

Explanatory Statement

Immigration (Education) (functional English) Specification 2017

Summary

Subsection 3(2) of the *Immigration (Education) Act 1971* (the Act) provides that the Minister may, by legislative instrument, specify procedures or standards for the purposes of the definition of functional English in subsection 3(1) of the Act.

The *Immigration (Education) (functional English) Specification 2017* specifies that a person is taken to have functional English if they are assessed in accordance with subsection 5(2) of the *Migration Act 1958* as having functional English in respect to a visa grant, or, are assessed under the Australian Core Skills Framework (**ACSF**) to have a Level 3 proficiency or above across the core skills of skills of reading, writing, learning and oral communication.

Background

The Act provides for up to 510 hours of tuition in approved English courses to migrants who hold eligible visas and who do not have functional English. This is delivered through the Australian Government's Adult Migrant English Program (**AMEP**).

The eligibility requirements for English courses are set out in section 4A of the Act. Paragraph 4A(b) of the Act provides that a person is eligible for English courses if he or she does not have functional English. The Act requires that a provider of an approved English course determines whether a person has functional English in accordance with any procedures or standards specified by the Minister in a legislative instrument made under subsection 3(2) of the Act.

Consultation

In 2014, ACIL Allen Consulting were engaged to undertake an evaluation of AMEP which included consultation with a range of stakeholders. Community consultations from the general public were undertaken by the Minister in July and August 2015. The feedback from these processes informed the development of reforms to AMEP delivery arrangements.

The Request for Tender for AMEP services was released on 7 October 2016. Industry briefings were held advising of changes to the AMEP business model, including the use of the ACSF. There was broad support for the proposed changes.

Regulatory Impact Statement

The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is not required (OBPR ID 21982).

Authority

This Instrument is made under subsection 3(2) of the Act to specify the procedures or standards for the purposes of the definition of functional English (defined in subsection 3(1) of the Act). Subsection 3(1) provides that a person has functional English if the provider of an approved English course determines, in accordance with any procedures or standards specified by the Minister under subsection 3(2), that the person has functional English.

Explanation of Provisions

Section 1 – Name of instrument

This section provides that the name of the instrument is the *Immigration (Education) (functional English) Specification 2017 (the Instrument)*.

Section 2 – Commencement

This section provides that the Instrument commences on 1 July 2017.

Section 3 – Authority

This section provides that the authority for the Instrument is under subsection 3(2) of the *Immigration (Education) Act 1971*.

Section 4 – Definition

Section 4 specifies the meaning of ‘the Act’ to provide that a reference within the Instrument to the Act is to be taken as a reference to the *Immigration (Education) Act 1971*.

Section 5 – Revocation

This section provides that the previous instrument (IMMI 10/057, *Procedures or Standards for functional English*) specifying the standards of procedures for the purpose of the definition of functional English in subsection 3(1) of the Act, made on 8 December 2010 (F2010L03242) is revoked.

Section 6 – Savings provision

Paragraph 6(a) of the Instrument provides that until the commencement date of this instrument (1 July 2017), the standards and procedures specified in IMMI 10/057 (F2010L3242) will be used to determine functional English.

Paragraph 6(b) of the Instrument provides that from the commencement date of this Instrument, the procedures and standards specified in this instrument will be used to determine functional English.

Section 7 – Procedures or standards for determining that a person has functional English

Section 7 specifies when a person is taken to have functional English for the purposes of subsection 3(1) of the Act.

Paragraph 7(a) of the Instrument provides that if a person has been assessed or provided evidence that they have functional English or above for the purposes of their visa grant in accordance with the requirements under subsection 5(2) of the *Migration Act 1958*, they will be taken to have functional English.

Paragraph 7(b) of the Instrument provides that if a person has not been assessed as having functional English under paragraph 7(a) and they have been assessed under the ACSF and achieved a Level 3 proficiency or above in each of the core skills of learning, reading, writing and oral communication, they will be taken to have functional English.

Subsection 3(3) of the Act allows that an Instrument made under subsection 3(2) of the Act may apply, adopt or incorporate any matter contained in any other instrument or writing. The ACSF (as in force or existing from time to time) provides the procedures and standards for which a person will be assessed as having or not having functional English for the purposes of paragraph 7(b) of the Instrument.

The ACSF is a tool which assists both specialist and non-specialist English language, literacy and numeracy practitioners describe an individual's performance in the five core skills of learning, reading, writing, oral communication and numeracy.

The framework has broad application and can be used to:

- assess and benchmark an individual's core skills performance
- describe core skills relevant to the workplace and employment
- map curricula
- tailor approaches to teaching and learning
- inform decisions regarding funding and referrals.

As at the commencement of this Instrument, the ACSF may be publicly accessed on the website: <https://www.education.gov.au/australian-core-skills-framework>

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Immigration (Education) (functional English) Specification 2017

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The *Immigration (Education) (functional English) Specification 2017* (**the Instrument**) is made by the Minister under subsection 3(2) of the *Immigration (Education) Act 1971* (**the Act**).

The Act provides for 510 hours of tuition in approved English courses to migrants who have eligible visas and who do not have functional English. This is delivered through the Australian Government Adult Migrant English Program (**AMEP**).

The Instrument seeks to specify the standard of functional English which is one of the criteria of eligibility for AMEP under the Act. AMEP seeks to improve the language proficiency and confidence of eligible new migrants and humanitarian entrants, who lack functional English, to participate socially and economically in Australian society.

Human Rights Implications

The Instrument engages the following human rights:

The right to work – Article 6 of the International Covenant on Economic, Social and Cultural Rights (**ICESCR**)

The right to education – Article 13 of the ICESCR

Right to Work

This Instrument engages the right to work which is set out in Article 6 of the ICESCR.

Under Article 6(1) State Parties are required to recognise the right to work, which includes the right of everyone to the opportunity to gain their living by work which they freely choose or accept. Article 6(2) provides that the steps to be taken by a State Party to achieve the full realisation of this right include providing technical and vocational guidance and training programs.

This right goes to an objective of the Instrument, which is to improve the employment outcomes of eligible migrants who lack functional English through the delivery of 510 hours of English tuition at no charge through the AMEP.

This Instrument is compatible with the right to work.

Right to Education

The Instrument engages the right to education which is set out in Article 13 of the ICESCR. Article 13 recognises the important personal, societal, economic and intellectual benefits of education.

The Instrument promotes the right to education by providing access to English language education to eligible migrants.

Conclusion

This Instrument is compatible with human rights in promoting an individuals' right to work and right to education.

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