

Immigration (Education) Amendment Regulations 2004 (No. 1) 2004 No. 301

EXPLANATORY STATEMENT

STATUTORY RULES 2004 NO. 301

Issued by the Minister for Citizenship and Multicultural Affairs

Immigration (Education) Act 1971

Immigration (Education) Amendment Regulations 2004 (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.

In addition the following provisions may apply:

- section 4 of the Act, which provides that the Minister may arrange for English courses and citizenship courses to be provided for persons outside Australia intending to migrate to Australia, and for persons in Australia, the Cocos (Keeling) Islands or Christmas Island under certain circumstances, including, for persons who hold a temporary visa of a class specified by the Minister by notice published in the *Gazette*;
- subsection 4A(1) of the Act, which 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;
- subsection 4A(2) of the Act, which provides that regulations for the purposes of subsection 4A(1) must:
 - exempt from any fees prescribed under that subsection persons who, at the time of enrolment in the English course, are the holders of a health care card or registered job seekers; and
 - provide that fees are payable on enrolment in the English course; and
- subregulation 4A(3) of the Act, which provides that the regulations may do one or both of the following:
 - prescribe different fees in relation to different classes of courses; and
 - 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) specifies the fee for a prescribed English course, when this fee is payable, who is entitled to be exempt from paying course fees and the circumstances in which, and to whom, the Minister must give a refund of a fee in respect of a prescribed English course. Subregulation 4(3) of the Principal Regulations provides that holders of a health care card, registered job seekers and holders of certain classes of visas are exempt from paying course fees for a prescribed English language course.

The purpose of the new Regulations is to update the list of who is exempt from paying course fees, or who is entitled to have their course fees waived, for a prescribed English course. The

new Regulations properly distinguish between those people who are exempt from paying English course fees (under subsection 4A(2) of the Act) and those who are entitled to have English course fees waived (under subsection 4A(3) of the Act). They also make minor technical amendments to clarify who is entitled to a refund of course fees paid in relation to a prescribed English course.

The new Regulations add two visa classes to the list of visa classes, the holders of which are exempt or entitled to have their course fees waived in relation to a prescribed English course. These visa classes are the Skilled - Independent Regional (Provisional) (Class UX) (SIR) visa, which commenced on 1 July 2004, and the Partner (Temporary) (Class UK) visa, previously included in the Principal Regulations by reference to Subclass 820 (Spouse) and Subclass 826 (Interdependency) visas.

Generally applicants who do not have functional English, and are seeking to satisfy the secondary criteria for the grant of a SIR visa, are required to pay a second instalment of the Visa Application Charge (VAC). The policy intention is that payment of this second instalment will mean that SIR visa holders who enrol in a prescribed English course will not have to pay course fees as the VAC covers the cost of undertaking a prescribed language course.

Details of the Regulations are set out in the [Attachment](#).

The Regulations are taken to have commenced on 1 September 2004. This coincides with the date of effect of a notice issued by the Minister, and gazetted on 18 August 2004, specifying temporary visa classes for the purpose of section 4 of the Act.

The Regulations have a retrospective effect, as they are taken to have commenced on a date earlier than their notification in the *Gazette*. However, advice from the Australian Government Solicitor is that 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 (other than the Commonwealth) so as to disadvantage that person. Nor do the regulations impose any liabilities on any person (other than the Commonwealth) in respect of anything done, or omitted to be done, before the date of notification.

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ATTACHMENT

Details of the *Immigration (Education) Amendment Regulations 2004 (No. 1)*.

Regulation 1 - Name of Regulations

This regulation provides that these Regulations are the *Immigration (Education) Amendment Regulations 2004 (No. 1)*.

Regulation 2 - Commencement

This regulation provides that these Regulations are taken to have commenced on 1 September 2004.

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

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

Schedule 1 - Amendment

Item [1] - Subregulations 4(3) and (4)

This item substitutes subregulations 4(3) and (4) of the Principal Regulations with new subregulations 4(3), (4) and (5).

New subregulation 4(3) provides that a person enrolling in a prescribed English course is exempt from paying the fee if, at the time of enrolment, the person is:

- the holder of a health care card, within the meaning of section 4A of the *Immigration (Education) Act 1971* (the Act); or
- a registered job seeker, within the meaning of section 4A of the Act.

New subregulation 4(3) is made in accordance with subsection 4A(2) of the Act.

New subregulation 4(4) provides that the fee for a person enrolling in a prescribed English course is waived if, at the time of enrolment, the person is the holder of a visa of a particular class or subclass as outlined in paragraphs (a) - (f) of this subregulation.

Under subparagraphs 4(b)(ii) of the Act, the Minister may arrange for English and citizenship courses to be provided in Australia, for persons who hold a temporary visa of a class specified by the Minister by notice published in the *Gazette*. Similarly, under subparagraph 4(c)(ii) of the Act, the Minister may arrange for English and citizenship courses to be provided in the Territory of Cocos (Keeling) Islands or in the Territory of Christmas Island for persons in the territory concerned, who hold a temporary entry visa of a class specified by the Minister by notice published in the *Gazette*. The Minister has gazetted the following visas under subparagraphs 4(b)(ii) and 4(c)(ii), with effect from 1 September 2004:

- Business Skills (Provisional) (Class UR);
- Interdependency (Provisional) (Class UG);
- Partner (Provisional) (Class UF);
- Partner Temporary) (Class UK);

- Resolution of Status (Temporary) (Class UH); and
- Skilled - Independent Regional (Provisional) (Class UX).

Holders of all the visas listed (except the Skilled - Independent Regional (Provisional) visa) were previously exempt from paying course fees, but under the new Regulations are more correctly categorised as having course fees waived in accordance with section 4 of the Act.

Applicants for the Skilled - Independent Regional (Provisional) (Class UX) visa, who do not have functional English, have to pay the second instalment of the visa application charge (VAC) immediately prior to being granted the visa, (unless they have previously paid this VAC). As a holder of this visa who has paid the second instalment of the VAC, it is not appropriate that they should also have to pay the fees prescribed in regulation 4 of the Principal Regulations. The amendment waives course fees for holders of a Class UX visa who are enrolling in a prescribed English course.

New subregulation 4(5) remakes former subregulation 4(4) in light of new subregulations 4(3) and 4(4), inserted by these Regulations.

New subregulation 4(5) provides that the Minister must give a person a refund of an amount paid in respect of the fee for a prescribed English course if the Minister is satisfied that the person:

- was at the time of enrolment, exempt from paying the fee under subregulation 4(3) or entitled to a waiver of the fee under subregulation 4(4); and
- has paid the amount.