

**EXPLANATORY STATEMENT**

*Migration Regulations 1994*

**TESTS, SCORES, PERIOD, LEVEL OF SALARY AND EXEMPTIONS TO  
THE ENGLISH LANGUAGE REQUIREMENT FOR  
SUBCLASS 457 (TEMPORARY WORK (SKILLED)) VISAS 2015**

(Subparagraph 2.72(10)(g)(iv), paragraphs 457.223(4)(eb)  
and 457.223(6)(a), and subclause 457.223(11))

1. This Instrument is made under subparagraph 2.72(10) (g) (iv) of Part 2A to the *Migration Regulations 1994* (the Regulations) and clause 457.223 of Schedule 2 to the Regulations.
2. The Instrument revokes IMMI 14/009 (F2014L00327) under section 33(3) of the *Acts Interpretation Act 1901*.
3. The Instrument operates by specifying the test, scores, period, level of salary and other exemptions to the English language requirement for Subclass 457 (Temporary Work (Skilled)) (Subclass 457) visa applicants.
4. The purpose of the Instrument is to change the minimum English language proficiency requirements for applicants of the Subclass 457 visa. The change amends the requirements applicants must meet to satisfy the English language criteria while continuing to ensure that applicants have a sufficient level of English language ability to perform effectively in their nominated occupations. The amendment gives effect to a recommendation from an independent review conducted in 2014, the 457 Integrity Review.
5. For the purposes of subparagraph 2.72(10)(g)(iv), the Instrument applies to a nomination of proposed occupations by a standard business sponsor made under paragraph 140GB(1)(b) of the *Migration Act 1958* (the Act) that are lodged on or after the commencement of this Instrument, or lodged prior to the commencement of this Instrument but not finally determined by the date of commencement. For the purposes of paragraphs 457.223(4)(eb) and 457.223(6)(a) and subclause 457.223(11), the Instrument applies to applicants of Subclass 457 visas who lodged applications on or after the commencement of this Instrument, or lodged prior to the commencement of this Instrument but not finally determined by the date of commencement. The exemptions in Item (7) of the Instrument apply to Subclass 457 visa applicants with respect to the visa applicant's most recent Subclass 457 visa application only.

6. Consultation was undertaken by the independent panel which conducted the 457 Integrity Review. The 457 Integrity Review involved stakeholder consultation including 140 face-to-face meetings and a review of 180 written submissions from industry stakeholders.
7. The Office of Best Practice Regulation has advised that a Regulatory Impact Statement is not required (OBPR Ref 18006).
8. Under section 42 of the *Legislative Instruments Act 2003* the Instrument is subject to disallowance and therefore a Human Rights Statement of Compatibility has been provided.
9. This Instrument number IMMI 15/028 commences on 18 April 2015.

## Statement of Compatibility with Human Rights

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

### **Tests, scores, period, level of salary and exemptions to English Language requirements for Subclass 457 visa applicants**

This 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 amended Legislative Instrument**

This Instrument revokes legislative instrument IMMI14/009, which specified tests, scores, period, level of salary and exemptions to the English Language requirement for Subclass 457 (Temporary Work (Skilled)) visas. Like revoked instrument IMMI14/009, the proposed instrument specifies the same matters but with three key changes to provide a fairer assessment of Subclass 457 visa applicants' English language ability. The first change proposed to be introduced is the expansion of acceptable English language tests for the Subclass 457 visa programme. If the amendments to the instrument enter into force, applicants for a Subclass 457 visa will be able to use the Test of English as a Foreign Language internet-based test (TOEFL iBT), Pearson Test of English (PTE) and Cambridge English: Advanced (CAE) test (conducted on or after 1 January 2015). Applicants will be able to use these tests in addition to the existing International English Language Testing System (IELTS) and Occupational English Test (OET). The expansion of acceptable English language tests will make it easier for applicants to access English language assessments and provide them with the same choices of English language tests that other visa applicants enjoy.

The second change proposed to the instrument is to amend the current English language test scores by introducing an overall average English language test score in addition to minimum scores for individual components (reading, writing, listening and speaking) for IELTS, TOEFL iBT, PTE and the CAE test. A test score from the OET is also accepted as evidence of English language proficiency for certain 457 visa applicants. However, no changes are proposed to the OET scores, as the OET awards letter scores, which are difficult to average and index compared to the numerical scores awarded by the other test providers. Additionally, OET is a specialised test targeting health professionals, who usually have to adhere to industry determined English language requirements.

These proposed score changes will make the Subclass 457 visa more equitable for Subclass 457 visa applicants and their employers.

The third proposed change will amend the requirement for an 'exempt applicant' to have completed at least 5 consecutive years of full-time study in a secondary and/or higher education institution where the instruction was delivered in English, to five years of cumulative study. The introduction of this change will allow

applicants who have had breaks within their studies, the ability to access an exemption to the English language requirement.

### **Human rights implications**

This instrument expands the applicability of English language tests for Subclass 457 visa applicants and does not engage any of the applicable rights or freedoms contained in the seven core international human rights treaties.

### **Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**The Hon. Michaelia Cash, Assistant Minister for Immigration and Border Protection**