

## EXPLANATORY STATEMENT

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

*Immigration (Education) Act 1971*

### ***Immigration (Education) (Specification of temporary visas) Instrument (LIN 21/013) 2021***

- 1 The instrument, Departmental reference LIN 21/013, is made under subsections 4(2) and 4A(2) of the *Immigration (Education) Act 1971* (the Act).
- 2 The instrument repeals *Immigration (Education) (LIN 19/218: Temporary visa classes for eligibility for English Courses) Instrument 2019* (F2019L01406) (LIN 19/218), in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*. That subsection provides that where an Act confers a power to make a legislative instrument, the power includes a power to amend or repeal that instrument, subject to any conditions that apply to the initial instrument-making power.
- 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 This 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). One of the criteria to be eligible for English language tuition is that the person holds, or has applied for, a permanent visa or a temporary visa within a class specified by the Minister in a legislative instrument. The instrument specifies the classes of temporary visas that a person must hold, or have applied for, to be eligible for English courses.
- 6 The eligibility requirements for English courses have been amended by the Amendment Act, as set out in sections 4 and 4A of the Act. The instrument is made under these provisions as amended, and also ensures that the classes of temporary visas that people in Australia must hold to be eligible for English courses are specified under the new express (rather than implied) instrument making power introduced by the Amendment Act.
- 7 By providing measures to support migrants with low English proficiency to learn the national language, the reforms will facilitate social cohesion and boost the education and potential employment prospects of participating migrants.
- 8 The instrument adds the Dependent Child (Visa Class TK) (Subclass 445) visa to the list of temporary visas which a person must hold, or have applied for, to be eligible for the provision of English courses.
- 9 Adding Subclass 445 visas to the list of eligible visas is consistent with the rationale for inclusion of the Partner (Provisional) visa (Subclass 309) and Partner visa (Subclass 820) because a Subclass 445 visa is granted to a child dependent on a parent who holds either Subclass 309 or a Subclass 820 visa. Subclass

445 visa holders ultimately have a pathway to a permanent visa and all permanent visa holders are eligible for AMEP.

- 10 AMEP is available to all eligible permanent visa holders and citizens who previously held permanent visa who are 18 years of age or over and who do not have a vocational level of English language proficiency. However, some visa holders aged 15 to 17 may also be eligible in some locations where intensive English classes in high schools are not available.
- 11 In addition, the instrument removes the Skilled Designated Area Sponsored (Visa Class BQ) (Subclass 139) visa from the list of specified visas, as Subclass 139 visa is a permanent visa and not a temporary visa. This change does not affect the eligibility of holders of this visa subclass for English tuition under the AMEP, as all permanent visa holders are eligible for this tuition by virtue of being permanent visa holders and do not need to be specified in this instrument.
- 12 Interdependency (Provisional) (Visa Class UG) (Subclass 310) visa, Skilled Regional Sponsored (Visa Class VF) (Subclass 475) visa, Skilled Regional Sponsored (Visa Class VC) (Subclass 487) visa, Skilled Independent Regional (Provisional) (Visa Class UX) (Subclass 495) visa, and Resolution of Status (Visa Class UH) (Subclass 850) visa have been repealed from Schedule 1 to the *Migration Regulations 1994*. However, under section 6 of the instrument, holders of these visas who were granted their visas before the instrument commences will remain eligible for the provision of English courses to support their English language learning.

### ***Consultation***

- 13 In preparing the instrument, a range of relevant agencies were consulted including the Department of Education, Skills and Employment and the Department of Finance.
- 14 All of the agencies that were consulted agreed that the classes of temporary visas specified in the instrument were appropriate to specify.
- 15 The Office of Best Practice Regulation (OBPR) was also consulted and considered that the instrument dealt with matters of a minor or machinery nature and no regulatory impact statement was required. The OBPR reference number is 43216.

### ***Details of the instrument***

- 16 Section 1 sets out the name of the instrument.
- 17 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.
- 18 Section 3 sets out definitions of terms used in the instrument.
- 19 Section 4 provides that the instrument repeals LIN 19/218.
- 20 Section 5 specifies subclasses of temporary visas.

- 21 Section 6 provides that holders of certain subclasses of visa that were granted before the commencement of the instrument will remain eligible for the provision of English courses to support their English language learning, despite the repeal of those subclasses of visa from the Migration Regulations.

***Parliamentary scrutiny etc.***

- 22 The instrument is subject to disallowance under section 42 of the Legislation Act.
- 23 A Statement of Compatibility with Human Rights has been prepared in relation to the instrument. It provides that the disallowable legislative instrument is compatible with human rights. The instrument's intended purpose is to facilitate access to English language tuition for eligible visa holders in Australia. This promotes Article 13 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). The Statement is included at **Attachment A** to this explanatory statement.
- 24 The instrument was made by Alex Hawke, Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, in accordance with subsections 4(2) and 4A(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) Amendment (Specification of temporary visas) Instrument (LIN 21/013) 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 Immigration (Education) Act) provides for publicly-funded tuition in approved English courses to eligible migrants who do not have vocational English. This is delivered through the Australian Government Adult Migrant English Program (AMEP). The AMEP helps new migrants learn English skills that will assist them to successfully and confidently participate socially and economically in Australian society. The AMEP is available to all eligible permanent visa holders 18 years of age or over who do not have a vocational level of English language proficiency. Some visa holders aged 15 to 17 may also be eligible in some locations where intensive English classes in high schools are not available. Access is extended to some temporary visa holders as specified in the legislative instrument for this purpose.

The purpose of this Disallowable Legislative Instrument is to repeal and replace the *Immigration (Education) (LIN 19/218: Temporary visa classes for eligibility for English Courses) Instrument 2019* (LIN 19/218) to align with amendments made to the Immigration (Education) Act by the *Immigration (Education) Amendment (Expanding Access to English Tuition) Act 2020*.

This Disallowable Legislative Instrument aligns with the newly inserted instrument making power in subsection 4A(2) of the Immigration (Education) Act whereby the Minister may specify a class of temporary visa for the purposes of subparagraph 4A(1)(a)(ii) of the Immigration (Education) Act to access English courses inside Australia. The inclusion of an express power reflects modern drafting practices and ensures consistency with other express powers to make legislative instruments in the Immigration (Education) Act.

This Disallowable Legislative Instrument also aligns with the newly inserted instrument making power in subsection 4(2) of the Immigration (Education) Act which empowers the Minister to specify a class of temporary visa for the purposes of subparagraph 4(1)(b)(ii) of the Immigration (Education) Act to access English courses outside Australia.

The effect of this Disallowable Legislative Instrument is also to update the existing list of temporary visas eligible for English tuition under the AMEP as specified by LIN 19/218, which this Instrument is repealing and replacing. All the temporary visas which were specified by LIN19/218 are specified in this Instrument and the eligibility for English tuition under the AMEP of those visa holders will not be affected. This Instrument will also make the following two changes compared to the previous list in LIN19/218:

- It removes the permanent Subclass 139 (Skilled Designated Area Sponsored) visa. This change does not affect the eligibility of Subclass 139 (Skilled Designated Area Sponsored) visa holders for English tuition under the AMEP as all permanent visa holders, including Subclass 139 visa holders, are eligible for this tuition by virtue of being permanent visa holders and do not need to be specified in this instrument.

- It adds one new temporary visa subclass so that holders of the subclass 445 (Dependent child) visa are eligible for approved English tuition through AMEP. This is consistent with the rationale for inclusion of the Subclass 309 (Partner (Provisional)) visa and Subclass 820 (Partner) visa in both this Instrument and in LIN19/218 which it is replacing, because a Subclass 445 visa is granted to a child dependent on a parent who holds either a Subclass 309 or a Subclass 820 visa. Further, like Subclass 309 and 820 visa holders, Subclass 445 visa holders ultimately have a pathway to a permanent visa and all permanent visa holders are eligible for AMEP.

## **Human rights implications**

### *Right to Education*

This Disallowable Legislative Instrument specifies, for the purposes of subparagraph 4A(1)(a)(ii) of the Immigration (Education) Act, the particular classes and subclasses of temporary visas which enable the holders of these visas to be among those eligible for English language tuition arranged and funded by the Australian Government.

This Disallowable Legislative Instrument promotes the right to education in Article 13 of *the International Covenant on Economic, Social and Cultural Rights* by providing access to government-funded English language education to eligible visa holders, in particular to the holders of the one new visa subclass that is being added as a result of the instrument being updated.

## **Conclusion**

The Disallowable Legislative Instrument is compatible with human rights.

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