

EXPLANATORY STATEMENT

Immigration (Education) Act 1971

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

1. The Instrument, IMMI 12/038, is made under subparagraph 4A(a)(ii) of the *Immigration (Education) Act 1971* ('the Act'). The instrument revokes instrument number IMMI 10/058 signed on 8 December 2010.
2. 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.
3. The purpose of the Instrument is to specify classes of temporary visas, the holders of which will be able to access English courses.
4. The Instrument operates to provide access to English courses for holders of the following temporary visas:
 - (a) Business Skills (Provisional) (Class UR);
 - (b) Business Skills (Provisional) (Class EB);
 - (c) Interdependency (Provisional) (Class UG);
 - (d) Partner (Provisional) (Class UF);
 - (e) Partner (Temporary) (Class UK);
 - (f) Resolution of Status (Temporary) (Class UH);
 - (g) Skilled – Designated Area-sponsored (Provisional) (Class UZ);
 - (h) Skilled – Independent Regional (Provisional) (Class UX);
 - (i) Skilled – Regional Sponsored (Subclass 475);
 - (j) Skilled – Regional Sponsored (Subclass 487); and
 - (k) Skilled – Regional Sponsored (Subclass 489).
5. Pursuant to section 18 of the *Legislative Instruments Act 2003* consultation was not necessary. The Instrument is of a minor or machinery nature and does not substantially alter existing arrangements.
6. The Office of Best Practice Regulation has advised that a Regulatory Impact Statement is not required (OBPR Reference Number 13710).

7. Under section 42 of the *Legislative Instruments Act 2003* the instrument is subject to disallowance and therefore a Human Rights Statement of Compatibility has been provided.
8. This Instrument, IMMI 12/038, commences on 1 July 2012, immediately after the commencement of the *Migration Amendment Regulation 2012 (No. 2)*.

Statement of Compatibility with Human Rights

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

Legislative Instrument IMMI 12/038 – “English Courses for Holders of Certain Temporary Visas (Subparagraph 4A(a)(ii))”

This Legislative Instrument is 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*.

Overview of the Legislative Instrument

Under Legislative Instrument IMMI 12/038 “English Courses for Holders of Certain Temporary Visas (Subparagraph 4A(a)(ii))” (the Legislative Instrument), the Minister for Immigration and Citizenship acts under subparagraph 4A(a)(ii) of the *Immigration (Education) Act 1971* (the Act). The purpose of this Legislative Instrument is to specify that the holders of particular temporary visas are eligible for access to English courses arranged by the Government for the purposes of subparagraph 4A(a)(ii) of the Act.

The proposed changes to the Legislative Instrument are part of broader changes to the *Migration Regulations 1994* (the Regulations) which will be implemented on 1 July 2012.

The purpose of the proposed changes to the Legislative Instrument is to specify that the holders of a number of the new temporary visas created under the changes to the Regulations will be eligible for access to English courses arranged by the Government.

Human rights implications

The proposed change to the Legislative Instrument can be said to engage Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) in that it sets out adult access to English language education. This goes beyond our obligation under ICESCR. To the extent that the proposed changes to the Legislative Instrument makes English language tuition available to certain temporary visa holders, this is because it is limited to those temporary visa holders who are on a pathway to permanent residency or will be eligible for permanent residency.

Conclusion

This Legislative Instrument is compatible with human rights.