

EXPLANATORY STATEMENT

Issued by authority of the Assistant Minister for Citizenship and Multicultural Affairs

Migration Regulations 1994

Migration (English Language Tests and Evidence Exemptions for Subclass 500 (Student) Visa) Amendment (LIN 24/082) Specification 2024

The instrument, departmental reference LIN 24/082, is made under subclause 500.213(3) of Schedule 2 to the *Migration Regulations 1994* (the Migration Regulations).

This instrument amends the *Migration (English Language Tests and Evidence Exemptions for Subclass 500 (Student) Visa) Instrument (LIN 24/022) 2024* (LIN 24/022) 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.

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

The purpose of LIN 24/082 is to substitute the table in Schedule 2 to LIN 24/022 with an updated list of registered courses that are specified to be eligible pathway programs for the purposes of paragraph 5(3)(d) of LIN 24/022. The amendment of principal instrument LIN 24/022 increases the total number of specified eligible pathway programs from 134 to 155.

A pathway program is a course for students who have not yet 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.

Under subclause 500.213(1) of the Migration Regulations, if required by the Minister, an applicant for a Subclass 500 (Student) visa 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). 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 visa. This includes specifying the English language tests and the required English language test scores.

Applicants who are required to provide evidence of their English language proficiency will be eligible to meet a lower English language test score if they are enrolled in an eligible pathway program. Only pathway programs specified in Schedule 2 will meet the definition of an *eligible pathway program* for the purposes of LIN 24/0. These courses have been identified as delivering reputable English language training through rigorous consultation with the university sector. The updated list of courses reflects recent consultation with course providers.

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. The list of eligible pathway programs provides transparency regarding the registered courses an applicant can enrol in to satisfy the English language requirements. Listing the eligible pathway program courses in Schedule 2 facilitates access and provides greater clarity and certainty in relation to the requirements.

Consultation

Initial consultations 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 the International Education Association of Australia, the Independent Tertiary Education Council Australia, Alana Kaye College, the 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.

Further consultations occurred with the International Education Association of Australia, Universities Australia and Navitas to inform the list of eligible pathway programs specified in LIN 24/022.

The Australian Government Department of Education, Australian Skills Quality Authority (ASQA) and Tertiary Education Quality and Standards Agency (TEQSA) were also consulted.

Since the original list was published in April 2024, the Department of Home Affairs has engaged in an outreach program visiting 50 education stakeholders including universities, peak bodies and state and territory governments. The Department has also engaged directly with education providers seeking to have their courses added to the list of eligible pathway programs.

Following the July 2024 consultations, an additional 26 courses were identified as eligible pathway programs. Five courses were also removed due to IELTS scores exceeding 5.5 or failing to meet the definition of eligible pathway program.

All relevant peak bodies and government Departments were informed of developments via the Education Visa Consultation Committee (EVCC).

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

Details of the instrument are set out in [Attachment A](#).

Parliamentary scrutiny etc.

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. See table item 20(b) in section 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.

The instrument is made by the Assistant Minister under and in accordance with subclause 500.213(3) of Schedule 2 to the Migration Regulations.

Details of the *Migration (English Language Tests and Evidence Exemptions for Subclass 500 (Student) Visa) Amendment (LIN 24/082) Specification 2024*

Section 1 Name

This section provides that the name of the instrument is the *Migration (English Language Tests and Evidence Exemptions for Subclass 500 (Student) Visa) Amendment (LIN 24/082) Specification 2024*.

Section 2 Commencement

This section provides that the instrument commences on the day after it is registered on the Federal Register of Legislation.

Section 3 Authority

This section provides that the instrument is made under subclause 500.213(3) of Schedule 2 to the *Migration Regulations 1994* (the Migration Regulations).

Section 4 Schedules

This section 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.

Schedule 1 Amendments

Item [1] inserts new section 11 (Application of amendments made by LIN 24/082). This is an application provision, and provides that the amendments made by this instrument to LIN 24/022 (the principal instrument) apply in relation to an application made for a Subclass 500 (Student) visa made on or after the commencement of this instrument.

Item [2] amends Schedule 2 to LIN 24/022 (the principal instrument).

This amendment substitutes the table of eligible pathway programs – that is, registered courses specified to be eligible pathway programs for the purposes of paragraph 5(3)(d) of LIN 24/022. An applicant for a Subclass 500 (Student) visa who is enrolled in one of the courses specified in the table will be eligible to meet the English language proficiency requirement under subclause 500.213(1) so long as the applicant has also achieved the required English language test score specified in Column 3 of an item in the table under Schedule 1 to the principal instrument (LIN 24/022). The substituted table includes 155 courses (a net increase of 21) as registered courses identified as delivering reputable English language training, following further consultation with the education sector. This increases the total number of specified courses from 134 to 155. As noted in the outline, 26 courses have been added to the list of eligible pathway programs, and five have been removed.