

## EXPLANATORY STATEMENT

Issued by authority of the Minister for Home Affairs

*Migration Regulations 1994*

### ***Migration (English Language Tests and Evidence Exemptions for Subclass 500 (Student) Visa) Instrument (LIN 24/022) 2024***

- 1 The instrument, Departmental reference LIN 24/022, is made under subclause 500.213(3) of Schedule 2 to the *Migration Regulations 1994* (the Migration Regulations).
- 2 The instrument repeals *Migration (IMMI 18/015: English Language Tests and Evidence Exemptions for Subclass 500 (Student) Visa) Instrument 2018* (F2018C00474) in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (the Acts Interpretation Act). 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 23 March 2024. It is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

#### ***Purpose***

- 4 The purpose of the instrument is to specify English language proficiency requirements to satisfy the criterion for the grant of a Subclass 500 (Student) visa in subclause 500.213(1). The instrument operates to increase the required English language test scores, following the release of the Government's Migration Strategy, to improve the integrity of the student visa program. The instrument also specifies the class of applicants to which English language requirements do not apply under subclause 500.213(2).

#### ***Background***

- 5 Under subclause 500.213(1), if required by the Minister, an applicant must provide evidence they have a level of English language proficiency that meets the requirements specified in a legislative instrument made by the Minister under paragraph 500.213(3)(a).
- 6 LIN 24/022 specifies the following English language proficiency requirements:
  - the applicant took an approved English language test;
  - the applicant took the test within 2 years immediately before the application is made (or if evidence of the test is not provided at the time the visa application is made, 2 years immediately before a decision on the application is made);

- the applicant achieved the required English language test score specified in Schedule 1 and any associated requirements.
- 7 The required English language test scores have increased from those previously specified in *Migration (IMMI 18/015: English Language Tests and Evidence Exemptions for Subclass 500 (Student) Visa) Instrument 2018*. This is because higher English language requirements will help students succeed in their studies and engage in Australian life.
  - 8 Australia has a large student cohort as a proportion of the general population, so it is important for Australia's social cohesion for students to have the language skills necessary to live, study and engage in part time or casual work. Students with strong English language skills are less likely to experience workplace exploitation and more likely to make the social and professional connections that will help them navigate the labour market and gain skilled employment as graduates. The increase to English language test scores also means Australia is more aligned with competitor countries.
  - 9 Lower test scores are specified for applicants who are unable to achieve a test score of IELTS 6.0 (or equivalent), if they enrol in a registered course of at least 10 or 20 weeks of an English Language Intensive Course for Overseas Students (ELICOS).
  - 10 Test scores are maintained at 5.5 for applicants enrolled in standard or extended foundation programs or eligible pathway programs. Foundation and pathway programs are courses for students who have not met the academic entry requirements for their intended Australian undergraduate university degree. Successful completion of a foundation program provides an academic entry pathway to first year undergraduate study. A pathway program leads to a qualification recognised under the Australian Qualifications Framework and provides academic credit for and entry to second year undergraduate study.
  - 11 The instrument also specifies classes of applicants to which the English language test requirements do not apply under subclause 500.213(2), which maintains existing settings.

### ***Consultation***

- 12 Cross-Government consultation was undertaken in relation to the reforms to increase the English language test scores. Stakeholder views were also sought through the Education Visa Consultative Committee, the Council for International Education, and a range of individual meetings with International education sector providers. Stakeholders were broadly supportive of the proposal to increase English language proficiency requirements for student and graduate visas. The Department has engaged closely with the ELICOS sector who expressed the

strongest concerns about the change. This consultation accords with s 17(1) of the Legislation Act.

- 13 The Office of Impact Analysis (OIA) was consulted and considered all impact analysis requirements have been acquitted. No further impact analysis is required. The OIA reference number is OBPR23-04044.

***Details of the instrument***

- 14 Details of the instrument are set out in Attachment A.

***Parliamentary scrutiny etc.***

- 15 The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because instruments made under Schedule 2 to the Migration Regulations are prescribed as being exempt from disallowance under paragraph 44(2)(b) of the Migration Regulations. See table item 20 in regulation 10 of the *Legislation (Exemptions and Other Matters) Regulations 2015*. As the instrument is exempt from disallowance, a Statement of Compatibility with Human Rights is not required.

***Details of the instrument***

- 1 Section 1 provides the name of the instrument is the *Migration (English Language Tests and Evidence Exemptions for Subclass 500 (Student) Visa) Instrument (LIN 24/022) 2024*.
- 2 Section 2 provides the instrument commences on 23 March 2024.
- 3 Section 3 provides the instrument is made under subclause 500.213(3) of Schedule 2 to the *Migration Regulations 1994* (the Migration Regulations).
- 4 Section 4 sets out the definitions of terms used in the instrument. The note to section 4 provides that a number of expressions used in the instrument are defined in the Migration Regulations.
- 5 Section 5 specifies the English language test requirements an applicant must meet:
  - subsection 5(1) specifies the requirements for the purpose of subclause 500.213(1) of Schedule 2 to the Migration Regulations. Subclause 500.213(1) provides, that if required by the Minister, the applicant gives evidence they have a level of English language proficiency that meets the requirements specified in a legislative instrument. The requirements specified for this purpose are:
    - i. the applicant took an approved English language test, which is defined in section 4 to mean:
      - the International English Language Testing System (the IELTS);
      - the Test of English as a Foreign Language internet based test (the TOEFL iBT);
      - the Cambridge English: Advanced test (the CAE) (also known as Certificate in Advanced English);
      - the Pearson Test of English Academic (the PTE);
      - the Occupational English Test (the OET);
    - ii. the applicant took the test either:
      - within 2 years immediately before the application is made, if evidence of the test is provided at the time the application is made; or
      - within 2 years immediately before a decision is made on the application, if evidence of the test is not provided at the time the visa application is made;

iii. the applicant satisfied the English language test score requirements in subsections (2), (3) or (4). The applicant is required to meet the requirements set out in only one of these subsections. The required English language test scores are set out against each of the approved English language tests in Schedule 1.

- subsection 5(2) provides that the applicant must have achieved the required English language test score set out in Column 2 of Schedule 1. Column 2 sets out the new minimum test scores required to be achieved.
- subsection 5(3) provides that, if the applicant has enrolled in at least 10 weeks of an ELICOS in addition to their principal course, or has enrolled in a standard foundation program, an extended foundation program or an eligible pathway program, the applicant must have achieved the required English language test score set out in Column 3 of Schedule 1, which is lower than the score required in Column 2.
- subsection 5(4) provides that, if the applicant has enrolled in at least 20 weeks of ELICOS in addition to their principal course, the applicant must have achieved the required English language test score set out in Column 4 of Schedule 1, which is lower than the score required in Column 2 and 3.

i. Column 3 and Column 4 of Schedule 1 specify lower test scores for applicants who are unable to achieve the benchmark score of IELTS 6.0 (or equivalent) specified in Column 2, provided the applicant also provides evidence of enrolment in at least 10 or 20 weeks of ELICOS. Enrolment in the relevant period of ELICOS must be in addition to the principal course of study and the ELICOS must commence after the Student visa application is made. Evidence of ELICOS undertaken prior to lodging a visa application will not be eligible for consideration. This maintains the current setting that a lower score is available where a course is packaged with the required ELICOS study.

ii. Column 3 of Schedule 1 also specifies a lower score for the foundation and pathway programs. This maintains the score of 5.5 (or equivalent) currently required for foundation and pathway programs.

6 Section 6 sets out the classes of applicants to which subclause 500.213(1) of Schedule 2 to the Migration Regulations does not apply. Applicants within the specified class are not required to meet the English language requirements specified for subclause 500.213(1).

- paragraph 6(1)(a) provides the requirements of subclause 500.213(1) do not apply to an applicant who is a citizen of and who holds a valid passport issued by:
  - i. the United Kingdom;
  - ii. the United States of America;

- iii. Canada;
  - iv. New Zealand; or
  - v. the Republic of Ireland;
- paragraph 6(1)(b) provides the requirements of subclause 500.213(1) do not apply to an applicant who is enrolled one of the following courses, where that is the only course being undertaken on the visa (ie, is not part of a package of courses):
  - i. a course of study that is registered to be delivered in a language other than English;
  - ii. an ELICOS;
  - iii. a registered school course; or
  - iv. a registered post-graduate research course;
- paragraph 6(1)(c) provides the requirements of subclause 500.213(1) do not apply to an applicant who is a:
  - i. Foreign Affairs student;
  - ii. Defence student; or
  - iii. Secondary exchange student;
- paragraph 6(1)(d) provides the requirements of subclause 500.213(1) do not apply to an applicant who in the 2 years before applying for a Subclass 500 (Student) visa, has successfully completed:
  - i. the requirements for a Senior Secondary Certificate of Education conducted in Australia and in English; or
  - ii. a substantial component of a course leading to a qualification from the Australian Qualifications Framework at the Certificate IV level or higher that was conducted in Australia and in English, while the applicant was holding a student visa;
- paragraph 6(1)(e) provides the requirements of subclause 500.213(1) do not apply to an applicant who has successfully completed a minimum of 5 years of study in English undertaken in any of the following countries: Australia; Canada; New Zealand; South Africa; the Republic of Ireland; the United Kingdom; the United States of America.

- 7 Section 7 provides this instrument applies to an application for a Subclass 500 (Student) visa made on or after the commencement of this instrument.
- 8 Section 8 repeals the instrument *Migration (IMMI 18/015: English Language Tests and Evidence Exemptions for Subclass 500 (Student) Visa) Instrument 2018*.
- 9 Section 9 continues the application of *Migration (IMMI 18/015: English Language Tests and Evidence Exemptions for Subclass 500 (Student) Visa) Instrument 2018* in respect to applications for a Subclass 500 (Student) visa made, but not yet finally determined, before the date of commencement of this instrument.
- 10 Schedule 1 sets out the minimum English language test scores required in relation to each of the approved English language tests.