



File Ref: SDE 32

**WORKFORCE (IMMIGRATION NEW ZEALAND)  
INTERNAL ADMINISTRATION CIRCULAR NO: 10/11**

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

Date: 6 October 2010

**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 replace Internal Administration Circular (IAC) numbers 07/18 and IAC 08/02.

**Purpose**

1. The purpose of this IAC is to consolidate and clarify the previous instructions on the process of granting a LPP for the purpose of study to a child unlawfully in New Zealand. This IAC will cease to become effective on 29 November 2010, following the implementation of the Immigration Act 2009.

**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 a child who is unlawfully in New Zealand (**whether or not their parents are present**), the child may be provided with a LPP to enable them to access primary and secondary school education, while their immigration status is being determined. 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 1987 (the Act).<sup>1</sup> Nevertheless, Cabinet's decision also applies to such people.

**Important note for all cases**

4. A LPP removes the right to appeal to the Removal Review Authority (RRA). If the child has been unlawful for less than 42 days only grant a LPP if parent/guardian or child (aged 17 or over) agrees.
5. The child's status will remain unlawful if a LPP is not granted and if the child does not meet normal student policy. The usual RRA and/or removal processes will take place.
6. If an appeal to the RRA was lodged prior to the LPP being considered, the parent/guardian must be made aware that granting a LPP will result in the child becoming lawful and therefore ineligible to be included in an appeal to the RRA. The parent/guardian should be given the option to either await the outcome of the RRA appeal (in which case a LPP cannot

<sup>1</sup> s 141A defines a minor as someone who is under 17 years of age

be granted), or to agree to the child being granted a LPP to enable them to attend school (in which case the child would be removed from the appeal).

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

7. As noted above, a LPP may be granted to a child unlawfully in New Zealand to allow them to study whether or not their parents are in New Zealand.
8. When applying for a LPP, the parent or guardian must complete a student application form on behalf of the child.
9. If a case officer thinks that a LPP 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.
10. There are four main groups of children in New Zealand who may need to have their immigration status addressed by the grant of a LPP 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. The groups have been identified as follows:

Child unlawfully in New Zealand	Action
1. Unlawful (with or without their parents)	<ul style="list-style-type: none"> <li>• If child has been unlawful for less than 42 days only grant a LPP if parent/guardian or child (aged 17 or over) agrees.</li> <li>• If there is agreement, grant a LPP to the end of the 2010 school year or an earlier date if it is likely that their immigration status will be resolved before the end of the school year.</li> <li>• If child has been unlawful for more than 42 days, <b>do not</b> grant a LPP if removal is planned within the next 21 days and if there is no appeal against removal pending.</li> </ul>
2. Previously a foreign fee paying student now unlawful	<ul style="list-style-type: none"> <li>• Consider granting a 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).</li> </ul>
3. Previously held a visitor permit and is unlawful	<ul style="list-style-type: none"> <li>• Advise that a student permit should be requested under section 35A of the Act. The applicant should provide evidence to show that they meet full fee student policy or other relevant student policy provisions.</li> <li>• If the child does not meet full fee policy or other relevant student policy, consider a LPP to enable study while their immigration status is determined (subject to parent/guardian or child 17 or over agreeing, as above).</li> </ul>
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"> <li>• If the parent has an application in progress, consideration may be given to processing this application as quickly as possible, as the child may be eligible for a student permit if the parent's application is approved. If it is not possible to finalise the parent's application or if the application is declined, consider a LPP to the end of the 2010 school year or earlier if it is expected that a decision will be made before the end of the school year.</li> <li>• Please note that interim student permits should not be granted as the child will not be a domestic student. Domestic status is determined by the Education Act and not Immigration New Zealand (INZ).</li> </ul>

<b>Child lawfully in New Zealand</b>	<b>Action</b>
1. Foreign fee paying student, lawful but recently declined a further student permit	<ul style="list-style-type: none"> <li>• Provide usual advice that they must leave New Zealand before their current permit expires.</li> </ul>
2. Holds visitor's permit and tries to enrol in school.	<ul style="list-style-type: none"> <li>• Advise that the child should apply for a student permit as a full fee student or other relevant student policy provision.</li> </ul>

### **Health requirements**

11. 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. 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.
12. 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).
13. 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. Any decision not to grant a permit in this type of situation may only be made by a branch manager.

### **Not granting a LPP**

14. As noted above, the decision not to grant a LPP to an unlawful child must be made by a branch manager. A LPP may not be appropriate in the following circumstances (although each situation will need to be assessed on a case by case basis):
  - The child is lawful and holds a visitor's permit but would like to attend school.
  - The child is lawful and was previously a foreign fee paying student but recently declined a student permit.
  - The child would likely meet student policy on the basis of being a dependent of a worker.

### **Receiving branch for LPPS**

15. 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 referral. 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).

## **The LPP process in AMS**

16. Where a LPP is to be granted to a child for the purpose of study while immigration status is determined, a LPP (Study) application should be raised in AMS.
17. The purpose, as recorded on the label, must read 'UNCROC. Study while immigration status is determined – domestic'. The condition of the LPP must read 'to study at any school in New Zealand'.
18. If a short term LPP will be granted to allow the child to leave New Zealand the purpose and condition should be the same as above, however the approval letter should be amended to advise that a short term LPP was granted to allow arrangements to depart New Zealand to be made.
19. A determination question was added to AMS and asks 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.
20. The requirement to provide a fee should be waived by an officer with schedule 1 delegations.
21. The applicant may apply directly for a LPP, in which case it is not necessary to raise a s 35A request in AMS, however the s 35A template (available in the staff toolkit) should be used when considering the LPP. As mentioned above, the application fee should be waived.
22. If an applicant applies for a student permit and the child is school age and unlawful, the application should be raised as a student permit under s 35A and the s 35A fee may be waived. Firstly, consider if the child will meet normal policy. A fee can be requested later if it is determined that they meet normal policy. If they do not meet normal policy an LPP application should be raised in AMS and the fee for the LPP should be waived. As mentioned in the previous paragraph, it is important to consider the LPP using the s 35A template.
23. In the case of children who apply together with their parents (i.e. the parents are applying for a work permit) consideration may be given to processing the applications together. If the child is unlawful, consideration may also be given to processing the parents' applications as quickly as possible, although this may not be an option in all cases.

## **Determining a child's immigration status**

24. 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.
25. 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).
26. 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 granting 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 s 35A of the Act. The process for revoking an LPP is available on the Staff Toolkit under "FAQs: Limited Purpose policy" in the "Limited Purpose Permit (LPP)" section.
27. Note that if a child's LPP has already expired they can be granted a temporary permit under s 35A of the Act. The standard s 35A process will apply.

**Further information**

- 28. Following the implementation of the Immigration Act 2009, LPPs will no longer be issued to unlawful children for the purpose of study as it will not be an offence to allow a person who is not entitled to study in New Zealand to undertake compulsory education. The Ministry of Education will determine the criteria for enrolment.
- 29. If this IAC is inconsistent with any previous IAC, information or instruction, these instructions prevail.

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THE ADVICE IN THIS INTERNAL ADMINISTRATION CIRCULAR IS NO LONGER CURRENT.