



Immigration (Education) Amendment Act 2010

No. 112, 2010

An Act to amend the *Immigration (Education) Act 1971*, and for related purposes

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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An Act to amend the *Immigration (Education) Act 1971*, and for related purposes

[Assented to 14 July 2010]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Immigration (Education) Amendment Act 2010*.

2 Commencement

This Act commences on 1 January 2011.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments etc.

Part 1—Amendments

Immigration (Education) Act 1971

1 Before section 1

Insert:

Part 1—Preliminary

2 Section 3

Before “In this Act”, insert “(1)”.

3 Section 3 (definition of *approved course*)

Omit “or a citizenship course provided under section 4”, substitute “provided under section 4 or a citizenship course provided under section 4E”.

4 Section 3 (definition of *approved English course*)

Omit “in accordance with section 4 or 4B”, substitute “under section 4”.

5 Section 3 (definition of *capital equipment of an educational nature*)

Repeal the definition, substitute:

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

6 Section 3

Insert:

eligible has the meaning given by section 4A.

7 Section 3 (definition of *functional English*)

Repeal the definition, substitute:

functional English: a person has *functional English* if the provider of an approved English course determines, in accordance with any procedures or standards specified by the Minister under subsection (2), that the person has functional English.

8 Section 3 (definition of *independent school*)

Repeal the definition.

9 Section 3 (definition of *school authority*)

Repeal the definition.

10 Section 3

Insert:

Secretary means the Secretary of the Department.

11 Section 3 (definition of *teaching and learning materials*)

After “audio materials,”, insert “materials in digital form, educational software,”.

12 Section 3

Insert:

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.

13 At the end of section 3

Add:

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.

14 Sections 4 to 5

Repeal the sections, substitute:

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
 - (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
 - (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.

15 Subsections 9(2) and (3)

Omit “section 4 for the provision of approved courses by the Government of a State or Territory or by the school authority of an independent school”, substitute “section 4 or 4E for the provision of approved courses”.

16 Subsection 9(3)

Omit “supply, whether as a gift or otherwise, to that Government or school authority”, substitute “supply to the course provider, whether as a gift or otherwise,”.

17 After section 9A

Insert:

Part 5—Miscellaneous

Note 1: The heading to section 10 is altered by adding at the end “**by the Minister**”.

Note 2: The heading to section 10A is altered by adding at the end “**by the Secretary**”.

Part 2—Transitional and saving provisions

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*.

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.

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.

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.

*[Minister's second reading speech made in—
House of Representatives on 17 March 2010
Senate on 24 June 2010]*