LMT

Legislation and regulations

Labour market testing condition – Section 140GBA

**(3)**  The labour market testing condition is satisfied if:

(a)  the Minister is satisfied that the person has undertaken[labour market testing](https://legend.online.immi.gov.au/migration/2021-2024/2023/27-10-2023/acts/Pages/_document00000/_level%20100005/level%20200009.aspx#labourmarkettesting)in relation to the nominated position within a period determined under subsection (4) in relation to the nominated occupation; and

(aa)  the labour market testing in relation to the nominated position was undertaken in the manner determined under subsection (5); and

(b)  the nomination is accompanied by:

(i)  evidence in relation to that[labour market testing](https://legend.online.immi.gov.au/migration/2021-2024/2023/27-10-2023/acts/Pages/_document00000/_level%20100005/level%20200009.aspx#labourmarkettesting)of a kind determined under subsection (6A); and

(ii)  if one or more Australian citizens or [Australian permanent residents](https://legend.online.immi.gov.au/migration/2021-2024/2023/27-10-2023/acts/Pages/_document00000/_level%20100005/level%20200009.aspx#australianpermanentresident)were, in the previous 4 months, made redundant or retrenched from positions in the nominated occupation in a business, or an associated entity, of the person — information about those redundancies or retrenchments; and

(d)  having regard to that evidence, and information (if any), the Minister is satisfied that:

(i)  a suitably qualified and experienced Australian citizen or [Australian permanent resident](https://legend.online.immi.gov.au/migration/2021-2024/2023/27-10-2023/acts/Pages/_document00000/_level%20100005/level%20200009.aspx#australianpermanentresident)is not readily available to fill the nominated position; and

(ii)  a suitably qualified and experienced [eligible temporary visa holder](https://legend.online.immi.gov.au/migration/2021-2024/2023/27-10-2023/acts/Pages/_document00000/_level%20100005/level%20200009.aspx#eligibletempvisaholder)is not readily available to fill the nominated position.

**(4)**  For the purposes of paragraph (3)(a), the Minister may, by [legislative instrument](https://legend.online.immi.gov.au/migration/2021-2024/2023/27-10-2023/acts/Pages/_document00000/_Pop%20ups/PopUp-Period%2C-Manner-and-Evidence-of-Labour-Market-Testing.aspx), determine a period within which [labour market testing](https://legend.online.immi.gov.au/migration/2021-2024/2023/27-10-2023/acts/Pages/_document00000/_level%20100005/level%20200009.aspx#labourmarkettesting)is required in relation to a nominated occupation. The period must not start earlier than 4 months before the nomination is received by the Minister.

**(4A)**  Despite paragraph (3)(a) and subsection (4), if there have been redundancies or retrenchments as mentioned in subparagraph (3)(b)(ii), the labour market testing must be undertaken after those redundancies and retrenchments.

Evidence of labour market testing

**(5)**  For the purposes of paragraph [(3)(aa)](https://legend.online.immi.gov.au/migration/2021-2024/2023/27-10-2023/acts/Pages/_document00000/_level%20100005/level%20200009.aspx#140GBA3), the Minister may, by [legislative instrument](https://legend.online.immi.gov.au/migration/2021-2024/2023/27-10-2023/acts/Pages/_document00000/_Pop%20ups/PopUp-Period%2C-Manner-and-Evidence-of-Labour-Market-Testing.aspx), determine the manner in which labour market testing in relation to a nominated position must be undertaken.

**(6)**  Without limiting subsection (5), the Minister may determine the following:

(a)  the language to be used for any advertising (paid or unpaid) of the position, and any similar positions, commissioned or authorised by the approved work sponsor;

(b)  the method of any such advertising;

(c)  the period during which any such advertising must occur;

(d)  the duration of any such advertising.

**(6AA)**  The Minister must not make a determination under subsection [(5)](https://legend.online.immi.gov.au/migration/2021-2024/2023/27-10-2023/acts/Pages/_document00000/_level%20100005/level%20200009.aspx#140GBA5) unless the Minister is reasonably satisfied that any advertising of the position undertaken in the determined manner:

(a)  will be targeted in such a way that a significant proportion of suitably qualified and experienced Australian citizens or Australian permanent residents would be likely to be informed about the position; and

(b)  will set out any skills or experience requirements that are appropriate to the position.

**(6AB)**  A duration determined for the purposes of paragraph[(6)(](https://legend.online.immi.gov.au/migration/2021-2024/2023/27-10-2023/acts/Pages/_document00000/_level%20100005/level%20200009.aspx#140GBA6)d) must be at least 4 weeks.

**(6A)**  For the purposes of subparagraph [(3)](https://legend.online.immi.gov.au/migration/2021-2024/2023/27-10-2023/acts/Pages/_document00000/_level%20100005/level%20200009.aspx#140GBA3)(b)(i), the Minister may, by [legislative instrument](https://legend.online.immi.gov.au/migration/2021-2024/2023/27-10-2023/acts/Pages/_document00000/_Pop%20ups/PopUp-Period%2C-Manner-and-Evidence-of-Labour-Market-Testing.aspx), determine kinds of evidence that must accompany a nomination.

**(6B)**  Without limiting subsection (6A), the Minister may determine that a copy of any advertising mentioned in subsection (6) must accompany a nomination.

**(6C)**  Without limiting subsection [(5)](https://legend.online.immi.gov.au/migration/2021-2024/2023/27-10-2023/acts/Pages/_document00000/_level%20100005/level%20200009.aspx#140GBA5) or (6A), the Minister may prescribe different manners or evidence for different nominated positions or classes of nominated positions.

Legislative Instrument LIN 22/064

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

**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:

(a)   on the Australian Government *Workforce Australia* website (https://www.workforceaustralia.gov.au); and

(b)   in at least 2 advertisements on or in one or more of the following:

             (i)  a recruitment website with national reach in Australia (other than the website mentioned in paragraph (a));

            (ii)  print media with national reach in Australia;

           (iii)  radio with national reach in Australia;

           (iv)  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.

**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.