

## EXPLANATORY STATEMENT

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

*Migration Regulations 1994*

### ***Migration (English Language Requirements for Subclass 192 (Pacific Engagement) Visa) Instrument (LIN 24/023) 2024***

- 1 The instrument, Departmental reference LIN 24/023, is made under clause 192.214 of Schedule 2 to the *Migration Regulations 1994* (the Migration Regulations).
- 2 The instrument commences on the day after the instrument is registered. It is a legislative instrument for the purposes of the *Legislation Act 2003* (the Legislation Act).

#### ***Purpose***

- 3 The instrument specifies, for the purposes of clause 192.214 of Schedule 2 to the Migration Regulations, English language test requirements that an applicant (or the applicant's spouse of de facto partner, if making a combined application) may be required to satisfy for a Subclass 192 (Pacific Engagement) visa.

#### ***Background***

- 4 The *Migration Amendment (Subclass 192 (Pacific Engagement) Visa) Regulations 2024* amended the Migration Regulations to introduce a new permanent Subclass 192 (Pacific Engagement) visa (the Pacific Engagement visa). The Pacific Engagement visa provides an avenue to permanent residence in Australia for eligible citizens of a number of Pacific island countries and Timor-Leste, and members of their family units, who are randomly selected to apply for the visa under a visa pre-application process relating to their country of citizenship.
- 5 Selected applicants must meet prescribed criteria for the grant of a Pacific Engagement visa, including the criterion at clause 192.214 of Schedule 2 to the Migration Regulations which provides that if required by the Minister, the applicant, or the applicant's spouse or de facto partner if they have made a combined application with the applicant, must satisfy English language test requirements specified by the Minister in a legislative instrument for the purposes of clause 192.214. This criterion ensures that at least one applicant for the visa has sufficient English or appropriate prospects of acquiring English.
- 6 Applicants who can demonstrate English language proficiency, for instance through time spent working or studying in an English speaking country or by previously satisfying an approved English language test, will not be required to satisfy the English language test requirements specified in the instrument. Applicants who do not meet these circumstances will have the option of undertaking to participate free of charge in the Australian Migrant English Program

(AMEP) after arrival in Australia, or, alternatively, satisfying the English language test requirements specified in the instrument.

- 7 The instrument specifies five English language tests: the Cambridge English: Advanced test (the CAE), the International English Language Testing System (IELTS); the Occupational English Test (the OET); the Pearson Test of English Academic (the PTE); and the test of English as a Foreign Language internet-based Test (the TOEFL iBT). The instrument also specifies the required test scores for each of the specified tests. The tests have different scoring systems, however the instrument specifies equivalent scores to achieve a reasonable level of English under each test.
- 8 The English language test requirements specified in the instrument do not include the test components of reading or writing in English. The reason for this is that it is considered that minimum level English language speaking and listening skills are appropriate and sufficient for Subclass 192 (Pacific Engagement) visa holders to effectively engage with the Australian community for the purposes of working, studying, or in cultural and community activities, in circumstances where the visa program does not require higher level occupational skills or minimum level reading or writing skills.

#### ***Details of the instrument***

- 9 Details of the instrument are set out in the Attachment.

#### ***Consultation***

- 10 Consultation in relation to the Regulations was undertaken with the Department of Foreign Affairs and Trade. Consultation was also undertaken with the Department of Employment and Workplace Relations, the Department of Prime Minister and Cabinet, the Department of Social Services, the Department of Education and the Department of Finance in relation to the development of the Pacific Engagement visa program and key eligibility requirements. This consultation accords with subsection 17(1) of the Legislation Act.
- 11 The Office of Impact Analysis (OIA) was also consulted and considered that all impact analysis requirements have been acquitted. No further regulatory impact statement was required. The OIA reference number is OBPR22-02320.

#### ***Parliamentary scrutiny etc.***

- 12 The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because instruments made under Schedule 2 of the Migration Regulations are prescribed as being exempt from disallowance under paragraph 44(2)(b) of the Legislation Act. See table item 20 in regulation 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*. As the instrument is exempt from disallowance, a Statement of Compatibility with Human Rights is not required.
- 13 The instrument was made by the Minister for Immigration, Citizenship and Multicultural Affairs, in accordance with clause 192.214 of Schedule 2 to the Migration Regulations.

**Details of the Migration (English Language Requirements for Subclass 192 (Pacific Engagement) Visa) Instrument (LIN 24/2023) 2024**

**Section 1 – Name**

This section provides that the name of the instrument is the *Migration (English Language Requirements for Subclass 192 (Pacific Engagement) Visa) Instrument (LIN 24/023) 2024* (the instrument).

**Section 2 – Commencement**

This section provides that the instrument commences on the day after the instrument is registered.

**Section 3 – Authority**

This section provides that the authority under which the instrument is made is clause 192.214 of Schedule 2 to the Migration Regulations.

**Section 4 – English language test requirements**

This section specifies the English language test requirements for the purposes of clause 192.214.

Paragraph 4(1)(a) provides that the applicant, or the applicant's spouse (if they made a combined application), must undertake an English language test listed in subclause (2) – see below.

Paragraph 4(1)(b) provides that the applicant, or the applicant's spouse (if they made a combined application), must achieve the test scores specified in column 2 of the table in relation to the test undertaken. The table is set out in subsection 4(3).

Paragraph 4(1)(c) provides that the test must have been undertaken:

- if evidence of the test is provided at the time of visa application, 3 years immediately before the day of visa application; or
- if evidence of the test is not provided at the time of visa application, 3 years immediately before a decision to grant or refuse the visa application is made.

Subsection 4(2) provides that the English language tests for the purposes of paragraph (1)(a) are:

- the Cambridge English Advanced test (the CAE);
- the International English Language Testing System (the IELTS);
- the Occupational English test (the OET);
- the Pearson test of English Academic (the PTE);
- the Test of English as a Foreign Language internet-based Test (the TOEFL iBT), provided that test was undertaken on or before 25 July 2023.

Subsection 4(3) provides that the required test scores are specified in column 2 in relation to the test in column 1 for each Item of the table.

The note to the table clarifies that only the test scores set out in the table are required. There is no minimum test score required for reading and writing components. A minimum overall test score is also not required. This recognises speaking and listening skills are more valuable for participation and engagement in the Australian community and better supports a positive experience for applicants seeking to immigrate to Australia.