

EXPLANATORY STATEMENT

Issued by the Assistant Minister for Citizenship and Multicultural Affairs

Migration (Language Test Requirements for Subclass 482 Visa) Instrument 2024

The instrument *Migration (Language Test Requirements for Subclass 482 Visa) Instrument 2024* (departmental reference LIN 24/099) is made under subclauses 482.222(1) and 482.232(1) of Schedule 2 to the *Migration Regulations 1994* (Migration Regulations).

In accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (Acts Interpretation Act), the instrument repeals *Migration (IMMI 18/032: Language Test Requirements—Subclass 482 Visa) Instrument 2018* (IMMI 18/032). Subsection 33(3) of the Acts Interpretation Act states that 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.

IMMI 18/032 provided for the language test requirements that were applicable for an applicant to the Subclass 482 (Temporary Skill Shortage) visa in the Short-term stream and Medium-term stream. IMMI 18/032 set out the required test scores in an approved English test that an applicant must have met to have satisfied the English language requirements for the Subclass 482 (Temporary Skill Shortage) visa.

The Migration Amendment (2024 Measures No. 1) Regulations 2024 implemented the new Subclass 482 (Skills in Demand) visa to replace the Subclass 482 (Temporary Skill Shortage) visa. The Subclass 482 (Skills in Demand) visa aims to address the nation's skills needs, and provides skilled migrant workers with increased worker mobility and clear pathways to permanent residence.

The purpose of LIN 24/099 is to repeal IMMI 18/032 and specify the language test requirements for an applicant to the Specialist Skills stream and Core Skills stream of the Subclass 482 (Skills in Demand) visa, including the following:

- the English language tests that are approved for demonstrating English language proficiency for the purposes of the Specialist Skills stream and Core Skills stream;
- the required test scores for an applicant in an approved English test;
- the period of time in which the required test scores must be obtained; and
- applicants who are exempt from the requirement to undertake English language tests.

The required test scores for an applicant to the Specialist Skills stream and Core Skills stream of the Subclass 482 (Skills in Demand) visa are identical to the requirements that previously applied to an applicant to the Medium-term stream of the Subclass 482 (Temporary Skill Shortage) visa.

The instrument is exempt from disallowance under section 42 of the *Legislation Act 2003* (Legislation Act). This is because instruments made under Schedule 2 to the Migration

Regulations are prescribed as being exempt from disallowance under paragraph (b) of item 20 of the table in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*. A statement of compatibility with human rights is therefore not required.

The Office of Impact Analysis (OIA) has been consulted in relation to the amendments, advising that no Impact Analysis is required. The OIA consultation reference number is OIA24-08389.

The Department of Home Affairs has consulted on the Migration Strategy with business, unions and other stakeholders throughout the Migration Review. Whole of Government consultation occurred, along with consultation involving peak body, state and territory, and industry representatives via the Ministerial Advisory Council on Skilled Migration (MACSM) and Skilled Migration Officials Group (SMOG) groups.

The instrument commences on 7 December 2024.

Section 4 of the Acts Interpretation Act relevantly provides in effect that if an Act is enacted and at a time after its enactment the Act will confer power to make an instrument of a legislative or administrative character, the power may be exercised after the Act is made, but before the Act commences. Paragraph 13(1)(a) of the Legislation Act applies that law to instruments. This instrument was made in accordance with those provisions.

Further details of the instrument are set out in [Attachment A](#).

The Migration Regulations specify no conditions that need to be satisfied before the power to make the instrument may be exercised.

The instrument is a legislative instrument for the purposes of the Legislation Act.

Details of the Migration (Language Test Requirements for Subclass 482 Visa – LIN 24/099) Instrument 2024

Section 1 – Name of instrument

This section provides that the title of the instrument is the *Migration (Language Test Requirements for Subclass 482 Visa – LIN 24/099) Instrument 2024* (LIN 24/099).

Section 2 – Commencement

This section provides the instrument commences on 7 December 2024.

Section 3 – Authority

This section provides that the instrument is made under subclauses 482.222(1) and 482.232(1) of the *Migration Regulations 1994* (Migration Regulations).

Section 4 – Definitions

This section provides for the definitions for a number of expressions in the instrument.

An ***exempt applicant*** is defined as the following:

- an applicant who is a citizen of, and who holds a valid passport issued by Canada, New Zealand, the Republic of Ireland, the United Kingdom, or the United States; or
- an applicant who has completed at least 5 years of full-time study in a secondary education institution or higher education institution where the instruction was delivered in English; or
- an applicant who has been nominated by a standard business sponsor in relation to an occupation that will be performed at a diplomatic or consular mission of another country, or an Office of the Authorities of Taiwan located in Australia; or
- an applicant:
 - who has been nominated in relation to an occupation that requires the applicant to hold a license, registration or membership to perform the occupation; and
 - who has been granted that license, registration or membership; and
 - who, for the purposes of the grant of that license, registration or membership, was required to demonstrate a level of English language proficiency that is equivalent to, or better than, the level of English language proficiency that is required to achieve the required test scores for an approved English language test etc; or
- an applicant who is employed by a company operating an established business overseas, and is nominated by a standard business sponsor who is that company or an associated entity of that company, and will receive annual earnings of at least AUD 96,400.

Full-time study is defined as the following:

- in relation to a secondary education institution in a particular country – the standard number of contract hours that a student would undertake in that country; or
- in relation to a higher education institution – the completion of at least 3 subjects in each semester or trimester of study.

The meaning of **required test scores** for an approved English language test is provided for in subsection 6(4) of this instrument.

Test component is defined to include listening, reading, speaking, and writing as test components of an approved English language test.

Section 5 – Schedules

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Section 6 – Language test requirements

Subsection 6(1) provides that section 6 specifies language test requirements for the purposes of subclauses 482.222(1) and 482.232(1) of Schedule 2 to the Migration Regulations.

Amongst other things, the *Migration Amendment (2024 Measures No. 1) Regulations 2024* (the Amendment Regulations) amended the Migration Regulations to repeal the existing subdivisions 482.22 and 482.23 of Schedule 2 under which IMMI 18/032 had been made.

The Amendment Regulations substituted new subdivisions 482.22 and 482.23 of Schedule 2 to the Migration Regulations. This included new clauses 482.222 and 482.232, which respectively set out the language test requirements for an applicant to the Specialist Skills stream and Core Skills stream of the Subclass 482 (Skills in Demand) visa.

The effect is that an applicant to the Specialist Skills stream and Core Skills stream to the Subclass 482 (Skills in Demand) visa must satisfy the language test requirements specified by the Minister in a legislative instrument made under the following provisions:

- for an applicant to the Specialist Skills stream – subclause 482.222(1);
- for an applicant to the Core Skills stream – subclause 482.231(1).

Subsection 6(2) requires an applicant in the Specialist Skills stream or Core Skills stream (other than an exempt applicant) to have taken an approved English test on a particular day (the **test day**), and achieved the required scores needed for that test in a single attempt at the test. The test day must not have occurred more than 3 years before the day on which the applicant provides evidence of their required test scores.

Subsection 6(3) provides that each of the following is an **approved English language test**:

- the International English Language Testing System (the IELTS);
- the Occupational English Test (the OET);
- the Test of English as a Foreign Language internet-based test (the TOEFL);

- the Pearson Test of English Academic (the **PTE**);
- the Cambridge English: Advanced Test (**CAE**).

Subsection 6(4) sets out a table that provides for the **required test scores**. The required test scores for applicants for both the Specialist Skills stream and Core Skills stream of the Subclass 482 (Skills in Demand) visa are identical to the requirements that previously applied for an applicant to the Medium-term stream of the Subclass 482 (Temporary Skill Shortage) visa.

Section 7 – Application of this instrument

This section provides that *Migration (Language Test Requirements for Subclass 482 Visa – LIN 24/099) Instrument 2024* applies in relation to an application for a visa that is made on or after the commencement of this instrument.

Section 8 – Continued application of IMMI 18/032

This section provides that, despite the repeal of *Migration (IMMI 18/032: Language Test Requirements—Subclass 482 Visa) Instrument 2018* (IMMI 18/032) by *Migration (Language Test Requirements for Subclass 482 Visa – LIN 24/099) Instrument 2024* (LIN 24/099), IMMI 18/032, as in force immediately before the day LIN 24/099 commences, continues to apply in relation to an application for a visa made before the commencement of LIN 24/099.

Schedule 1 – Repeals

Item [1] – The whole of the instrument

Item [1] of Schedule 1 repeals the whole of *Migration (IMMI 18/032: Language Test Requirements—Subclass 482 Visa) Instrument 2018* (IMMI 18/032).