

EXPLANATORY STATEMENT

Issued by authority of the Assistant Minister for Immigration

Migration Regulations 1994

Migration (Evidence of Functional English Language Proficiency) Instrument 2025

This instrument, departmental reference LIN 25/014, is made under paragraph 5.17(a) of the *Migration Regulations 1994* (the Regulations).

This instrument repeals the *Migration Regulations 1994 - Specification of Evidence of Functional English Language Proficiency 2015 – IMMI 15/004* (IMMI 15/004) 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 this instrument.

This instrument commences on 7 August 2025. It is a legislative instrument for the purposes of the *Legislation Act 2003* (the Legislation Act).

Background

The *Migration Regulations 1994 - Specification of Evidence of Functional English Language Proficiency 2015 – IMMI 15/004* (IMMI 15/004) commenced on 1 January 2015.

That instrument was made under paragraph 5.17(a) of the Regulations, which 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), the evidence referred to in each of the following is prescribed evidence of the English language proficiency of a person:

- evidence specified by the Minister in an instrument in writing for paragraph 5.17(a) of the Regulations;
- evidence that
 - the person holds an award (being a degree, a higher degree, a diploma or a trade qualification) that required at least 2 years of full-time study or training; and (paragraph 5.17(c)(i)); and
 - all instruction (including instruction received in other courses for which the person was allowed credit) for that award was conducted in English; (paragraph 5.17(c)(ii));
- if evidence referred to in paragraph 5.17(a) cannot be provided by the person—evidence that the person has been determined by the Minister, on the basis of an interview with the person, to have functional English (paragraph 5.17(d)).

For the purposes of this instrument, the term ‘functional English’ is relevantly defined in paragraph 5(2)(b) of the Act and the terms ‘degree’, ‘diploma’ and ‘trade qualification’ are defined in subregulation 2.26AC(6) of the Regulations.

IMMI 15/004 operated to specify the qualifications or experience, among other matters, for the purposes of providing evidence of English language proficiency. This included specifying educational experience and results obtained as a consequence of sitting specific English language tests such as the Occupational English Test (OET).

Purpose

Migration (Evidence of Functional English Language Proficiency) Instrument 2025

The *Migration (Evidence of Functional English Language Proficiency) Instrument 2025* (this instrument) is made under paragraph 5.17(a) of the Regulations.

The purpose of this instrument is to:

- specify what qualifications or experience a person must have to meet the definition of functional English (paragraph 5(2)(b) of the Act); and
- specify that persons who are citizens of, and holders of a valid passport issued by Canada, New Zealand, the Republic of Ireland, the United Kingdom of Great Britain and Northern Ireland, or the United States of America to have functional English language proficiency.

This instrument operates to specify and recognise the qualifications or experience necessary for the purposes of providing evidence of English language proficiency of a person who has functional English. This includes specifying educational experience and results obtained as a consequence of sitting specific English language tests which include the following:

- Canadian English Language Proficiency Index Program General (CELPIP General);
- International English Language Test System Academic (IELTS Academic);
- International English Language Test System General Training (IELTS General Training);
- LANGUAGECERT Academic Test (LANGUAGECERT Academic);
- Michigan English Test (MET);
- Occupational English Test (OET);
- Pearson Test of English Academic (PTE Academic); and
- Test of English as a Foreign Language internet-Based Test (TOEFL iBT).

The intent of this instrument is to update the above mentioned English language tests and scores for Australian visas in accordance with the outcome of the Department's Request for Expression of Interest (REOI) process, that commenced in July 2022. Through that REOI process, this instrument also specifies a change of the language tests to give effect to new Deeds of Agreement (Deeds) between the Department and the new test providers.

Consultation

External consultation was undertaken throughout the REOI process by the Department with key departmental committees and industry bodies such as the Education Visa Consultative Committee (EVCC), Australian Health Practitioner Regulation Agency (AHPRA), Law Council of Australia (LCA) and Migration Institute of Australia (MIA). English language test providers were consulted on, and confirmed accuracy of, the English language test names and scores set out in this instrument. This consultation accords with the consultation requirements in section 17 of the Legislation Act.

Parliamentary scrutiny etc.

This instrument is exempt from disallowance under section 42 of the Legislation Act. This is because this instrument is made under Part 5 of the Regulations, which is prescribed in sub-item 20(b) of the table in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.

As this instrument is exempt from disallowance, a Statement of Compatibility with Human Rights is not required.

This instrument was made by the Assistant Minister for Immigration in accordance with paragraph 5.17(a) of the Regulations.

Details of the instrument

Part 1 - Preliminary

Section 1 of Part 1 of this instrument sets out the name of this instrument.

Section 2 of Part 1 of this instrument provides for this instrument commencing on 7 August 2025.

Section 3 of Part 1 of this instrument provides for this instrument being made under paragraph 5.17(a) of the *Migration Regulations 1994* (the Regulations).

Section 4 of Part 1 to this instrument sets out definitions of terms used in this instrument. This section provides for definitions for the instrument, including:

- ***Act*** means the *Migration Act 1958*.
- ***average band score*** means a test score calculated from the makeup of the scores received for each of the English test components.
- ***CELP General*** means the Canadian English Language Proficiency Index Program General.
- ***English test components*** means all of the following (see paragraphs (a) – (d) of that definition in section 4 of the instrument):
 - listening;
 - reading;
 - speaking; and
 - writing.
- ***IELTS Academic*** means the International English Language Test System Academic.
- ***IELTS General Training*** means the International English Language Test System General Training.
- ***LANGUAGECER Academic*** means the LANGUAGECER Academic Test.
- ***Language tests*** means the language tests mentioned in column 1 of the table in Schedule 1 to the instrument.
- ***MET*** means the Michigan English Test.
- ***OET*** means the Occupational English Test.
- ***Overall band score*** means a test score calculated from the makeup of the scores received for each of the English test components.
- ***PTE Academic*** means the Pearson Test of English Academic.
- ***relevant application*** means an application, including (but not limited to) (see paragraphs (a) – (b) of that definition in section 4 of the instrument):
 - an application for a visa; or
 - an application under section 140GB of the Act to approve a nomination under subsection 140GB(2) of the Act;where a person is required, for the purposes of that application, to satisfy a criterion or meet a requirement under the Act or the Regulations to have functional English.
 - The note under the above definition in section 4 of the instrument provides for the meaning of ***functional English***, see subsection 5(2) of the Act.
 - The examples under the note under the above definition in section 4 of the instrument, provide for (see Examples 1 – 2 of section 4 of the instrument):
 - Subregulation 2.72A(14) of the Regulations provides that one of the criteria for the Minister to approve a nomination under subsection 140GB(2) of the Act is that the Minister is satisfied that the nominee has functional English.
 - Under clause 407.212 of Schedule 2 to the Regulations, the applicant for a Subclass 407 (Training) visa must satisfy the Minister that the applicant has functional English.
- ***Regulations*** means the *Migration Regulations 1994*.
- ***Minimum test scores*** means: see paragraph 6(3)(a) of the instrument (below).
- ***TOEFL iBT*** means the Test of English as a Foreign Language internet-Based Test.

- **Total band score** means a test score calculated from the makeup of the scores received for each of the English test components.

Subsection 5(2) of the Act provides that for the purposes of that Act, a person has functional English at a particular time if (see paragraphs (a) – (b) of that definition of that provisions of that Act):

- the person passes a test that (see paragraphs (a)(i) – (ii) of that provision of that Act, respectively):
 - is approved in writing by the Minister for the purposes of this subsection; and
 - is conducted by a person, or organisation, approved for the purposes of this subsection by the Minister by notice in the Gazette; or
- the person provides the Minister with prescribed evidence of the person's English language proficiency.

Regulation 5.17 of the Regulations provides that for the purposes of paragraph 5(2)(b) of the Act (dealing with whether a person has functional English), the evidence referred to in each of the following paragraphs is prescribed evidence of the English language proficiency of a person (see paragraphs 5.17(a), (c) and (d) of the Regulations):

- evidence specified by the Minister in an instrument in writing for this paragraph;
- evidence that (see paragraph 5.17(c)(i) – (ii) of the Regulations):
 - the person holds an award (being a degree, a higher degree, a diploma or a trade qualification) that required at least 2 years of full-time study or training; and
 - all instruction (including instruction received in other courses for which the person was allowed credit) for that award was conducted in English;
- if evidence referred to in paragraph 5.17(a) cannot be provided by the person—evidence that the person has been determined by the Minister, on the basis of an interview with the person, to have functional English.

Section 5 of Part 1 of this instrument provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in each Schedule of this instrument and any other item in a Schedule to this instrument has effect according to its terms.

Part 2 - Specified evidence of English language proficiency

Section 6 of this instrument sets out the specified evidence of English language proficiency.

Subsection 6(1) of this instruments provides that for the purposes of paragraph 5(2)(b) of the Act, the requirements in paragraph 6(1)(a), (b), (c) or (d) of this instrument (see below) are specified and recognised as prescribed evidence of the English language proficiency of a person who has functional English.

Paragraph 6(1)(a) of this instrument provides that the person provides evidence of having completed one of the following at an educational institution or institutions in which all instruction was conducted in English (see paragraphs 6(1)(a)(i) – (ii) of this instrument):

- all years of primary education and at least 3 years of secondary education; or
- at least 5 years of secondary education.

The effect of paragraph 6(1)(a) of this instrument is that where a person can provide the necessary evidence for paragraph 6(1)(a)(i) or (ii) of this instrument, they will satisfy the requirements of paragraph 5.17(c)(ii) of the Regulations.

Paragraph 6(1)(b) of this instrument provides that the person provides evidence of having successfully completed, in Australia, at least 1 year of full-time study or equivalent part-time study towards one or more of the following at an institution or institutions, where all the instruction was conducted in English (see paragraphs 6(1)(b)(i) – (iv) of this instrument):

- a degree; or
- a higher degree; or
- a diploma; or
- an associate diploma.

The effect of paragraph 6(1)(b) of this instrument is that where a person can provide the necessary evidence for paragraph 6(1)(b)(i), (ii), (iii) or (iv) of this instrument, they will satisfy the requirements of paragraph 5.17(c)(i) of the Regulations.

Paragraph 6(1)(c) of this instrument provides that the person provides evidence (see paragraphs 6(1)(c)(i) – (iii) of this instrument):

- of having achieved one of the minimum test scores in columns 2 to 4 of the table in Schedule 1 to this instrument, in a test mentioned in an item of column 1 of that table in Schedule 1 to this instrument; and
- as it relates to the relevant language test in column 1 of the table in Schedule 1; and
- that test was based on the English test components and that test was undertaken (see paragraphs 6(1)(c)(iii)(A) – (B) of this instrument):
 - in the period of 12 months immediately before the day on which the relevant application is made; or
 - on or after the day on which the relevant application is made; or

The following terms are defined in section 4 of this instrument (above):

- English test components;
- language tests;
- Minimum test scores; and
- relevant application.

The effect of paragraph 6(1)(c) of this instrument is that where a person can provide the necessary evidence for paragraph 6(1)(c)(i), (ii) and (iii)(A) or (B) of this instrument, they will satisfy the requirements of paragraph 5.17(a) of the Regulations.

Paragraph 6(1)(d) of this instrument provides that the person, provides evidence that they are a citizen of, and a holder of a valid passport issued by one of the following countries (see paragraphs 6(1)(d)(i) – (v) of this instrument):

- Canada; or
- New Zealand; or
- the Republic of Ireland; or
- the United Kingdom of Great Britain and Northern Ireland; or
- the United States of America.

The effect of paragraph 6(1)(d) of this instrument is that where a person can provide the necessary evidence for paragraph 6(1)(d)(i), (ii), (iii), (iv) or (v) of this instrument, they will satisfy the requirements of paragraph 5.17(d) of the Regulations.

Section 7 of this instrument provides for the specified evidence of English language proficiency where a test was undertaken before the commencement of this instrument (7 August 2025).

Subsection 7(1) of this instrument provides that for the purposes of paragraph 5(2)(b) of the Act, the requirements in subsections 7(2) to (5) of this instrument (below) are specified under paragraph 5.17(a) of the Regulations (above) as prescribed evidence of the English language proficiency of a person, for the purposes of a relevant application (see paragraphs 7(1)(a) – (b) of this instrument):

- that is made on or after the day this instrument commences; and
- where the person has undertaken a test that is specified in subsection 7(2), (3), (4) or (5) of this instrument (below), and where the test was undertaken (see paragraphs 7(1)(b)(i) – (ii) of this instrument):
 - in the period of 12 months immediately before the day on which the relevant application is made; and
 - before the day on which this instrument commences.

The term relevant application is defined in section 4 of this instrument (above).

Subsection 7(2) of this instrument provides that the person provides evidence of having achieved an International English Language Testing System (IELTS) average band score of at least 4.5, based on the four test components of speaking, reading, writing and listening in that test.

Subsection 7(3) of this instrument provides that the person provides evidence of having achieved a Test of English as a Foreign Language internet-Based Test (TOEFL iBT) total band score of at least 32, based on the four test components of speaking, reading, writing and listening in that test.

Subsection 7(4) of this instrument provides that the person provides evidence of having achieved a Pearson Test of English Academic (PTE Academic) overall band score of at least 30, based on the four test components of speaking, reading, writing and listening in that test.

Subsection 7(5) of this instrument provides that the person provides evidence of having achieved a Cambridge English Advanced (CAE) overall score of at least 147 based on the four test components of speaking, reading, writing and listening in that test.

The following terms are defined in section 4 of this instrument (above):

- average band scores;
- total band score; and
- overall band score.

The effect of section 7 of this instrument is that a person will be determined to possess the necessary functional English (paragraph 5(2)(b) of the Act) and satisfy the requirements of paragraph 5.17(a) of the Regulations, where:

- the relevant application was made on or after 7 August 2025; and
- that person has undertaken one of the tests specified in subsection 7(2), (3), (4) or (5) of this instrument; and
- where that test was undertaken during the period 5 August 2024 and 6 August 2025 (inclusive); and
- that person provides the necessary evidence of having achieved the necessary score in the specified test in subsection 7(2), (3), (4) or (5) of this instrument.

Part 3 – Application provision

Section 8 of this instrument provides that this instrument applies (see paragraphs 8(a) – (b) of Part 3 of this instrument):

- for the purposes of a relevant application made on or after the day on which this instrument commences; and
- for other purposes under the Act and the Regulations in relation to functional English requirements.

The term relevant application is defined in section 4 of this instrument (above).

The effect of section 8 of Part 3 of the instrument is that a person will be assessed against the requirements of section 6 of this instrument, where that application is made on or after 7 August 2025 and against the requirements for functional English (subsection 5(2) of the Act) within the Act and the Regulations.

Schedule 1 - Language tests and test scores for specified evidence of English language proficiency

Schedule 1 to this instrument provides for the language tests and test scores for specified evidence of English language proficiency for the purposes of paragraph 6(1)(c) of this instrument.

Schedule 2 - Repeals

Item 1 of Schedule 2 to this instrument repeals the *Migration Regulations 1994 - Specification of Evidence of Functional English Language Proficiency 2015 – IMMI 15/004* in its entirety.