

## 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) Amendment Instrument (LIN 21/070) 2021***

- 1 The instrument, Departmental reference LIN 21/070, is made under subsections 4(2) and 4A(2) of the *Immigration (Education) Act 1971* (the IE Act).
- 2 The instrument amends *Immigration (Education) (Specification of temporary visas) Instrument (LIN 21/013) 2021* (LIN 21/013) in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*. That subsection provides that a power to make a legislative instrument includes a power to amend or repeal that instrument in the same manner, and subject to the same conditions, as the power to make the instrument.
- 3 The instrument commences on the day after it is registered on the Federal Register of Legislation, and is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

#### ***Purpose***

- 4 In response to the humanitarian crisis in Afghanistan, the Australian Government is providing settlement assistance to Afghan citizens. Many in this cohort have been, or will be, granted a Temporary Safe Haven (Class UJ), Subclass 449 (Humanitarian Stay (Temporary)) visa (a Subclass 449 visa).
- 5 As part of supporting this cohort, this instrument expands eligibility for tuition in approved English courses, known as the Adult Migrant Education Program (AMEP), to holders of Subclass 449 visas both offshore and in Australia.
- 6 The IE Act sets out a scheme for tuition in approved English courses to eligible migrants. Relevantly, a person is eligible for AMEP when they are:
  - outside Australia and hold, or have applied for, a class of temporary visa specified by the Minister (see subparagraph 4(1)(b)(ii) of the IE Act); or
  - in Australia and hold a class of temporary visa specified by the Minister (subparagraph 4A(1)(a)(ii)).
- 7 LIN 21/013 specifies the classes of temporary visas that are eligible for AMEP for both subparagraphs 4(1)(b)(ii) and 4A(1)(a)(ii). The instrument adds the subclass 449 visa to LIN 21/013 as a specified class of temporary visa so that visa holders in this cohort are eligible to access English tuition under the AMEP.

#### ***Consultation***

- 8 The Department sought to respond quickly to ensure English tuition under the AMEP would be accessible to visa holders in the cohort as soon as practicable, allowing them to begin developing English language skills and to support settlement in Australia. In the interests of progressing the

instrument quickly, and noting the net benefit that this provides to the affected cohort, no external consultation was undertaken prior to making the instrument.

- 9 The Office of Best Practice Regulation (OBPR) was also consulted and considered that the instrument deals with matters of a minor or machinery nature and no regulatory impact statement was required. The OBPR reference number is 44471.

***Details of the instrument***

- 10 Section 1 sets out the name of the instrument.
- 11 Section 2 provides for the commencement of the instrument on the day after it is registered on the Federal Register of Legislation.
- 12 Section 3 provides that LIN 21/013 is amended as set out in Schedule 1.
- 13 Schedule 1 inserts a new item 5A into the table in section 5 of LIN 21/013, which specifies the subclasses of temporary visas that are eligible for the provision of English language course for subparagraphs 4(1)(b)(ii) and 4A(1)(a)(ii) of the IE Act. New item 5A includes a subclass 449 visa as a specified class of temporary visa.

***Parliamentary scrutiny etc.***

- 14 The instrument is subject to disallowance under section 42 of the Legislation Act. A Statement of Compatibility with Human Rights has been prepared in relation to the instrument, and provides that 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*. The Statement is included at [Attachment A](#) to this explanatory statement.
- 15 The instrument was made by the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs in accordance with subsections 4(2) and 4A(2) of the IE Act.

**Statement of Compatibility with Human Rights**

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

***Immigration (Education) (Specification of temporary visas) Amendment Instrument (LIN 21/070) 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* 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's 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, and current citizens who previously held a permanent visa, aged 18 years 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 also extended to some temporary visa holders as specified in the legislative instrument for this purpose.

The purpose of this Disallowable Legislative Instrument is to amend the *Immigration (Education) (Specification of temporary visas) Instrument (LIN 21/013) 2021* (LIN 21/013) to add the Temporary Safe Haven (Class UJ), Subclass 449 (Humanitarian Stay (Temporary)) visa to the specified classes of temporary visas that a person must hold, or have applied for, to be eligible for the provision of English language tuition under the AMEP.

The Subclass 449 (Humanitarian Stay (Temporary)) visa is being added to support the Government's efforts to provide urgent settlement assistance to those entering Australia from Afghanistan, many of whom have been or are expected to be granted this visa, by providing them with access to English language tuition under the AMEP.

**Human rights implications**

*Right to Education*

This Disallowable Legislative Instrument promotes the right to education in Article 13 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), which states:

1. *The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.*

The Disallowable Legislative Instrument positively engages the right to education in Article 13 of the ICESCR as it provides access to government-funded English language tuition to holders of a Temporary Safe Haven (Class UJ) Subclass 449 (Humanitarian Stay (Temporary)) visa.

**Conclusion**

The Disallowable Legislative Instrument is compatible with human rights.

Unless otherwise indicated in this document, it is Copyright of the Commonwealth of Australia and the following applies:

Copyright Commonwealth of Australia.

This material does not purport to be the official or authorised version. Reproduction and use of this material is subject to a [Creative Commons Attribution-NonCommercial-ShareAlike 3.0 Australia License](#).

You should make independent inquiries and obtain appropriate advice before relying on the information in any important matter.

This document has been distributed by LexisNexis Australia. All queries regarding the content should be directed to the author of this document.

Unless otherwise indicated in this document, it is Copyright of the Commonwealth of Australia and the following applies:

Copyright Commonwealth of Australia.

This material does not purport to be the official or authorised version. Reproduction and use of this material is subject to a [Creative Commons Attribution-NonCommercial-ShareAlike 3.0 Australia License](#).

You should make independent inquiries and obtain appropriate advice before relying on the information in any important matter.

This document has been distributed by LexisNexis Australia. All queries regarding the content should be directed to the author of this document.