



Migration (IMMI 18/015: English Language Tests and Evidence Exemptions for Subclass 500 (Student) Visa) Instrument 2018

I, Richard Johnson, First Assistant Secretary, Band two, Immigration, Citizenship and Multiculturalism Policy Division, Delegate of the Minister for Home Affairs, make the following instrument:

Dated 27/5/18

Richard Johnson

RICHARD JOHNSON

First Assistant Secretary, Band two, Immigration Citizenship and Multiculturalism Policy Division and Delegate of the Minister for Home Affairs

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Part 1 – Preliminary

1 Name

- (1) This instrument is the *Migration (IMMI 18/015: English Language Tests and Evidence Exemptions for Subclass 500 (Student) Visa) Instrument 2018*.
- (2) This instrument may be cited as **IMMI 18/015**.

2 Commencement

This instrument commences **on the day after registration on the Federal Register of Legislation**.

3 Authority

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

4 Definitions

Note: A number of expressions used in this instrument are defined in definitions section of the Regulations, including the following:

- (a) **Defence student** has the meaning specified in regulation 1.04B;
- (b) **ELICOS** has the meaning specified in regulation 1.03;
- (c) **Foreign Affairs student** has the meaning specified in subregulation 1.04A(3);
and
- (d) **Secondary exchange student** has the meaning specified in regulation 1.03.

In this instrument:

Australian Qualifications Framework has the same meaning given by the *Higher Education Support Act 2003*.

principal course means the main course of study to be undertaken by an overseas student.

Note: Principal course would normally be the final course of study where the overseas student arrives in Australia with a student visa that covers multiple courses.

Regulations means the *Migration Regulations 1994*.

TOEFL-PBT means Test of English as a Foreign Language Paper-Based test.

5 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Part 2 – Requirements for Subclass 500 (Student) visa

6 Primary Criteria

- (1) For the purpose of subclause 500.213(1) of Schedule 2 to the Regulations, the following requirements are specified:
 - (a) the applicant must undertake one of the English language tests specified in Column 1 of Schedule 1;
 - (b) the applicant must achieve the English language test score specified for that English language test in Column 3 of Schedule 1; and
 - (c) the applicant must have completed the test within the following period:
 - (i) if evidence of the test is provided at the time the applicant makes an application for a Subclass 500 (Student) visa - **2 years immediately before the date of the visa application**; or
 - (ii) if evidence of the test is not provided at the time the visa application is made - 2 years immediately before a decision to grant or refuse the visa application is made.
- (2) For the purpose of subclause 500.213(2) of Schedule 2 to the Regulations, subclause 500.213(1) of Schedule 2 to the Regulations **does not apply to the following classes of applicants**:
 - (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 is enrolled in a principal course of study that is:
 - (i) registered to be delivered in a language other than English;
 - (ii) a registered ELICOS course, as defined in regulation 1.03 of the Regulations;
 - (iii) a registered school course; or
 - (iv) **a registered post-graduate research course**; or

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- (c) an applicant who is a:
- (i) Foreign Affairs student;
 - (ii) Defence Student; or
 - (iii) Secondary exchange student; or
- (d) an applicant, who, in the 2 years before applying for a Subclass 500 (Student) visa, has successfully completed:
- (i) the requirements for a Senior Secondary Certificate of Education, in a course that was conducted in Australia and in English; or
 - (ii) a substantial component of a course leading to a qualification from the Australian Qualifications Framework at the Certificate IV level or higher that was conducted in Australia and in English, while the applicant was holding a student visa; or
- (e) an applicant who has successfully completed a minimum of 5 years of study in English undertaken in one or more of the following countries;
- (i) Australia;
 - (ii) Canada;
 - (iii) New Zealand;
 - (iv) South Africa;
 - (v) the Republic of Ireland;
 - (vi) the United Kingdom;
 - (vii) the United States of America.

Part 3 – Application

7 Application of this instrument

This instrument applies to an application for a Subclass 500 (Student) visa made on or after the commencement of this instrument.

Schedule 1— English language tests and minimum test scores

English language tests			
Item	Column 1: Test name	Column 2: Acronym/ also known as	Column 3: Minimum test score
1	International English Language Testing system	IELTS Test	(a) Overall band score 5.5; or (b) Overall band score 5 if packaged with at least 10 weeks' ELICOS; or (c) Overall band score of 4.5 if packaged with at least 20 weeks' ELICOS.
2	Test of English as a Foreign Language internet-based test	TOEFL iBT	(a) 46; or (b) 35, if packaged with at least 10 weeks' ELICOS ; or (c) 32, if packaged with at least 20 weeks' ELICOS.
3	Cambridge English: Advanced (CAE) test	Certificate in Advanced English	(a) 162; or (b) 154, if packaged with at least 10 weeks' ELICOS; or (c) 147, if packaged with at least 20 weeks' ELICOS.
4	Pearson Test of English Academic	PTE	(a) 42; or (b) 36, if packaged with at least 10 weeks' ELICOS; or (c) 30, if packaged with at least 20 weeks' ELICOS.
5	Occupational English Test	OET	a score of at least B for each test component of the OET.

Schedule 2 — Repeals

Part 1 – Repeals

English Language Tests and Evidence Exemptions for Subclass 500 (Student) Visas 2016/019 (F2016L00629)

1 The whole of the instrument

Repeal the instrument.

Part 2 – Application

1 Application of repeal

(1) Despite the repeal of the *English Language Tests and Evidence Exemptions for Subclass 500 (Student) Visas 2016/019 (IMMI 16/019)* by Part 1 of Schedule 3 to this instrument, IMMI 16/019, as in force immediately before the commencement of this instrument, continues to apply in relation to an applicant for a Subclass 500 (Student) visa who meets either of the following requirements:

(a) the applicant:

- (i) completed the TOEFL-PBT before 14 October 2017; and
- (ii) achieved the specified TOEFL-PBT test score as specified in IMMI 16/019 within the following period:
 - A. if evidence of the test is provided at the time the applicant makes an application for a Subclass 500 (Student) visa - 2 years immediately before the date of the visa application; or
 - B. if evidence of the test is not provided at the time the visa application is made - 2 years immediately before a decision to grant or refuse the visa application is made; or

(b) the applicant:

- (i) completed the TOEFL-PBT on or after 14 October 2017 but before the commencement of this instrument; and
- (ii) achieved the specified TOEFL-PBT test score as specified in IMMI 16/019 within the following period:
 - A. if evidence of the test is provided at the time the applicant makes an application for a Subclass 500 (Student) visa - 2 years immediately before the date of the visa application; or
 - B. if evidence of the test is not provided at the time the visa application is made - 2 years immediately before a decision to grant or refuse the visa application is made; and

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- (iii) if requested to do so by the Minister, gives the Minister additional evidence of the applicant's English language proficiency specified by the Minister in the request.

EXPLANATORY STATEMENT*Migration Regulations 1994***Migration (IMMI 18/015: English Language Tests and Evidence Exemptions for
Subclass 500 (Student) Visa) Instrument 2018***Subclause 500.213(3)*

1. The instrument, IMMI 18/015, is made under subclause 500.213(3) of the *Migration Regulations 1994* (the Regulations).
2. The instrument repeals IMMI 16/019 (F2016L00629) in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*, which states where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.
3. The instrument IMMI 16/019 specified the ‘Test of English as a Foreign Language Paper-Based test’ (TOEFL-PBT) as one of the tests, accepted by the Department of Home Affairs (the Department) for Subclass 500 (Student) visa applications, for establishing an applicant’s English language proficiency. On 14 October 2017, the TOEFL-PBT was revised by an external agency and the TOEFL-PBT no longer includes a measurement of speaking. Testing of English language speaking skills is a requirement for assessment of an applicant to establish they have the required English language proficiency. The Testing of English language speaking skills is designed to ensure applicants have the ability to communicate effectively in face-to-face situations within Australia.
4. As a result of the change to the TOEFL-PBT, the instrument IMMI 18/015 does not specify TOEFL-PBT as an accepted English language test due to its inability to measure the English language speaking skills of an applicant. Therefore, **the purpose of this instrument is to remove the TOEFL-PBT as one of the specified tests for establishing an applicant’s English language proficiency** accepted by the Department for Subclass 500 (Student) visa applications.

5. Under subclause 500.213(1) of Schedule 2 to the Regulations, if required to do so by the Minister, an applicant must give evidence which demonstrates the applicant has a level of English language proficiency that meets the requirements specified in an instrument made under paragraph 500.213(3)(a) of Schedule 2 to the Regulations. The instrument operates **to specify the required levels of English language proficiency applicants must have to meet the criteria for the Subclass 500 (Student) visa.** The English language proficiency requirements are specified in Part 2 of the instrument which include the following:
 - a. the English language tests;
 - b. the English language test scores; and
 - c. the time periods in which an English test must be taken.
6. Under subclause 500.213(2) of Schedule 2 to the Regulations, the requirement in subclause 500.213(1) of Schedule 2 to the Regulations, to provide evidence of English language proficiency, does not apply to the class of applicants specified in subsection 6(2) of Part 2 of the instrument, under paragraph 500.213(3)(b) of Schedule 2 to the Regulations.
7. The application provision in section 1 of Part 2 in Schedule 2 to the instrument provides that IMMI 16/019 will continue to apply to an applicant who within the specified time limit:
 - a. completed the TOEFL-PBT;
 - b. made an application for a Subclass 500 (Student) visa; and
 - c. met the specified English language proficiency requirements specified by the Minister.
8. Consultation was undertaken with the Education Visa Consultative Committee before the instrument was made.
9. The Office of Best Practice Regulation (OBPR) have advised that a Regulatory Impact Statement is not required (OBPR Reference: 22865).

10. Under section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*, the instrument is exempt from disallowance and therefore a Statement of Compatibility with Human Rights is not required.
11. The instrument commences on the day after registration on the Federal Register of Legislation.