



Immigration (Education) Charge Act 1992

Act No. 177 of 1992 as amended

This compilation was prepared on 19 April 2011
taking into account amendments up to Act No. 5 of 2011

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

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An Act to impose a charge on applications for certain visas and entry permits by certain persons needing instruction in the English language

1 Short title [see Note 1]

This Act may be cited as the *Immigration (Education) Charge Act 1992*.

2 Commencement

This Act commences on 1 March 1993.

3 Interpretation

- (1) In this Act, unless the contrary intention appears, an expression defined for the purposes of the *Migration Act 1958* has the same meaning as in that Act.
- (2) In this Act, unless the contrary intention appears:

English Education Charge means the charge imposed by section 5.

exempt entry permit means:

- (a) an entry permit, a criterion for the grant of which is that the Minister is satisfied that:
 - (i) permanent settlement in Australia is the appropriate course for the applicant; and
 - (ii) such settlement would not be contrary to the interests of Australia; or
- (b) an entry permit applied for by a person on the ground that he or she is the spouse, dependent child or aged parent of:
 - (i) an Australian citizen; or
 - (ii) a permanent resident; or
- (c) an entry permit prescribed for the purposes of this definition.

exempt visa means:

- (a) a visa, a criterion for the grant of which is that the Minister is satisfied that:
 - (i) permanent settlement in Australia is the appropriate course for the applicant; and
 - (ii) such settlement would not be contrary to the interests of Australia; or
- (b) a visa applied for by a person on the ground that he or she is the spouse, dependent child or aged parent of:
 - (i) an Australian citizen; or
 - (ii) a permanent resident; or
- (c) a visa prescribed for the purposes of this definition.

Finance Department means the Department administered by the Minister administering the *Financial Management and Accountability Act 1997*.

permanent resident means a person who is usually resident in Australia and whose continued lawful presence in Australia is not subject to a limitation as to time imposed by law.

stay visa means:

- (a) a permanent entry permit within the meaning of the *Migration Act 1958* as in force immediately before 1 September 1994; or
- (b) a permanent visa.

4 Act to extend to certain Territories

This Act extends to the Territories to which the *Migration Act 1958* extends.

5 Imposition of English Education Charge

English Education Charge is imposed in respect of an application by a non-citizen if:

- (a) the application is for a stay visa and is made on or after 1 January 1993 and before the commencement of the *Migration (Visa Application) Charge Act 1997*; and

- (aa) any visa application fee payable in relation to the application has been paid before the commencement of the *Migration (Visa Application) Charge Act 1997*; and
- (b) the Minister has given the applicant a notice including:
 - (i) a statement of the kind mentioned in paragraph 24(3)(ab) of the *Migration Act 1958* as in force immediately before 1 September 1994 or a notice under paragraph 24(6)(aa) or 34(3)(aa) of that Act as in force at that time; or
 - (ii) a notice including a statement of the kind mentioned in subsection 26ZEA(3) of the *Migration Act 1958*; and
- (c) the applicant is not exempt from the charge in respect of the application because of section 7.

6 Amount of English Education Charge

- (1) Subject to this section, the amount of English Education Charge in respect of an application is the amount, not exceeding the applicable charge limit, prescribed in relation to the class of applicants of which the applicant is a member.
- (2) The ***applicable charge limit*** in relation to an application made during a financial year starting on or after 1 July 1995 is, subject to subsection (3), the amount worked out under the formula:

$$\frac{\text{new CGFCE number}}{\text{base CGFCE number}} \times \$4,280$$

where:

new CGFCE number means the number worked out as follows:

- (a) take the first set of Commonwealth Government Final Consumption Expenditure Implicit Price Deflators to be issued by the Finance Department after 1 January in the previous financial year;
- (b) find the number that relates to the period ending on 31 December in the previous financial year;
- (c) that number is the new CGFCE number.

base CGFCE number means the number worked out as follows:

- (a) take the first set of Commonwealth Government Final Consumption Expenditure Implicit Price Deflators to be

- issued by the Finance Department after 1 January in the previous financial year;
 - (b) find the number that relates to the period ending on 31 December 1993;
 - (c) that number is the base CGFCE number.
- (3) If an amount worked out under the formula in subsection (2) is not a multiple of \$5, the amount is to be rounded as follows:
- (a) if the amount exceeds the nearest lower multiple of \$5 by \$2.50 or more—round the amount up to the nearest higher multiple of \$5;
 - (b) in any other case—round the amount down to the nearest lower multiple of \$5.

7 Exemptions from English Education Charge

- (1) English Education Charge is not payable:
 - (a) in respect of an application for an exempt visa; or
 - (b) in respect of an application for an exempt entry permit.
- (2) English Education Charge is not payable:
 - (a) in respect of an application if the applicant withdraws the application before the charge is paid; or
 - (b) in respect of an application by a person who has previously paid the charge in respect of another application for a visa or entry permit and has not received a refund of the payment; or
 - (c) in respect of an application by a person who is a permanent resident at the time of the application.

8 Applicant to pay charge

English Education Charge in respect of an application is payable by the applicant.

9 Delegation

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

10 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted to be prescribed by this Act; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Table of Acts**Notes to the *Immigration (Education) Charge Act 1992*****Note 1**

The *Immigration (Education) Charge Act 1992* as shown in this compilation comprises Act No. 177, 1992 amended as indicated in the Tables below.

For relevant information pertaining to application, saving or transitional provisions *see* Table A.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Immigration (Education) Charge Act 1992</i>	177, 1992	16 Dec 1992	1 Mar 1993	
<i>Migration Legislation Amendment Act 1994</i>	60, 1994	9 Apr 1994	Schedule 3 (items 47 and 48) (a)	—
<i>Immigration (Education) Charge Amendment Act 1995</i>	113, 1995	29 Sept 1995	1 Nov 1995 (<i>see Gazette</i> 1995, No. GN43)	S. 3(2)
<i>Migration Legislation Amendment Act (No. 1) 1997</i>	27, 1997	10 Apr 1997	Schedule 1 (items 18, 19, 29, 30): 1 May 1997 (<i>see Gazette</i> 1997, No. S168) (b)	Sch. 1 (items 29, 30)
<i>Statute Law Revision Act 2011</i>	5, 2011	22 Mar 2011	Schedule 6 (items 48–50): 19 Apr 2011	—

Act Notes

- (a) The *Immigration (Education) Charge Act 1992* was amended by Schedule 3 (items 47 and 48) only of the *Migration Legislation Amendment Act 1994*, subsection 2(3) of which provides as follows:
 - (3) The remaining provisions of this Act commence immediately after the commencement of section 3 of the *Migration Reform Act 1992*.Section 3 commenced on 1 September 1994.
- (b) The *Immigration (Education) Charge Act 1992* was amended by Schedule 1 (items 18 and 19) only of the *Migration Legislation Amendment Act (No. 1) 1997*, subsection 2(1) of which provides as follows:
 - (1) Schedule 1 commences on a day to be fixed by Proclamation.

Table of Amendments

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 3	am. No. 60, 1994; No. 5, 2011
S. 5	am. No. 60, 1994; No. 27, 1997
S. 6	am. No. 113, 1995; No. 5, 2011

Table A

Table A

Application, saving or transitional provisions

Immigration (Education) Charge Amendment Act 1995 (No. 113, 1995)

3 Amount of English Education Charge

- (2) The amendments made by subsection (1) apply to applications made on or after the day on which this section commences.

Migration Legislation Amendment Act (No. 1) 1997 (No. 27, 1997)

Schedule 1

29 Application

- (1) The amendment made by item 13 of this Schedule applies in relation to applications whether made before, at or after the commencement of this item.
- (2) The remaining amendments of the *Immigration (Education) Act 1971* and the *Migration Act 1958* made by this Schedule apply in relation to applications for visas made at or after the commencement of the *Migration (Visa Application) Charge Act 1997*.

Note: Under item 30, some applications that are made before the commencement of the *Migration (Visa Application) Charge Act 1997* are taken to be made immediately after that time.

30 Transitional

If:

- (a) an application for a visa is made before the commencement of the *Migration (Visa Application) Charge Act 1997*; and
- (b) a visa application fee, or part of a visa application fee, payable under the *Migration Act 1958* in respect of the application has not been paid at that time;

then, for the purposes of the *Immigration (Education) Act 1971*, the *Migration (Health Services) Charge Act 1991* and sections 45A, 45B and 45C of the *Migration Act 1958*, the application is taken to

Table A

have been made immediately after the commencement of the
Migration (Visa Application) Charge Act 1997.