

## LABOUR MARKET TESTING FAQs

### Which applications require Labour Market Testing (LMT)?

All Subclass 482 nominations require LMT unless there is an exemption under the International Trade Obligations (ITO).

### What are the exemptions under the ITO's?

LMT will not need to occur where it would conflict with Australia's international trade obligations, in any of the following circumstances:

- The worker you nominate is a citizen/national of China (excludes Hong Kong and Macau), Japan or Thailand, or is a citizen/national/permanent resident of Chile, South Korea, New Zealand or Singapore.
- The worker you nominate is a current employee of a business that is an associated entity of your business that is located in an Association of South-East Asian Nations (ASEAN) country (Brunei, Myanmar, Cambodia, Indonesia, Laos, Malaysia, Philippines, Singapore, Thailand and Vietnam), Chile, China, Japan, South Korea or New Zealand.
- The worker you nominate is a current employee of an associated entity of your business who operates in a country that is a member of the World Trade Organisation (WTO), where the nominated occupation as an "Executive or Senior Manager" and the nominee will be responsible for the entire or a substantial part of your company's operations in Australia.
- Your business currently operates in a WTO member country and is seeking to establish a business in Australia, where the nominated occupation as an "Executive or Senior Manager".
- The worker you nominate is a citizen of a WTO member country and has worked for you in the nominated position in Australia on a full-time basis for the last two years.

### Which occupations are considered to be Executive or Senior Manager positions under the ITO's?

| <b>Occupation</b>                    | <b>ANZSCO Code</b> |
|--------------------------------------|--------------------|
| Advertising Manager                  | 131113             |
| Chief Executive or Managing Director | 111111             |
| Chief Information Officer            | 135111             |

|                                 |        |
|---------------------------------|--------|
| Corporate General Manager       | 111211 |
| Corporate Services Manager      | 132111 |
| Finance Manager                 | 132211 |
| Human Resource Manager          | 132311 |
| Sales and Marketing Manager     | 131112 |
| Supply and Distribution Manager | 133611 |

### **When does LMT need to be undertaken?**

Unless alternative requirements apply LMT must have been undertaken:

- within the four months immediately before lodging a nomination application
- if within four months of lodging the nomination application, and if the sponsor or an associated entity has made any Australian citizen or permanent resident workers redundant or retrenched them from positions in the nominated occupation - since the date that these events occurred.

LMT must be completed prior to lodgement of a Subclass 482 nomination. An employment contract must be dated after LMT has been completed.

### **What details must LMT advertising contain?**

Unless alternative requirements apply advertising of the nominated position must meet **all of** the below:

- the advertisement was in Australia, in English and included the following information:
  - the title, or a description, of the position. Multiple positions in one advertisement are acceptable
  - the skills or experience required for the position
  - the name of the approved sponsor or the name of the recruitment agency being used by the sponsor and
  - the salary for the position - if the annual earnings for the position are lower than AUD96,400. A salary range is acceptable.

### **The position will be paid under an Award or Enterprise Agreement. Does the salary still need to be on the advert?**

A link to the Award or Enterprise Agreement can be included. The advert must also state the applicable salary level used in the Award or Agreement.

### **Where can the advertisements be published?**

- on a prominent or professional recruitment website with national reach that publishes advertisements for positions throughout Australia. Some examples of acceptable websites include:

www.jobactive.gov.au  
seek.com.au  
au.indeed.com  
Linkedin- Recruitment platform only

- in national print media—that is, newspapers or magazines with national reach that are published at least monthly and marketed throughout Australia
- on national radio—that is, radio programs that are broadcast or syndicated nationally or
- on the business' website if the sponsor is an accredited sponsor.

### **I am an approved business sponsor, does that mean I am an accredited sponsor?**

Being approved as a standard business sponsor does not mean you are an accredited sponsor. To obtain sponsorship accreditation a business must meet certain requirements and have been approved as an accredited sponsor. If your business is not an accredited sponsor you cannot advertise on the business website to meet the LMT requirements. For further information regarding sponsorship accreditation, speak to one of our Consultants.

### **Can I advertise on social Media?**

Only the LinkedIn recruitment platform is acceptable. A job advertised on a page where only connections can view the job does not have the national reach required for LMT. Twitter and Instagram are not acceptable.

### **Can I advertise of an industry specific recruitment website?**

Industry specific recruitment websites relevant to the occupation that are in significant use by the industry are an acceptable method of LMT advertising.

Gumtree and general classified websites are not acceptable.

### **How many advertisements are required?**

At least two advertisements that meet the above criteria must have been published.

### **Online Advertising is the only applicable method to our industry. Can I run two adverts at the same time?**

Advertising on two different mediums can be undertaken simultaneously, or on two separate occasions for the same medium.

### **Can we use a recruitment agency to advertise the position?**

Advertising may have been undertaken by a third party if authorised to do so by the sponsor (for example, an associated entity or a contracted party, such as a recruitment agency) - there is no requirement that the sponsor placed the advertisement themselves.

### **Does the advertising need to be paid advertising only?**

Advertising does not need to be paid advertising. If the advertising is paid advertising, the receipt is required.

### **How long do the adverts need to be open?**

Each advert needs to be open or live on a website for 28 days. It does not need to be 28 consecutive days. For example, a business may advertise for 2 weeks followed by a break in advertising and then a further 2 weeks of advertising is completed.

### **What evidence needs to be provided to demonstrate LMT?**

- A copy of the adverts and evidence the position have been advertised for at least 28 days.
- If paid advertising, evidence of payment.

### **When can alternative evidence of LMT be provided?**

Alternative requirements apply where the nominated occupation/position is one which:

- requires the occupant to have an internationally recognised record of exceptional and outstanding achievement in a profession or a field (such as a sport, academia and research, or as a top-talent chef).
- is held by an existing TSS or subclass 457 visa holder for whom a new nomination has been lodged solely because:
  - the annual earnings that will apply to the nominee have changed or
  - a change in business structure has resulted in the nominee's employer lodging a new application to be approved as a standard business sponsor.
- relating to an intra corporate transfer (ICT). Note: an intra-corporate transfer is the transfer of an existing employee of a company to another branch or associated entity of that company operating in Australia
  - for which the annual earnings will be equal to or greater than AUD250,000.

- within ANZSCO Minor Group 253 – Medical Practitioners (except General Practitioner (ANZSCO 253111) and Medical Practitioners nec (ANZSCO 253999)) or ANZSCO Unit Group 4111 – Ambulance Officers and Paramedics.

**What evidence needs to be provided when the alternative requirements apply?**

A submission is required to explain how the local market has been tested. For example, where the applicant's salary is over \$250,000 an executive search process may have been completed. A submission and evidence would be required.