**EXPLANATORY STATEMENT**

*Migration Regulations 1994*

**Time period for English language requirements for Subclass 457 nominations**

(*subparagraph 2.72(10)(g)(iv))*

1. This Instrument, *Migration (IMMI 17/078: Time period for English language requirements for Subclass 457 nominations) Instrument 2017*, is made under subparagraph 2.72(10)(g)(iv) of the Regulations.
2. A standard business sponsor may nominate the holder of a Subclass 457 (Temporary Work) (Skilled) visa (Subclass 457). If the nomination identifies a holder who was granted the visa on the basis of an exemption from English language testing for persons earning a specified income (subclause 457.223(6) of Schedule 2 to the Regulations), then one of four alternative criteria must be met:
* the income exemption from English language testing continues to be met (subparagraph 2.72(10)(g)(i));
* English language ability is demonstrated by holding an occupational licence, registration or membership (subparagraph 2.72(10)(g)(ii));
* the holder is an exempt applicant within the meaning of subclause 457.223(4) of Schedule 2 (subparagraph 2.72(10)(g)(iii)): or
* the holder has undertaken a language test specified by the Minister under subparagraph 457.223(4)(eb)(iv) of Schedule 2, and achieved, in a single attempt at the test, a score specified by the Minister under subparagraph 457.223(4)(eb)(v) of Schedule 2.
1. The final alternative criterion noted above also requires the score to be obtained within the period specified by the Minister in a legislative instrument for the purpose of subparagraph 2.72(10)(g)(iv) of the Regulations. This instrument specifies a period of three years from the date of the nomination.
2. The specification under subparagraph 2.72(10)(g)(iv) was previously located in item 5 of *Tests, Scores, Period, Level of Salary and Exemptions to the English Language Requirement for Subclass 457 (Temporary Work (Skilled)) Visas 2015 (IMMI 15/028)*. That instrument was repealed on 1 July 2017. Other provisions relating to English language requirements for Subclass 457 visas are now located in *Migration (IMMI 17/057: English Language Requirements for Subclass 457 visas) Instrument 2017* which commenced on 1 July 2017. The reason for having separate instrumrnts for these matters is that only certain instruments are subject to Parliamentary disallowance. It assists the presentation and scrutiny of these matters if disallowable and non-disallowable instruments are maintained in separate instruments.
3. The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is not required (OBPR Reference 21681).
4. No consultation was considered necessary or appropriate because the amendments do not substantially alter existing arrangements. This accords with subsection 17(1) of the *Legislation Act 2003*, which envisages consultations where appropriate and reasonably practicable.
5. This instrument is subject to disallowance in accordance with the *Legislation Act 2003*. Accordingly, a Statement of Compatibility with Human Rights has been prepared and is attached.
6. The Instrument commences on 1 July 2017.

**Statement of Compatibility with Human Rights**

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

**Time period for English language requirements for Subclass 457 nominations**

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 Legislative Instrument**

The *Migration Regulations 1994* (‘the Regulations’) set out the English language requirements for the grant of a Temporary Work (Skilled) (Subclass 457) visa (‘subclass 457 visa’). A standard business sponsor may nominate the holder of a Subclass 457 visa for the grant of a subsequent 457 visa. If the nomination identifies a holder who was granted the visa on the basis of an exemption from English language testing for persons earning a specified income, then one of four alternative criteria must be met, one of which is that the holder has undertaken a language test and achieved a specified score.

The purpose of this disallowable instrument is to specify the period within which the primary applicant must achieve the English language test score specified in the separate instrument IMMI 17/057. The specified period is three years from the date of the nomination. The required score must be achieved within this period by the primary applicant to satisfy the English language requirements set out in the Regulations in order to be granted the subclass 457 visa.

This instrument replaces paragraph 5 of instrument IMMI 15/028, which also specified a period of three years and which is repealed on 1 July 2017.

**Human rights implications**

As there is no change to the previously specified period of three years from date of nomination, there are no new human rights implications.

**Conclusion**

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