



# **Immigration (Education) Act 1971**

**No. 3, 1971**

## **Compilation No. 11**

<b>Compilation date:</b>	19 April 2021
<b>Includes amendments up to:</b>	Act No. 139, 2020
<b>Registered:</b>	5 May 2021

Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### This compilation

This is a compilation of the *Immigration (Education) Act 1971* that shows the text of the law as amended and in force on 19 April 2021 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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# Contents

<b>Part 1—Preliminary</b>	1
1 Short title.....	1
2 Commencement.....	1
3 Interpretation.....	1
<b>Part 2—English courses</b>	4
4 English courses.....	4
4A Eligibility for English courses.....	4
4B Obligation to provide tuition in an English course.....	5
4C Ineligibility for English courses—time limits for registration or commencement.....	5
4D Ineligibility for English courses—time limit on tuition.....	6
<b>Part 3—Citizenship courses</b>	8
4E Citizenship courses.....	8
<b>Part 4—Implementation</b>	9
5 Provision of teaching and learning materials.....	9
7 Training courses for teachers.....	9
8 Research projects.....	9
9 Payments under arrangements etc.....	9
9A Services for non-government organisations.....	10
<b>Part 5—Miscellaneous</b>	11
10 Delegation by the Minister.....	11
10A Delegation by the Secretary.....	11
11 Expenditure to be made from appropriations.....	11
12 Annual reports by the Minister.....	11
13 Regulations.....	12
<b>Endnotes</b>	13
<b>Endnote 1—About the endnotes</b>	13
<b>Endnote 2—Abbreviation key</b>	15
<b>Endnote 3—Legislation history</b>	16
<b>Endnote 4—Amendment history</b>	18



# An Act relating to the provision of certain Courses of Instruction for Immigrants and certain other Persons

## Part 1—Preliminary

### 1 Short title

This Act may be cited as the *Immigration (Education) Act 1971*.

### 2 Commencement

This Act shall come into operation on the day on which it receives the Royal Assent.

### 3 Interpretation

(1) In this Act, unless the contrary intention appears:

***approved course*** means an English course provided under section 4 or a citizenship course provided under section 4E.

***approved English course*** means an English course provided under section 4.

***capital equipment of an educational nature*** includes audiovisual equipment, computers and specialised electronic equipment, but does not include any kind of building.

***child*** of a person has the same meaning as in the Migration Act.

***citizenship course*** means a course of instruction designed to impart an understanding of ways of life in Australia and of the rights and duties of an Australian citizen.

***eligible*** has the meaning given by section 4A.

***English course*** means a course of instruction in the English language.

Section 3

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**Migration Act** means the *Migration Act 1958*.

**parent** of a person has the same meaning as in the Migration Act.

**permanent entry permit** has the same meaning as in the Migration Act as in force immediately before the commencement of section 3 of the *Migration Reform Act 1992*.

**permanent visa** has the same meaning as in the Migration Act.

**Secretary** means the Secretary of the Department.

**teaching and learning materials** includes printed materials, audio materials, materials in digital form, educational software, visual aids and audiovisual aids.

**temporary visa** has the same meaning as in the Migration Act.

**visa commencement day**, in relation to a person, means the earlier of the following days:

- (a) the first day the person was in Australia on or after the day when a permanent visa held by the person came into effect;
- (b) the first day the person was in Australia on or after the day when a temporary visa of a class mentioned in subparagraph 4A(1)(a)(ii) held by the person came into effect.

**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.

*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).
- (3) An instrument made under subsection (2) may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in any other instrument or writing:

- (a) as in force or existing at a particular time; or
- (b) as in force or existing from time to time.

## Part 2—English courses

### 4 English courses

- (1) The Minister may provide, or arrange the provision of, English courses to:
  - (a) eligible persons, while they are eligible; or
  - (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.
- (2) The Minister may, by legislative instrument, make a determination specifying a class of temporary visa for the purposes of subparagraph (1)(b)(ii).

#### 4A Eligibility for English courses

- (1) A person is *eligible* for the purposes of this Act if he or she:
  - (a) is in Australia and:
    - (i) holds a permanent visa; or
    - (ii) holds a temporary visa of a class specified in a legislative instrument made by the Minister for the purposes of this subparagraph; or
    - (iii) previously held a permanent entry permit or a permanent visa and has become an Australian citizen; or
    - (iv) is aged under 18 years and has at least one parent who has held or holds a permanent entry permit or a permanent visa; and
  - (b) does not have vocational English; and
  - (c) is not ineligible under section 4C or 4D.
- (2) The Minister may, by legislative instrument, make a determination specifying a class of temporary visa for the purposes of subparagraph (1)(a)(ii).



**4B Obligation to provide tuition in an English course**

- (1) The Minister must provide, or arrange the provision of, tuition in an approved English course to an eligible person, while he or she is eligible, if the person:
  - (a) holds a permanent visa; and
  - (b) was aged at least 18 years on the first day the person was in Australia on or after the day when the permanent visa came into effect; and
  - (c) has paid, or is exempt from paying, visa application charge under section 45A of the Migration Act for the permanent visa; and
  - (d) did not, at any time before the permanent visa came into effect, hold another permanent visa while in Australia; and
  - (e) is not excluded from the application of this section by the regulations.
- (3) This section does not limit section 4.

**4C Ineligibility for English courses—time limits for registration or commencement***Scope*

- (1) This section applies to a person who would (apart from this section) be eligible, if:
  - (a) he or she has ever held a permanent visa; or
  - (b) he or she has ever held a temporary visa of a class mentioned in subparagraph 4A(1)(a)(ii).
- (1A) However, this section does not apply to a person whose visa commencement day is on or before 1 October 2020.

*Time limits*

- (2) The person stops being eligible:
  - (a) if he or she fails to register with the provider of an approved English course within:

Section 4D

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- (i) if he or she was aged under 18 years on his or her visa commencement day—the period of 12 months starting on that day; or
- (ii) if he or she was aged 18 years or over on his or her visa commencement day—the period of 6 months starting on that day; or
- (b) if he or she fails to start an approved English course within the period of 12 months starting on his or her visa commencement day.

*Extension of time*

- (3) The person may apply to the Secretary for an extension of a period mentioned in subsection (2) (the **subsection (2) period**).
- (4) An application under subsection (3) for an extension of a subsection (2) period:
  - (a) must be made in the manner, and within the period, prescribed by the regulations; and
  - (b) subject to paragraph (a), may be made before or after the end of the subsection (2) period.
- (5) On an application under this section, if the Secretary is satisfied that it was, or would be, unreasonable for the applicant to stop being eligible under subsection (2), the Secretary may extend the subsection (2) period by a specified period.
- (6) In making a decision under subsection (5), the Secretary:
  - (a) must have regard to the matters prescribed by the regulations; and
  - (b) must not have regard to any other matter.

**4D Ineligibility for English courses—time limit on tuition**

*Scope*

- (1) This section applies to a person who would (apart from this section) be eligible, if:
  - (a) he or she has ever held a permanent visa; or

(b) he or she has ever held a temporary visa of a class mentioned in subparagraph 4A(1)(a)(ii).

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

*Time limit*

(2) The person stops being eligible at the end of the period of 5 years starting on his or her visa commencement day.

*Extension of time*

(3) The person may apply to the Secretary for an extension of the period mentioned in subsection (2) (the **subsection (2) period**).

(4) An application under subsection (3) for an extension of the subsection (2) period:

- (a) must be made in the manner, and within the period, prescribed by the regulations; and
- (b) subject to paragraph (a), may be made before or after the end of the subsection (2) period.

(5) On an application under this section, if the Secretary is satisfied that, for compelling and compassionate reasons, the applicant should not stop, or should not have stopped, being eligible under subsection (2), the Secretary may extend the subsection (2) period by a specified period.

(6) In making a decision under subsection (5), the Secretary:

- (a) must have regard to the matters prescribed by the regulations; and
- (b) must not have regard to any other matter.

## Part 3—Citizenship courses

### 4E Citizenship courses

The Minister may arrange for citizenship courses to be provided inside or outside Australia to persons prescribed by the regulations.

## **Part 4—Implementation**

### **5 Provision of teaching and learning materials**

The Minister may arrange for the purchase or production of, and the distribution of, teaching and learning materials for use in approved courses.

### **7 Training courses for teachers**

- (1) The Minister may arrange for the provision of training courses for teachers who are engaged, or intend to engage, in giving approved courses.
- (2) Where a teacher attending a training course referred to in subsection (1) is paid salary by his or her employer for the whole or a part of the period of his or her attendance, the Minister may authorize the payment to the employer of the whole or a part of the cost of the salary so paid.
- (3) In this section:

*employer* includes the Government of a State or Territory.

*salary* includes an allowance in the nature of a travelling allowance.

### **8 Research projects**

The Minister may arrange for the conduct of research projects designed to improve the form or content of approved courses.

### **9 Payments under arrangements etc.**

- (1) An arrangement under this Act may make provision for, or in relation to, the making of payments by the Commonwealth to another party to the arrangement in connexion with matters to which the arrangement relates.

- (2) Without limiting the generality of subsection (1), an arrangement under section 4 or 4E for the provision of approved courses may make provision for, or in relation to, the payment by the Commonwealth of the whole or a part of:
- (a) the cost of salaries and fees of teaching staff engaged in the giving of the courses; and
  - (b) administrative costs (including the salaries of administrative staff) incurred in connexion with the courses; and
  - (c) the cost of capital equipment of an educational nature to be used in the courses; and
  - (d) the cost of teaching and learning materials (other than materials provided under section 5) to be used in the courses; and
  - (e) the cost of student support services.
- (3) An arrangement under section 4 or 4E for the provision of approved courses may make provision for the Commonwealth to supply to the course provider, whether as a gift or otherwise, capital equipment of an educational nature to be used in the courses.

### **9A Services for non-government organisations**

The Minister may arrange to provide language training and related services to or for a non-government organisation or non-government body.

## **Part 5—Miscellaneous**

### **10 Delegation by the Minister**

- (1) The Minister may, by instrument in writing, delegate to a person appointed or engaged under the *Public Service Act 1999*, either generally or otherwise as provided in the instrument of delegation, all or any of his or her powers or functions under this Act, except this power of delegation.
- (2) A power or function so delegated may be exercised or performed by the delegate in accordance with the instrument of delegation.
- (3) A delegation under this section is revocable at will and does not prevent the exercise of a power or the performance of a function by the Minister.

### **10A Delegation by the Secretary**

The Secretary may, by signed instrument, delegate any or all of his or her powers under this Act to an officer of the Department.

### **11 Expenditure to be made from appropriations**

Expenditure by the Commonwealth for the purposes of this Act shall be made out of moneys appropriated by the Parliament for those purposes.

### **12 Annual reports by the Minister**

The Minister shall, as soon as practicable after 30th June in each year, cause to be laid before each House of the Parliament a report on the operation of this Act during the year ended on that date, including particulars of expenditure by the Commonwealth for the purposes of this Act during that year.

### **13 Regulations**

The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act.



## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

## Endnotes

### Endnote 1—About the endnotes

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be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

## Endnote 2—Abbreviation key

**Endnote 2—Abbreviation key**

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous (prev...) = previously
def = definition(s)	Pt = Part(s)
Dict = Dictionary	r = regulation(s)/rule(s)
disallowed = disallowed by Parliament	reloc = relocated
Div = Division(s)	renum = renumbered
ed = editorial change	rep = repealed
exp = expires/expired or ceases/ceased to have effect	rs = repealed and substituted
F = Federal Register of Legislation	s = section(s)/subsection(s)
gaz = gazette	Sch = Schedule(s)
LA = <i>Legislation Act 2003</i>	Sdiv = Subdivision(s)
LIA = <i>Legislative Instruments Act 2003</i>	SLI = Select Legislative Instrument
(md) = misdescribed amendment can be given effect	SR = Statutory Rules
(md not incorp) = misdescribed amendment cannot be given effect	Sub-Ch = Sub-Chapter(s)
mod = modified/modification	SubPt = Subpart(s)
No. = Number(s)	<u>underlining</u> = whole or part not commenced or to be commenced

## Endnotes

### Endnote 3—Legislation history

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### Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent date</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Immigration (Education) Act 1971	3, 1971	12 Mar 1971	12 Mar 1971 (s 2)	
Immigration (Education) Act 1973	110, 1973	12 Oct 1973	12 Oct 1973 (s 2)	—
Statute Law Revision Act 1973	216, 1973	19 Dec 1973	31 Dec 1973 (s 2)	s 9(1) and 10
Statute Law (Miscellaneous Provisions) Act (No. 1) 1986	76, 1986	24 June 1986	s 9 and Sch 1: 24 June 1986 (s 2(1))	s 9
Immigration (Education) Amendment Act 1991	35, 1991	21 Mar 1991	21 Mar 1991 (s 2)	—
Migration Laws Amendment Act (No. 2) 1992	176, 1992	16 Dec 1992	s 5: 1 Jan 1993 (s 2(1)); s 4, 6 and 7: 1 Mar 1993 (s 2(2))	—
Migration Legislation Amendment Act 1994	60, 1994	9 Apr 1994	s 85 and Sch 3 (items 39-46): 1 Sept 1994 (s 2(3))	—
Migration Legislation Amendment Act (No. 1) 1995	110, 1995	29 Sept 1995	s 4, 9 and Sch 2: 1 Nov 1995 (s 2(2)–(4)) and gaz 1995 No 43)	s 9
Migration Legislation Amendment Act (No. 1) 1997	27, 1997	10 Apr 1997	Sch 1 (items 1-17, 29 and 30): 1 May 1997 (s 2(1), (2) and gaz 1997 No S168)	Sch 1 (items 29 and 30)
Migration Legislation Amendment Act (No. 1) 1998	113, 1998	11 Dec 1998	Sch 8 (item 1): 1 May 1997 (s 2(4))	—

## Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent date</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Sch 1 (item 524): 5 Dec 1999 (s 2)	—
Australian Citizenship (Transitionals and Consequentials) Act 2007	21, 2007	15 Mar 2007	Sch 2 and Sch 3 (items 14 and 21): 1 July 2007 (s 2(1) item 2)	Sch 3 (items 14 and 21)
Statute Law Revision Act 2008	73, 2008	3 July 2008	Sch 4 (item 333): 4 July 2008 (s 2(1) item 64)	—
Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008	144, 2008	9 Dec 2008	Sch 10 (items 77 and 78): 1 July 2009 (s 2(1) item 28)	—
Immigration (Education) Amendment Act 2010	112, 2010	14 July 2010	1 Jan 2011 (s 2)	Sch 1 (items 18–27)
Immigration (Education) Amendment (Expanding Access to English Tuition) Act 2020	139, 2020	17 Dec 2020	19 Apr 2021 (s 2(1) item 2)	—

## Endnotes

### Endnote 4—Amendment history

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#### Endnote 4—Amendment history

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Provision affected	How affected
<b>Part 1</b>	
Part 1 heading .....	ad No 112, 2010
s 3 .....	am No 110, 1973; No 76, 1986; No 35, 1991; No 176, 1992; No 60, 1994; No 27, 1997; No 144, 2008; No 112, 2010; No 139, 2020
<b>Part 2</b>	
Part 2 .....	ad No 112, 2010
s 4 .....	am No 76, 1986
	rs No 35, 1991
	am No 60, 1994
	rs No 112, 2010
	am No 139, 2020
s 4A .....	ad No 176, 1992
	am No 110, 1995
	rs No 112, 2010
	am No 139, 2020
s 4B.....	ad No 176, 1992
	am No 27, 1997; No 113, 1998
	rs No 112, 2010
	am No 139, 2020
s 4C.....	ad No 176, 1992
	am No 27, 1997
	rs No 112, 2010
	am No 139, 2020
s 4D .....	ad No 176, 1992
	am No 27, 1997; No 21, 2007
	rs No 112, 2010
	am No 139, 2020
<b>Part 3</b>	

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
Part 3 .....	ad No 112, 2010
s 4E.....	ad No 176, 1992 rep No 27, 1997 ad No 112, 2010
s 4F .....	ad No 176, 1992 rep No 27, 1997
<b>Part 4</b>	
Part 4 heading.....	ad No 112, 2010
s 5 .....	am No 76, 1986; No 35, 1991 rs No 112, 2010
s 6 .....	rep No 35, 1991
s 7 .....	am No 76, 1986; No 35, 1991
s 8 .....	am No 110, 1973; No 35, 1991
s 9 .....	am No 110, 1973; No 76, 1986; No 35, 1991; No 112, 2010
s 9A .....	ad No 35, 1991
<b>Part 5</b>	
Part 5 heading.....	ad No 112, 2010
s 10 .....	am No 146, 1999; No 73, 2008; No 112, 2010
s 10A .....	ad No 176, 1992 am No 112, 2010
s 12 .....	am No 110, 1973; No 216, 1973