



# Migration Laws Amendment Act (No. 2) 1992

No. 176 of 1992

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**An Act to amend the *Immigration (Education) Act 1971*  
and the *Migration Act 1958*, and for related purposes**

[Assented to 16 December 1992]

The Parliament of Australia enacts:

## PART 1—PRELIMINARY

### Short title

1. This Act may be cited as the *Migration Laws Amendment Act (No. 2) 1992*.

### Commencement

2.(1) Subject to this section, this Act commences, or is taken to have commenced, on 1 January 1993.

(2) Sections 4, 6 and 7 and Part 3 of this Act commence on 1 March 1993.

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(3) Parts 4 and 5 of this Act commence on the day on which this Act receives the Royal Assent.

## **PART 2—AMENDMENT OF THE IMMIGRATION (EDUCATION) ACT 1971**

### **Principal Act**

3. In this Part, “**Principal Act**” means the *Immigration (Education) Act 1971*<sup>1</sup>.

### **Interpretation**

4. Section 3 of the Principal Act is amended by inserting the following definitions:

“**‘approved English course’** means an English course provided in accordance with section 4 or 4B;

“**‘Charge Act’** means the *Immigration (Education) Charge Act 1992*;

“**‘exempt entry permit’** has the same meaning as in the Charge Act;

“**‘exempt visa’** has the same meaning as in the Charge Act;

“**‘stay visa’** has the same meaning as in the Charge Act;”.

5. After section 4 of the Principal Act the following section is inserted:

### **Fees for English courses**

“4A.(1) The regulations may provide for the charging and recovery of fees, not exceeding \$250 per year per student, in respect of English courses provided in accordance with section 4.

“(2) Regulations for the purposes of subsection (1) must:

(a) exempt from any fees prescribed under that subsection persons who, at the time of enrolment in the English course, are:

(i) the holders of a health care card; or

(ii) registered job seekers; and

(b) provide that fees are payable on enrolment in the English course.

“(3) The regulations may do one or both of the following:

(a) prescribe different fees in relation to different classes of courses;

(b) provide for the refund, reduction or waiving of fees in cases identified in the regulations.

“(4) In this section:

“**‘health care card’** means a card prescribed for the purposes of this section that is issued by the government of the Commonwealth, of a State or of a Territory;

“**‘registered job seeker’** means a person prescribed for the purposes of this section who is seeking work.”.

6. After section 4A of the Principal Act the following sections are inserted:

**English courses**

“4B. The Minister is to arrange for English courses to be provided for persons who:

- (a) have made an application for a stay visa that is covered by paragraph 5(a) of the Charge Act; and
- (b) were at least 18 at the time the stay visa came into force; and
- (c) do not have functional English; and
- (d) have paid, or are exempt from paying, the English Education Charge under the Charge Act.

**Obligation to provide English tuition**

“4C. Subject to section 4D, the Commonwealth is obliged to provide, or arrange the provision of, 510 hours of tuition in an approved English course to a person if the person:

- (a) has made an application for a stay visa that is covered by paragraph 5(a) of the Charge Act; and
- (b) was at least 18 at the time the stay visa came into force; and
- (c) does not have functional English; and
- (d) has paid, or is exempt from paying, the English Education Charge under the Charge Act.

**Cessation of obligation to provide English tuition**

“4D.(1) Subject to this section, the obligation of the Commonwealth to a person under section 4C ceases:

- (a) if the provider of an approved English course determines, in writing, in accordance with procedures approved in writing by the Secretary, that the person has functional English; or
- (b) if the person fails to register with the provider of an approved English course within the period of 3 months starting on the visa commencement date; or
- (c) if the person fails to commence an approved English course within the period of 12 months starting on the visa commencement date; or
- (d) at the end of the period of 36 months starting on the visa commencement date.

“(2) If:

- (a) the obligation to a person would, under subsection (1), or under this subsection, cease at a particular date; and
- (b) the Secretary is satisfied that it would be unreasonable for the obligation to so cease;

the Secretary may, in writing, determine that the obligation is not to cease, or is to cease only at a later date.

“(3) In determining whether it is unreasonable for an obligation to cease, the Secretary may only have regard to:

- (a) the prevention of the person from undertaking the whole or a part of an approved English course by the action or inaction of a person who provides approved English courses; and
- (b) any other matters that are prescribed.

“(4) In this section:

‘**relevant visa or entry permit**’ means the visa or entry permit in respect of the application for which English Education Charge was imposed;

‘**visa commencement date**’ for a person means:

- (a) if the person was in Australia on the day on which the relevant visa or entry permit came into force—that day; or
- (b) if the person was not in Australia on the day on which the relevant visa or entry permit came into force—the day that the person first enters Australia after that day.

### **Refunds**

“4E. A person is entitled to a refund of English Education Charge paid by the person under the Charge Act on an application for a stay visa if the obligation of the Commonwealth to the person under section 4C has not ceased and:

- (a) the person withdraws the application before the stay visa is granted; or
- (b) the stay visa is cancelled or otherwise ceases to be in force before the person commences an approved English course and, at the time the person seeks the refund, the person has not applied for or been granted another stay visa (other than an exempt visa or exempt entry permit); or
- (c) the person dies before the person commences an approved English course.

### **Effect of refund**

“4F. For the purposes of this Act, if a person is entitled to a refund of an amount of English Education Charge, the person is taken to have never paid the charge.”.

7. After section 10 of the Principal Act, the following section is inserted:

### **Delegation**

“10A. The Secretary may, by signed instrument, delegate any or all of his or her powers under this Act to an officer of the Department.”.

**PART 3— AMENDMENTS OF THE MIGRATION ACT 1958  
RELATING TO MIGRATION EDUCATION**

**Principal Act**

8. In this Part, “Principal Act” means the *Migration Act 1958*<sup>2</sup>.

**Interpretation**

9. Section 4 of the Principal Act is amended by inserting after subsection (1) the following subsection:

“(1A) For the purposes of this Act, a person has functional English at a particular time if:

- (a) the person passes a test that:
  - (i) is approved in writing by the Minister for the purposes of this subsection; and
  - (ii) is conducted by a person, or organisation, approved for the purposes of this subsection by the Minister by notice in the *Gazette*; or
- (b) the person provides the Minister with prescribed evidence of the person’s English language proficiency.”.

**Grant or refusal of visas**

10. Section 24 of the Principal Act is amended:

(a) by inserting after paragraph (3)(aa) the following paragraph:

“(ab) if:

- (i) paragraphs 5(a) and (c) of the *Immigration (Education) Charge Act 1992* apply to the person in relation to the application; and
- (ii) the person is at least 18; and
- (iii) the person does not have functional English;

the Minister must include in the notice a statement to the effect that a visa cannot be granted unless the English Education Charge payable under that Act has been paid; and”;

(b) by inserting in subsection (3B) “the *Immigration (Education) Charge Act 1992* or” after “under”;

(c) by omitting paragraph (6)(a) and substituting the following paragraphs:

“(aa) if:

- (i) paragraphs 5(a) and (c) of the *Immigration (Education) Charge Act 1992* apply to the person in relation to the application; and
- (ii) the person is at least 18; and
- (iii) the person does not have functional English;

the Minister must include in the notice a statement to the effect that a visa cannot be granted unless the English

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Education Charge payable under that Act has been paid;  
and;

- (a) the Minister must, subject to subsection (3B) and to sections 28 and 28B, grant the visa; and”.

**Grant or refusal of entry permits**

11. Section 34 of the Principal Act is amended:

- (a) by inserting after paragraph.(3)(a) the following paragraph:

“(aa) if:

(i) paragraphs 5(a) and (c) of the *Immigration (Education) Charge Act 1992* apply to the person in relation to the application; and

(ii) the person is at least 18; and

(iii) the person does not have functional English;

the Minister must include in the notice a statement to the effect that an entry permit cannot be granted unless the English Education Charge payable under that Act has been paid; and”;

- (b) by inserting in subsection (3B) “the *Immigration (Education) Charge Act 1992* or” after “under”.

**PART 4—OTHER AMENDMENTS OF THE MIGRATION ACT  
1958**

**Principal Act**

12. In this Part, “**Principal Act**” means the *Migration Act 1958*³.

**Consideration of applications for refugee status**

13. Section 22AD of the Principal Act is amended by omitting paragraph (2)(c) and substituting the following paragraph:

“(c) an entry permit, or entry visa:

(i) granted to a person because of being a national of the People’s Republic of China who was in Australia on or before 20 June 1989; or

(ii) granted to a person because of being a spouse or dependent child of a person described in subparagraph (i).”.

14. After section 89A of the Principal Act the following section is inserted:

**Persons to identify themselves**

“89B.(1) In this section:

‘**overseas vessel**’ means:

- (a) a vessel on which persons travel from outside Australia to a port and then to another port or ports; or

- (b) a vessel on which persons travel from a port to another port or ports and then to a place outside Australia.

“(2) A person, whether a citizen or a non-citizen, who travels, or appears to intend to travel, on an overseas vessel from a port to another port may be required by an officer at either port or by officers at both ports:

- (a) to show the officer prescribed evidence of the person’s identity; and
- (b) to give the officer any information required to be given by this Act or the regulations.”.

15.(1) After section 181 of the Principal Act the following section is inserted:

**Regulations about visa criteria**

“182. To avoid doubt, regulations for the purpose of prescribing a criterion for visas, or entry permits, in a class may provide that the Minister, when required to decide whether an applicant for a visa, or entry permit, in the class satisfies the criterion:

- (a) is to get a specified person or organisation, or a person or organisation in a specified class, to:
  - (i) give an opinion on a specified matter; or
  - (ii) make an assessment of a specified matter; or
  - (iii) make a finding about a specified matter; or
  - (iv) make a decision about a specified matter; and
- (b) is:
  - (i) to have regard to that opinion, assessment, finding or decision in; or
  - (ii) to take that opinion, assessment, finding or decision to be correct for the purposes of;  
deciding whether the applicant satisfies the criterion.”.

(2) Regulations purported to be made before the commencement of this section that could have been made if the section inserted in the Principal Act by subsection (1) had been in force are taken to have been validly made.

**PART 5—OPERATION OF THE MIGRATION AMENDMENT ACT 1983**

**Absorbees never prohibited non-citizens**

16. Subsection 8(2) of the *Migration Amendment Act 1983* does not apply, and never has applied, to a person who:

- (a) on the commencement of that Act, was in Australia; and
- (b) before that commencement, had ceased to be an immigrant; and
- (c) since that commencement, has not left Australia.

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**NOTES**

1. No. 3, 1971, as amended. For previous amendments, see Nos. 110 and 216, 1973; No. 37, 1976; No. 76, 1986; and No. 35, 1991.
2. No. 62, 1958, as amended. For previous amendments, see No. 87, 1964; No. 10, 1966; Nos. 16 and 216, 1973; Nos. 37 and 91, 1976; Nos. 117 and 118, 1979; Nos. 89 and 175, 1980; No. 61, 1981; No. 51, 1982; Nos. 73 and 112, 1983; Nos. 22, 72 and 123, 1984; Nos. 71, 102 and 168, 1986; Nos. 86, 104, 133 and 141, 1987; Nos. 5, 38, 49 and 151, 1988; Nos. 59 and 61, 1989; No. 37, 1990; Nos. 70, 86, 196 and 198, 1991; and Nos. 24, 84 and 85, 1992.
3. No. 62, 1958, as amended. For previous amendments, see No. 87, 1964; No. 10, 1966; Nos. 16 and 216, 1973; Nos. 37 and 91, 1976; Nos. 117 and 118, 1979; Nos. 89 and 175, 1980; No. 61, 1981; No. 51, 1982; Nos. 73 and 112, 1983; Nos. 22, 72 and 123, 1984; Nos. 71, 102 and 168, 1986; Nos. 86, 104, 133 and 141, 1987; Nos. 5, 38, 49 and 151, 1988; Nos. 59 and 61, 1989; No. 37, 1990; Nos. 70, 86, 196 and 198, 1991; and Nos. 24, 84 and 85, 1992.

*[Minister's second reading speech made in—  
House of Representatives on 4 November 1992  
Senate on 24 November 1992]*