

Immigration (Education) Amendment Regulations 2003 (No. 1) 2003 No. 91

EXPLANATORY STATEMENT

STATUTORY RULES 2003 No. 91

Issued by the Minister for Citizenship and Multicultural Affairs

Immigration (Education) Act 1971

Immigration (Education) Amendment Regulations 2003 (No. 1)

Section 13 of the *Immigration (Education) Act 1971* (the Act) provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters required or permitted by the Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 4 of the Act provides that the Minister may arrange for English courses and citizenship courses to be provided for persons intending to migrate to Australia, and for persons in Australia, the Cocos (Keeling) Islands or Christmas Island under certain circumstances.

Regulations may also be made pursuant to the following powers under the Act:

- subsection 4A(1) of the Act provides that the regulations may provide for the charging and recovery of fees, not exceeding the applicable fee limit per year per student, in respect of English courses provided in accordance with section 4 of the Act; and
- subsection 4A(3) of the Act provides that the regulations may do one or both of the following: (a) prescribe different fees in relation to different classes of courses; and (b) provide for the refund, reduction or waiving of fees in cases identified in the regulations.

Regulation 4 of the *Immigration (Education) Regulations 1992* (the Principal Regulations) prescribes fees for the purposes of subsection 4A(1) of the Act.

The purpose of the Regulations is to provide that a person enrolling in a prescribed English course is exempt from paying the fee if, at the time of enrolment, he or she is the holder of a Business Skills (Provisional) (Class UR) visa.

The Regulations have a retrospective effect as they are taken to have commenced on 1 March 2003. The Regulations do not infringe subsection 48(2) of the *Acts Interpretation Act 1901* as the amendments are beneficial in nature, and do not affect the rights of any person so as to disadvantage that person. Nor do they impose liabilities on any person in respect of anything done, or omitted to be done, before the date of notification. This is because, under subregulation 4(4) of the Principal Regulations, if the Minister is satisfied that a person who has paid a fee for a prescribed English course was, at the time of enrolment, exempt under subregulation 4(3) from paying the fee, the Minister must give the person a refund of the amount paid.

Details of the Regulations are set out in the Attachment.

The Regulations commence on 1 March 2003, being the date of commencement of the Business Skills (Provisional) (Class UR) visa.

0302413B-0305122

ATTACHMENT

Regulation 1 - Name of Regulations

This regulation provides that these Regulations are the *Immigration (Education) Amendment Regulations 2003 (No. 1)*.

Regulation 2 - Commencement

This regulation provides that these Regulations are taken to have commenced on 1 March 2003.

Regulation 3 - Amendment of *Immigration (Education) Regulations 1992*

This regulation provides that Schedule 1 to these Regulations amends the *Immigration (Education) Regulations 1992* (the Immigration Education Regulations).

Schedule 1 - Amendments

Item [1] - Paragraph 4(3)(e)

This item makes a consequential amendment to paragraph 4(3)(e) of the Immigration Education Regulations as a result of the amendment made by item [2] to insert new paragraph 4(3)(f).

Item [2] - After paragraph 4(3)(e)

This item inserts new paragraph 4(3)(f) into the Immigration Education Regulations to provide that a person enrolling in a prescribed English course is exempt from paying the fee if, at the time of enrolment, he or she is the holder of a Business Skills (Provisional) (Class UR) visa.

This amendment is a result of the introduction on 1 March 2003 of a two-stage processing scheme for business skills migration. Under this scheme, the majority of business skills applicants first apply for a provisional business skills Class UR visa, and after providing satisfactory evidence of a specified level of business or investment activity in Australia, may apply for a permanent Business Skills (Residence) (Class DF) visa.

As part of this scheme, applicants for a provisional visa who are assessed as not having functional English are eligible to access English language tuition through the Adult Migrant English Program while they are the holder of provisional business skills Class UR visa.

Under section 4 of Act, the Minister may arrange for English and citizenship courses to be provided to persons in Australia, who hold a temporary visa of a class specified by the Minister in a Gazette Notice (subparagraph 4(b)(ii) refers). The Minister has gazetted provisional Class UR, with effect from 1 March 2003.

Subregulation 4(1) of the Immigration Education Regulations lists the fees for a prescribed English course. Pursuant to subsection 4A(3) of the Act, the Immigration Education Regulations may provide for the refund, reduction or waiving of those fees.

Applicants for the provisional Class UR visa, who do not have functional English, have to pay the second instalment of the visa application charge. It is not appropriate that they should also have to pay the fees prescribed in regulation 4 of the Immigration Education Regulations. This amendment exempts holders of a Class UR visa, who are enrolling in a prescribed English course, from paying those fees.

The amendments made by the Regulations have a retrospective effect as they commence on 1 March 2003 (the date of commencement of the two-stage processing scheme for business skills migration). These changes do not infringe subsection 48(2) of the *Acts Interpretation Act 1901* as the amendments are beneficial in nature, and do not affect the rights of any person so as to disadvantage that person. Nor do they impose liabilities on any person in respect of anything done, or omitted to be done, before the date of notification. This is because, under subregulation 4(4) of the Immigration Education Regulations, if the Minister is satisfied that a person who has paid a fee for a prescribed English course was, at the time of enrolment, exempt under subregulation 4(3) from paying the fee, the Minister must give the person a refund of the amount paid.