

EXPLANATORY STATEMENT

Migration Regulations 1994

Migration (LIN 18/123: English Language Tests and Evidence Exemptions for Subclass 500 (Student) Visa) Amendment Instrument 2018

Subclause 500.213(3)

1. The instrument, LIN 18/123, is made under subclause 500.213(3) of the *Migration Regulations 1994* (the Regulations).
2. The instrument amends IMMI 18/015 (F2018L00713) in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*, which states 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. The instrument IMMI 18/015 operates to remove the ‘Test of English as a Foreign Language Paper-Based test’ (TOEFL-PBT) as one of the specified tests for establishing an applicant’s English language proficiency accepted by the Department of Home Affairs (the Department) for Subclass 500 (Student) visa applications. The TOEFL-PBT was revised by an external agency and no longer includes a measurement of speaking. As a result of the change to the TOEFL-PBT, the instrument IMMI 18/015 does not specify TOEFL-PBT as an accepted English language test due to its inability to measure the English language speaking skills of an applicant.
4. The purpose of this instrument is to amend the application of the repeal provision in Part 2 of Schedule 2 to the instrument. The amendment is to clarify that, despite its repeal, IMMI 16/019 applies to all applications for a Subclass 500 (Student) visa made, but not finally determined, before 6 June 2018, the date of commencement of IMMI 18/015. This is consistent with Part 3 of IMMI 18/015, which provides that the instrument applies to applications made on or after commencement. The amended

savings provision still covers applicants who took the TOEFL-PBT and submitted their application before 6 June 2018.

5. In accordance with paragraph 15J(2)(e) of the *Legislation Act 2003*, consultation was not necessary. This instrument makes minor typographical amendments to IMMI 18/015 and does not alter existing arrangements of the previous instrument that applies to applications made before the commencement of IMMI 18/015.
6. The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is not required (OBPR Reference: 22865).
7. Under section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*, the instrument is exempt from disallowance and therefore a Statement of Compatibility with Human Rights is not required.
8. The instrument commences on the day after registration on the Federal Register of Legislation.