



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

made under subsections 140GBA(4), 140GBA(5) and 140GBA(6A) of the
Migration Act 1958

Compilation No. 5

Compilation date: 7 December 2024

Includes amendments: *Migration Amendment (Skills in Demand Visa and Related Matters) Instrument 2024 (F2024L01621)*

Prepared by the Department of Home Affairs

About this compilation

This compilation

This is a compilation of the *Migration (LIN 18/036: Period, manner and evidence of labour market testing) Instrument 2018* that shows the text of the law as amended and **in force on 7 December 2024 (the *compilation date*)**.

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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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.

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
- (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*.

ANZSCO means:

- (a) in relation to a nomination of an occupation relating to an application, or proposed application, for a Subclass 482 (Skills in Demand) visa—the Australian and New Zealand Standard Classification of Occupations published by the Australian Bureau of Statistics, as in force on 23 November 2022;

- (b) in any other case—the Australian and New Zealand Standard Classification of Occupations published by the Australian Bureau of Statistics, as in force on 27 June 2013.

earnings has the meaning given by regulation 2.57A of the Regulations.

Regulations means the *Migration Regulations 1994*.

select occupation: a nominated occupation is a *select occupation* if the position associated with the nominated occupation is a select position..

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 held by a holder of a Subclass 457 (Temporary Work (Skilled)) visa, Subclass 482 (Temporary Skill Shortage) visa, Subclass 482 (Skills in Demand) visa or Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa (the visa holder) and for which a new nomination has been lodged solely because:
- (i) the annual earnings for the position held by the visa holder have changed; or
 - (ii) the business structure of the standard business sponsor (or an associated entity of that sponsor) who most recently nominated the occupation in relation to the visa holder has changed and, as a result, the visa holder, while not changing positions, is no longer employed by the standard business sponsor or associated entity; 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 Practitioner; or
 - (ii) ANZSCO 253999 - Medical Practitioners nec; or
- (e) a position within ANZSCO Unit Group 4111 - Ambulance Officers and Paramedics.

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) 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 for the purposes of subsection 7(1).

Language

- (2) 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) The nominated position must be advertised in at least two advertisements on or in one or more of the following:
 - (a) a recruitment website with national reach in Australia;
 - (b) print media with national reach in Australia;
 - (c) radio with national reach in Australia;
 - (d) if the approved sponsor is an accredited sponsor—the approved sponsor's website.
- (3A) Each advertisement of the nominated position for the purposes of subsection (3) must be commissioned or authorised by the approved sponsor.
- (4) Each advertisement of the nominated position for the purposes of subsection (3) must include the following details of the position:
 - (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) Applications or expressions of interest for an advertised position must be accepted for at least 4 weeks from when an advertisement for the position is first published in accordance with subsections (2) to (4) on or in any of the following:
 - (a) print media;
 - (b) radio;
 - (c) website;

Overlapping interests

- (6) For the avoidance of doubt, for the purposes of subsection (5), applications or expressions of interest for a nominated position may be accepted for a continuous duration of at least 4 weeks across 2 or more advertisements where each advertisement for the nominated position overlaps either:
 - (a) the first day on which the next advertisement for the nomination position is published; or
 - (b) the day on which the preceding advertisement for the nominated position is published.
- (7) For the purposes of determining the total number of days for a continuous duration mentioned in subsection (6), any day or days that overlap may only be counted once.

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.

Part 3 Application, saving and transitional provisions

10 Application of this instrument

This instrument applies to a nomination made on or after the commencement date of the instrument.

11 Saving of IMMI 18/059

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.

12 Application of amendments made by LIN 19/268

The amendments made by items 1 and 2 in Schedule 1 to LIN 19/268 apply in relation to a nomination for a Subclass 457 (Temporary Work (Skilled)) visa, Subclass 482 (Temporary Skill Shortage) visa or Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa, made on or after 16 November 2019.

13 Application of amendments made by LIN 20/156

- (1) The amendments of section 8 made by Schedule 1 to the *Migration (LIN 20/156: Jobactive - Period, manner and evidence of labour market testing) Amendment Instrument 2020* apply in relation to a nomination for a Subclass 457 (Temporary Work (Skilled)) visa, Subclass 482 (Temporary Skill Shortage) visa or Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa that is made after the end of the period of 28 days beginning on the day that instrument commences..
- (2) Despite the amendments of section 8 made by Schedule 1 to the *Migration (LIN 20/156: Jobactive - Period, manner and evidence of labour market testing) Amendment Instrument 2020*, that section, as in force immediately before the commencement of that instrument, continues to apply in relation to a nomination for a Subclass 457 (Temporary Work (Skilled)) visa, Subclass 482 (Temporary Skill Shortage) visa or Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa that is made within the period of 28 days after that commencement.

14 Amendments made by *Migration (Labour market testing) Amendment Determination (LIN 22/064) 2022*

An advertisement on the Jobactive website (<http://www.jobactive.gov.au>) before 4 July 2022 is taken to meet the requirement in paragraph 8(3)(a).

15 Application of amendments made by LIN 23/072

The amendments of section 8 made by Schedule 1 to the *Migration (LIN 18/036: Period, manner and evidence of labour market testing) Amendment (LIN 23/072) Determination 2023 (LIN 23/072)* apply in relation to a nomination made by a person under subsection 140GB of the Migration Act 1958, where the nomination:

- (a) is made on or after the commencement of LIN 23/072; or
- (b) was made but not decided before the commencement of LIN 23/072.

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and “(md not incorp)” is added to the amendment history.

Endnotes

Endnote 2—Abbreviation key

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ad = added or inserted	orig = original
am = amended	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
amdt = amendment	pres = present
c = clause(s)	prev = previous
C[x] = Compilation No. x	(prev...) = previously
Ch = Chapter(s)	Pt = Part(s)
def = definition(s)	r = regulation(s)/rule(s)
Dict = Dictionary	reloc = relocated
disallowed = disallowed by Parliament	renum = renumbered
Div = Division(s)	rep = repealed
exp = expires/expired or ceases/ceased to have effect	rs = repealed and substituted
F = Federal Register of Legislation	s = section(s)/subsection(s)
gaz = gazette	Sch = Schedule(s)
LA = <i>Legislation Act 2003</i>	Sdiv = Subdivision(s)
LIA = <i>Legislative Instruments Act 2003</i>	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
o = order(s)	<u>underlining</u> = whole or part not commenced or to be commenced
Ord = Ordinance	

Endnote 3—Legislation history

Endnote 3—Legislation history

Name	Registration	Number	Commencement	Application, saving and transitional provisions
<i>Migration (LIN 18/036: Period, manner and evidence of labour market testing) Instrument 2018</i>	10 August 2018	F2018L01108	12 August 2018	-
<i>Migration (LIN 19/268: Period, Manner and Evidence of Labour Market Testing) Amendment Instrument 2019</i>	13 November 2019	F2019L01450	16 November 2019	Part 3
<i>Migration (LIN 20/156: Jobactive – Period, manner and evidence of labour market testing) Amendment Instrument 2020</i>	2 September 2020	F2020L01123	3 September 2020	sections 10, 11, 12 and 13
<i>Migration (Labour market testing) Amendment Determination (LIN 22/064) 2022</i>	1 July 2022	F2022L00936	4 July 2022	section 14
<i>Migration (LIN 18/036: Period, manner and evidence of labour market testing) Amendment (LIN 23/072) Determination 2023</i>	10 December 2023	F2023L01643	11 December 2023	section 15
<i>Migration Amendment (Skills in Demand Visa and Related Matters) Instrument 2024</i>	6 December 2024	F2024L01621	7 December 2024	-

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Endnotes

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
s 2.....	rep LA s 48D
s 4.....	am F2019L01450
	am F2020L01123
	am F2022L00936
	am F2024L01621
s 5.....	rep F2022L00936
s 7.....	am F2020L01123
s 8.....	am F2020L01123
s 8(3)	amF2022L00936
	rs F2023L01643
s 8(6)	ad F2023L01643
Sch 1	rep LA s 48C
Sch 2 (heading).....	rep F2020L01123
Pt 1 (heading).....	rep F2020L01123
section under Pt 1	am F2020L01123
Pt 2 (heading).....	rep F2020L01123
section under Pt 2	am F2020L01123
Pt 3 (heading).....	rep F2020L01123
section under Pt 3	ad F2019L01450
	am F2020L01123
Pt 3 (heading).....	ad F2020L01123
s 13.....	ad F2020L01123
s 14.....	ad F2022L00936
s 15.....	ad F2023L01643