



Commonwealth of Australia

Migration Regulations 1994

**TESTS, SCORES, PERIOD, LEVEL OF SALARY AND EXEMPTIONS TO
THE ENGLISH LANGUAGE REQUIREMENT FOR
SUBCLASS 457 (TEMPORARY WORK (SKILLED)) VISAS 2015**

(Subparagraph 2.72(10)(g)(iv), paragraphs 457.223(4)(eb) and 457.223(6)(a), and subclause 457.223(11))

I, *MICHAELIA CASH*, Assistant Minister for Immigration and Border Protection, acting under subparagraph 2.72(10)(g)(iv) of Part 2A to the *Migration Regulations 1994* (the Regulations), and paragraphs 457.223(4)(eb), 457.223(6)(a) and subclause 457.223(11) of Schedule 2 to the Regulations:

1. REVOKE Instrument number IMMI 14/009 (F2014L00327), signed on 19 March 2014, specifying the tests, scores, period, level of salary and exemptions to the English Language requirement for Subclass 457 (Temporary Work (Skilled)) visas; and
2. SPECIFY for the purposes of subparagraph 457.223(4)(eb)(iv), the following language tests:
 - (a) International English Language Testing System (IELTS test);
 - (b) Occupational English Test (OET);
 - (c) Test of English as a Foreign Language internet-based test (TOEFL iBT);
 - (d) Pearson Test of English Academic (PTE);
 - (e) Cambridge English: Advanced test (CAE), where the test was completed on, or after 1 January 2015.
3. SPECIFY for the purposes of subparagraph 457.223(4)(eb)(v), the following scores:

English test	Minimum band score	Minimum scores for English test components			
		Listening	Reading	Speaking	Writing
IELTS test	Overall band score 5.0	4.5	4.5	4.5	4.5
OET	-	B	B	B	B
TOEFL iBT	Total band score 36	3	3	12	12
PTE	Overall band score 36	30	30	30	30
CAE	Overall band score 154	147	147	147	147

4. SPECIFY the period of **three years** from the date of the visa application, for the purposes of paragraph 457.223(4)(eb).
5. SPECIFY the period of **three years** from the date of nomination, for the purposes of subparagraph 2.72(10)(g)(iv).
6. SPECIFY for the purposes of paragraph 457.223(6)(a), that the base rate of pay (expressed as an annual salary) is at least the level of salary, where:
 - (a) the **base rate of pay** has the same meaning as in subregulation 2.57(1) of the Regulations; and
 - (b) the **level of salary** is **AUD 96,400**.
7. SPECIFY the following classes of Subclass 457 visa applicants to be an exempt applicant under subclause 457.223(11) of Schedule 2 of the Regulations:
 - (a) an applicant who is a citizen of, and who holds a valid passport issued by:
 - (i) the United Kingdom;
 - (ii) the United States of America;
 - (iii) Canada;
 - (iv) New Zealand; or
 - (v) the Republic of Ireland; or
 - (b) an applicant who:
 - (i) is nominated in an occupation that does not require a level of English language competency for grant (however described) of registration, licence or membership; and
 - (ii) has completed at least five years of full-time study in a secondary and/or higher education institution where the instruction was delivered in English; or
 - (c) an applicant who is:
 - (i) nominated in relation to an activity or occupation by a standard business sponsor approved under regulations 2.59 or 2.68 of the Regulations; and
 - (ii) nominated in relation to an activity or occupation that will be performed at a diplomatic or consular mission of another country or an Office of the Authorities of Taiwan located in Australia; or

- (d) an applicant who lodged his or her most recent Subclass 457 visa application before 1 July 2013 and:
 - (i) is the subject of an approved nomination; and
 - (ii) the application for approval of the approved nomination in subparagraph (i) was made on or after 1 July 2010, in an occupation that does not require a level of English language competency for grant (however described) of registration, license or membership; and
 - (iii) is nominated in the application for approval of nomination in an occupation that is in:
 - A. ANZSCO Major Group 1;
 - B. ANZSCO Major Group 2;
 - C. ANZSCO Major Group 4;
 - D. ANZSCO Major Group 5;
 - E. ANZSCO Major Group 6;
 - F. Sub-Major Group 31; or
 - G. Unit Group 3993; or

- (e) an applicant who lodged his or her most recent Subclass 457 visa application before 1 July 2013 and:
 - (i) is the subject of an approved nomination; and
 - (ii) the application for approval of the approved nomination in subparagraph (i) was made before 1 July 2010 in an occupation that does not require a level of English language competency for grant (however described) of registration, license or membership; and
 - A. for an applicant whose most recent Subclass 457 visa application was lodged before 14 April 2009 – the Subclass 457 visa applicant is nominated in the application for approval of the approved nomination in subparagraph (i) in an occupation that is in:
 - 1. ASCO Major Group 1;
 - 2. ASCO Major Group 2; or
 - 3. ASCO Major Group 3; or
 - B. for an applicant whose most recent Subclass 457 visa application was lodged on or after 14 April 2009 and before 1 July 2013 – the Subclass 457 visa applicant is nominated in the application for approval of the approved nomination in subparagraph (i) in an occupation, other than Head Chef 3322-01 or Chef 3322-11, that is in:
 - 1. ASCO Major Group 1;
 - 2. ASCO Major Group 2; or
 - 3. ASCO Major Group 3.

8. For the purposes of Item (7) of this Instrument:
- (a) in relation to secondary education, *full-time study* means the standard number of contact hours that a student would undertake in the relevant country;
 - (b) in relation to higher education, *full-time study* means the completion of at least three subjects in each semester or trimester of study;
 - (c) for the purposes of regulation 1.03 of the Regulations *ANZSCO* means the Australian and New Zealand Standard Classification of Occupations as published by the Australian Bureau of Statistics; and
 - (d) *ASCO* is defined at regulation 1.03 of the Regulations.

This Instrument number IMMI 15/028 commences on 18 April 2015.

Dated 16 April 2015

Michaelia Cash
Assistant Minister for Immigration and Border Protection

EXPLANATORY STATEMENT

Migration Regulations 1994

TESTS, SCORES, PERIOD, LEVEL OF SALARY AND EXEMPTIONS TO THE ENGLISH LANGUAGE REQUIREMENT FOR SUBCLASS 457 (TEMPORARY WORK (SKILLED)) VISAS 2015

(Subparagraph 2.72(10)(g)(iv), paragraphs 457.223(4)(eb)
and 457.223(6)(a), and subclause 457.223(11))

1. This Instrument is made under subparagraph 2.72(10) (g) (iv) of Part 2A to the *Migration Regulations 1994* (the Regulations) and clause 457.223 of Schedule 2 to the Regulations.
2. The Instrument revokes IMMI 14/009 (F2014L00327) under section 33(3) of the *Acts Interpretation Act 1901*.
3. The Instrument operates by specifying the **test, scores, period, level of salary and other exemptions to the English language requirement for Subclass 457 (Temporary Work (Skilled)) (Subclass 457) visa applicants.**
4. The purpose of the Instrument is to change **the minimum English language proficiency requirements for applicants of the Subclass 457 visa.** The change amends the requirements applicants must meet to satisfy the English language criteria while continuing to ensure that applicants have a sufficient level of English language ability to perform effectively in their nominated occupations. The amendment gives effect to a recommendation from an independent review conducted in 2014, the 457 Integrity Review.
5. For the purposes of subparagraph 2.72(10)(g)(iv), the Instrument applies to a nomination of proposed occupations by a standard business sponsor made under paragraph 140GB(1)(b) of the *Migration Act 1958* (the Act) that are lodged on or after the commencement of this Instrument, or lodged prior to the commencement of this Instrument but not finally determined by the date of commencement. For the purposes of paragraphs 457.223(4)(eb) and 457.223(6)(a) and subclause 457.223(11), the Instrument applies to applicants of Subclass 457 visas who lodged applications on or after the commencement of this Instrument, or lodged prior to the commencement of this Instrument but not finally determined by the date of commencement. The exemptions in Item (7) of the Instrument apply to Subclass 457 visa applicants with respect to the visa applicant's most recent Subclass 457 visa application only.

6. Consultation was undertaken by the independent panel which conducted the 457 Integrity Review. The 457 Integrity Review involved stakeholder consultation including 140 face-to-face meetings and a review of 180 written submissions from industry stakeholders.
7. The Office of Best Practice Regulation has advised that a Regulatory Impact Statement is not required (OBPR Ref 18006).
8. Under section 42 of the *Legislative Instruments Act 2003* the Instrument is subject to disallowance and therefore a Human Rights Statement of Compatibility has been provided.
9. This Instrument number IMMI 15/028 commences on **18 April 2015**.

Statement of Compatibility with Human Rights

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

Tests, scores, period, level of salary and exemptions to English Language requirements for Subclass 457 visa applicants

This 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 amended Legislative Instrument

This Instrument revokes legislative instrument IMMI14/009, which specified tests, scores, period, level of salary and exemptions to the English Language requirement for Subclass 457 (Temporary Work (Skilled)) visas. Like revoked instrument IMMI14/009, the proposed instrument specifies the same matters but with three key changes to provide a fairer assessment of Subclass 457 visa applicants' English language ability. The first change proposed to be introduced is the expansion of acceptable English language tests for the Subclass 457 visa programme. If the amendments to the instrument enter into force, applicants for a Subclass 457 visa will be able to use the Test of English as a Foreign Language internet-based test (TOEFL iBT), Pearson Test of English (PTE) and Cambridge English: Advanced (CAE) test (conducted on or after 1 January 2015). Applicants will be able to use these tests in addition to the existing International English Language Testing System (IELTS) and Occupational English Test (OET). The expansion of acceptable English language tests will make it easier for applicants to access English language assessments and provide them with the same choices of English language tests that other visa applicants enjoy.

The second change proposed to the instrument is to amend the current English language test scores by introducing an overall average English language test score in addition to minimum scores for individual components (reading, writing, listening and speaking) for IELTS, TOEFL iBT, PTE and the CAE test. A test score from the OET is also accepted as evidence of English language proficiency for certain 457 visa applicants. However, no changes are proposed to the OET scores, as the OET awards letter scores, which are difficult to average and index compared to the numerical scores awarded by the other test providers. Additionally, OET is a specialised test targeting health professionals, who usually have to adhere to industry determined English language requirements.

These proposed score changes will make the Subclass 457 visa more equitable for Subclass 457 visa applicants and their employers.

The third proposed change will amend the requirement for an 'exempt applicant' to have completed at least 5 consecutive years of full-time study in a secondary and/or higher education institution where the instruction was delivered in English, to five years of cumulative study. The introduction of this change will allow

applicants who have had breaks within their studies, the ability to access an exemption to the English language requirement.

Human rights implications

This instrument expands the applicability of English language tests for Subclass 457 visa applicants and does not engage any of the applicable rights or freedoms contained in the seven core international human rights treaties.

Conclusion

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

The Hon. Michaelia Cash, Assistant Minister for Immigration and Border Protection