

EXPLANATORY STATEMENT

Issued by authority of the Minister for Immigration, Citizenship and Multicultural Affairs

Migration Regulations 1994

Migration (English Language Tests and Evidence Exemptions for Subclass 500 (Student) Visa) Amendment (Pathway Programs) Specification 2024

- 1 The instrument, departmental reference LIN 24/043, is made under subclause 500.213(3) of Schedule 2 to the *Migration Regulations 1994* (the Migration Regulations).
- 2 The instrument amends *Migration (English Language Tests and Evidence Exemptions for Subclass 500 (Student) Visa) Instrument (LIN 24/022) 2024* 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 the instrument.
- 3 The instrument commences on the day after it is registered. It is a legislative instrument for the purposes of the *Legislation Act 2003* (the Legislation Act).

Purpose

- 4 LIN 24/022 specifies the English language proficiency requirements that an applicant may be required to meet to satisfy the criterion for the grant of a Subclass 500 (Student) visa in subclause 500.213(1). This includes specifying the English language tests an applicant must undertake; the required English language test scores; and the class of applicants to which English language requirements do not apply under subclause 500.213(2).
- 5 The purpose of LIN 24/043 is to amend the definition of *eligible pathway program* and to specify by way of a Schedule, the list of registered courses that are an eligible pathway program for the purposes of LIN 24/022. Applicants enrolled in an eligible pathway program and who are required to provide evidence of their English language proficiency will be eligible to meet a lower English language test score requirement, as specified in Schedule 1. The list of specified courses provides transparency regarding these eligible pathway programs in relation to English language requirements.

Background

- 6 Under subclause 500.213(1), if required by the Minister, an applicant must provide evidence they have a level of English language proficiency that meets the requirements specified in a legislative instrument made by the Minister under paragraph 500.213(3)(a).
- 7 LIN 24/022 specifies the following English language proficiency requirements:
 - the applicant took an approved English language test;
 - the applicant took the test within 2 years immediately before the application is made (or if evidence of the test is not provided at the time the visa application is made, 2 years immediately before a decision on the application is made);
 - the applicant achieved the required English language test score specified in Schedule 1 and any associated requirements.
- 8 LIN 24/022 increased the required English language test scores previously specified in *Migration (IMMI 18/015: English Language Tests and Evidence Exemptions for Subclass 500 (Student) Visa) Instrument 2018*. This was in response to the Government's Migration Strategy, to improve the integrity of the student visa program.
- 9 In accordance with the Migration Strategy, the test score required for students undertaking pathway programs that deliver reputable English language training remained at IELTS (or equivalent) 5.5. A pathway program is a course for students who have not met the academic entry requirements for their intended Australian undergraduate university degree. A pathway program leads to a qualification recognised under the Australian Qualifications Framework and provides academic credit and entry to second year undergraduate study.
- 10 LIN 24/043 inserts new Schedule 2, which lists registered courses that are specified to be eligible pathway programs for the purposes of LIN 24/022 in relation to English language requirements and related test scores. Only pathway programs specified in Schedule 2 will meet the definition of an *eligible pathway program* for the purposes of LIN 24/022. These courses have been identified as delivering reputable English language training through rigorous consultation with the university sector. The effect is that applicants enrolled in an eligible pathway program, as specified in Schedule 2, will be able to meet the lower English language test score specified for the English language test in accordance with Schedule 1. Listing the eligible pathway program courses in a schedule to the instrument facilitates access and provides greater clarity and certainty in relation to the requirements.

Consultation

- 11 Initial consultation by the Department of Home Affairs on English language reforms in relation to the student visa program (including eligible foundation and pathway programs) involved an English language working group that included International Education Association of Australia, Independent Tertiary Education Council Australia, Alana Kaye College, Australian

Academy of Vocational Education and Trades, Griffith University, Australian Universities International Directors Forum, Independent Higher Education Australia, the University of South Australia and James Cook University.

- 12 Further consultation occurred with Commonwealth agencies as well as regulatory and sector representatives including International Education Association of Australia, Universities Australia and Navitas. These sector representatives were advised of broad criteria for assessment, given reasons for course exclusion from the list of eligible pathway programs and provided opportunity to reply and seek reassessment on behalf of universities and higher education institutions. This consultation informed the list of *eligible pathway programs* specified in the instrument. This consultation accords with s 17(1) of the Legislation Act.
- 13 The Office of Impact Analysis (OIA) was previously consulted and considered all impact analysis requirements have been acquitted. No further impact analysis is required. The OIA reference number is OBPR23-04044.

Details of the instrument

- 14 Details of the instrument are set out in Attachment A.

Parliamentary scrutiny etc.

- 15 The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because instruments made under Schedule 2 to the Migration Regulations are prescribed as being exempt from disallowance under paragraph 44(2)(b) of the Migration Regulations. See table item 20 in regulation 10 of the *Legislation (Exemptions and Other Matters) Regulations 2015*. As the instrument is exempt from disallowance, a Statement of Compatibility with Human Rights is not required.
- 16 The instrument was made by a delegate of the Minister, in accordance with and for the purposes of subclause 500.213(3) of Schedule 2 to the Migration Regulations.

Details of the instrument

- 1 Section 1 provides the name of the instrument is the *Migration (English Language Tests and Evidence Exemptions for Subclass 500 (Student) Visa) Amendment (Pathway Programs) Specification 2024*.
- 2 Section 2 provides the instrument commences on the day after registration.
- 3 Section 3 provides the instrument is made under subclause 500.213(3) of Schedule 2 to the *Migration Regulations 1994* (the Migration Regulations).
- 4 Section 4 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.
- 5 Schedule 1 amends the *Migration (English Language Tests and Evidence Exemptions for Subclass 500 (Student) Visa) Instrument (LIN 24/022) 2024* (the English requirements instrument).
- 6 Item 1 (section 4 (definition of *eligible pathway program*)) of the Schedule repeals the definition of *eligible pathway program* in section 4 of the English requirements instrument and substitutes a new definition. The new definition provides that in the English requirements instrument, *eligible pathway program* means a registered course that is specified in an item in the table in Schedule 2 for paragraph 5(3)(d). Paragraph 5(3)(d) is also amended, see below. The note to the definition of eligible pathway program explains that a pathway program is a course for students who have not met the academic entry requirements for their intended Australian undergraduate university degree. A pathway program leads to a qualification recognised under the Australian Qualifications Framework and provides academic credit and entry to second year undergraduate study.
- 7 Item 2 (Paragraph 5(3)(d)) of the Schedule repeals the paragraph and substitutes a new paragraph 5(3)(d), referring to a registered course that is specified in an item in the table in Schedule 2. Schedule 2, inserted by item 4 of the Schedule, is a new schedule that specifies registered courses as eligible pathway programs. The effect of paragraph 5(3)(d) is that if the applicant is enrolled in a registered course that is specified in an item in the table in Schedule 2, the applicant must achieve the required English language test score specified in Column 3 of an item in the table in Schedule 1.
- 8 Item 3 (after section 9) of the Schedule adds a new section 10 (Application of amendments made by LIN 24/043) to the English requirements instrument. New section 10 provides for how the amendments made by the Schedule apply.
- 9 Item 4 (after Schedule 1 – Required English language test scores) of the Schedule inserts a new Schedule 2 – Specified eligible pathway programs – in the English requirements instrument. New Schedule 2 sets out the courses by item number that are eligible pathway programs. An

applicant for a Subclass 500 (Student) visa who is undertaking one of the courses specified in Schedule 2 will need to achieve only IELTS (or equivalent) 5.5 if required to provide evidence of English.