



Immigration (Education) Regulations 2018

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 02 August 2018

Peter Cosgrove
Governor-General

By His Excellency's Command

Karen Andrews
Assistant Minister for Vocational Education and Skills
Parliamentary Secretary to the Minister for Education and Training

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Part 1—Preliminary

1 Name

This instrument is the *Immigration (Education) Regulations 2018*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 October 2018.	1 October 2018

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Immigration (Education) Act 1971*.

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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

5 Definitions

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

- (a) approved English course;
- (b) Secretary;
- (c) visa commencement day.

In this instrument:

Act means the *Immigration (Education) Act 1971*.

illness includes a physical or mental illness.

injury includes a physical or mental injury.

Section 5

non-participation period, in relation to an application under subsection 4C(3) or 4D(3) of the Act, means the period starting on the applicant's visa commencement day and ending on the day on which the application is made.

Part 2—English courses

6 Requirements for application for extension of period **for registration or commencement**

For the purposes of paragraph 4C(4)(a) of the Act, an application under subsection 4C(3) of the Act must be made:

- (a) through a provider of an approved English course, electronically in the form approved in writing by the Secretary; and
- (b) **within 10 years after the applicant's visa commencement day.**

7 Matters to which Secretary must have regard when deciding on extension of period for registration or commencement

- (1) For the purposes of paragraph 4C(6)(a) of the Act, if the application is made by an applicant who is aged under 18 years on the applicant's visa commencement day, the following matters are prescribed:
 - (a) the applicant's medical history during the non-participation period, including the nature and duration of any serious illness or injury suffered by the applicant during the non-participation period;
 - (b) the applicant's family and caring commitments during the non-participation period;
 - (c) any other compelling or compassionate reasons that existed during the non-participation period for making a particular decision on the application.
- (2) For the purposes of paragraph 4C(6)(a) of the Act, if the application is made by an applicant who is aged 18 years or over on the applicant's visa commencement day, the following matters are prescribed:
 - (a) the applicant's record in learning English during the non-participation period;
 - (b) during the non-participation period, the applicant's participation in, and suitability for, educational services generally available to members of the public;
 - (c) the applicant's employment record during the non-participation period;
 - (d) the applicant's medical history during the non-participation period, including the nature and duration of any serious illness or injury suffered by the applicant during the non-participation period;
 - (e) the applicant's family and caring commitments during the non-participation period;
 - (f) whether the applicant was not in Australia at any time during the non-participation period;
 - (g) any other compelling or compassionate reasons that existed during the non-participation period for making a particular decision on the application.

Section 8

8 Requirements for application for extension of time limit on tuition

For the purposes of paragraph 4D(4)(a) of the Act, an application under subsection 4D(3) of the Act must be made:

- (a) through a provider of an approved English course, electronically in the form approved in writing by the Secretary; and
- (b) within 10 years after the applicant's visa commencement day.

9 Matters to which Secretary must have regard when deciding on extension of time limit on tuition

For the purposes of paragraph 4D(6)(a) of the Act, the following matters are prescribed in relation to a decision under subsection 4D(5) of the Act on an application:

- (a) the applicant's medical history during the non-participation period, including the nature and duration of any serious illness or injury suffered by the applicant during the non-participation period;
- (b) whether a family member of the applicant died during the non-participation period;
- (c) whether the applicant had a traumatic experience during the non-participation period;
- (d) any compelling and compassionate reasons that will prevent, or have prevented, the applicant from having 510 hours of tuition in approved English courses before the later of:
 - (i) 5 years after the applicant's visa commencement day; or
 - (ii) the day on which the application is made.

Part 3—Citizenship courses

10 Persons to whom citizenship courses may be provided

For the purposes of section 4E of the Act, a person who has made an application under subsection 21(1) of the *Australian Citizenship Act 2007* on the basis that the person may be eligible to become an Australian citizen under subsection 21(2) of that Act is prescribed.

Part 4—Application, saving and transitional provisions

11 Applications made under the *Immigration (Education) Regulations 1992*

Despite the repeal of the *Immigration (Education) Regulations 1992*, those regulations continue to apply, as if the repeal had not happened, in relation to an application made under subsection 4C(3) or 4D(3) of the Act before the commencement of this section.

Schedule 1—Repeals

Immigration (Education) Regulations 1992

1 The whole of the instrument

Repeal the instrument.

EXPLANATORY STATEMENT

Immigration (Education) Act 1971

Immigration (Education) Regulations 2018

Authority

The *Immigration (Education) Act 1971* (**Act**) provides the basis for the **Adult Migrant English Program (AMEP)**, which delivers English language tuition **to eligible migrants** and humanitarian entrants to assist them in learning foundational English language and settlement skills.

The *Immigration (Education) Regulations 2018* (**Regulations**) are made under section 13 of the Act, which provides that the Governor-General may make regulations prescribing matters that are required or permitted by the Act, or are necessary or convenient to carry out or give effect to the Act. The Regulations prescribe matters for the purposes of sections 4C, 4D and 4E of the Act.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), 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.

Background

The Regulations repeal and replace the *Immigration (Education) Regulations 1992* (**the 1992 Regulations**), which sunset, pursuant to section 50 of the *Legislation Act 2003*, on 1 October 2018.

The 1992 Regulations outline the processes according to which the Secretary (or their delegate) may make decisions on applications for extensions to time limits contained in the Act, as well as eligibility for citizenship courses.

Adult Migrant English Program (AMEP)

AMEP is a program that provides **free English courses** (**AMEP tuition**) **to eligible new migrants** and humanitarian entrants. Currently, the Department of Education and Training (**department**) administers AMEP through contracted AMEP service providers.

The legislative basis for AMEP is set out in the Act. Under the Act, eligible persons have a limited period of time in which to register with a provider of an approved English course, as well as to commence and complete their AMEP Tuition.

Sections 4C and 4D of the Act specify **time limits for registration, commencement and completion of approved English courses**, after which an eligible person becomes ineligible for AMEP tuition. However, the Regulations allow potential AMEP clients to apply to the Secretary for an extension to these time limits. This extension of time enables an eligible person to access AMEP tuition beyond the legislated time limits in specified circumstances. The Secretary approves applications for extensions to time limits in accordance with the matters prescribed in the Regulations.

Citizenship courses

Section 4E of the Act provides that the Minister may arrange for citizenship courses to be provided inside or outside Australia to persons prescribed by the Regulations. The term ‘citizenship course’ is defined in section 3 of the Act as a ‘course of instruction designed to impart an understanding of ways of life in Australia and of the rights and duties of an Australian citizen’. Section 4E allows the Minister to provide access to the Citizenship Course-Based Test to persons seeking to become Australian citizens under subsection 21(2) of the *Australian Citizenship Act 2007* (**Australian Citizenship Act**). The Citizenship Course-Based Test is currently administered by the Department of Home Affairs, who liaise directly with contracted AMEP service providers.

Purpose and operation

AMEP

Under the 1992 Regulations, the timeframes for applying for extensions to AMEP differed depending on whether an eligible person applying for an extension of time (**applicant**) was over or under 18 years of age. The Regulations align the timeframes for applying for an extension of time, so that applicants have the same timeframe in which to make their application, regardless of age. However, the Regulations also introduce a new requirement that applications for extensions of time for registration, **commencement or tuition must be made within ten years of the applicant’s visa commencement day.**

Aside from this change, the Regulations have substantially the same effect as the 1992 Regulations. The Regulations will enable the department to continue to process applications for extension of time to access AMEP. Currently, around 9,000 applications for extension are made per annum. Decisions on applications made under the 1992 Regulations continue to have force, if made prior to the commencement of the Regulations.

Citizenship courses

Section 10 of the Regulations preserve the arrangements under the 1992 Regulations, whereby the Minister is able to make the Course-Based Test available to persons seeking to become Australian citizens under subsection 21(2) of the Australian Citizenship Act.

Regulation Impact Statement

The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is not required (OBPR ID 22872).

Commencement

The Regulations **commence 1 October 2018.**

Consultation

In accordance with section 17 of the *Legislation Act 2003*, the department has consulted with the Department of Home Affairs, Department of Social Services, Attorney-General’s Department, Department of Jobs and Small Business, and AMEP service providers contracted by the department to deliver AMEP tuition in relation to the Regulations.

Detailed explanation of the *Immigration (Education) Regulations 2018* provisions

Part 1—Preliminary

Section 1 – Name

Section 1 provides that the title of the instrument is the *Immigration (Education) Regulations 2018* (Regulations).

Section 2 – Commencement

Section 2 provides for the commencement of the Regulations on 1 October 2018.

Section 3 – Authority

Section 3 provides that the Regulations are made under the Act. Section 13 of the Act provides that the Governor-General may make regulations required or permitted by the Act, or necessary or convenient to carry out or give effect to the Act.

Section 4 – Schedule

Section 4 provides that each instrument that is specified in a Schedule to the Regulations is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the Regulations has effect according to its terms.

Section 5 – Definitions

Section 5 defines terms used in the Regulations.

A note to the section explains that a number of expressions used in the Regulations derive their meaning from the Act.

Part 2—English courses

Section 6 – Requirements for application for extension of period for registration or commencement

Under subsection 4C(2) of the Act, a person who was aged under 18 years on their visa commencement day stops being eligible for an English course if they fail to register with the provider of an approved English course **within the period of 12 months** starting on that day (see subparagraph 4C(2)(a)(i)). A person who was aged 18 years or over on their visa commencement day, stops being eligible for an English course **with the period of 6 months** starting on that day (see subparagraph 4C(2)(a)(ii)).

Irrespective of age, a person stops being eligible to register or commence an approved English course, if they fail to start within the period of 12 months starting on his or her visa commencement day (see paragraph 4C(2)(b)).

Subsection 4C(3) and paragraph 4C(4)(a) of the Act, however, provide that a person may apply to the Secretary for an extension of a period for registration or commencement of an English course, provided the application is made in the manner and within the period prescribed by the

Regulations. Paragraph 6(a) of the Regulations prescribes, for the purposes of paragraph 4C(4)(a) of the Act, that an application made under subsection 4C(3) of the Act for an extension of a period for registration or commencement of an English course must be made electronically through a provider of an approved English course (an AMEP service provider), in a form approved in writing by the Secretary. This reflects current practice and supports the efficient administration of applications through information and communication technology systems.

Paragraph 6(b) of the Regulations introduces a **new requirement that applications must be made within 10 years after the applicant's visa commencement day**. The applicant's visa commencement day is defined by section 3(1) of the Act as 'the earlier of the following days: (a) **the first day the person was in Australia on or after the day when a permanent visa held by the person came into effect**; (b) the first day the person was in Australia on or after the day when a **temporary visa of a class mentioned in subparagraph 4A(a)(ii) held by the person came into effect**'. In December 2017, the Parliamentary Joint Standing Committee on Migration: Inquiry into Migrant Settlement Outcomes, recommended that AMEP clients be given 10 years to complete their tuition. The change provides recognition that some migrants will need additional time to attend to settlement needs ahead of attending AMEP tuition, but limits the government's liability to provide tuition indefinitely.

This measure also aligns the timeframes for applicants aged over and under 18 years of age to provide equitable access to AMEP for persons requiring extensions, regardless of their age. Under the 1992 Regulations, if an applicant was under 18 years of age on their visa commencement day, their application for extension needed to be made within a maximum period of 12 months from their visa commencement day, whereas this requirement did not exist for persons 18 years of age or over.

Section 8 of the Regulations replicates these new application requirements for applications to extend the time limit to complete tuition.

Section 7 – Matters to which the Secretary must have regard when deciding on extension of period of registration or commencement

Section 7 of the Regulations outlines the matters the Secretary must consider when deciding on an application for extension of time limits to register or commence tuition. The matters are distinguished between those relevant to persons aged under 18 years and those aged 18 years or over on their visa commencement day.

The matters relate to events and circumstances during the applicant's non-participation period that provide justification for the applicant's failure to register for, or commence, tuition. Section 5 of the Regulations defines **non-participation period**, in relation to an application to mean the period starting on the applicant's visa commencement day and ending on the day on which the application is made.

Subsection 7(1) of the Regulations prescribes the matters the Secretary must consider for an applicant aged under 18 years on their visa commencement day. The matters are:

- the applicant's medical history during the non-participation period, including the nature and duration of any serious illness or injury suffered by the applicant during the non-participation period
- the applicant's family and caring commitments during the non-participation period

- any other compelling and compassionate reasons that existed during the non-participation period for making a decision on the application.

Subsection 7(2) of the Regulations prescribes the matters the Secretary must consider for an applicant who was aged 18 years or over on their visa commencement day. The matters are:

- the applicant's record in learning English during the non-participation period;
- during the non-participation period, the applicant's participation in, and suitability for, educational services generally available to members of the public;
- the applicant's employment record during the non-participation period;
- the applicant's medical history during the non-participation period, including the nature and duration of any serious illness or injury suffered by the applicant during that period;
- the applicant's family and caring commitments during the non-participation period;
- whether the applicant was not in Australia at any time during the non-participation period;
- any other compelling or compassionate reasons that existed during the non-participation period for making a particular decision on the application.

The inclusion at paragraph 7(2)(g) of the Regulations of a more general consideration for 'any compelling or compassionate reasons that existed during the non-participation period for making a particular decision on the application' is intended to account for unforeseeable or unique events and circumstances that do not fall within the prior categories.

Section 8 – Requirements for application for extension of time limit on tuition

Under subsection 4D(2) of the Act, a person will stop being eligible for an English course at the end of the period of 5 years starting on his or her visa commencement day. Under subsection 4D(3) and paragraph 4D(4)(a) of the Act, a person may apply to the Secretary for an extension of a time limit on tuition, provided the application is made in the manner and within the period prescribed by the Regulations.

Consistent with the requirements by section 6 of the Regulations for applications for extension of period for registration or commencement, section 8 of the Regulations prescribes for the purposes of paragraph 4D(4)(a) of the Act, that an application under subsection 4D(3) of the Act must be made:

- through a provider of an approved English course (an AMEP service provider), in electronic form approved in writing by the Secretary; and
- within 10 years after the applicant's visa commencement day.

Section 9 – Matters to which the Secretary must have regard when deciding on extension of time limit on tuition

Section 9 of the Regulations prescribes for the purposes of paragraph 4D(6)(a) of the Act, the matters the Secretary must consider in deciding on an application for extension of the time limit to complete tuition under subsection 4D(5) of the Act. The matters relate to events and circumstances during the applicant's non-participation period that provide justification for the applicant's inability to complete tuition within the 5 year time limit prescribed by subsection 4D(2) of the Act. The matters are:

- the applicant's medical history during the non-participation period, including the nature and duration of any serious illness or injury suffered by the applicant during that period;

- whether a family member of the applicant died during the non-participation period;
- whether the applicant had a traumatic experience during the non-participation period;
- any compelling and compassionate reasons that will prevent, or have prevented, the applicant completing their tuition.

The inclusion at paragraph 9(d) of the Regulations of a more general consideration for ‘any compelling and compassionate reasons that will prevent, or have prevented, the applicant from having 510 hours of tuition’ is intended to account for unforeseeable or unique events and circumstances that do not fall within the prior categories.

Section 10 – Persons to whom citizenship courses may be provided

Section 10 of the Regulations prescribes for the purposes of section 4E of the Act, the persons to whom the Minister may arrange for citizenship courses to be provided. The prescribed persons are those who have made an application for Australian citizenship under subsection 21(1) of the *Australian Citizenship Act 2007* (**Australian Citizenship Act**) on the basis that the person may be eligible to become an Australian citizen under subsection 21(2) of that Act. The term ‘citizenship course’ is defined in section 3 of the Act as a ‘course of instruction designed to impart an understanding of ways of life in Australia and of the rights and duties of an Australian citizen’.

Subsection 21(2) of the Australian Citizenship Act set outs the ‘general eligibility’ criteria that the Minister (being the Minister responsible for administering the Australian Citizenship Act, currently the Minister for Home Affairs) must be satisfied of in order for a person to be eligible to become an Australian citizen. Subsection 21(2A) of the Australian Citizenship Act provides that the eligibility criteria in paragraphs (2)(d), (e) and (f) of the Australian Citizenship Act are taken to be satisfied only if the Minister is satisfied that the person has sat and successfully completed the citizenship test approved in a determination made under section 23A of the Australian Citizenship Act.

At the date of the commencement of the Regulations, one of the citizenship tests approved in the determination made under section 23A of the Australian Citizenship Act is a Course-Based Test provided by an organisation that is contracted to provide services under AMEP.

The measure in section 10 of the Regulations preserves the arrangements under the 1992 Regulations, whereby the Minister is able to make this Course-Based Test available to persons seeking to become Australian citizens under subsection 21(2) of the Australian Citizenship Act.

Section 11 – Applications made under the Immigration (Education) Regulations 1992

Section 11 of the Regulations is a transitional provision and provides that decisions made in relation to an application made under subsection 4C(3) or 4D(3) of the Act before the commencement of section 11 will continue to apply despite the repeal of the 1992 Regulations.

Schedule 1 – Repeals

Item 1 of Schedule 1 to the Regulations repeals the 1992 Regulations.

Statement of Compatibility with Human Rights

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

Immigration (Education) Regulations 2018

The *Immigration (Education) Regulations 2018* (**Regulations**) are 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*.

Authority

The *Immigration (Education) Act 1971* (**Act**) provides the basis for the Adult Migrant English Program (**AMEP**), which delivers English language tuition to eligible migrants and humanitarian entrants to assist them in learning foundational English language and settlement skills.

The Regulations are made under section 13 of the Act, which provides that the Governor-General may make regulations prescribing matters that are required or permitted by the Act, or are necessary or convenient to carry out or give effect to the Act. The Regulations prescribe matters for the purposes of sections 4C, 4D and 4E of the Act.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), 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.

Background

The Regulations repeal and replace the *Immigration (Education) Regulations 1992* (**the 1992 Regulations**), which sunsets, pursuant to section 50 of the *Legislation Act 2003*, on 1 October 2018.

The 1992 Regulations outline the processes according to which the Secretary (or their delegate) may make decisions on applications for extensions to time limits contained in the Act, as well as eligibility for citizenship courses.

Adult Migrant English Program (AMEP)

AMEP is a program that provides free English courses (**AMEP tuition**) to eligible new migrants and humanitarian entrants. Currently, the Department of Education and Training (**department**) administers AMEP through contracted AMEP service providers.

The legislative basis for AMEP is set out in the Act. Under the Act, eligible persons have a limited period of time in which to register with a provider of an approved English course, as well as to commence and complete their AMEP Tuition.

Sections 4C and 4D of the Act specify time limits for registration, commencement and completion of approved English courses, after which an eligible person becomes ineligible for AMEP Tuition. However, the Regulations allow potential AMEP clients to apply to the Secretary for an extension to these time limits. This extension of time enables an eligible person to access AMEP Tuition

beyond the legislated time limits in specified circumstances. The Secretary approves applications for extensions to time limits in accordance with the matters prescribed in the Regulations.

Citizenship courses

Section 4E of the Act provides that the Minister may arrange for citizenship courses to be provided inside or outside Australia to persons prescribed by the Regulations. The term ‘citizenship course’ is defined in section 3 of the Act as a ‘course of instruction designed to impart an understanding of ways of life in Australia and of the rights and duties of an Australian citizen’. Section 4E allows the Minister to provide access to the Citizenship Course-Based Test to persons seeking to become Australian citizens under subsection 21(2) of the *Australian Citizenship Act 2007* (**Australian Citizenship Act**). The Citizenship Course-Based Test is currently administered by the Department of Home Affairs, who liaise directly with contracted AMEP service providers.

Purpose and operation

AMEP

Under the 1992 Regulations, the timeframes for applying for extensions to AMEP differed, depending on whether an eligible person applying for an extension of time (applicant) was over or under 18 years of age. The Regulations align the timeframes for applying for an extension of time, so that applicants have the same timeframe in which to make their application, regardless of age. However, the Regulations also introduce a new requirement that applications for extensions of time for registration, commencement or tuition must be made within ten years of the applicant’s visa commencement day.

Aside from this change, the Regulations have substantially the same effect as the 1992 Regulations and allow the department to continue to administer extensions to access AMEP. Decisions on applications made under the 1992 Regulations continue to have force, if made prior to the commencement of the Regulations.

Citizenship courses

Section 10 of the Regulations preserve the arrangements under the 1992 Regulations, whereby the Minister is able to make the Course-Based Test available to persons seeking to become Australian citizens under subsection 21(2) of the Australian Citizenship Act.

Human rights implications

The Regulations engage the following human rights:

- *the right to work* – Article 6 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR)
- *the right to education* – Article 13 of the ICESCR, and
- *the right to privacy* – Article 17(1) of the *International Covenant on Civil and Political Rights* (ICCPR)
- *right to equality and non-discrimination* – Article 5 of the *Convention on the Elimination of all Forms of Racial Discrimination* (CERD)
- *right to acquire a nationality* – Article 24(3) of the ICCPR
- *rights of the child* – Articles 22 and 28 of the *Convention on the Rights of the Child* (CRC)

Right to Work

The Regulations engage the right to work which is set out in Article 6 of the ICESCR.

Under Article 6(1) of the ICESCR, State Parties are required to recognise the right to work, which includes the right of everyone to have the opportunity to gain their living by work which they freely choose or accept. Article 6(2) provides that the steps to be taken by a State Party to achieve the full realisation of this right include providing technical and vocational guidance and training programs.

The measures in the Regulations enable eligible migrants and humanitarian entrants to apply for extensions of time to register for, commence and complete approved English courses provided under AMEP. The approved English courses assist eligible migrants and humanitarian entrants to access free tuition in learning foundational English language and settlement skills, through the delivery of 510 hours of English tuition at no charge through the AMEP. These skills are fundamental to equipping eligible migrants and humanitarian entrants with skills to access tertiary and vocational education and training opportunities, and to participate in the employment market.

The Regulations are compatible with the right to work.

Right to Education

The Regulations engage the right to education, which is set out in Article 13 of the ICESCR.

Article 13 recognises the important personal, societal, economic and intellectual benefits of education. The right to education requires State Parties to have functioning educational institutions and programs in sufficient quantity. It also requires primary and secondary education to be available to all, and for higher education to be made equally accessible to all on the basis of capacity.

The measures in the Regulations enable eligible migrants and humanitarian entrants to apply for extensions of time to register for, commence and complete approved English courses provided under AMEP. In effect, the measures in the Regulations facilitate and extend accessibility to AMEP and ensure eligible migrants and humanitarian entrants have a maximised opportunity to access 510 hours of English tuition at no charge. This is because the measures enable the Secretary (or their delegate) to extend the statutory time limit in which an eligible person must register, commence and complete their AMEP tuition. The measures also enable the Secretary (or their delegate) to take into account the eligible person's circumstances when making a decision on extending the statutory time limit.

The Regulations are compatible with the human right to education.

Right to Privacy

The Regulations engage the right to privacy and reputation contained in Article 17 of the ICCPR.

Article 17(1) of the ICCPR provides that no one shall be subjected to arbitrary or unlawful interference with their privacy. The measures in Part 2 of the Regulations require the Secretary to consider an applicant's personal and sensitive information, including health information, when deciding whether to approve an application for extension to time limits.

The measures in the Regulation do not require a person to provide their personal information to the Secretary (or their delegate). However, if a person chooses to apply for an extension of time, their application will include personal information (and may include sensitive personal information) so the Secretary (or their delegate) can make a decision on whether to grant an extension of time. The provision of this information is necessary to allow the Secretary to assess an applicant's individual circumstances, in order to determine whether an extension to existing time limits should be granted.

To the extent the right to privacy is engaged the collection and use of personal information is reasonable and there are adequate safeguards in place for the protection of this right. A person is not required to provide their personal information to the Secretary (or their delegate) unless they are seeking an extension of time. The information required in support of a request for an extension of time is limited to that which is minimally necessary for the Secretary (or their delegate) to make a decision under the Act. Additionally, the *Privacy Act 1988* (**Privacy Act**) is the legal framework which applies to the provision of personal information in this context, and section 14 and Schedule 1 to the Act set out the Australian Privacy Principles which prescribe how Government departments can lawfully collect, solicit, store, use and disclose personal information. As the department is subject to the Privacy Act, the collection, use and disclosure of any personal information provided with applications is treated consistently with the requirements of the Australian Privacy Principles, and as such, adequate safeguards are in place for the protection of personal information.

The Regulations are compatible with the right to privacy.

Right to equality and non-discrimination

The Regulations engage the right to equality and non-discrimination contained in Article 5(e)(v) of CERD.

Article 5(e)(v) of CERD provides that persons should not face discrimination on the basis of race, colour, or national or ethnic origin, in relation to accessing education and training.

Eligibility for AMEP is outlined in section 4A of the Act. AMEP is a beneficial program that is available to migrants and humanitarian entrants on the basis of their need to gain functional English proficiency to participate in Australian society, rather than on the basis of their race, colour, or ethnic origin. The availability of AMEP to people on the distinction of their national origin is reasonable, proportionate and justified to attain the objective of AMEP. Other language and literacy programs are available to persons who do not meet the eligibility for the AMEP due to their visa or citizenship.

The Regulations are compatible with the right to equality and non-discrimination, and to the extent that this right is limited, the limitation is reasonable, necessary and proportionate.

Right to acquire a nationality

The Regulations engage the right to a nationality contained in Article 24(3) of the ICCPR.

Article 24(3) of the ICCPR provides that every child has the right to acquire a nationality.

Part 3 of the Regulations prescribe a class of persons eligible to whom the Minister may arrange for citizenship courses to be provided under the Act. Section 10 of the Regulations prescribes a person who has made an application under subsection 21(1) of the *Australian Citizenship Act 2007* on the

basis that the person may be eligible to become an Australian citizen under subsection 21(2) of that. This class of persons is not limited by age, accordingly some children may be captured in this class of persons. This measure provides a pathway for new migrants and humanitarian entrants to be able to satisfy the requirements to obtain Australian citizenship, enhancing their ability to attain a nationality.

The Regulations are compatible with the right to acquire a nationality.

Rights of the child

The Regulations engage the rights of the child contained in Articles 22 and 28 of the CRC.

Article 22 of the CRC provides that children who come into a country as refugees should have the same rights as children who are born in that country. Article 28 of the CRC provides that children have the right to an education.

Part 2 of the Regulations prescribe matters that the Secretary must consider in granting an extension for persons aged under 18 years. These matters support children to access AMEP to gain functional English proficiency to participate in Australian society.

The Regulations are compatible with the rights of the child.

Conclusion

The Regulations are compatible with human rights.



Immigration (Education) Act 1971

Act No. 3 of 1971 as amended

This compilation was prepared on 1 January 2011
taking into account amendments up to Act No. 112 of 2010

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

Prepared by the Office of Legislative Drafting and Publishing,
Attorney-General's Department, Canberra

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An Act relating to the provision of certain Courses of Instruction for Immigrants and certain other Persons

Part 1—Preliminary

1 Short title [see Note 1]

This Act may be cited as the **Immigration (Education) Act 1971**.

2 Commencement [see Note 1]

This Act shall come into operation on the day on which it receives the Royal Assent.

3 Interpretation

(1) In this Act, unless the contrary intention appears:

approved course means an English course provided under section 4 or a citizenship course provided under section 4E.

approved English course means an English course provided under section 4.

capital equipment of an educational nature includes audiovisual equipment, computers and specialised electronic equipment, but does not include any kind of building.

child of a person has the same meaning as in the Migration Act.

citizenship course means a course of instruction designed to impart an understanding of ways of life in Australia and of the rights and duties of an Australian citizen.

eligible has the meaning given by section 4A.

English course means a course of instruction in the English language.

functional English: a person has **functional English** if the provider of an approved English course determines, in accordance

Section 3

with any procedures or standards specified by the Minister under subsection (2), that the person has functional English.

Migration Act means the *Migration Act 1958*.

parent of a person has the same meaning as in the Migration Act.

permanent entry permit has the same meaning as in the Migration Act as in force immediately before the commencement of section 3 of the *Migration Reform Act 1992*.

permanent visa has the same meaning as in the Migration Act.

Secretary means the Secretary of the Department.

teaching and learning materials includes printed materials, audio materials, materials in digital form, educational software, visual aids and audiovisual aids.

temporary visa has the same meaning as in the Migration Act.

visa commencement day, in relation to a person, means the earlier of the following days:

- (a) the first day the person was in Australia on or after the day when a permanent visa held by the person came into effect;
- (b) the first day the person was in Australia on or after the day when a temporary visa of a class mentioned in subparagraph 4A(a)(ii) held by the person came into effect.

Functional English

- (2) The Minister may, by legislative instrument, specify procedures or standards for the purposes of the definition of ***functional English*** in subsection (1).
- (3) An instrument made under subsection (2) may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in any other instrument or writing:
 - (a) as in force or existing at a particular time; or
 - (b) as in force or existing from time to time.

Part 2—English courses

4 English courses

The Minister may provide, or arrange the provision of, English courses to:

- (a) eligible persons, while they are eligible; or
- (b) persons who are outside Australia and have applied for a permanent visa.

4A Eligibility for English courses

A person is *eligible* for the purposes of this Act if he or she:

- (a) **is in Australia** and:
 - (i) **holds a permanent visa**; or
 - (ii) holds a temporary visa of a class **specified in a legislative instrument** made by the Minister for the purposes of this paragraph; or
 - (iii) previously held a permanent entry permit or a permanent visa and has become an Australian citizen; or
 - (iv) is aged under 18 years and has at least one parent who has held or holds a permanent entry permit or a permanent visa; and
- (b) **does not have functional English**; and
- (c) is not ineligible under section 4C or 4D.

4B Obligation to provide 510 hours of tuition in an English course

- (1) The Minister must provide, or arrange the provision of, tuition in an approved English course to an eligible person, while he or she is eligible, if the person:
 - (a) holds a permanent visa; and
 - (b) was aged at least 18 years on the first day the person was in Australia on or after the day when the permanent visa came into effect; and
 - (c) **has paid**, or is exempt from paying, **visa application charge** under section 45A of the Migration Act **for the permanent visa**; and

Section 4C

- (d) did not, at any time before the permanent visa came into effect, hold another permanent visa while in Australia; and
 - (e) is not excluded from the application of this section by the regulations.
- (2) Subsection (1) stops applying to a person when he or she has had 510 hours of tuition in approved English courses.
- (3) This section does not limit section 4.

4C Ineligibility for English courses—time limits for registration or commencement

Scope

- (1) This section applies to a person who would (apart from this section) be eligible, if:
- (a) he or she has ever held a permanent visa; or
 - (b) he or she has ever held a temporary visa of a class specified under subparagraph 4A(a)(ii).

Time limits

- (2) The person stops being eligible:
- (a) if he or she fails to register with the provider of an approved English course within:
 - (i) if he or she was aged under 18 years on his or her visa commencement day—the period of 12 months starting on that day; or
 - (ii) if he or she was aged 18 years or over on his or her visa commencement day—the period of 6 months starting on that day; or
 - (b) if he or she fails to start an approved English course within the period of 12 months starting on his or her visa commencement day.

Extension of time

- (3) The person may apply to the Secretary for an extension of a period mentioned in subsection (2) (the **subsection (2) period**).

- (4) An application under subsection (3) for an extension of a subsection (2) period:
 - (a) must be made in the manner, and within the period, prescribed by the regulations; and
 - (b) subject to paragraph (a), may be made before or after the end of the subsection (2) period.
- (5) On an application under this section, if the Secretary is satisfied that it was, or would be, unreasonable for the applicant to stop being eligible under subsection (2), the Secretary may extend the subsection (2) period by a specified period.
- (6) In making a decision under subsection (5), the Secretary:
 - (a) must have regard to the matters prescribed by the regulations; and
 - (b) must not have regard to any other matter.

4D Ineligibility for English courses—time limit on tuition

Scope

- (1) This section applies to a person who would (apart from this section) be eligible, if:
 - (a) he or she has ever held a permanent visa; or
 - (b) he or she has ever held a temporary visa of a class specified under subparagraph 4A(a)(ii).

Time limit

- (2) The person stops being eligible at the end of the period of 5 years starting on his or her visa commencement day.

Extension of time

- (3) The person may apply to the Secretary for an extension of the period mentioned in subsection (2) (the **subsection (2) period**).
- (4) An application under subsection (3) for an extension of the subsection (2) period:
 - (a) must be made in the manner, and within the period, prescribed by the regulations; and

Section 4D

- (b) subject to paragraph (a), may be made before or after the end of the subsection (2) period.
- (5) On an application under this section, if the Secretary is satisfied that, for compelling and compassionate reasons, the applicant should not stop, or should not have stopped, being eligible under subsection (2), the Secretary may extend the subsection (2) period by a specified period.
- (6) In making a decision under subsection (5), the Secretary:
 - (a) must have regard to the matters prescribed by the regulations; and
 - (b) must not have regard to any other matter.

Part 3—Citizenship courses

4E Citizenship courses

The Minister may arrange for citizenship courses to be provided inside or outside Australia to persons prescribed by the regulations.

Part 4—Implementation

5 Provision of teaching and learning materials

The Minister may arrange for the purchase or production of, and the distribution of, teaching and learning materials for use in approved courses.

7 Training courses for teachers

- (1) The Minister may arrange for the provision of training courses for teachers who are engaged, or intend to engage, in giving approved courses.
- (2) Where a teacher attending a training course referred to in subsection (1) is paid salary by his or her employer for the whole or a part of the period of his or her attendance, the Minister may authorize the payment to the employer of the whole or a part of the cost of the salary so paid.
- (3) In this section:

employer includes the Government of a State or Territory.

salary includes an allowance in the nature of a travelling allowance.

8 Research projects

The Minister may arrange for the conduct of research projects designed to improve the form or content of approved courses.

9 Payments under arrangements etc.

- (1) An arrangement under this Act may make provision for, or in relation to, the making of payments by the Commonwealth to another party to the arrangement in connexion with matters to which the arrangement relates.
- (2) Without limiting the generality of subsection (1), an arrangement under section 4 or 4E for the provision of approved courses may

make provision for, or in relation to, the payment by the Commonwealth of the whole or a part of:

- (a) the cost of salaries and fees of teaching staff engaged in the giving of the courses; and
 - (b) administrative costs (including the salaries of administrative staff) incurred in connexion with the courses; and
 - (c) the cost of capital equipment of an educational nature to be used in the courses; and
 - (d) the cost of teaching and learning materials (other than materials provided under section 5) to be used in the courses; and
 - (e) the cost of student support services.
- (3) An arrangement under section 4 or 4E for the provision of approved courses may make provision for the Commonwealth to supply to the course provider, whether as a gift or otherwise, capital equipment of an educational nature to be used in the courses.

9A Services for non-government organisations

The Minister may arrange to provide language training and related services to or for a non-government organisation or non-government body.

Part 5—Miscellaneous

10 Delegation by the Minister

- (1) The Minister may, by instrument in writing, delegate to a person appointed or engaged under the *Public Service Act 1999*, either generally or otherwise as provided in the instrument of delegation, all or any of his or her powers or functions under this Act, except this power of delegation.
- (2) A power or function so delegated may be exercised or performed by the delegate in accordance with the instrument of delegation.
- (3) A delegation under this section is revocable at will and does not prevent the exercise of a power or the performance of a function by the Minister.

10A Delegation by the Secretary

The Secretary may, by signed instrument, delegate any or all of his or her powers under this Act to an officer of the Department.

11 Expenditure to be made from appropriations

Expenditure by the Commonwealth for the purposes of this Act shall be made out of moneys appropriated by the Parliament for those purposes.

12 Annual reports by the Minister

The Minister shall, as soon as practicable after 30th June in each year, cause to be laid before each House of the Parliament a report on the operation of this Act during the year ended on that date, including particulars of expenditure by the Commonwealth for the purposes of this Act during that year.

13 Regulations

The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to

be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Table of Acts**Notes to the *Immigration (Education) Act 1971*****Note 1**

The *Immigration (Education) Act 1971* as shown in this compilation comprises Act No. 3, 1971 amended as indicated in the Tables below.

All relevant information pertaining to application, saving or transitional provisions prior to 10 April 1997 is not included in this compilation. For subsequent information see Table A.

The *Immigration (Education) Act 1971* was affected by the *Migration Legislation Amendment Act (No. 5) 1995* see Table B.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Immigration (Education) Act 1971</i>	3, 1971	12 Mar 1971	12 Mar 1971	
<i>Immigration (Education) Act 1973</i>	110, 1973	12 Oct 1973	12 Oct 1973	—
<i>Statute Law Revision Act 1973</i>	216, 1973	19 Dec 1973	31 Dec 1973	Ss. 9(1) and 10
<i>Statute Law (Miscellaneous Provisions) Act (No. 1) 1986</i>	76, 1986	24 June 1986	S. 3: Royal Assent (a)	S. 9
<i>Immigration (Education) Amendment Act 1991</i>	35, 1991	21 Mar 1991	21 Mar 1991	—
<i>Migration Laws Amendment Act (No. 2) 1992</i>	176, 1992	16 Dec 1992	Ss. 1-3 and 5: 1 Jan 1993 Ss. 4, 6, 7 and Part 3 (ss. 8–11): 1 Mar 1993 Remainder: Royal Assent	—
<i>Migration Legislation Amendment Act 1994</i>	60, 1994	9 Apr 1994	S. 85: (b)	—
<i>Migration Legislation Amendment Act (No. 1) 1995</i>	110, 1995	29 Sept 1995	S. 4: 1 Nov 1995 (see <i>Gazette</i> 1995, No. GN43) Remainder: Royal Assent	S. 9
<i>Migration Legislation Amendment Act (No. 1) 1997</i>	27, 1997	10 Apr 1997	Schedule 1: 1 May 1997 (see <i>Gazette</i> 1997, No. S168) Remainder: Royal Assent	Sch. 1 (items 29, 30) [see Table A]

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Migration Legislation Amendment Act (No. 1) 1998</i>	113, 1998	11 Dec 1998	Schedule 8 (item 1) 1 May 1997 (see <i>Gazette</i> 1997, No. S168) (c)	—
<i>Public Employment (Consequential and Transitional) Amendment Act 1999</i>	146, 1999	11 Nov 1999	Schedule 1 (item 524): 5 Dec 1999 (see <i>Gazette</i> 1999, No. S584) (d)	—
<i>Australian Citizenship (Transitional and Consequentials) Act 2007</i>	21, 2007	15 Mar 2007	Schedules 1–3: 1 July 2007 (see s. 2(1) and F2007L01653) Remainder: Royal Assent	Sch. 3 (items 14, 21) [see Table A]
<i>Statute Law Revision Act 2008</i>	73, 2008	3 July 2008	Schedule 4 (item 333): 4 July 2008	—
<i>Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008</i>	144, 2008	9 Dec 2008	Schedule 10 (items 77, 78): 1 July 2009	—
<i>Immigration (Education) Amendment Act 2010</i>	112, 2010	14 July 2010	1 Jan 2011	Sch. 1 (items 18–27) [see Table A]

Act Notes

- (a) The *Immigration (Education) Act 1971* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1986*, subsection 2(1) of which provides as follows:
 - (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.
- (b) The *Immigration (Education) Act 1971* was amended by section 85 only of the *Migration Legislation Amendment Act 1994*, subsection 2(3) of which provides as follows:
 - (3) The remaining provisions of this Act commence immediately after the commencement of section 3 of the *Migration Reform Act 1992*.Section 3 commenced on 1 September 1994.
- (c) The *Immigration (Education) Act 1971* was amended by Schedule 8 (item 1) only of the *Migration Legislation Amendment Act (No. 1) 1998*, subsection 2(4) of which provides as follows:
 - (4) Item 1 of Schedule 8 is taken to have commenced immediately after the commencement of Schedule 1 to the *Migration Legislation Amendment Act (No. 1) 1997*.
- (d) The *Immigration (Education) Act 1971* was amended by Schedule 1 (item 524) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:
 - (1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
 - (2) Subject to this section, this Act commences at the commencing time.

Table of Amendments**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part 1	
Heading to Part 1	ad. No. 112, 2010
S. 3	am. No. 110, 1973; No. 76, 1986; No. 35, 1991; No. 176, 1992; No. 60, 1994; No. 27, 1997; No. 144, 2008; No. 112, 2010
Part 2	
Part 2	ad. No. 112, 2010
S. 4	am. No. 76, 1986 rs. No. 35, 1991 am. No. 60, 1994 rs. No. 112, 2010
S. 4A	ad. No. 176, 1992 am. No. 110, 1995 rs. No. 112, 2010
S. 4B	ad. No. 176, 1992 am. No. 27, 1997; No. 113, 1998 rs. No. 112, 2010
S. 4C	ad. No. 176, 1992 am. No. 27, 1997 rs. No. 112, 2010
S. 4D	ad. No. 176, 1992 am. No. 27, 1997; No. 21, 2007 rs. No. 112, 2010
Part 3	
Part 3	ad. No. 112, 2010
S. 4E	ad. No. 176, 1992 rep. No. 27, 1997 ad. No. 112, 2010
S. 4F	ad. No. 176, 1992 rep. No. 27, 1997
Part 4	
Heading to Part 4	ad. No. 112, 2010
S. 5	am. No. 76, 1986; No. 35, 1991 rs. No. 112, 2010
S. 6	rep. No. 35, 1991
S. 7	am. No. 76, 1986; No. 35, 1991
S. 8	am. No. 110, 1973; No. 35, 1991
S. 9	am. No. 110, 1973; No. 76, 1986; No. 35, 1991; No. 112, 2010
S. 9A	ad. No. 35, 1991
Part 5	
Heading to Part 5	ad. No. 112, 2010

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Heading to s. 10	am. No. 112, 2010
S. 10	am. No. 146, 1999; No. 73, 2008
Heading to s. 10A.....	am. No. 112, 2010
S. 10A	ad. No. 176, 1992
S. 12	am. Nos. 110 and 216, 1973

Table A**Table A****Application, saving or transitional provisions***Migration Legislation Amendment Act (No. 1) 1997* (No. 27, 1997)**Schedule 1—Amendments related to visa application charge****Part 2—Application and transitional****29 Application**

- (1) The amendment made by item 13 of this Schedule applies in relation to applications whether made before, at or after the commencement of this item.
- (2) The remaining amendments of the *Immigration (Education) Act 1971* and the *Migration Act 1958* made by this Schedule apply in relation to applications for visas made at or after the commencement of the *Migration (Visa Application) Charge Act 1997*.

Note: Under item 30, some applications that are made before the commencement of the *Migration (Visa Application) Charge Act 1997* are taken to be made immediately after that time.

30 Transitional

If:

- (a) an application for a visa is made before the commencement of the *Migration (Visa Application) Charge Act 1997*; and
- (b) a visa application fee, or part of a visa application fee, payable under the *Migration Act 1958* in respect of the application has not been paid at that time;

then, for the purposes of the *Immigration (Education) Act 1971*, the *Migration (Health Services) Charge Act 1991* and sections 45A, 45B and 45C of the *Migration Act 1958*, the application is taken to have been made immediately after the commencement of the *Migration (Visa Application) Charge Act 1997*.

Table A

Australian Citizenship (Transitional and Consequential) Act 2007
(No. 21, 2007)

Schedule 3

14 Definition

In this Part:

commencement day means the day on which sections 2A to 54 of the *Australian Citizenship Act 2007* commence.

21 Application—*Immigration (Education) Act 1971*

The amendment made by item 1 of Schedule 2 applies in relation to:

- (a) a person in respect of which an obligation under section 4C of the *Immigration (Education) Act 1971* begins on or after the commencement day; or
- (b) a person in respect of which an obligation under that section began before the commencement day, but only if that obligation has not ceased before the commencement day.

Immigration (Education) Amendment Act 2010 (No. 112, 2010)

Schedule 1

18 Definitions

In this Part:

approved English course has the same meaning as in the old law.

commencement time means the start of 1 January 2011.

new law means the *Immigration (Education) Act 1971* as in force immediately after the commencement time.

old law means the *Immigration (Education) Act 1971* as in force immediately before the commencement time.

Secretary means the Secretary of the Department.

special category visa has the same meaning as in the *Migration Act 1958*.

temporary visa has the same meaning as in the *Migration Act 1958*.

Table A**19 Transitional—gazettal of temporary visa classes**

- (1) This item applies to a class of temporary visas if:
 - (a) the class was specified in a notice published in the *Gazette* under subparagraph 4(b)(ii) of the old law; and
 - (b) the notice was in force immediately before the commencement time.
- (2) Subparagraph 4A(a)(ii) of the new law has effect, at and after the commencement time, as if the class had been specified in a legislative instrument made under that paragraph.

20 Transitional—New Zealand citizens registered at commencement time

- (1) This item applies to a person who:
 - (a) is a citizen of New Zealand; and
 - (b) is in Australia; and
 - (c) holds a special category visa; and
 - (d) was, immediately before the commencement time, registered with the provider of an approved English course; and
 - (e) held a special category visa at the time he or she first registered with the provider of an approved English course.
- (2) For the purposes of the new law, other than section 4B (obligation to provide 510 hours of tuition in an English course), treat a special category visa held by the person at or after the commencement time as if it were a permanent visa that came into effect at the time the special category visa mentioned in paragraph (1)(e) of this item came into effect.

21 Transitional—hours of tuition taken before commencement time

In working out how many hours of tuition a person has had for the purposes of subsection 4B(2) of the new law, include hours of tuition in approved English courses given before the commencement time in accordance with the old law.

Table A

22 Transitional—determination that a person has functional English

- (1) This item applies to a person if a determination under paragraph 4D(1)(a) of the old law that the person has functional English (within the meaning of the old law) was in force immediately before the commencement time.
- (2) The person is taken, at and after the commencement time, to have functional English for the purposes of the new law.

23 Transitional—people registered at commencement time

- (1) This item applies to a person if the person was, immediately before the commencement time, registered with the provider of an approved English course.
- (2) Subsections 4C(2) and 4D(2) of the new law apply to the person as if the references in those provisions to the person's visa commencement day were references to the day on which this item commences.

Note: This item commences at the start of 1 January 2011 (see item 18).

24 Transitional—determinations by the Secretary delaying the end of obligation

- (1) This item applies to a person if:
 - (a) a determination was made by the Secretary under subsection 4D(2) of the old law; and
 - (b) the determination provided that the obligation to the person under section 4D of the old law is, or was, to cease on a particular day (the *cessation day*) at or after the commencement time; and
 - (c) the determination was in force immediately before the commencement time; and
 - (d) the person is not covered by item 23.
- (2) Section 4C of the new law applies to the person, at and after the commencement time, as if each of the references to a period in paragraphs 4C(2)(a) and (b) were a reference to the period ending at the end of the cessation day.

Table A

25 Transitional—determinations by the Secretary that obligation not cease

- (1) This item applies to a person if:
- (a) a determination was made by the Secretary under subsection 4D(2) of the old law; and
 - (b) the determination provided that the obligation to the person under section 4D of the old law was not to cease; and
 - (c) the determination was in force immediately before the commencement time; and
 - (d) the person is not covered by item 23.
- (2) Section 4C of the new law does not apply to the person.

26 Transitional—people who became ineligible before commencement time

- (1) This item applies to a person if:
- (a) the person:
 - (i) would have stopped being eligible under subsection 4C(2) of the new law at any time before the commencement time, had the new law been in force; and
 - (ii) is not covered by item 23, 24 or 25; or
 - (b) the person:
 - (i) would have stopped being eligible under subsection 4D(2) of the new law at any time before the commencement time, had the new law been in force; and
 - (ii) is not covered by item 23.
- (2) For the purposes of the new law, and subject to subsections 4C(3) to (6) and 4D(3) to (6) of the new law, the person is not eligible at or after the commencement time.

27 Saving—refund of fees for English courses

Despite the repeal of paragraph 4A(3)(b) of the old law by Part 1 of this Schedule, that paragraph, and regulations made for the purposes of that paragraph, continue to apply at and after the commencement time in relation to fees charged before the commencement time under regulations made for the purposes of subsection 4A(1) of the old law.

Table B

Table B

Affected by another Act

Migration Legislation Amendment Act (No. 5) 1995 (No. 100, 1995)

Schedule 1

1 Certain persons not entitled to tuition

- (1) Despite section 4C of the *Immigration (Education) Act 1971*, the Commonwealth is not obliged to provide, or arrange for the provision of, any tuition in an approved English course to a person if the person was granted a visa, whether or not after the commencement of this item, because the person satisfied paragraph 816.721(1)(a) or 818.721(1)(a) of the Migration (1993) Regulations.
- (2) If, immediately before the commencement of this item, the Commonwealth had an obligation under that Act to a person covered by subitem (1), that obligation ceases at the commencement of this item.

Schedule 1 (item 1) commenced on 15 September 1995.



Commonwealth of Australia

Immigration (Education) Act 1971

ENGLISH COURSES FOR HOLDERS OF CERTAIN TEMPORARY VISAS 2015
(SUBPARAGRAPH 4A(a)(ii))

I, *SIMON BIRMINGHAM*, Assistant Minister for Education and Training, acting under subparagraph 4A(a)(ii) of the *Immigration (Education) Act 1971* ('the Act'):

1. REVOKE Instrument number IMMI 12/038 (F2012L01288), signed on 12 June 2012, specifying temporary visas for the purposes of subparagraph 4A(a)(ii) of the Act; AND
2. SPECIFY, for the purposes of subparagraph 4A(a)(ii) of the Act, the following classes of temporary visas:
 - (a) Bridging F (Class WF);
 - (b) Business Skills (Provisional) (Class UR);
 - (c) Business Skills (Provisional) (Class EB);
 - (d) Interdependency (Provisional) (Class UG);
 - (e) Partner (Provisional) (Class UF);
 - (f) Partner (Temporary) (Class UK);
 - (g) Resolution of Status (Temporary) (Class UH);
 - (h) Safe Haven Enterprise (Class XE);
 - (i) Skilled – Designated Area-sponsored (Provisional) (Class UZ);
 - (j) Skilled – Independent Regional (Provisional) (Class UX);
 - (k) Skilled – Regional Sponsored (Subclass 475);
 - (l) Skilled – Regional Sponsored (Subclass 487);
 - (m) Skilled – Regional Sponsored (Subclass 489);
 - (n) Temporary (Humanitarian Concern) (Class UO); and
 - (o) Temporary Protection (Class XD).

This Instrument commences on 1 July 2015.

Dated 25 June 2015

Simon Birmingham
Assistant Minister for Education and Training

[NOTE: Subparagraph 4A(a)(ii) of the Act provides that a person is eligible for English courses if he or she is in Australia and holds a temporary visa of a class specified in a legislative instrument made by the Minister.]

EXPLANATORY STATEMENT

Immigration (Education) Act 1971

ENGLISH COURSES FOR HOLDERS OF CERTAIN TEMPORARY VISAS 2015

(Subparagraph 4A(a)(ii))

Background

The *Immigration (Education) Act 1971* (the Act) provides for up to 510 hours of tuition in approved English courses to eligible migrants who do not have functional English. This is delivered through the Australian Government Adult Migrant English Program (AMEP).

The eligibility requirements for English courses are set out in section 4A of the Act. Subparagraph 4A(a)(ii) of the Act provides that a person is eligible for English courses if he or she is in Australia and holds a temporary visa of a class specified in a legislative instrument made by the relevant Minister.

Authority

The Instrument concerning English Courses for Holders of Certain Temporary Visas (the Instrument) is made under subparagraph 4A(a)(ii) of the Act. In addition, under subsection 33 (3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), 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.

Purpose

The purpose of the Instrument is to:

- a. revoke instrument number IMMI 12/038 (F2012L01288), signed on 12 June 2012; and
- b. make a new instrument specifying the classes of temporary visas eligible for English courses.

This Instrument will extend the list of temporary visa classes which enable the holders of such visas to be eligible to access English courses through the AMEP. The addition of these temporary visa classes follows:

- a. reforms to the Australian Government's Human Trafficking Visa Framework (the Visa Framework); and
- b. the reintroduction of temporary protection visas and the new Safe Haven Enterprise Visa following the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014*.

Changes to the Visa Framework

The Visa Framework enables foreign nationals who do not already hold a valid visa and are suspected victims of human trafficking or slavery to remain lawfully in Australia. Currently, the visa categories available are:

- a. Bridging F visa (BF visa).
 - A BF visa allows a person suspected of being trafficked to remain in Australia for up to 45 days;
 - A second BF visa can be granted in certain circumstances for a further 45 days;
- b. the Criminal Justice Stay Visa (CJS visa).
 - After the expiry of a BF visa, a CJS visa may be granted to a suspected trafficked person. A CJS visa allows the holder to remain in Australia for as long as their presence is required for the administration of criminal justice.
- c. Witness Protection (Trafficking) (Permanent) Visa (WPT visa).

- A WPT visa allows the holder to remain in Australia permanently. A WPT visa may be granted to a trafficked person who has made a contribution to the investigation or prosecution of an alleged trafficker and who may be placed in danger if returned to their country of origin or domicile.

The above visa categories were not previously specified in instrument IMMI 12/038 (F2012L01288) because:

- CJS visas are not a visa class granted exclusively to trafficked people. Trafficked people make up only a small percentage of the overall number of CJS visa grantees. Accordingly, the inclusion of this visa class would have allowed a much broader category of people to access English courses which would not have met the intended policy aim; and
- WPT visas are a permanent visa. The Minister can only specify classes of temporary visas in instruments made under subparagraph 4A(a)(ii) of the Act.

The Visa Framework regulatory reforms which come into effect on 1 July 2015 will result in the:

- WPT visa being renamed; and
- BF visa being redesigned to incorporate CJS-like functionality. The redesign of the BF visa means that the human trafficking visa framework (comprising of BF and a permanent visa) is now exclusive to trafficked people.

Accordingly, the holder of a Bridging F Visa (Class WF) will now be eligible to access English courses through the AMEP.

The Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014

The *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014* introduced the Safe Haven Enterprise visa and reintroduced temporary protection visas. Following from these changes, the following temporary visas are being added to the Instrument:

- Safe Haven Enterprise Visa (Class XE);
- Temporary Humanitarian Concern Visa (Class UO); and
- Temporary Protection Visa (Class XD).

Accordingly, holders of these visas categories will be eligible to access to English courses through AMEP.

Consultation

Australia's anti-human trafficking strategy is overseen by an Interdepartmental Committee (IDC), chaired by the Attorney-General's Department (AGD), with membership from a range of Commonwealth agencies. The IDC was consulted on the additions to the Instrument.

The Department of Immigration and Border Protection was also consulted in relation to the addition of the temporary protection visas and the Safe Haven Enterprise Visa.

Commencement

This Instrument commences on 1 July 2015.

Regulation Impact Statement

The Office of Best Practice Regulation has advised that a Regulatory Impact Statement is not required (OBPR Reference Number 19306).

Statement of Compatibility with Human Rights

Under section 42 of the *Legislative Instruments Act 2003* the instrument is subject to disallowance and therefore a Statement of Compatibility with Human Rights has been prepared.

Statement of Compatibility with Human Rights

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

English Courses for Holders of Certain Temporary Visas 2015

Overview of the Legislative Instrument

The *English Courses for Holders of Certain Temporary Visas* (**the Instrument**) is made by the Minister under subparagraph 4A(a)(ii) of the *Immigration (Education) Act 1971* (**the Act**).

The Act provides for 510 hours of tuition in approved English courses to eligible migrants who do not have functional English. This is delivered through the Australian Government Adult Migrant English Program (**AMEP**).

The eligibility requirements for English courses are set out in section 4A of the Act. Subparagraph 4A(a)(ii) of the Act provides that a person is eligible for English courses if he or she is in Australia and holds a temporary visa of a class specified in a legislative instrument made by the Minister.

This instrument will revoke the previous instrument (F2012L01288) and make a new instrument specifying the classes of temporary visas which enable the visa holders to be eligible for English courses. The main change will be that the new instrument will extend the list of temporary visa classes which enable the holders of such visas to be eligible to access English courses through the AMEP. The addition of these temporary visa classes follows reforms to the Australian Government's Human Trafficking Visa Framework (**the Visa Framework**) and amendments made by the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014*.

Human rights implications

Right to Education

The Instrument engages the right to education contained in Article 13 of the *International Covenant on Economic, Social and Cultural Rights* (**ICESCR**) and Article 6 of the ICESCR which provides that everyone has the right to the education.

The Instrument specifies, for the purposes of subparagraph 4A(a)(ii) of the Act, the holders of particular temporary visas who are eligible for access to English courses arranged by the Australian Government. The Instrument promotes the right to education by providing access to English language education to eligible migrants.

This instrument is compatible with the right to education.

Right to Equality and Non-discrimination

The right to equality and non-discrimination is protected in Articles 2 and 26 of the International Covenant on Civil and Political Rights (**ICCPR**).

Article 2(1) of the ICCPR obligates each State party to respect and ensure to all persons within its territory and subject to its jurisdiction the rights recognised in the Covenant without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status¹.

Article 26 of the ICCPR not only entitles all persons to equality before the law as well as equal protection of the law, but also prohibits any discrimination under the law and guarantees to all

¹ CCPR General Comment No. 18

persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

While the Instrument limits access to English courses to only particular temporary visa holders, these requirements are compatible with the nature of the ICCPR rights and solely for the purpose of promoting general welfare, as permitted by the Committee on Economic, Social and Cultural Rights in its commentary on differential treatment². Therefore, the Instrument does not restrict any person's right to equality and non-discrimination as contained in Articles 2 and 26 of the ICCPR.

This instrument is compatible with the right to equality and non-discrimination.

Conclusion

The Instrument is compatible with human rights.

² CESCR, General Comment No 20