

EXPLANATORY STATEMENT

Issued by authority of the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

Immigration (Education) Act 1971

Immigration (Education) (Standards for Vocational English) Instrument (LIN 21/012) 2021

- 1 The instrument, Departmental reference LIN 21/012, is made under subsection 3(2) of the *Immigration (Education) Act 1971* (the Act).
- 2 The instrument repeals *Immigration (Education) (Functional English) Specification 2017* (F2017L00720) made under subsection 3(2) of the Act, in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*. That subsection provides that a power to make a legislative instrument includes a power to amend or repeal that instrument in the same manner, and subject to the same conditions, as the power to make the instrument.
- 3 The instrument commences on the later of:
 - the day after it is registered on the Federal Register of Legislation; and
 - immediately after the commencement of Schedule 1 of the *Immigration (Education) Amendment (Expanding Access to English Tuition) Act 2020* (the Amendment Act).
- 4 The instrument is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

Purpose

- 5 The Act sets out a scheme for tuition in approved English courses to eligible migrants, known as the Adult Migrant Education Program (AMEP). Under subsection 4A(1) of the Act, after commencement of the Amendment Act, one of the criteria a migrant in Australia must meet to be eligible for English language tuition is that the person does not have ‘vocational English’.
- 6 The purpose of the instrument is to specify the procedures or standards for an approved English language provider to determine whether a migrant in Australia has ‘vocational English’.
- 7 Subsection 3(1) of the Act provides that a person has vocational 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 vocational English.
- 8 The instrument specifies the English language skill standards that a person must meet or exceed to determine whether the person has ‘vocational English’ for the purpose of subsection 3(1) of the Act.
- 9 The standards specified in this instrument will reflect amendments made to the Act by the Amendment Act, which change the eligibility for English language tuition for eligible migrants in Australia from not having ‘functional English’ to the higher level of ‘vocational English’. This will enable eligible persons to continue their language learning to a higher level of English proficiency.
- 10 The primary standard of English specified in the instrument is Level 3 proficiency under the Australian Core Skills Framework (ACSF). The instrument also specifies a standard of an average of 5.5 in the

International English Language Testing System (IELTS), and the equivalent standard in alternative language tests (Test of English as a Foreign Language internet-based Test (TOEFL iBT), Cambridge C1 Advanced Test (C1 Advanced), Pearson Test of English Academic (PTE Academic) and Occupational English Test (OET)).

- 11 Following a curriculum reaccreditation process in 2018, the main curricula used in the AMEP currently determine that ACSF 3 is equivalent to IELTS 5.5. The previous instrument operated under a previous arrangement in which ACSF 3 was equivalent to IELTS 4.5 (Functional English). This new instrument will align the ACSF and IELTS (and equivalent) levels and enact the Government's intention to raise the threshold of the AMEP to vocational English.

Consultation

- 12 In preparing the instrument, a range of relevant agencies were consulted including the Department of Education, Skills and Employment and the Department of Finance. These agencies agreed with the standards being specified in the instrument.
- 13 The Office of Best Practice Regulation (OBPR) was also consulted and considered that the instrument dealt with matters of a minor nature and no regulatory impact statement was required. The OBPR reference number is 42538.

Details of the instrument

- 14 Section 1 sets out the name of the instrument.
- 15 Section 2 provides the commencement of the instrument, which is on the later of:
- the day after it is registered on the Federal Register of Legislation; and
 - immediately after the commencement of Schedule 1 of the Amendment Act.
- 16 Section 3 states that the instrument repeals *Immigration (Education) (Functional English) Specification 2017* (F2017L00720).
- 17 Section 4 specifies standards for the definition of vocational English for subsection 3(1) of the Act.
- 18 Subsection 4(1) provides that a provider of an approved English language course can determine that a person has 'vocational English' where the person meets or exceeds one of the following standards:
- at least Level 3 proficiency in each of the four core skills of learning, reading, writing and oral communication under the ACSF (paragraph (a)); or
 - an average score of at least 5.5 in an IELTS test, based on the four test components of speaking, reading, writing and listening (paragraph (b)); or
 - a total band score of at least 46 in a TOEFL iBT, based on the four test components of speaking, reading, writing and listening (paragraph (c)); or
 - a total band score of at least 162 in a C1 Advanced test, based on the four test components of speaking, reading, writing and listening (paragraph (d)); or

- a total band score of at least 42 in a PTE Academic, based on the four test components of speaking, reading, writing and listening (paragraph (e)); or
- at least B for each of the four test components of speaking, reading, writing and listening in an OET (paragraph (f)).

19 Information about each of the above tests can be obtained at the following locations:

- ACSF: <https://www.dese.gov.au/skills-information-training-providers/australian-core-skills-framework/>.
- IELTS: <https://ielts.com.au/>;
- TOEFL iBT: <https://www.ets.org/toefl/test-takers/ibt/about>;
- C1 Advanced: <https://www.cambridgeenglish.org/exams-and-tests/advanced/>;
- PTE Academic: <https://pearsonpte.com/>;
- OET: <https://www.occupationalenglishtest.org/>;

20 Subsection 4(2) of the instrument provides that the reference to the tests in subsection (1) is a reference to those tests as in force or existing from time to time. Subsection 3(3) of the Act provides that the instrument may apply, adopt or incorporate any matter contained in any other instrument or writing as in force or existing at a particular time, or from time to time. This displaces the application of subsection 14(2) of the Legislation Act.

Parliamentary scrutiny etc.

21 The instrument is subject to disallowance under section 42 of the Legislation Act.

22 A Statement of Compatibility with Human Rights has been prepared in relation to the instrument. It provides that the instrument is compatible with human rights because its intended purpose is to facilitate improved access to education (English language tuition) for migrants in Australia which will support social cohesion and allow migrants to participate fully in the Australian community. This aligns with Articles 6 and 13 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and Articles 6 and 7 of the *Convention on the Elimination of All Forms of Racial Discrimination* (CERD). The Statement is included at **Attachment A** to this explanatory statement.

23 The instrument was made by Alex Hawke, Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, in accordance with subsection 3(2) of the Act.

Statement of Compatibility with Human Rights

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

Immigration (Education) (Standards for Vocational English) Instrument (LIN 21/012) 2021

This Disallowable 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 Disallowable Legislative Instrument

The *Immigration (Education) Act 1971* (the Act) provides for publicly-funded tuition in approved English courses to eligible migrants. This is delivered through the Australian Government Adult Migrant English Program (AMEP).

The purpose of this Disallowable Legislative Instrument is to repeal and replace the *Immigration (Education) (Functional English) Specification 2017* (F2017L00720) to align with amendments made to the Act by the *Immigration (Education) Amendment (Expanding Access to English Tuition) Act 2020* (the Amendment Act) to encourage the acquisition of a higher level of English proficiency.

The Amendment Act relevantly changed the eligibility requirements for a person to be eligible for an approved English course. Prior to amendments, the eligibility requirements in subsection 4A(b) of the Act meant a migrant became ineligible for tuition under the Act once they reach the level of ‘functional English’. This is lower than the level of English required by most employers, and for enrolment in TAFE courses.

Under section 4 of the Act, as amended by the Amendment Act, to be eligible for a course, the person must not have ‘vocational English’. A new definition of ‘vocational English’ in subsection 3(1) of the Act provides that the Minister may specify the standards and procedures for determining whether or not a person has ‘vocational English’. This Disallowable Legislative Instrument specifies the standards that a provider of an approved English language course must use to determine whether an eligible migrant or humanitarian entrant in Australia has ‘vocational English’ for the purposes of AMEP eligibility.

An approved English course provider can determine that a person has ‘vocational English’, and is ineligible for the AMEP, if the person meets or exceeds one of the standards included in the instrument. The standard is set as Level 3 in the Australian Core Skills Framework (ACSF) or the minimum score in one of the five international language tests specified in the instrument.

This instrument therefore supports, and is consequential to, the amendments to eligibility made by the Amending Act.

Amendment of the eligibility level means migrants will be able to stay in the program for longer, and reach a higher level of proficiency. It also means those who are currently ineligible because they have functional English will be able to enter (or re-enter) the program to raise their English proficiency.

Human rights implications

The Disallowable Legislative Instrument broadly promotes the following rights:

- Articles 6 and 13 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR)
- Article 7 of the *Convention on the Elimination of All Forms of Racial Discrimination* (CERD)

Article 13 of ICESCR recognises the right of everyone to education and that “*education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups*”. The Disallowable Legislative Instrument promotes Article 13 of ICESCR insofar as it will support the amendments made by the Amendment Act to enable more migrants to be able to access free English tuition for longer and until they reach a higher level of proficiency, which will enhance access to vocational pathways and support them to participate more fully in the Australian community.

Similarly, insofar as the Disallowable Legislative Instrument supports the implementation of the changes made by the Amendment Act, it also broadly promotes the right to work in Article 6 and Article 7 of the CERD which calls for the State to promote understanding, tolerance and friendship among racial and ethnic groups.

By supporting the amendments made by the Amendment Act to support migrants with low English proficiency to learn the national language, the Disallowable Legislative Instrument will assist in facilitating social cohesion and in boosting the education and potential employment prospects of participating migrants.

Conclusion

The Disallowable Legislative Instrument is compatible with human rights.