

EXPLANATORY STATEMENT

Immigration (Education) Act 1971

Immigration (Education) (LIN 19/218: Temporary visa classes for eligibility for English Courses) Instrument 2019

(Subparagraph 4A(a)(ii))

1. This instrument, LIN 19/218, is made under subparagraph 4A(a)(ii) of the *Immigration (Education) Act 1971* (the Act).
2. This instrument repeals *English Courses for Holders of Certain Temporary Visas 2015 (F2015L01020)* [Department reference: IMMI 15/103] made on 25 June 2015, under subparagraph 4A(a)(ii) of the Act, in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (the AIA). Subsection 33(3) of the AIA states that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.
3. Part 2 of the Act provides for up to 510 hours of tuition in approved English courses to eligible migrants who do not have functional English. This is delivered through the Australian Government Adult Migrant English Program (AMEP). The eligibility requirements for English courses are set out in section 4A of the Act. This includes that a person is eligible for English courses if they are in Australia and hold a temporary visa of a class specified in a legislative instrument made by the relevant Minister.
4. Accordingly, this instrument operates to specify classes of temporary visas that a person must hold to be eligible for the provision of English courses according to Part 2 of the Act.
5. The purpose of this instrument is to implement changes made by the *Migration Amendment (New Skilled Regional Visas) Regulations 2019*. In particular, the instrument specifies two new temporary visa classes to ensure that holders of the new Subclass 491 (Skilled Work Regional (Provisional) (Class PS) visa (Subclass 491 visa) and Subclass 494 (Skilled Employer Sponsored Regional (Provisional) (Class PE) visa (Subclass 494 visa) are eligible for approved English courses through the AMEP.

6. This instrument is part of a package introducing new regional visas designed to deliver a migration program that can respond more effectively to the needs of regional Australia. These changes will also assist with governmental priorities to attract highly skilled migrants to regional areas and ease population pressure in major cities.
7. Section 17 of the *Legislation Act 2003* requires consultations which are appropriate and reasonably practicable to be undertaken. The following Commonwealth government agencies were consulted in relation to the instrument: Attorney-General's Department; Department of Education (then Department of Education and Training); Department of Finance; Department of Foreign Affairs and Trade; Department of Health; Department of Human Services; Department of Industry, Innovation and Science; Department of Infrastructure, Transport, Cities and Regional Development (then Department of Infrastructure, Regional Development and Cities); Department of Employment, Skills, Small and Family Business (then Department of Jobs and Small Business); Department of the Prime Minister and Cabinet; Department of Social Services; and The Treasury.
8. Pursuant to the frequency and volume of the legislative amendments that are required to maintain a dynamic and responsive immigration system, it has been a consistent practice to include certain criteria and conditions in delegated legislation. The criteria for the new Subclass 491 visa and Subclass 494 visa have been included in delegated legislation rather than primary legislation to give the Government oversight and the ability to respond quickly to emerging situations, which may include changes in the labour market and the economy. In addition, instruments made under the Migration Regulations are subject to the scrutiny framework set out in the *Legislation Act 2003*, which include the provisions related to disallowance.
9. Under section 42 of the *Legislation Act 2003*, the instrument is subject to disallowance and therefore a Statement of Compatibility with Human Rights has been provided at **Attachment A**.
10. The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is not required (OBPR Reference 25045).
11. The whole of this instrument commences at the same time as Schedule 1 and Schedule 2 to the *Migration Amendment (New Skilled Regional Visas) Regulations 2019* commence.

Attachment A

Statement of Compatibility with Human Rights

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

Immigration (Education) (LIN 19/218: Temporary visa classes for eligibility for English Courses) Instrument 2019

This Disallowable 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 Disallowable Legislative Instrument

The *Immigration (Education) (LIN 19/218: Temporary visa classes for eligibility for English Courses) Instrument 2019* (the Instrument) is made by the Minister under subparagraph 4A(a)(ii) of the *Immigration (Education) Act 1971* (the Act).

The Act provides for 510 hours of publicly-funded tuition in approved English courses to eligible migrants who do not have functional English. This is delivered through the Australian Government Adult Migrant English Program (AMEP). The AMEP helps new migrants learn basic English skills that will assist them to successfully and confidently participate socially and economically in Australian society. The AMEP is available to migrants from the family, skilled and humanitarian visa streams. The AMEP is available to all eligible permanent visa holders 18 years of age or over who do not have a functional level of English language proficiency. Access is extended to some temporary visa holders as specified in the legislative instrument for this purpose.

This instrument will revoke the previous instrument *English Courses for Holders of Certain Temporary Visas 2015 (F2015L01020)* [Department reference: IMMI 15/103] and make a new instrument specifying the classes of temporary visas which enable visa holders of these visas to be eligible for English courses. The purpose of the new instrument is to update the list of temporary visa classes which enable the holders of such visas to be eligible to access English courses through the AMEP, by adding two newly-created skilled regional visa subclasses. The eligibility of other temporary visa holders listed in the instrument, including temporary protection visa holders and provisional partner visa holders, is unaffected by this change.

In particular, this instrument specifies two new temporary visa classes to ensure that holders of the new subclass 491 (Skilled Work Regional (Provisional) (Class PS) visa and subclass 494 (Skilled Employer Sponsored Regional (Provisional) (Class PE) visa are eligible for approved English courses through AMEP.

Human rights implications

Right to Education

This Instrument specifies, for the purposes of paragraph 4A(a)(ii) of the Act, the particular classes and subclasses of temporary visas which enables the holders of these visas to be among those eligible for adult English language courses arranged and funded by the Australian Government.

This Instrument promotes the right to education in Article 13 of the *International Covenant on Economic, Social and Cultural Rights* by providing access to free English language education to eligible migrants, in particular to the holders of the two new visa subclasses that are being added as a result of the instrument being updated.

Conclusion

This instrument is compatible with human rights.

David Coleman

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