

EXPLANATORY STATEMENT

Immigration (Education) Act 1971

ENGLISH COURSES FOR HOLDERS OF CERTAIN TEMPORARY VISAS 2015 (Subparagraph 4A(a)(ii))

Background

The *Immigration (Education) Act 1971* (**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. Subparagraph 4A(a)(ii) of the Act provides that a person is eligible for English courses if he or she is in Australia and holds a temporary visa of a class specified in a legislative instrument made by the relevant Minister.

Authority

The Instrument concerning English Courses for Holders of Certain Temporary Visas (the Instrument) is made under subparagraph 4A(a)(ii) of the Act. In addition, under subsection 33 (3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), 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.

Purpose

The purpose of the Instrument is to:

- a. revoke instrument number IMMI 12/038 (F2012L01288), signed on 12 June 2012; and
- b. make a new instrument specifying the classes of temporary visas eligible for English courses.

This Instrument will extend the list of temporary visa classes which enable the holders of such visas to be eligible to access English courses through the AMEP. The addition of these temporary visa classes follows:

- a. reforms to the Australian Government's Human Trafficking Visa Framework (**the Visa Framework**); and
- b. the reintroduction of temporary protection visas and the new Safe Haven Enterprise Visa following the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014*.

Changes to the Visa Framework

The Visa Framework enables foreign nationals who do not already hold a valid visa and are suspected victims of human trafficking or slavery to remain lawfully in Australia. Currently, the visa categories available are:

- a. Bridging F visa (**BF visa**).
 - A BF visa allows a person suspected of being trafficked to remain in Australia for up to 45 days;
 - A second BF visa can be granted in certain circumstances for a further 45 days;
- b. the Criminal Justice Stay Visa (**CJS visa**).
 - After the expiry of a BF visa, a CJS visa may be granted to a suspected trafficked person. A CJS visa allows the holder to remain in Australia for as long as their presence is required for the administration of criminal justice.
- c. Witness Protection (Trafficking) (Permanent) Visa (**WPT visa**).

- A WPT visa allows the holder to remain in Australia permanently. A WPT visa may be granted to a trafficked person who has made a contribution to the investigation or prosecution of an alleged trafficker and who may be placed in danger if returned to their country of origin or domicile.

The above visa categories were not previously specified in instrument IMMI 12/038 (F2012L01288) because:

- CJS visas are not a visa class granted exclusively to trafficked people. Trafficked people make up only a small percentage of the overall number of CJS visa grantees. Accordingly, the inclusion of this visa class would have allowed a much broader category of people to access English courses which would not have met the intended policy aim; and
- WPT visas are a permanent visa. The Minister can only specify classes of temporary visas in instruments made under subparagraph 4A(a)(ii) of the Act.

The Visa Framework regulatory reforms which come into effect on 1 July 2015 will result in the:

- WPT visa being renamed; and
- BF visa being redesigned to incorporate CJS-like functionality. The redesign of the BF visa means that the human trafficking visa framework (comprising of BF and a permanent visa) is now exclusive to trafficked people.

Accordingly, the holder of a Bridging F Visa (Class WF) will now be eligible to access English courses through the AMEP.

The Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014

The *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014* introduced the Safe Haven Enterprise visa and reintroduced temporary protection visas. Following from these changes, the following temporary visas are being added to the Instrument:

- Safe Haven Enterprise Visa (Class XE);
- Temporary Humanitarian Concern Visa (Class UO); and
- Temporary Protection Visa (Class XD).

Accordingly, holders of these visas categories will be eligible to access to English courses through AMEP.

Consultation

Australia's anti-human trafficking strategy is overseen by an Interdepartmental Committee (IDC), chaired by the Attorney-General's Department (AGD), with membership from a range of Commonwealth agencies. The IDC was consulted on the additions to the Instrument.

The Department of Immigration and Border Protection was also consulted in relation to the addition of the temporary protection visas and the Safe Haven Enterprise Visa.

Commencement

This Instrument commences on 1 July 2015.

Regulation Impact Statement

The Office of Best Practice Regulation has advised that a Regulatory Impact Statement is not required (OBPR Reference Number 19306).

Statement of Compatibility with Human Rights

Under section 42 of the *Legislative Instruments Act 2003* the instrument is subject to disallowance and therefore a Statement of Compatibility with Human Rights has been prepared.

Statement of Compatibility with Human Rights

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

English Courses for Holders of Certain Temporary Visas 2015

Overview of the Legislative Instrument

The *English Courses for Holders of Certain Temporary Visas* (**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 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. Subparagraph 4A(a)(ii) of the Act provides that a person is eligible for English courses if he or she is in Australia and holds a temporary visa of a class specified in a legislative instrument made by the Minister.

This instrument will revoke the previous instrument (F2012L01288) and make a new instrument specifying the classes of temporary visas which enable the visa holders to be eligible for English courses. The main change will be that the new instrument will extend the list of temporary visa classes which enable the holders of such visas to be eligible to access English courses through the AMEP. The addition of these temporary visa classes follows reforms to the Australian Government's Human Trafficking Visa Framework (**the Visa Framework**) and amendments made by the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014*.

Human rights implications

Right to Education

The Instrument engages the right to education contained in Article 13 of the *International Covenant on Economic, Social and Cultural Rights* (**ICESCR**) and Article 6 of the ICESCR which provides that everyone has the right to the education.

The Instrument specifies, for the purposes of subparagraph 4A(a)(ii) of the Act, the holders of particular temporary visas who are eligible for access to English courses arranged by the Australian Government. The Instrument promotes the right to education by providing access to English language education to eligible migrants.

This instrument is compatible with the right to education.

Right to Equality and Non-discrimination

The right to equality and non-discrimination is protected in Articles 2 and 26 of the *International Covenant on Civil and Political Rights* (**ICCPR**).

Article 2(1) of the ICCPR obligates each State party to respect and ensure to all persons within its territory and subject to its jurisdiction the rights recognised in the Covenant without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status¹.

Article 26 of the ICCPR not only entitles all persons to equality before the law as well as equal protection of the law, but also prohibits any discrimination under the law and guarantees to all

¹ CCPR General Comment No. 18

persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

While the Instrument limits access to English courses to only particular temporary visa holders, these requirements are compatible with the nature of the ICCPR rights and solely for the purpose of promoting general welfare, as permitted by the Committee on Economic, Social and Cultural Rights in its commentary on differential treatment². Therefore, the Instrument does not restrict any person's right to equality and non-discrimination as contained in Articles 2 and 26 of the ICCPR.

This instrument is compatible with the right to equality and non-discrimination.

Conclusion

The Instrument is compatible with human rights.