

**EXPLANATORY STATEMENT**

*Migration Regulations 1994*

*Migration Act 1958*

**EVIDENCE OF FUNCTIONAL ENGLISH LANGUAGE PROFICIENCY**

(Regulation 5.17)

1. This instrument is made under regulation 5.17 of the *Migration Regulations 1994* ('the Regulations').
2. Paragraph 5.17(a) of the Regulations provides that, for the purposes of paragraph 5(2)(b) of the *Migration Act 1958*, ('the Act'), (dealing with whether a person has functional English), evidence of the English language proficiency of a person may be specified by the Minister in an instrument in writing.
3. Paragraph 5(2)(b) of the Act provides that a person has functional English at a particular time if the person provides the Minister with prescribed evidence of the person's English language proficiency.
4. The purpose of the instrument is to:
  - (a) specify what qualifications or experience an applicant must have as evidence that they meet the definition of functional English; and
  - (b) include references that were made in Regulation 5.17 to Part 3 of Schedule 6, which is being repealed as part of the implementation of SkillSelect; and
  - (c) remove reference to the Australian Assessment of Communicative English Skills test (ACCESS) test, which is no longer available.
5. The instrument operates to specify the qualifications or experience necessary for the purposes of providing evidence of English language proficiency. This includes specifying educational experience and results obtained as a consequence of sitting specific English language tests including the International English Language Testing System (IELTS) Test.
6. Pursuant to section 18 of the *Legislative Instruments Act 2003*, consultation was not necessary. The Instrument is of a minor or machinery nature and does not substantially alter existing arrangements.
7. The Office of Best Practice Regulation has advised that a Regulatory Impact Statement is not required (OBPR Reference 13150).
8. Under section 44 of the *Legislative Instruments Act 2003* the Instrument is exempt from disallowance and therefore a Human Rights Statement of Compatibility is not required.
9. The Instrument, IMMI 12/073, commences on 1 July 2012, immediately after the commencement of *Migration Amendment Regulation 2012 (No. 3)*.