordance with the subsections 140GBA(4), 140GBA(5), and 140GBA(6A) of the Act.