



File Ref: SDE 32

**WORKFORCE (IMMIGRATION NEW ZEALAND)
INTERNAL ADMINISTRATION CIRCULAR NO: 08/02**

To: All Workforce/Immigration New Zealand (INZ) staff

Date: 01 February 2008

**United Nations Convention on the Rights of the Child: Further advice
on granting unlawful school-age children Limited Purpose Permits
(LPPs)**

Please **read** this information and ensure that all staff members who may be affected are aware of what is required of them. These instructions should be read in conjunction with IAC Number 07/18, dated 12 September 2007.

Purpose

1. The purpose of this Internal Administration Circular (IAC) is to:
 - provide advice for staff receiving queries from schools regarding the immigration status of a child;
 - provide staff with further advice on the process for granting LPPs for the purpose of study to children in New Zealand unlawfully;
 - provide information about the process for revoking a child's LPP and issuing a permit of a different type.

Background

2. New Zealand is a party to the United Nations Convention on the Rights of the Child (UNCROC). The UNCROC sets out agreed rights to protections, entitlements and freedoms for children and young people under the age of 18 years.
3. On 15 August 2007 Cabinet agreed that, where the Department of Labour (the Department) becomes aware of children unlawfully in New Zealand, (whether or not their parents are present), the children may be provided with LPPs to enable them to access primary and secondary school education, while their immigration status is being determined. It should be noted that publicly funded education is available up to the end of the year in which a person turns 19, so some of those who come to notice may not be minors in terms of the Immigration Act. Nevertheless, Cabinet's decision also applies to such people.
4. In October 2007 the Minister of Immigration agreed to the Department's approach to granting LPPs to children in New Zealand unlawfully. The Department identified several different groups of children who might be eligible for an LPP, and recommended different approaches to resolving their immigration status. Note that in some cases the approach might be to grant an 'interim' student permit rather than an LPP.

Schools inquiring into the immigration status of a child

All schools inquiring into the immigration status of a child should be advised to contact the Ministry of Education (MoE). The MoE is responsible for contacting the Immigration New Zealand (INZ) Palmerston North student team for notification of a child's status.

5. The INZ Palmerston North office will be responsible for advising the MoE of the child's status where possible, for granting an LPP to the child where appropriate, and referring the child's details to a compliance officer for investigation. Where a child's immigration status cannot be confirmed the MoE will be advised of this, and will carry out further investigation into the child's identity and status.
6. It is important to note that Palmerston North office will not be dealing with all UNCROC related LPP cases. Palmerston North will be responsible for those cases that would normally come to that branch (e.g. one related to a full fee-paying student) and those that arise through a MoE enquiry. Cases that present in other offices should be dealt with by that office (e.g. a case connected to a S35A request for work permits by the child's parents).

Granting permits to children in New Zealand to allow them to study

7. There are four main groups of children in New Zealand who may need to have their immigration status addressed by the grant of an LPP (or an 'interim' student permit) so that they can access education. It should be noted, however, that the complexity of some cases means they do not fit neatly into a particular group. In all cases involving children unlawfully in New Zealand, the child's best interests must be taken into account.
8. If a case officer thinks that an LPP or 'interim' student permit should not be granted for any reason other than those noted in the '**Action**' column below, they must involve their branch manager and only the branch manager may decide not to grant a permit.
9. The groups have been identified as follows:

Status of child in New Zealand	Action	Notes
1. Unlawful (often with their parents)	<ul style="list-style-type: none"> • If child has been unlawful for less than 42 days only grant LPP if parent/guardian or child (aged 17 or over) agrees • If there is agreement, usually grant LPP to end of school year to allow immigration status to be determined • If child has been unlawful for more than 42 days, do not grant LPP if there is no appeal against removal pending and removal is planned within the next 21 days 	<ul style="list-style-type: none"> • An LPP removes the right to appeal to the Removal Review Authority (RRA) • If parent/caregiver or child aged 17 or over does not agree to the grant of an LPP the child's status remains unlawful and the usual RRA and/or removal processes take place
2. Foreign fee-paying student – unlawful	<ul style="list-style-type: none"> • Consider granting short-term LPP to allow time for arrangements to depart NZ (subject to the agreement of the parent/guardian or child aged 17 or over as above) 	

2a. Foreign fee-paying student – lawful but recently declined a further student permit	<ul style="list-style-type: none"> • Provide usual advice that they must leave New Zealand before their current permit expires 	
3. Hold visitor's permit and try to enrol in school	<ul style="list-style-type: none"> • Inform the school of the child's status and advise that the child should apply for a student permit • If child becomes unlawful grant an LPP to enable study while their immigration status is resolved (subject to parent/guardian or child 17 or over agreeing, as above) 	
4. Become unlawful while INZ is considering their student permit application (often due to delays in considering a parent's work or other permit application)	<ul style="list-style-type: none"> • Grant 'interim' student permit to enable study while parent's application is sorted out 	

Sensitive Cases

10. It is possible that a child in any one of the above groups may not normally be granted a permit under temporary entry policy. For example, it may already have been established that the child does not meet health requirements. Granting the child a permit may either pose a health risk (e.g. children identified as having TB), or may impose significant costs on health or education systems (e.g. children identified as needing a significant level of Ongoing and Reviewable Resourcing Schemes Funding (ORRS)). Note that this situation may also apply to a child who would usually qualify for a student permit (e.g. the dependent of a long term work permit holder).
11. The circumstances of these children and their families is often complex, and the child's situation cannot be considered in isolation from that of their parents'. The child's parents should be given an opportunity to comment on the findings related to the particular risk. Officers need to consider the impact on the child and their parents of not granting a LPP but also the cost to the public of allowing the child to attend school. As noted in paragraph 9 above, any decision not to grant a permit in this type of situation may only be made by a branch manager.

Impact of the LPP on appeal rights

12. As noted above, the grant of an LPP removes the right of appeal to the RRA. A child can appeal to the RRA within 42 days of becoming unlawful (or of receiving notification of the outcome of a request for reconsideration). The opportunity to appeal needs to be balanced against the right to access education. An LPP should not be granted to a child who has been unlawful for less than 42 days unless their consent, or that of their parent or guardian has been obtained first.

Health requirements

13. An immigration officer considering whether to grant an LPP for the purpose of study to a child in New Zealand unlawfully should waive the requirement to provide valid medical and x-ray certificates and grant the LPP. However, if the child is aged 11 years or over and is considered to have risk factors for TB (see A4.25.5 of the operational manual) a chest x-ray should be requested to confirm whether active TB is present. Provision of the chest x-

ray would not be a condition of the grant of an LPP, but will enable the child to be referred to a doctor for further investigation and treatment if the child is suspected of having TB.

The LPP process in AMS

14. Where an LPP is to be granted to a child for the purpose of study while immigration status is determined, an LPP (Study) application should be raised in AMS. The purpose, as recorded on the label, must read 'study while immigration status is determined' at 'any school' in 'New Zealand'.
15. A new determination question will be added to the LPP (Study) application determination screen in the 4 February 2008 release. The determination question will require immigration officers to tick either 'Yes' or 'No' to indicate whether the LPP is being granted for the purpose of 'study while immigration status determined'. The addition of this question will enable the Department to report on the number of LPPs granted to unlawful children under the UNCROC provisions. This is important because we need to monitor the impact, including on resources.

Determining a child's immigration status

16. The purpose of granting unlawful school-age children an LPP is to enable them to study lawfully while their immigration status is resolved. The eventual aim is either that the child is granted an appropriate permit, or that they leave New Zealand.
17. There are two main ways in which a child who is the holder of an LPP granted for the purpose of study while their immigration status is resolved may become eligible for a temporary or residence permit. Firstly, their parents may have been granted temporary permits (e.g. work or student), and the child would therefore normally be granted a temporary permit appropriate to their needs. Secondly, the child may have an appeal approved (e.g. the Refugee Status Appeal Authority may decide to grant refugee status, or the Residence Review Board to grant residence).
18. In either case, the child's LPP will need to be revoked before the relevant permit can be granted. The LPP should be revoked by an Immigration Officer with Schedule 1 delegations (in line with the current Instrument of Delegations at A15.4.1), within the branch that will be issuing the subsequent permit. There is no need for a compliance officer to carry out the revocation. Once this has been done the appropriate temporary permit can be granted under section 35A of the Immigration Act 1987 (the Act). The process for revoking an LPP will be available within the next two weeks in the Staff Toolkit under "FAQs: Limited Purpose policy" in the "Limited Purpose Permit (LPP)" section.
19. Note that if a child's LPP has already expired they can be granted a temporary permit under section 35A of the Act. The standard section 35A process will apply.

Further information

20. Immigration officers with any further questions about the process for issuing an LPP to a child in New Zealand unlawfully should contact Operational Support. All staff should, however, be aware of Government's decision that all unlawful children may have access to publicly funded education, and determine any relevant applications accordingly.