



Immigration (Education) Act 1971

Act No. 3 of 1971 as amended

This compilation was prepared on 1 January 2011
taking into account amendments up to Act No. 112 of 2010

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

Prepared by the Office of Legislative Drafting and Publishing,
Attorney-General's Department, Canberra

Contents

Part 1—Preliminary	1
1 Short title [see Note 1].....	1
2 Commencement [see Note 1].....	1
3 Interpretation	1
Part 2—English courses	3
4 English courses.....	3
4A Eligibility for English courses	3
4B Obligation to provide 510 hours of tuition in an English course	3
4C Ineligibility for English courses—time limits for registration or commencement	4
4D Ineligibility for English courses—time limit on tuition	5
Part 3—Citizenship courses	7
4E Citizenship courses.....	7
Part 4—Implementation	8
5 Provision of teaching and learning materials.....	8
7 Training courses for teachers.....	8
8 Research projects.....	8
9 Payments under arrangements etc.....	8
9A Services for non-government organisations.....	9
Part 5—Miscellaneous	10
10 Delegation by the Minister	10
10A Delegation by the Secretary.....	10
11 Expenditure to be made from appropriations.....	10
12 Annual reports by the Minister.....	10
13 Regulations.....	10
Notes	13

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

Part 1—Preliminary

1 Short title [see Note 1]

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

2 Commencement [see Note 1]

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.

functional English: a person has ***functional English*** if the provider of an approved English course determines, in accordance

Section 3

with any procedures or standards specified by the Minister under subsection (2), that the person has functional English.

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(a)(ii) held by the person came into effect.

Functional English

- (2) The Minister may, by legislative instrument, specify procedures or standards for the purposes of the definition of ***functional 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

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 have applied for a permanent visa.

4A Eligibility for English courses

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 paragraph; 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 functional English; and
- (c) is not ineligible under section 4C or 4D.

4B Obligation to provide 510 hours of 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

Section 4C

- (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.
- (2) Subsection (1) stops applying to a person when he or she has had 510 hours of tuition in approved English courses.
- (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 specified under subparagraph 4A(a)(ii).

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:
 - (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 specified under subparagraph 4A(a)(ii).

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

Section 4D

- (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

Section 13

be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Table of Acts**Notes to the *Immigration (Education) Act 1971*****Note 1**

The *Immigration (Education) Act 1971* as shown in this compilation comprises Act No. 3, 1971 amended as indicated in the Tables below.

All relevant information pertaining to application, saving or transitional provisions prior to 10 April 1997 is not included in this compilation. For subsequent information see Table A.

The *Immigration (Education) Act 1971* was affected by the *Migration Legislation Amendment Act (No. 5) 1995* see Table B.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Immigration (Education) Act 1971</i>	3, 1971	12 Mar 1971	12 Mar 1971	
<i>Immigration (Education) Act 1973</i>	110, 1973	12 Oct 1973	12 Oct 1973	—
<i>Statute Law Revision Act 1973</i>	216, 1973	19 Dec 1973	31 Dec 1973	Ss. 9(1) and 10
<i>Statute Law (Miscellaneous Provisions) Act (No. 1) 1986</i>	76, 1986	24 June 1986	S. 3: Royal Assent (a)	S. 9
<i>Immigration (Education) Amendment Act 1991</i>	35, 1991	21 Mar 1991	21 Mar 1991	—
<i>Migration Laws Amendment Act (No. 2) 1992</i>	176, 1992	16 Dec 1992	Ss. 1-3 and 5: 1 Jan 1993 Ss. 4, 6, 7 and Part 3 (ss. 8–11): 1 Mar 1993 Remainder: Royal Assent	—
<i>Migration Legislation Amendment Act 1994</i>	60, 1994	9 Apr 1994	S. 85: (b)	—
<i>Migration Legislation Amendment Act (No. 1) 1995</i>	110, 1995	29 Sept 1995	S. 4: 1 Nov 1995 (see <i>Gazette</i> 1995, No. GN43) Remainder: Royal Assent	S. 9
<i>Migration Legislation Amendment Act (No. 1) 1997</i>	27, 1997	10 Apr 1997	Schedule 1: 1 May 1997 (see <i>Gazette</i> 1997, No. S168) Remainder: Royal Assent	Sch. 1 (items 29, 30) [see Table A]

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Migration Legislation Amendment Act (No. 1) 1998</i>	113, 1998	11 Dec 1998	Schedule 8 (item 1) 1 May 1997 (see <i>Gazette</i> 1997, No. S168) (c)	—
<i>Public Employment (Consequential and Transitional) Amendment Act 1999</i>	146, 1999	11 Nov 1999	Schedule 1 (item 524): 5 Dec 1999 (see <i>Gazette</i> 1999, No. S584) (d)	—
<i>Australian Citizenship (Transitionals and Consequentials) Act 2007</i>	21, 2007	15 Mar 2007	Schedules 1–3: 1 July 2007 (see s. 2(1) and F2007L01653) Remainder: Royal Assent	Sch. 3 (items 14, 21) [see Table A]
<i>Statute Law Revision Act 2008</i>	73, 2008	3 July 2008	Schedule 4 (item 333): 4 July 2008	—
<i>Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008</i>	144, 2008	9 Dec 2008	Schedule 10 (items 77, 78): 1 July 2009	—
<i>Immigration (Education) Amendment Act 2010</i>	112, 2010	14 July 2010	1 Jan 2011	Sch. 1 (items 18–27) [see Table A]

Act Notes

- (a) The *Immigration (Education) Act 1971* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1986*, subsection 2(1) of which provides as follows:
 - (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.
- (b) The *Immigration (Education) Act 1971* was amended by section 85 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.
- (c) The *Immigration (Education) Act 1971* was amended by Schedule 8 (item 1) only of the *Migration Legislation Amendment Act (No. 1) 1998*, subsection 2(4) of which provides as follows:
 - (4) Item 1 of Schedule 8 is taken to have commenced immediately after the commencement of Schedule 1 to the *Migration Legislation Amendment Act (No. 1) 1997*.
- (d) The *Immigration (Education) Act 1971* was amended by Schedule 1 (item 524) only of the *Migration Legislation Amendment Act (No. 1) 1998*, subsections 2(1) and (2) of which provide as follows:
 - (1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
 - (2) Subject to this section, this Act commences at the commencing time.

Table of Amendments**Table of Amendments**

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

Provision affected	How affected
Part 1	
Heading to Part 1	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
Part 2	
Part 2.....	ad. No. 112, 2010
S. 4.....	am. No. 76, 1986 rs. No. 35, 1991 am. No. 60, 1994 rs. No. 112, 2010
S. 4A	ad. No. 176, 1992 am. No. 110, 1995 rs. No. 112, 2010
S. 4B	ad. No. 176, 1992 am. No. 27, 1997; No. 113, 1998 rs. No. 112, 2010
S. 4C	ad. No. 176, 1992 am. No. 27, 1997 rs. No. 112, 2010
S. 4D	ad. No. 176, 1992 am. No. 27, 1997; No. 21, 2007 rs. No. 112, 2010
Part 3	
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
Part 4	
Heading to Part 4	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
Part 5	
Heading to Part 5	ad. No. 112, 2010

Table of Amendments

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

Provision affected	How affected
Heading to s. 10	am. No. 112, 2010
S. 10.....	am. No. 146, 1999; No. 73, 2008
Heading to s. 10A.....	am. No. 112, 2010
S. 10A	ad. No. 176, 1992
S. 12.....	am. Nos. 110 and 216, 1973

Table A**Table A****Application, saving or transitional provisions***Migration Legislation Amendment Act (No. 1) 1997* (No. 27, 1997)**Schedule 1—Amendments related to visa application charge****Part 2—Application and transitional****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 have been made immediately after the commencement of the *Migration (Visa Application) Charge Act 1997*.

Table A

Australian Citizenship (Transitionals and Consequential) Act 2007
(No. 21, 2007)

Schedule 3

14 Definition

In this Part:

commencement day means the day on which sections 2A to 54 of the *Australian Citizenship Act 2007* commence.

21 Application—*Immigration (Education) Act 1971*

The amendment made by item 1 of Schedule 2 applies in relation to:

- (a) a person in respect of which an obligation under section 4C of the *Immigration (Education) Act 1971* begins on or after the commencement day; or
- (b) a person in respect of which an obligation under that section began before the commencement day, but only if that obligation has not ceased before the commencement day.

Immigration (Education) Amendment Act 2010 (No. 112, 2010)

Schedule 1

18 Definitions

In this Part:

approved English course has the same meaning as in the old law.

commencement time means the start of 1 January 2011.

new law means the *Immigration (Education) Act 1971* as in force immediately after the commencement time.

old law means the *Immigration (Education) Act 1971* as in force immediately before the commencement time.

Secretary means the Secretary of the Department.

special category visa has the same meaning as in the *Migration Act 1958*.

temporary visa has the same meaning as in the *Migration Act 1958*.

Table A**19 Transitional—gazettal of temporary visa classes**

- (1) This item applies to a class of temporary visas if:
 - (a) the class was specified in a notice published in the *Gazette* under subparagraph 4(b)(ii) of the old law; and
 - (b) the notice was in force immediately before the commencement time.
- (2) Subparagraph 4A(a)(ii) of the new law has effect, at and after the commencement time, as if the class had been specified in a legislative instrument made under that paragraph.

20 Transitional—New Zealand citizens registered at commencement time

- (1) This item applies to a person who:
 - (a) is a citizen of New Zealand; and
 - (b) is in Australia; and
 - (c) holds a special category visa; and
 - (d) was, immediately before the commencement time, registered with the provider of an approved English course; and
 - (e) held a special category visa at the time he or she first registered with the provider of an approved English course.
- (2) For the purposes of the new law, other than section 4B (obligation to provide 510 hours of tuition in an English course), treat a special category visa held by the person at or after the commencement time as if it were a permanent visa that came into effect at the time the special category visa mentioned in paragraph (1)(e) of this item came into effect.

21 Transitional—hours of tuition taken before commencement time

In working out how many hours of tuition a person has had for the purposes of subsection 4B(2) of the new law, include hours of tuition in approved English courses given before the commencement time in accordance with the old law.

Table A

22 Transitional—determination that a person has functional English

- (1) This item applies to a person if a determination under paragraph 4D(1)(a) of the old law that the person has functional English (within the meaning of the old law) was in force immediately before the commencement time.
- (2) The person is taken, at and after the commencement time, to have functional English for the purposes of the new law.

23 Transitional—people registered at commencement time

- (1) This item applies to a person if the person was, immediately before the commencement time, registered with the provider of an approved English course.
- (2) Subsections 4C(2) and 4D(2) of the new law apply to the person as if the references in those provisions to the person's visa commencement day were references to the day on which this item commences.

Note: This item commences at the start of 1 January 2011 (see item 18).

24 Transitional—determinations by the Secretary delaying the end of obligation

- (1) This item applies to a person if:
 - (a) a determination was made by the Secretary under subsection 4D(2) of the old law; and
 - (b) the determination provided that the obligation to the person under section 4D of the old law is, or was, to cease on a particular day (the *cessation day*) at or after the commencement time; and
 - (c) the determination was in force immediately before the commencement time; and
 - (d) the person is not covered by item 23.
- (2) Section 4C of the new law applies to the person, at and after the commencement time, as if each of the references to a period in paragraphs 4C(2)(a) and (b) were a reference to the period ending at the end of the cessation day.

Table A

25 Transitional—determinations by the Secretary that obligation not cease

- (1) This item applies to a person if:
- (a) a determination was made by the Secretary under subsection 4D(2) of the old law; and
 - (b) the determination provided that the obligation to the person under section 4D of the old law was not to cease; and
 - (c) the determination was in force immediately before the commencement time; and
 - (d) the person is not covered by item 23.
- (2) Section 4C of the new law does not apply to the person.

26 Transitional—people who became ineligible before commencement time

- (1) This item applies to a person if:
- (a) the person:
 - (i) would have stopped being eligible under subsection 4C(2) of the new law at any time before the commencement time, had the new law been in force; and
 - (ii) is not covered by item 23, 24 or 25; or
 - (b) the person:
 - (i) would have stopped being eligible under subsection 4D(2) of the new law at any time before the commencement time, had the new law been in force; and
 - (ii) is not covered by item 23.
- (2) For the purposes of the new law, and subject to subsections 4C(3) to (6) and 4D(3) to (6) of the new law, the person is not eligible at or after the commencement time.

27 Saving—refund of fees for English courses

Despite the repeal of paragraph 4A(3)(b) of the old law by Part 1 of this Schedule, that paragraph, and regulations made for the purposes of that paragraph, continue to apply at and after the commencement time in relation to fees charged before the commencement time under regulations made for the purposes of subsection 4A(1) of the old law.

Table B

Table B

Affected by another Act

Migration Legislation Amendment Act (No. 5) 1995 (No. 100, 1995)

Schedule 1

1 Certain persons not entitled to tuition

- (1) Despite section 4C of the *Immigration (Education) Act 1971*, the Commonwealth is not obliged to provide, or arrange for the provision of, any tuition in an approved English course to a person if the person was granted a visa, whether or not after the commencement of this item, because the person satisfied paragraph 816.721(1)(a) or 818.721(1)(a) of the Migration (1993) Regulations.
- (2) If, immediately before the commencement of this item, the Commonwealth had an obligation under that Act to a person covered by subitem (1), that obligation ceases at the commencement of this item.

Schedule 1 (item 1) commenced on 15 September 1995.