

EXPLANATORY STATEMENT

Migration Regulations 1994

**MIGRATION (IMMI 18/032: LANGUAGE TEST REQUIREMENTS—SUBCLASS
482 VISA) INSTRUMENT 2018**

(Subclause 482.223(1) of Schedule 2, Subclause 482.232(1) of Schedule 2)

1. Instrument IMMI 18/032 is made under subclauses 482.223(1) and 482.232(1) of Schedule 2 of the *Migration Regulations 1994* (the Regulations).
2. This instrument replaces *Migration (IMMI 17/057: English Language Requirements for Subclass 457) Instrument 2017* (F2017L00835). IMMI 17/057 is repealed by operation of law following the repeal of the Subclass 457 (Temporary Work (Skilled)) ('Subclass 457') visa.
3. The subject of this instrument is part of a broad package of reforms for the employer sponsored skilled visa programs, announced by the Government on 18 April 2017, to replace the Subclass 457 visa with the Subclass 482 (Temporary Skill Shortage) ('Subclass 482') visa, and make consequential amendments to permanent skilled visas.
4. Subclause 482.223(1) allows the Minister to specify, in a legislative instrument, language test requirements that applicants in the Short-term stream of the Subclass 482 visa must satisfy. Subclause 482.232(1) allows the Minister to specify, in legislative instrument, language test requirements that applicants in the Medium-term stream of the Subclass 482 visa must satisfy.
5. This instrument specifies:
 - the English language tests which are acceptable for demonstrating English language proficiency for the purpose of the Subclass 482 visa;
 - the scores which must be achieved in the specified tests;

- the period of time within which the specified scores must be obtained; and
 - applicants who are exempt from the requirement to undertake English language tests.
6. As indicated above, IMMI 17/057 specified the language test requirements for the Subclass 457. The Subclass 457 visa has now been repealed. Aside from those changes reflecting the replacement of the Subclass 457 visa with the Subclass 482 visa, this instrument is different from IMMI 17/057 in the following respects:
- Section 4 defines ‘approved English language test’ by reference to subsection 5(2). Subsection 5(2) lists the ‘approved English language tests’ for the Subclass 482 visa. The tests specified are the same as those specified in section 7 of IMMI 17/057, with the exception of the ‘Cambridge English: Advance test (CAE)’ which remains on the list of specified English language tests but no longer needs to be completed ‘on, or after 1 January 2015.’
 - Section 4 defines ‘exempt applicant.’ The definition of exempt applicant has broadly the same effect as sections 9 to 11 of IMMI 15/057.
 - Section 4 defines ‘required test scores’ by reference to subsections 5(3) and 5(4). The ‘required test scores’ are specified in two separate tables to reflect the streams of the new Subclass 482 visa. The table in subsection 5(3) specifies the required test scores for the Short-term stream; the table in subsection 5(4) specifies the required test scores for the Medium-term stream.
 - The required test scores for a Subclass 482 visa in the Short-term stream specified in subsection 5(3) are the same as those specified for the Subclass 457 visa in IMMI 17/057, with the exception of the Total band score for the TOEFL iBT which is specified as 35 instead of 36. This was based on advice from the TOEFL iBT provider.
 - Applicants for a Subclass 482 visa in the Medium-term stream must achieve higher scores in individual test components of the IELTS, the TOEFL, the PTE and the CAE than applicants in the Short-term stream. The scores specified for

individual test components are also higher than those specified for the Subclass 457 visa in IMMI 17/057.

- Subsection 5(1) specifies the relevant time period. This replaces section 9 of IMMI 17/057 by specifying that the applicant must have achieved the required test scores on a day not more than 3 years before the day on which the applicant provided evidence that they had achieved the required test scores.
 - Subsection 5(1) imposes an additional requirement that the required test scores must be achieved in a single attempt at that test. This was previously specified in the Regulations under subparagraph 457.223(4)(eb)(v).
 - Section 10 of IMMI 17/057 has been removed as it was only relevant for subclass 457 visa applications made prior to 1 July 2017.
7. Note that this instrument also applies for the purposes of subregulation 2.72(14) as if the nominee were the applicant.
 8. As noted above, the subject of this instrument is part of a broad package of reforms for the employer sponsored skilled visa programs to replace the Subclass 457 visa with the Subclass 482 visa and make consequential amendments to permanent skilled visas. The Department of Home Affairs has engaged with external stakeholders since the announcement in developing the policy settings and considered feedback received. Some settings of the existing framework have been carried over without amendment, and have not been the subject of consultation.
 9. These reforms were also informed by earlier reviews including: the 2014 Independent Review into the Integrity of the Subclass 457 programme; the 2016 Productivity Commission Inquiry Report: Migrant Intake into Australia; the 2016 Review of the Temporary Skilled Migration Income Threshold; and the 2016 Senate Inquiry A National Disgrace: The Exploitation of Temporary Work Visa Holders. These reviews were subject to extensive consultation processes, including: individuals; academics; bodies and businesses who use the employer sponsored skilled visa programs; migration agents; representatives of foreign governments; the Ministerial Advisory Council on Skilled Migration; and government departments and agencies.

10. A Regulatory Impact Statement has been prepared in accordance with advice from the Office of Best Practice Regulation (OBPR). The OBPR Reference number is 21946.
11. Pursuant to item 20 of the table in section 10 of the *Legislation (Exemptions and Other Matters) Regulations 2015*, the instrument is exempt from disallowance and therefore a Statement of Compatibility with Human Rights is not required.
12. The instrument commences on 18 March 2018.