

The Hon Alex Hawke MP

Former Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs



Tuesday, 23 March 2021

 Media release

Enhanced access for migrants to English language tuition

Migrants will receive improved access to government-funded English language tuition following enhancements to the Adult Migrant English Program (AMEP), which will help more migrants reach higher levels of English language proficiency.

The Immigration (Education) Amendment (Expanding Access to English Tuition) Act 2020 is a significant reform to the AMEP, and is part of the Australian Government's three-part plan to make English tuition more accessible, facilitate better outcomes, and encourage greater participation.

These reforms take effect from 19 April 2021 and include:

- removing the 510 hour limit on a person's entitlement to free English tuition;
- raising the standard of language proficiency migrants are encouraged to achieve in the program;
- removing time limits on registration, commencement and completion of tuition for eligible migrants who first arrived in Australia on or before 1 October 2020.

Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, Alex Hawke said these are the most significant reforms to the AMEP in many years.

"These are substantial enhancements to the AMEP and represent the first in a series of reforms to the wider program that we are implementing to further strengthen social cohesion, and to ensure migrants are best positioned to reach their full potential in Australia.

"We know that English language skills are critical to every aspect of life in Australia. Migrants who can't communicate face greater challenges settling into Australia, such as being limited as to their choice of job, and the ability to engage with other members of the Australian community.


"These enhancements provide more migrants with greater access to the AMEP, so that they can achieve a higher standard of English and thereby have the best chance of success in their new home," Minister Hawke said.

Additional improvements include more flexible learning options, such as virtual classes that can be completed at a time convenient for students.

The AMEP, which is managed by the Department of Home Affairs, is delivered across 58 regions by 13 registered training organisations Australia-wide.

More information on the AMEP, including contact details for course providers, is available on the Department of Home Affairs website, www.homeaffairs.gov.au/amep.

Last updated: 24 March 2021

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Australian Government

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Immigration (Education) Amendment (Expanding Access to English Tuition) Act 2020

No. 139, 2020

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

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

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Immigration (Education) Amendment (Expanding Access to English Tuition) Act 2020

No. 139, 2020

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

[Assented to 17 December 2020]

The Parliament of Australia enacts:

1 Short title

This Act is the *Immigration (Education) Amendment (Expanding Access to English Tuition) Act 2020*.

*No. 139, 2020 Immigration (Education) Amendment (Expanding Access to English
Tuition) Act 2020 1*

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	17 December 2020
2. Schedule 1	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	19 April 2021 (F2021N00041)

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Immigration (Education) Act 1971

1 Subsection 3(1) (definition of **functional English**)

Repeal the definition.

2 Subsection 3(1) (paragraph (b) of the definition of **visa commencement day**)

Omit “4A(a)(ii)”, substitute “4A(1)(a)(ii)”.

3 Subsection 3(1)

Insert:

vocational English: a person has **vocational English** if the provider of an approved English course determines, in accordance with any procedures or standards specified by the Minister under subsection (2), that the person has vocational English.

4 Subsection 3(2)

Repeal the subsection, substitute:

Vocational English

- (2) The Minister may, by legislative instrument, make a determination specifying procedures or standards for the purposes of the definition of **vocational English** in subsection (1).

5 Section 4

Before “The”, insert “(1)”.

6 Paragraph 4(b)

Repeal the paragraph, substitute:

- (b) persons who are outside Australia and hold, or have applied for, either:
- (i) a permanent visa, or

- (ii) a temporary visa of a class specified in a legislative instrument made by the Minister.

7 At the end of section 4

Add:

- (2) The Minister may, by legislative instrument, make a determination specifying a class of temporary visa for the purposes of subparagraph (1)(b)(ii).

8 Section 4A

Before “A”, insert “(1)”.

9 Subparagraph 4A(a)(ii)

Omit “paragraph”, substitute “subparagraph”.

10 Paragraph 4A(b)

Omit “functional”, substitute “vocational”.

11 At the end of section 4A

Add:

- (2) The Minister may, by legislative instrument, make a determination specifying a class of temporary visa for the purposes of subparagraph (1)(a)(ii).

12 Section 4B (heading)

Omit “510 hours of”.

13 Subsection 4B(2)

Repeal the subsection.

14 Paragraph 4C(1)(b)

Omit “specified under subparagraph 4A(a)(ii)”, substitute “mentioned in subparagraph 4A(1)(a)(ii)”.

15 After subsection 4C(1)

Insert:

(1A) However, this section does not apply to a person whose visa commencement day is on or before 1 October 2020.

16 Paragraph 4D(1)(b)

Omit “specified under subparagraph 4A(a)(ii)”, substitute “mentioned in subparagraph 4A(1)(a)(ii)”.

17 After subsection 4D(1)

Insert:

(1A) However, this section does not apply to a person whose visa commencement day is on or before 1 October 2020.

*[Minister’s second reading speech made in—
House of Representatives on 29 October 2020
Senate on 9 December 2020]*

(136/20)



Migration Legislation Amendment (English Tuition) Regulations 2021

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 18 March 2021

David Hurley
Governor-General

By His Excellency's Command

Alex Hawke
Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

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1 Name

This instrument is the *Migration Legislation Amendment (English Tuition) Regulations 2021*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	At the same time as <i>Schedule 1 to the Immigration (Education) Amendment (Expanding Access to English Tuition) Act 2020</i> commences.	19 April 2021

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the following:

- (a) the *Immigration (Education) Act 1971*;
- (b) the *Migration Act 1958*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Immigration (Education) Regulations 2018

1 Paragraph 9(d)

Repeal the paragraph, substitute:

- (d) any other compelling or compassionate reasons that existed during the non-participation period for making a particular decision on the application.

Migration Regulations 1994

2 Paragraph 2.12H(2)(f)

After “paragraph and”, insert “, within the period of 12 months starting on the applicant’s visa commencement day (within the meaning of the *Immigration (Education) Act 1971*), any of the following events occur”.

3 Subparagraphs 2.12H(2)(f)(i) to (iv)

Repeal the subparagraphs, substitute:

- (i) the applicant dies before commencing a course of English language tuition to which the applicant was entitled under section 4B of that Act;
- (ii) the applicant’s visa is cancelled before the applicant commences a course of English language tuition to which the applicant would otherwise be entitled under section 4B of that Act;
- (iii) the applicant’s visa ceases to have effect before the applicant commences a course of English language tuition to which the applicant would otherwise be entitled under section 4B of that Act;
- (iv) the obligation of the Commonwealth to the applicant under section 4B of that Act ceases, by operation of paragraph 4A(1)(b) of that Act, before the applicant commences a course of English language tuition to which the applicant would otherwise be entitled under section 4B of that Act.

4 Subregulation 2.12H(2A)

Repeal the subregulation, substitute:

- (2A) However, subparagraph (2)(f)(iii) does not apply if, before the visa ceases to have effect, the Commonwealth’s obligation under section 4B of the *Immigration (Education) Act 1971*, in relation to the applicant, has ceased by operation of paragraph 4C(2)(a) or (b) of that Act.

5 Paragraph 2.12H(4)(b)

Omit “4C”, substitute “4B”.

6 Paragraphs 5.17(f) and (j)

Repeal the paragraphs, substitute:

-
- (d) if evidence referred to in paragraph (a) cannot be provided by the person—
evidence that the person has been determined by the Minister, on the basis
of an interview with the person, to have functional English.

EXPLANATORY STATEMENT

Issued by the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

Immigration (Education) Act 1971
Migration Act 1958

Migration Legislation Amendment (English Tuition) Regulations 2021

The purpose of this instrument is to amend the *Immigration (Education) Regulations 2018* (the Immigration (Education) Regulations) and the *Migration Regulations 1994* (the Migration Regulations) to update references and provisions consequential to amendments made to the *Immigration (Education) Act 1971* (the Immigration (Education) Act) by the *Immigration (Education) Amendment (Expanding Access to English Tuition) Act 2020* (the amending Act).

The Immigration (Education) Act is an Act relating to the provision of certain courses of instruction for immigrants and certain other persons.

The *Migration Act 1958* (the Migration Act) is an Act relating to the entry into, and presence in, Australia of aliens, and the departure or deportation from Australia of aliens and certain other persons.

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

Subsection 504(1) of the Migration Act provides that the Governor-General may make regulations, not inconsistent with the Migration Act, prescribing matters required or permitted to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Migration Act.

In addition, regulations may be made pursuant to:

- paragraph 4D(6)(a) of the Immigration (Education) Act, which provides that the regulations may prescribe the matters to which the Secretary must have regard in considering whether there are compelling and compassionate reasons why a person's eligibility to receive English course should be extended to more than five years;
- paragraph 5(2)(b) of the Migration Act, which provides that a person has functional English at a particular time if the person provides the Minister with evidence of the person's English language proficiency prescribed in the regulations; and
- paragraph 45C(2)(b) of the Migration Act, which provides that the regulations may make provision for the refund of the visa application charge.

The *Migration Legislation Amendment (English Tuition) Regulations 2021* (the Regulations):

- make consequential amendments to the Immigration (Education) Regulations following **removal of the limit of 510 hours on the Commonwealth's obligation to provide English courses under the Immigration (Education) Act;**

- update provisions of the Migration Regulations for the refund, in certain circumstances, of the second instalment of the visa application charge paid by relevant applicants who do not commence an approved English course for which they are eligible under the Immigration (Education) Act; and
- update the prescribed evidence of functional English for the purposes of the Migration Regulations to take account of the fact that providers of approved courses under the Immigration (Education) Act will **no longer be making determinations that a person has functional English**.

The matters dealt with in the Regulations are appropriate for implementation in regulations rather than by Parliamentary enactment. Providing for these details to be in delegated legislation rather than primary legislation allows flexibility to adjust administrative provisions as necessary and appropriate from time to time. The authorising Acts expressly provide for these matters to be prescribed, as can be seen in the provisions listed above.

Providing for these matters in delegated legislation has been the consistent practice of the Government of the day. The current Migration Regulations have been in place since 1994, when they replaced regulations made in 1989 and 1993. On 1 October 2018, the Immigration (Education) Regulations replaced the *Immigration (Education) Regulations 1992*, which sunsetted on that date pursuant to section 50 of the *Legislation Act 2003* (the Legislation Act).

A Statement of Compatibility with Human Rights (the Statement) has been completed in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The overall assessment is that the Regulations are compatible with human rights. A copy of the Statement is at [Attachment A](#).

The Office of Best Practice Regulation (the OBPR) has been consulted in relation to the amendments. No Regulation Impact Statement is required. The OBPR consultation reference number is 43332.

In addition to the OBPR, a range of relevant agencies were consulted including the Department of Education, Skills and Employment and the Department of Finance.

The Department follows standard practices to notify clients about the Regulations, including updating its website and notifying peak bodies.

The Regulations commence at the same time as Schedule 1 to the *Immigration (Education) Amendment (Expanding Access to English Tuition) Act 2020*.

Further details of the Regulations are set out in [Attachment B](#).

The Immigration (Education) Act and the Migration Act specify no conditions that need to be satisfied before the powers to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the Legislation Act.

Statement of Compatibility with Human Rights

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

Migration Legislation Amendment (English Tuition) Regulations 2021

The *Migration Legislation Amendment (English Tuition) Regulations 2021* are 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 purpose of this Disallowable Legislative Instrument is to amend the *Migration Regulations 1994* (the Migration Regulations) and the *Immigration (Education) Regulations 2018* (the Immigration (Education) Regulations) to update references and provisions consequential to amendments made to the *Immigration (Education) Act 1971* (the IE Act) by the *Immigration (Education) Amendment (Expanding Access to English Tuition) Act 2020* (the IE Amendment Act).

The IE Act relates to the provision of certain courses of instruction for migrants and certain other persons. This includes the provision of English courses. The IE Act sets out who is eligible and ineligible for English courses, as well as time limits for registration, commencement and completion. The IE Act also establishes the Minister's obligation to provide or arrange the provision of tuition in an approved English course to certain eligible persons.

The IE Amendment Act, which received the Royal Assent on 17 December 2020, makes the following amendments to the IE Act:

- changing the upper limit for eligibility to access English tuition from 'functional English' to a new level of 'vocational English';
- removing the 510 hour statutory limit on an eligible person's entitlement to English tuition;
- removing the statutory time limits of up to 12 months for registering for, commencing and completing English tuition for certain people who held a visa and were in Australia on or before 1 October 2020; and
- allowing for the provision of English tuition to certain visa holders or visa applicants outside Australia, to support their English language learning in preparation for their migration to Australia.

This Disallowable Legislative Instrument, which commences at the same time as these amendments made by the IE Amendment Act, amends the Immigration (Education) Regulations and Migration Regulations to align them with the amendments to the IE Act by:

- updating provisions of the Migration Regulations for the refund, in certain circumstances, of the second instalment of the visa application charge paid by relevant applicants who do not commence an approved English course for which they are eligible under the IE Act;
- updating the prescribed evidence of functional English for the purposes of the Migration Regulations to take account of the fact that providers of approved courses

under the IE Act will no longer be making determinations that a person has functional English; and

- making consequential amendments to the Immigration (Education) Regulations following removal of the limit of 510 hours on the Commonwealth's obligation to provide English courses under the IE Act.

Regulation 2.12H of the Migration Regulations relates to refunds of the second instalment of the Visa Application Charge (VAC), an amount that must be paid for a visa application in relation to some visas. The VAC is payable in two instalments: the 'first instalment' is payable at the time the visa application is made and the 'second instalment' (or second VAC) is payable before the grant of the visa. Some visas require that for the visa to be granted, the visa applicant must provide prescribed evidence that they have 'functional English'. If they cannot provide this prescribed evidence, they must pay a second VAC.

Refunds of the second VAC are available in certain circumstances where the visa holder does not commence English tuition while there is an obligation for the person to be provided with English tuition. Before the IE Act was amended, the obligation to be provided with English tuition ceased if the person did not register for or commence English tuition within 12 months of their visa commencement date, so a refund was only available during that time. The effect of the amendments to the IE Act is that for visa holders who were in Australia on or before 1 October 2020 there is no longer a time limit to commence English tuition. This Disallowable Legislative Instrument amends the refund provisions to maintain the status quo. That is, for those visa holders who were in Australia on or before 1 October 2020, and who will now benefit from the removal of this time limit to commence English tuition, a refund is still only available if the specified circumstances occur within 12 months of their visa commencement date. The time limit of 12 months for registration and commencement still applies to those visa holders who become eligible after 1 October 2020. The Disallowable Legislative Instrument also updates references to relevant provisions of the IE Act in regulation 2.12H where these references have been amended by the IE Amendment Act.

This Disallowable Legislative Instrument also amends regulation 5.17 of the Migration Regulations to remove a reference to a person being assessed as having 'functional English' by a provider of an approved English course for the purposes of the IE Act. Repealed paragraph 5.17(f) provided that prescribed evidence of a person's English language proficiency for the purposes of the *Migration Act 1958* and the Migration Regulations included evidence that the person has been assessed as having functional English by the provider of an approved English course for the purposes of section 4 of the IE Act. Apart from the term 'functional English' no longer being used in the IE Act, this way of providing evidence has become redundant as evidence of English for the purposes of a visa application, where required, is usually provided by way of a proficiency test, or by the other ways in regulation 5.17 which remain the same apart from consequential changes.

Finally, this Disallowable Legislative Instrument makes consequential amendments to paragraph 9(d) of the Immigration (Education) Regulations to remove references to 510 hours of English tuition following removal of the limit of 510 hours on the Commonwealth's obligation to provide English courses made by the amendments to the IE Act.

Human rights implications

The amendments made by this Disallowable Instrument are largely technical and consequential in nature to the amendments made by the IE Amendment Act and do not themselves engage any of the applicable rights or freedoms.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

The Hon Alex Hawke MP

Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

Details of the Migration Legislation Amendment (English Tuition) Regulations 2021

Section 1 - Name

This section provides that the name of the instrument is the *Migration Legislation Amendment (English Tuition) Regulations 2021*

Section 2 - Commencement

This section provides for the *Migration Legislation Amendment (English Tuition) Regulations 2021* to commence at the same time as Schedule 1 to the *Immigration (Education) Amendment (Expanding Access to English Tuition) Act 2020*.

Section 3 - Authority

This section provides that the Regulations are made under the *Migration Act 1958* (the Migration Act).

Section 4 - Schedules

This section provides for the operation of the amendments made by the Regulations. It provides that an instrument specified in a Schedule to the Regulations is amended or repealed as set out in the Schedule concerned, and any other item in a Schedule has effect according to its terms. In Schedule 1, the only Schedule to the Regulations, the specified instruments are the *Immigration (Education) Regulations 2018* (the Immigration (Education) Regulations) and the *Migration Regulations 1994* (the Migration Regulations).

Schedule 1 – Amendments

Immigration (Education) Regulations 2018

Item [1] – Paragraph 9(d)

The Regulations commence at the same time as, and make amendments that are consequential to, Schedule 1 to the *Immigration (Education) Amendment (Expanding Access to English Tuition) Act 2020* (the amending Act), which amends the *Immigration (Education) Act 1971* (the Immigration (Education) Act).

Item 1 of the Regulations repeals paragraph 9(d) of the Immigration (Education) Regulations and substitutes a new paragraph 9(d).

Section 4D of the Immigration (Education) Act imposes a **time limit of five years during which the Commonwealth is obliged to provide a person with English language tuition.** **Following the amendments made by the amending Act,** the time limit does not apply to a person who was granted a permanent visa in Australia on or before 1 October 2020 or who first entered Australia as the holder of a permanent visa on or before 1 October 2020.

Subsection 4D(3) provides that a person may apply for an extension of this time limit. Subsection 4D(5) provides that the Secretary may extend the time limit in respect of a person who has applied for an extension if the Secretary is satisfied that there are compelling and compassionate circumstances for doing so.

Regulation 9 of the Immigration (Education) Regulations prescribes the matters to which the Secretary must have regard in considering an application for an extension of the time limit of five years. Previously paragraph 9(d) required the Secretary to have regard to any compelling and compassionate reasons that prevented the person from receiving 510 hours of tuition in an approved English course prior to the application for an extension.

Prior to amendment by the Amending Act, the Immigration (Education) Act imposed a limit of 510 hours on the amount of English language tuition that the Commonwealth was obliged to provide under the Immigration (Education) Act to an eligible person. The amending Act removed this limitation and the reference to 510 hours is no longer appropriate in the context of paragraph 9(d).

New paragraph 9(d) omits the reference and provides that the Secretary must have regard to any other compelling or compassionate reasons that existed during the period that commenced when the person was first granted a permanent visa in Australia, or first entered Australia as the holder of a permanent visa, and ending when the person applied for an extension. The effect of new paragraph 9(d) is that the Secretary must have regard to any compelling and compassionate circumstances that may have arisen from the beginning of the period during which the Commonwealth was obliged to provide the person with English language tuition.

Migration Regulations 1994

Item [2] – Paragraph 2.12H(2)(f)

This item amends paragraph 2.12H(2)(f) of the Migration Regulations to insert the words “within the period of 12 months starting on the applicant’s visa commencement day (within the meaning of the *Immigration (Education) Act 1971*) any of the following events occur” after the words “paragraph and”.

Regulation 2.12H makes provision for the refund, in certain circumstances, of the second instalment of the Visa Application Charge (VAC) payable in respect of an application for some visas.

Paragraph 2.12H(2)(f) prescribes circumstances under which the Minister must refund the amount of a second instalment of the VAC paid under a provision of Schedule 1 to the Migration Regulations that is specified by the Minister in an instrument in writing. The provisions specified for the purposes of this paragraph relate to requirements for payment of a second instalment of the VAC if an applicant for a relevant visa is aged over 18 years and does not have functional English at the time of applying for the visa. The circumstances prescribed in paragraph 2.12H(2)(f) under which the second instalment of the VAC must be refunded relate to circumstances where a person does not commence an approved English course to which the person was entitled under the Immigration (Education) Act (see item 2, below, for further details of the provisions of paragraph 2.12H(2)(f)).

Under the Immigration (Education) Act, after the grant of a visa, or entry to Australia if the visa is granted while the applicant is overseas, **these persons are entitled to tuition in an approved English course for a period of time worked out under the Immigration (Education) Act.**

Prior to amendment of the Immigration (Education) Act by the amending Act, this entitlement ceased if the person failed to commence an approved English course within 12 months of the person's *visa commencement day*, which is the day the visa is granted if the person was in Australia when the visa was granted, or the day the person first entered Australia as the holder of the visa if the person was overseas when the visa was granted. However, the amendments to the Immigration (Education) Act include a new provision that the requirement that an approved course must be commenced within 12 months of the visa commencement day does not apply to a person whose visa commencement day is on or before 1 October 2020. This means that **the entitlement of those persons to tuition in an approved English course could continue even if they failed to commence the course within 12 months.**

It is not the intention that the period when a person is eligible for a refund of the second instalment of the VAC if the prescribed circumstances arise would extend beyond the current 12 months for any persons. Therefore this item amends paragraph 2.212H(2)(f) to make it clear that the relevant circumstance must arise within 12 months of the person's visa commencement day.

Item [3] – Subparagraphs 2.12H(2)(f)(i) to (iv)

This item repeals subparagraphs 2.12H(2)(f)(i) to (iv) of the Migration Regulations and substitutes new subparagraphs (i) to (iv). Paragraph 2.12H(2)(f) provides for a refund of the second instalment of the VAC if the visa holder does not commence a course of English tuition to which the applicant is entitled under the Immigration (Education) Act, under certain circumstances. As described above under item 1, to be eligible for a refund the person must have failed to commence a course of English language tuition within 12 months of the person's visa commencement day, and the prescribed circumstances must have arisen within those 12 months.

Subparagraphs 2.12H(2)(f)(i) to (iv) all contain references to the Immigration (Education) Act. The purpose of the new subparagraphs is to update the references and to align the operation of the subparagraphs with the current provisions of the Immigration (Education) Act. Details of the new subparagraphs are:

- subparagraph 2.12H(2)(f)(i) provides for a refund of the second instalment if the applicant dies before commencing a course of English language tuition to which the applicant was entitled under the Immigration (Education) Act. The previous subparagraph referred to section 4C of the Immigration (Education) Act. The entitlement is now provided for under section 4B. The new subparagraph updates the reference to that section;
- subparagraph 2.12H(2)(f)(ii) provides for a refund of the second instalment if the applicant's visa was granted and then later cancelled before the applicant commenced a course of English language tuition to which the applicant was entitled under the Immigration (Education) Act. The previous subparagraph referred to section 4C of

the Immigration (Education) Act. The entitlement is now provided for under section 4B. The new subparagraph updates the reference to that section;

- subparagraph 2.12H(2)(f)(iii) provides for a refund of the second instalment if the applicant's visa was granted but ceased to have effect before the applicant commenced a course of English language tuition to which the applicant was entitled under the Immigration (Education) Act. The previous subparagraph referred to section 4C of the Immigration (Education) Act. The entitlement is now provided for under section 4B. The new subparagraph updates the reference to that section; and
- subparagraph 2.12H(2)(f)(iv) provides for a refund of the second instalment if the Minister's obligation under the Immigration (Education) Act to provide tuition in an approved English course ceases because the person has attained the prescribed level of English before the person has received any English language tuition in an approved course. The previous subparagraph referred to the obligation being in section 4C of the Immigration (Education) Act. The new subparagraph updates this to a reference to section 4B where the obligation is now located. The previous subparagraph also referred to the person ceasing to be eligible under paragraph 4D(1)(a) of the Immigration (Education) Act. The new paragraph updates this to a reference to subsection 4A(1)(b) where provision for eligibility to cease due to the person attaining the prescribed level of English is now located. Prior to amendment by the amending Act, the Immigration (Education) Act provided that eligibility for English language tuition ceased when the person attained functional English. Following amendment, the relevant level of English is now vocational English.

Item [4] – Subregulation 2.12H(2A)

This item repeals subregulation 2.12H(2A) of the Migration Regulations and substitutes a new subregulation 2.12H(2A).

The purpose of subregulation 2.12H(2A) is to clarify that the provision for a refund of the second instalment under subparagraph 2.12H(2)(f)(iii) does not apply if the Commonwealth's obligation under the Immigration (Education) Act to provide tuition for a person in an approved English course ceased because the person failed to register for or commence a course within the required time, before the person's visa ceased. See the notes on item 2 above for further details of subregulation 2.12H(2)(f)(iii).

Previous subparagraph 2.12H(2)(f)(iii) referred to the obligation to provide tuition in an English course as being in section 4C of the Immigration (Education) Act. New subparagraph 2.12H(2)(f)(iii) updates this reference to section 4B where the obligation is now located. Previous subparagraph 2.12H(2)(f)(iii) also referred to the requirements for a person to register for and commence an approved English course within specified time limits as being in paragraphs 4D(1)(b) and (c) of the Immigration (Education) Act. New subparagraph 2.12H(2)(f)(iii) updates this to references to paragraphs 4C(2)(a) and (b), where the requirements are now located.

Item [5] – Paragraph 2.12H(4)(b)

This item omits a reference to “4C” in paragraph 2.12H(4)(b) of the Migration Regulations, and substitutes a reference to “4B”.

This amendment is consequential to the relocation of the relevant provision in the Immigration (Education) Act. See the notes on the amendment of subparagraph 2.12H(2)(f)(i) at item 3, above.

Item [6] – Paragraphs 5.17(f) and (j)

This item repeals paragraphs 5.17(f) and (j) of the Migration Regulations and substitutes a new paragraph 5.17(d).

Repealed paragraph 5.17(f) provided that prescribed evidence of a person's English language proficiency for the purposes of the Migration Regulations included evidence that the person has been assessed as having functional English by the provider of an approved English course for the purposes of section 4 of the Immigration (Education) Act. Amendments to the Immigration (Education) Act made by the amending Act repealed references to functional English and substituted references to vocational English. Providers of approved courses for the purposes for the Immigration (Education) Act will no longer assess a person as having functional English. Paragraph 5.17(f) is therefore inoperative once the changes made by the amending Act commence and, as a result, is repealed.

Repealed paragraph 5.17(j) provided that if other evidence of functional English referred to in paragraph 5.17(a) cannot be provided, and if it is not reasonably practical for a person to attend at a place or at a time for an assessment referred to in paragraph 5.17(f), evidence of a person's functional English includes evidence that the person has been determined by the Minister, on the basis of an interview with the person, to have functional English.

New paragraph 5.17(d) remakes repealed paragraph 5.17(j) omitting the reference to repealed paragraph 5.17(f), to provide that if the evidence referred to in paragraph 5.17(a) cannot be provided by a person, evidence that the person has functional English includes evidence that the person has been determined by Minister, on the basis of an interview with the person, to have functional English.



LIN 21/012

**Immigration (Education) (Standards for Vocational English) Instrument
(LIN 21/012) 2021**

I, Alex Hawke, Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, make this instrument under subsection 3(2) of the *Immigration (Education) Act 1971* (the *Act*).

Dated 19 April 2021

Alex Hawke

Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

1 Name

This instrument is the *Immigration (Education) (Standards for Vocational English) Instrument (LIN 21/012) 2021*.

2 Commencement

This instrument commences on the later of:

- (a) the day after registration; and
- (b) immediately after the commencement of Schedule 1 of the *Immigration (Education) Amendment (Expanding Access to English Tuition) Act 2020*.

3 Repeal

Immigration (Education) (Functional English) Specification 2017 (F2017L00720) is repealed.

4 Procedures or standards for determining that a person has vocational English

- (1) For the definition of *vocational English* in subsection 3(1) of the Act, a person has vocational English if a provider of an approved English course determines that the person meets or exceeds one of the following standards:
 - (a) at least Level 3 proficiency in each of the four core skills of learning, reading, writing and oral communication under the Australian Core Skills Framework; or
 - (b) an average score of at least 5.5 in an International English Language Testing System test, based on the four test components of speaking, reading, writing and listening; or
 - (c) a total band score of at least 46 in a Test of English as a Foreign Language internet-based Test, based on the four test components of speaking, reading, writing and listening; or
 - (d) a total band score of at least 162 in a Cambridge C1 Advanced Test, based on the four test components of speaking, reading, writing and listening; or
 - (e) a total band score of at least 42 in a Pearson Test of English Academic, based on the four test components of speaking, reading, writing and listening; or
 - (f) at least B for each of the four test components of speaking, reading, writing and listening in an Occupational English Test.
- (2) A reference to a test in subsection (1) is a reference to the test as in force or existing from time to time.

Note Despite subsection 14(2) of the *Legislation Act 2003*, a reference to a test in force or existing from time to time is permitted under subsection 3(3) of the Act.

EXPLANATORY STATEMENT

Issued by authority of the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

Immigration (Education) Act 1971

Immigration (Education) (Standards for Vocational English) Instrument (LIN 21/012) 2021

- 1 The instrument, Departmental reference LIN 21/012, is made under subsection 3(2) of the *Immigration (Education) Act 1971* (the Act).
- 2 The instrument repeals *Immigration (Education) (Functional English) Specification 2017* (F2017L00720) made under subsection 3(2) of the Act, in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*. That subsection provides that a power to make a legislative instrument includes a power to amend or repeal that instrument in the same manner, and subject to the same conditions, as the power to make the instrument.
- 3 The instrument commences on the later of:
 - the day after it is registered on the Federal Register of Legislation; and
 - immediately after the commencement of Schedule 1 of the *Immigration (Education) Amendment (Expanding Access to English Tuition) Act 2020* (the Amendment Act).
- 4 The instrument is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

Purpose

- 5 The Act **sets out** a scheme for tuition in approved English courses to eligible migrants, known as the **Adult Migrant Education Program (AMEP)**. Under subsection 4A(1) of the Act, after commencement of the Amendment Act, one of the criteria a migrant in Australia must meet to be eligible for English language tuition is that the person does not have ‘vocational English’.
- 6 The purpose of the instrument is to specify the procedures or standards for an approved English language provider to determine whether a migrant in Australia has ‘vocational English’.
- 7 Subsection 3(1) of the Act provides that a person has vocational English if the provider of an approved English course determines, in accordance with any procedures or standards specified by the Minister under subsection 3(2), that the person has vocational English.
- 8 The instrument specifies the English language skill standards that a person must meet or exceed to determine whether the person has ‘vocational English’ for the purpose of subsection 3(1) of the Act.
- 9 The standards specified in this instrument will reflect amendments made to the Act by the Amendment Act, which change the eligibility for English language tuition for eligible migrants in Australia from not having ‘functional English’ to the higher level of ‘vocational English’. This will enable eligible persons to continue their language learning to a higher level of English proficiency.
- 10 The primary standard of English specified in the instrument is Level 3 proficiency under the Australian Core Skills Framework (ACSF). **The instrument also specifies a standard of an average of 5.5 in the**

International English Language Testing System (IELTS), and the equivalent standard in alternative language tests (Test of English as a Foreign Language internet-based Test (TOEFL iBT), Cambridge C1 Advanced Test (C1 Advanced), Pearson Test of English Academic (PTE Academic) and Occupational English Test (OET)).

- 11 Following a curriculum reaccreditation process in 2018, the main curricula used in the AMEP currently determine that ACSF 3 is equivalent to IELTS 5.5. The previous instrument operated under a previous arrangement in which ACSF 3 was equivalent to IELTS 4.5 (Functional English). This new instrument will align the ACSF and IELTS (and equivalent) levels and enact the Government's intention to raise the threshold of the AMEP to vocational English.

Consultation

- 12 In preparing the instrument, a range of relevant agencies were consulted including the Department of Education, Skills and Employment and the Department of Finance. These agencies agreed with the standards being specified in the instrument.
- 13 The Office of Best Practice Regulation (OBPR) was also consulted and considered that the instrument dealt with matters of a minor nature and no regulatory impact statement was required. The OBPR reference number is 42538.

Details of the instrument

- 14 Section 1 sets out the name of the instrument.
- 15 Section 2 provides the commencement of the instrument, which is on the later of:
- the day after it is registered on the Federal Register of Legislation; and
 - immediately after the commencement of Schedule 1 of the Amendment Act.
- 16 Section 3 states that the instrument repeals *Immigration (Education) (Functional English) Specification 2017* (F2017L00720).
- 17 Section 4 specifies standards for the definition of vocational English for subsection 3(1) of the Act.
- 18 Subsection 4(1) provides that a provider of an approved English language course can determine that a person has 'vocational English' where the person meets or exceeds one of the following standards:
- at least Level 3 proficiency in each of the four core skills of learning, reading, writing and oral communication under the ACSF (paragraph (a)); or
 - an average score of at least 5.5 in an IELTS test, based on the four test components of speaking, reading, writing and listening (paragraph (b)); or
 - a total band score of at least 46 in a TOEFL iBT, based on the four test components of speaking, reading, writing and listening (paragraph (c)); or
 - a total band score of at least 162 in a C1 Advanced test, based on the four test components of speaking, reading, writing and listening (paragraph (d)); or

- a total band score of at least 42 in a PTE Academic, based on the four test components of speaking, reading, writing and listening (paragraph (e)); or
- at least B for each of the four test components of speaking, reading, writing and listening in an OET (paragraph (f)).

19 Information about each of the above tests can be obtained at the following locations:

- ACSF: <https://www.dese.gov.au/skills-information-training-providers/australian-core-skills-framework/>.
- IELTS: <https://ielts.com.au/>;
- TOEFL iBT: <https://www.ets.org/toefl/test-takers/ibt/about>;
- C1 Advanced: <https://www.cambridgeenglish.org/exams-and-tests/advanced/>;
- PTE Academic: <https://pearsonpte.com/>;
- OET: <https://www.occupationalenglishtest.org/>;

20 Subsection 4(2) of the instrument provides that the reference to the tests in subsection (1) is a reference to those tests as in force or existing from time to time. Subsection 3(3) of the Act provides that the instrument may apply, adopt or incorporate any matter contained in any other instrument or writing as in force or existing at a particular time, or from time to time. This displaces the application of subsection 14(2) of the Legislation Act.

Parliamentary scrutiny etc.

21 The instrument is subject to disallowance under section 42 of the Legislation Act.

22 A Statement of Compatibility with Human Rights has been prepared in relation to the instrument. It provides that the instrument is compatible with human rights because its intended purpose is to facilitate improved access to education (English language tuition) for migrants in Australia which will support social cohesion and allow migrants to participate fully in the Australian community. This aligns with Articles 6 and 13 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and Articles 6 and 7 of the *Convention on the Elimination of All Forms of Racial Discrimination* (CERD). The Statement is included at **Attachment A** to this explanatory statement.

23 The instrument was made by Alex Hawke, Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, in accordance with subsection 3(2) of the Act.

Statement of Compatibility with Human Rights

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

Immigration (Education) (Standards for Vocational English) Instrument (LIN 21/012) 2021

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) Act 1971* (the Act) provides for publicly-funded tuition in approved English courses to eligible migrants. This is delivered through the Australian Government Adult Migrant English Program (AMEP).

The purpose of this Disallowable Legislative Instrument is to repeal and replace the *Immigration (Education) (Functional English) Specification 2017* (F2017L00720) to align with amendments made to the Act by the *Immigration (Education) Amendment (Expanding Access to English Tuition) Act 2020* (the Amendment Act) to encourage the acquisition of a higher level of English proficiency.

The Amendment Act relevantly changed the eligibility requirements for a person to be eligible for an approved English course. Prior to amendments, the eligibility requirements in subsection 4A(b) of the Act meant a migrant became **ineligible** for tuition under the Act once they reach the level of ‘functional English’. This is lower than the level of English required by most employers, and for enrolment in TAFE courses.

Under section 4 of the Act, as amended by the Amendment Act, to be eligible for a course, the person must not have ‘vocational English’. A new definition of ‘vocational English’ in subsection 3(1) of the Act provides that the Minister may specify the standards and procedures for determining whether or not a person has ‘vocational English’. This Disallowable Legislative Instrument specifies the standards that a provider of an approved English language course must use to determine whether an eligible migrant or humanitarian entrant in Australia has ‘vocational English’ for the purposes of AMEP eligibility.

An approved English course provider can determine that a person has ‘vocational English’, and is ineligible for the AMEP, if the person meets or exceeds one of the standards included in the instrument. The standard is set as Level 3 in the Australian Core Skills Framework (ACSF) or the minimum score in one of the five international language tests specified in the instrument.

This instrument therefore supports, and is consequential to, the amendments to eligibility made by the Amending Act.

Amendment of the eligibility level means migrants will be able to stay in the program for longer, and reach a higher level of proficiency. It also means those who are currently ineligible because they have functional English will be able to enter (or re-enter) the program to raise their English proficiency.

Human rights implications

The Disallowable Legislative Instrument broadly promotes the following rights:

- Articles 6 and 13 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR)
- Article 7 of the *Convention on the Elimination of All Forms of Racial Discrimination* (CERD)

Article 13 of ICESCR recognises the right of everyone to education and that “*education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups*”. The Disallowable Legislative Instrument promotes Article 13 of ICESCR insofar as it will support the amendments made by the Amendment Act to enable more migrants to be able to access free English tuition for longer and until they reach a higher level of proficiency, which will enhance access to vocational pathways and support them to participate more fully in the Australian community.

Similarly, insofar as the Disallowable Legislative Instrument supports the implementation of the changes made by the Amendment Act, it also broadly promotes the right to work in Article 6 and Article 7 of the CERD which calls for the State to promote understanding, tolerance and friendship among racial and ethnic groups.

By supporting the amendments made by the Amendment Act to support migrants with low English proficiency to learn the national language, the Disallowable Legislative Instrument will assist in facilitating social cohesion and in boosting the education and potential employment prospects of participating migrants.

Conclusion

The Disallowable Legislative Instrument is compatible with human rights.