



Immigration (Education) Amendment Bill 2010

Moira Coombs
Law and Bills Digest Section

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Immigration (Education) Amendment Bill 2010

Date introduced: 17 March 2010

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Portfolio: Immigration and Citizenship

Commencement: 1 January 2011

Links: The [links](#) to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bills page, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

The purpose of the Immigration (Education) Amendment Bill 2010 (the Bill) is to amend the *Immigration (Education) Act 1971* (the Act) to implement the new Adult Migrant English Program (AMEP) Business Model.

Background

Adult Migrant English Program (AMEP)

AMEP has been in existence since 1948 when it was originally developed to assist migrants and displaced persons coming to Australia after the war to learn English.¹ ‘AMEP is the Australian Government’s largest settlement program and is delivered at more than 250 locations around Australia.’² The aims of AMEP are:

... to help recently arrived migrants and humanitarian entrants to develop the English language skills they need to access services in the general community, provide a pathway to employment, training or further study and participate in other government programs offered. The AMEP also assists clients, through experiential learning, to become independent in managing day-to-day situations.

Its vision is to provide basic English through:

- Formal and informal tuition
- Support services, including vocational guidance counselling

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1. Department of Immigration and Citizenship, *Review of the Adult Migrant English Program, Discussion Paper*, July 2008, p. 8.
 2. Ibid.

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- Social participation activities, and
- Learning and linkages to employment, training and further study pathways.³

AMEP— how it operates

People entering Australia who are permanent adult migrants or humanitarian entrants and whose English is poor are eligible under the Act for up to 500 hours of English language tuition. The entitlement ceases however once the person becomes proficient in English.⁴ The Discussion paper published by the Department of Immigration and Citizenship entitled *Review of the Adult Migrant English Program* (the Discussion Paper)⁵ notes that many eligible people come mainly from the humanitarian and family migration streams or are dependents of skilled migrants.⁶ AMEP is also currently available to 16 to 18 year olds who are unable to participate in the school system.⁷ Specifically,

... because the AMEP is an adult program, 16–17 year olds are only eligible if there is no appropriate program within the school sector. The Commonwealth provides funding, through state departments of education, for six months intensive English instruction for new arrivals. In some states, there is additional support that is state funded.⁸

The Special Preparatory Program exists as part of AMEP. This was introduced in 1997 to provide humanitarian entrants who have experienced trauma and torture with an additional 100 hours of tuition. In 2004, this was expanded to include young people in the 16 to 24 age group with seven or less years of schooling with an additional 400 hours of tuition.⁹

As mentioned above, there are more than 250 centres offering tuition in English to eligible persons. For example, these centres include the Canberra Institute of Technology and the various Technical and Further Education (TAFE) institutions around Australia. Not only do they provide tuition in English but these centres also provide advice on how to have

3. Ibid.

4. Ibid., p. 10.

5. See above note 1.

6. Ibid.

7. Ibid.

8. D E Murray and Rosemarie Lloyd, *Uptake of the Special Preparatory Program by African Communities: attitudes and expectations*, AMEP Research Centre, Sydney, Macquarie University, 2008, viewed 3 May 2010, p. 1, http://www.ameprc.mq.edu.au/docs/research_reports/research_reports/Uptake_report.pdf

9. Ibid.

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overseas qualifications recognised in Australia or assist with the translation of personal documents into English.¹⁰

People can undertake English classes in a classroom situation or by distance learning. In the case of distance learning, specially designed books and audiovisual materials are sent to the person's home and support is provided by regular phone contact with a qualified teacher.¹¹

A number of matters are considered before a person commences classes. These matters include:

- an assessment of the person's level of English
- the type of class the person will attend and agreement on the number of hours of study required each week
- childcare needs and whether the Centre can provide assistance
- develop an individual learning plan noting the educational and career goals and how they can be achieved
- progress in the AMEP program is recorded on the person's individual plan.¹²

AMEP Review

In 2007, Ernst and Young conducted an audit of AMEP and concluded that the goals and objectives of the program did not mesh. The Discussion Paper noted that there were recommendations from this audit that required consideration.¹³ In 2008, a formal review of AMEP commenced (the Review). An external steering committee was set up provide guidance and strategic direction. Membership of the Steering committee comprised departmental officers, two community representatives, the AMEP Research Centre¹⁴, and a State Government education representative.¹⁵

10. Department of Immigration and Citizenship, *Welcome to the Adult Migrant English Program*, viewed 4 May 2010, http://www.immi.gov.au/living-in-australia/help-with-english/amep/learning-english/_pdf/welcome-amep-english.pdf

11. Ibid.

12. Ibid.

13. Department of Immigration and Citizenship, *Review of the Adult Migrant English Program*, op. cit., p. 8.

14. The AMEP Centre is part of Macquarie University. It provided research and Professional Development services to AMEP. It served AMEP by providing TESOL (Teachers of

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The Discussion Paper considered it an opportune time to review the program as the profiles of clients had changed markedly, as had the Australian labour market. In the Discussion Paper, it was stated that:

Between 1997 and 2002, most humanitarian entrants came from the former Yugoslavia and Iraq and had average to high levels of education. Since 2002, the regional focus of the Humanitarian program has changed in response to United Nations High Commissioner for Refugees (UNHCR) resettlement priorities. There are significant numbers in the current cohort of humanitarian entrants with little or no education who require both English language and literacy skills. These clients are struggling to make gains in the current AMEP.¹⁶

It was intended that the outcomes of the review form the basis for development of the Request for Tender for the 2010-2015 AMEP contracts.¹⁷

The Review's terms of reference focussed on the following issues:

- the strategic goal and objectives of the program
- the best way to meet the English language needs of clients who are seeking employment and those requiring English to integrate socially
- the provision of English language assistance to 15 to 18 year old migrant and humanitarian entrants who are not attending school and are currently unable to access the AMEP, and
- improvements to the administration of the AMEP in the areas of performance measurement, reporting, legislation and benchmarking.¹⁸

The Review consulted extensively with clients, teachers, AMEP and other settlement service providers, as well as the Australian Government and state and territory government agencies. The findings fed into the new AMEP business model and consequently formed the basis of the request for tender for the AMEP services in 2009-10.¹⁹

English to Speakers of Other Languages) research and professional development from 1989 to 2009, website, viewed 10 May 2010, <http://www.ameprc.mq.edu.au/>

15. Ibid., p. 9.

16. Ibid.

17. Ibid.

18. Ibid., p. 9.

19. Department of Immigration and Citizenship, *New AMEP business model*, Annual report 2008-09, Department of Immigration and Citizenship, Canberra, 2009, p. 204.

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AMEP Business Model

An initiative was announced in the 2009-2010 Budget to reform the design and delivery of the AMEP. It proposed to increase the number of AMEP counsellors to assist clients to reach their goals. ‘This includes guidance on pathways to further English language tuition, education, employment or vocational training.’²⁰ In addition, it proposed expanded services to extend to 15 to 17 year old new arrivals who tend to drop out within their first year of arrival.²¹

The initiative supports the program reforms as outlined above. Budget paper no. 2²² stated that savings in this program will be achieved through improved pricing, administration and contractual arrangements for the delivery of services and estimated that it would provide a net savings of \$20.4 million over four years.²³

The Government considers learning English to be the most important step in successfully integrating into Australian society:

While maintaining one’s cultural heritage and language is always encouraged, the government considers English in the Australian context as one of the most important steps towards successful settlement in Australia.²⁴

The aim of the new AMEP Business Model (the new Model) is, as the Parliamentary Secretary states broadly, to ‘provide greater support for clients whilst improving client retention and the English language proficiency of clients.’²⁵ In addition, the Parliamentary Secretary states that the new Model will improve program delivery and administrative arrangements.²⁶

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20. L Ferguson, ‘Second reading speech: Immigration (Education) Amendment Bill 2010’, House of Representatives, *Debates*, 17 March 2010, p. 2719.
 21. Australian Government, ‘Part 2: Expense measures’, *Budget measures: budget paper no. 2: 2009-10*, Commonwealth of Australia, Canberra, 2009, [Immigration and Citizenship: improving English language learning outcomes for newly arrived migrants](#).
 22. Ibid.
 23. Ibid.
 24. L Ferguson, ‘Speech: Adult migrant English program National Forum’, media release, viewed 3 May 2010, <http://www.minister.immi.gov.au/parlsec/media/speeches/2009/lf091112.htm>
 25. Ibid.
 26. Ibid.

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Citizenship Courses

Item 14 of the Bill inserts Part 3 section 4E Citizenship courses into the Act. Currently in section 4, citizenship and English courses are grouped together. They have now been separated and arrangements concerning citizenship courses will be contained in the regulations. The time limit restrictions for English courses²⁷ will not apply to the citizenship courses.

The Government in its response to the *Moving Forward... Improving Pathways to Citizenship* report, published in November 2008, commented on citizenship courses as follows:

The Review Committee expressed concern that there are no alternative pathways to sitting a computer-based test which was in effect marginalising some people from becoming citizens. The Government is committed to ensuring people who have a commitment to Australia and who have a strong desire to become Australian Citizens have the opportunity to do so. The Government will develop a citizenship course that will provide an alternative pathway to citizenship for refugees and disadvantaged or vulnerable migrants. This will include people who understand English but whose level of literacy does not allow them to undertake a formal computer-based test.

This alternative pathway will address community concerns about the test and in many cases, will help people who were previously excluded from obtaining citizenship. It will ensure that the citizenship test caters for the needs of a broad range of people, particularly those who are disadvantaged and vulnerable. Equally the Government will provide educational support and a range of preparatory learning materials.

Migrants with better English are more successful at settling and finding employment. For these reasons, the Government does not support the recommendation for a citizenship education program in languages other than English.

The Department of Immigration and Citizenship (DIAC) will work with educational testing professionals to validate and ensure consistency of testing and assessment frameworks throughout pathways. The Government expects this process to be completed by 2010.

The Government does not support making the test questions publicly available. Maintaining the confidentiality of the test questions will ensure the integrity and rigour of the test is not diminished.²⁸

27. See the discussion on proposed provisions in this Digest at p.11 on the time limits for registration and commencement of English courses.

28. Australian Government, *Government response: Moving forward...Improving Pathways to Citizenship*, Government response to the report by the Australian Citizenship Test Review

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Committee consideration

On 17 March 2010, the Senate Selection of Bills Committee resolved to recommend that the Immigration (Education) Amendment Bill 2010 not be referred to a parliamentary committee.²⁹

Financial implications

The Explanatory Memorandum states that the removal of the annual administration fee for English courses would cost less than \$10,000 is collected per annum and that less than one per cent of clients are charged this fee. Consequently, the removal of this fee is expected to have a negligible impact on the Government's fiscal balance.³⁰

Main provisions

Schedule 1— Part 1—Amendments to the *Immigration (Education) Act 1971*

Part 1—Preliminary

Item 13 inserts proposed subsections 3(2) and (3) relating to the amended definition of 'functional English'.

The Explanatory Memorandum states

Although it is possible that the definition of the internationally recognised standard may change from time to time, this standard [English language ability] is widely used in second language learning and any changes to the standard would be implemented across the language learning sector. Linking the standard of "functional English" to an internationally recognised standard provides transparency and certainty as to the standard that providers of approved English courses must use to assess a person's English.³¹

Committee, November 2008, p. 4, viewed 5 May 2010,

http://www.citizenship.gov.au/_pdf/government-response-to-the-report.pdf

29. Senate Selection of Bills Committee, Report No. 5 of 2010, 18 March 2010, viewed 28 April 2010,

http://www.aph.gov.au/senate/committee/selectionbills_ctte/reports/2010/report0510.pdf

30. Explanatory Memorandum, Immigration (Education) Amendment Bill 2010, p. 2.

31. *Ibid.*, pp. 9–10.

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Proposed subsection 3(2) provides that the Minister may, by legislative instrument, specify procedures or standards relating to the definition of functional English in **proposed subsection 3(1)**.

Proposed subsection 3(3) provides that such legislative instrument may apply, adopt or incorporate, with or without amendment, any matters contained in other instruments or documents, which are in force or exist at a particular time or from time to time.

Item 14 repeals sections 4 and 5 and substituting existing sections 4 and 5 with **proposed new Part 2—English courses**, which includes **new sections 4 to 4D**; **proposed new Part 3—Citizenship courses** and **proposed new Part 4—Implementation** (which includes new **proposed section 5**). Other existing provisions are also amended.

New Part 2—English courses

Proposed section 4 provides that the Minister may provide or arrange for the provision of English courses for people who either meet the eligibility criteria or are outside Australia and who have applied for a permanent visa. The Explanatory Memorandum notes the following:

57. This amendment firstly ensures that the Minister may only provide, or arrange the provision of, English courses to persons who are outside Australia if they have applied for a permanent visa. The purpose of this amendment is to clarify the provision and provide for greater certainty for potential clients and decision-makers. The fact that a person has applied for a permanent visa demonstrates an intention to migrate to Australia and can be objectively ascertained, while the current requirement that a person intend to migrate to Australia involves a subjective assessment.

58. Secondly, this amendment, together with new section 4E inserted by this item, separates the provision of English courses from the provision of citizenship courses. This is to ensure that the time limits in new section 4C for registering in and starting an approved English course, and the five-year time limit in new section 4D on eligibility for approved English courses, do not apply in relation to citizenship courses. (Section 3, as amended by item 4, defines “approved English course” as an English course provided in accordance with section 4 of the Act.)³²

Proposed section 4A sets out the eligibility criteria that persons must meet to qualify to do an English course. A person is eligible if they meet the following criteria:

- the person is in Australia and:
 - holds a permanent visa

32. Ibid, p. 11.

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- holds a temporary visa of a type specified by the Minister in a legislative instrument for the purposes of **proposed paragraph 4A(a)**
- has previously held a permanent entry permit or a permanent visa; and has become an Australian citizen, or
- is under 18 years and has at least one parent who has held or holds a permanent entry permit or a permanent visa, and
- does not have functional English, and
- is not ineligible under **proposed sections 4C** (time limits for registration or commencement) or **4D** (time limit on tuition).

In effect, **proposed subsection 4A(1)** removes the eligibility of New Zealand citizens who hold a special category visa, the rationale being that they would have had access to English language tuition in New Zealand.³³ The reference to Christmas Island and the Cocos (Keeling) Islands is also removed as the definition of *Australia* in the *Acts Interpretation Act 1901* includes both of these external territories.³⁴

Proposed subsection 4B(1) provides that the Minister must provide or arrange the provision of tuition in an approved English course for an eligible person while he or she remains eligible, if that person meets the following criteria:

- holds a permanent visa
- is aged at least 18 years on their first day in Australia on or after the day when the permanent visa came into effect
- has paid or is exempt from paying the visa application fee for a permanent visa under section 45A of the *Migration Act 1958*
- did not at any time previously hold another permanent visa while in Australia, and
- is not excluded from the application of this section by the regulations.

Proposed subsection 4B(2) provides that subsection 4B(1) no longer applies once the person has had 510 hours of tuition in an approved English course.

Proposed subsection 4B(3) does not limit the operation of **proposed section 4** which means that the Minister's discretion in proposed section 4 is not limited by the operation of proposed section 4C.

33. Ibid, para. 64, p. 12

34. The definition of *Australia* in paragraph 17(a) of the *Acts Interpretation Act 1901* includes Christmas Island and the Cocos (Keeling) Islands but not any other external territory.

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Proposed section 4C relates to ineligibility for English courses and the time limits that apply for registration or commencement. **Proposed subsection 4C(1)** sets out the scope of the section. **Proposed section 4C(1)** applies to people who would be eligible to do an English course if they had ever held permanent visas or temporary visas of a type specified in **proposed subparagraph 4A(a)(ii)**.

Proposed subsection 4C(2) provides for time limits.

Proposed subparagraph 4C(2)(a)(i) provides that a person aged under 18 years on his or her visa commencement day and who fails to register with a provider of an approved English course within a twelve month period beginning from that visa commencement day, will become ineligible.

Proposed subparagraph 4C(2)(c)(ii) provides that a person aged 18 or more years on his or her visa commencement day and who fails to register with a provider of an approved English course within a six month period beginning on that day will become ineligible.

Proposed paragraph 4C(2)(b) provides that a person is ineligible if he or she fails to start an approved English course within a twelve month period beginning on his or her visa commencement day.

A person may apply to the Secretary for an extension of time mentioned in **proposed subsection 4C(2)** (**proposed 4C(3)**) and must do so as prescribed in the regulations. The application may, subject to any regulations, be made either before or after the end of the period of time mentioned in **proposed subsection 4C(2)**(**proposed 4C(4)**).

Proposed subsection 4C(5) allows the Secretary to approve such extensions of time if he or she is satisfied that it would be unreasonable to make the applicant ineligible. In making these decisions, the Secretary must consider the matters prescribed by the regulations and not consider any other matter (**proposed subsection 4C(6)**).

Proposed section 4D relates to ineligibility for English courses and the time limit on tuition. A person's eligibility to do an English course ceases after a five year period beginning on his or her visa commencement day (**proposed subsection 4D(2)**). Provisions relating to applying for extensions of time in **proposed section 4D** are similar to those in **proposed section 4C**. However, in deciding whether to extend time limits under **proposed section 4D**, the Secretary must be satisfied that the person not become ineligible for *compelling and compassionate* reasons as opposed to the reasonableness of such an outcome (see above).

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New Part 3—Citizenship courses

Proposed section 4E enables the Minister to arrange for citizenship courses to be provided both within and outside Australia to people prescribed in the regulations.

Transitional and Saving Provisions

The transitional and saving provisions are very detailed and provide guidance as to how various categories of people who are eligible or who have applied for English courses will be dealt with after the new laws come into force. The Explanatory Memorandum has detailed information in relation to these transitional provisions.³⁵

Schedule 1—Part 2 —Transitional and saving provisions

Item 19(1) relates to the gazettal of temporary visa classes specified in the Gazette under existing subparagraph 4(b)(ii), in force immediately before the commencement of the new law.

Item 19(2) provides that the **proposed subparagraph 4A(a)(ii)** has effect, at and after 1 January 2011, as if the classes of temporary visa had been specified in a legislative instrument under that paragraph.

Item 20 is a transitional provision in relation to New Zealand citizens, in Australia, who are registered with a provider of an approved English course at commencement time.

Item 20(1) states that this item applies to New Zealand citizens in Australia who hold special category visas, were registered with the provider of an approved English course immediately before 1 January 2011 and held special category visas at the time they were first registered with such providers.

Item 20(2) treats a special category visa held by a person, at or just after 1 January 2011, as if it were a permanent visa that came into effect at the time the special category visa mentioned in **item 20(1)(e)** came into effect. However, this does not apply in relation to **proposed section 4B** (obligation to provide 510 hours of tuition in an English course). This enables a New Zealand citizen holding a special category visa and who registers with a provider of an approved English course before 1 January 2011 to continue with the tuition after that date.³⁶

Item 23 is a transitional provision in relation to people registered in English courses on 1 January 2011.

35. Explanatory Memorandum, Immigration (Education) Amendment Bill 2010, pp. 27-36.

36. Explanatory Memorandum, Immigration (Education) Amendment Bill 2010, op. cit., p. 28.

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Item 23(1) applies to a person who is registered with a provider of an approved English course immediately before that date.

Item 23(2) provides that **proposed subsections 4C(2) and 4D(2)** which deal with time limits for registration or commencement of tuition will apply to such person as if the references to the person's visa commencement day were references to 1 January 2011. This ensures that a person who is registered before 1 January 2011 may start the course within 12 months of that date and have five years to complete tuition in approved English courses.

Item 24 is a transitional provision relating to determinations by the Secretary delaying the end of the obligation to provide 510 hours of tuition.

Item 24(1) provides that **item 24** applies to a person if:

- a determination was made by the Secretary under existing subsection 4D(2), that the obligation to provide English tuition to a person was to cease on a particular day (*cessation day*) at or after 1 January 2011
- that determination was in force immediately before that date, and
- the person is not covered by **item 23** (see above).

Item 24(2) provides that **proposed section 4C** applies to a person, at or after 1 January 2011, as if each reference to a period in **proposed paragraphs 4C(2)(a) and (b)** was a reference to the period ending at the end of the *cessation day*. The Explanatory Memorandum states

The purpose of this amendment is to avoid unfairness to people receiving tuition under the Act by ensuring that a date specified before the commencement time will remain in place after 1 January 2011.³⁷

Item 25 is a transitional provision concerning determinations by the Secretary that the obligation to provide English tuition is not to cease.

Item 25(1) applies if:

- the Secretary made a determination under existing subsection 4D(2) that an obligation to a person under existing section 4D was not to cease,
- that determination was immediately in force before 1 January 2011, and
- the person is not covered by **item 23** (see above).

37. Ibid., p. 33.

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Under existing section 4D, the Secretary may determine that the obligation not cease or nominate a later date.

Item 25(2) provides that **proposed section 4C** does not apply to the person. Proposed section 4C relates to time limits for registration or commencement of an English course.

Item 26 provides transitional arrangements for people who became ineligible to apply to a provider of an English course before 1 January 2011. **Subitem 26(1)** provides that a person would have stopped being eligible under proposed subsection 4C(2) (fails to register within 12 months if under 18 or 6 months if 18 and over or fails to start an English course within 12 months of visa commencement day) before 1 January 2011 had the new law been in force and is not covered by items 23, 24 or 25. The person would have stopped being eligible under subsection 4D(2) (a person stops being eligible after a five year period) of the new law before 1 January 2011 had the new law been in force and is not covered by item 23. **Subitem 26(2)** provides that a person is not eligible at or after 1 January 2011 subject to the provisions of subsections 4C(3) to (6) and 4D(3) to (6) (extension of time). The effect is that a person who did not register before 1 January 2011 must apply for an extension of the timeframes under proposed subsections 4C(2) or 4D(2) to be extended.

Item 27 provides for a saving provision for the refund of fees for English courses. Paragraph 4A(3)(b) of Part 1 of the old law and the regulations made under that paragraph continue to apply at or after 1 January 2011. The regulations made under paragraph 4A(3)(b) provide ‘for the refund, reduction or waiving of fees in cases identified in the regulations.’³⁸

38. Paragraph 4A(3)(b), Immigration (Education) Act 1971.

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