

Migration Agents Amendment Regulations 2000 (No. 2) 2000 No. 309

EXPLANATORY STATEMENT

STATUTORY RULES 2000 No. 309

Issued by the authority of the Minister for Immigration and Multicultural Affairs

Migration Act 1958

Migration Agents Amendment Regulations 2000 (No. 2)

Subsection 504(1) of the *Migration Act 1958* ("the Act") provides that the Governor-General may make regulations, not inconsistent with the Act, to prescribe all matters which are required or permitted to be prescribed by the Act or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act. In addition, section 290A of the Act provides that the Migration Agents Registration Authority must not register an agent seeking repeat registration unless satisfied that the agent meets the requirements prescribed by the regulations for continuing professional development of registered agents.

The purpose of the Regulations is to amend the *Migration Agents Regulations 1998*. In particular the Regulations amend Schedule 1 to those Regulations, dealing with the continuing professional development ("CPD") of registered migration agents.

Section 290A of the Act requires migration agents seeking registration, who have been registered at some time in the 12 months before making the application, to satisfy the CPD requirements prescribed in the regulations. These requirements are set out in Schedule 1 to the *Migration Agents Regulations 1998*, which provides that agents must, in the year ending on the anniversary of the agent's previous registration, complete at least 10 points of CPD. The Minister approves CPD activities, and allocates the number of points for each activity, by specification in the Gazette.

CPD requirements were introduced to enhance the integrity and competence of migration agents. Providers of CPD activities may be seen as exemplars to the migration advice profession and it is important that there are no questions relating to their integrity. The amendments make it clear that the Minister may consider the integrity and reputation of those connected with an activity in considering whether to gazette it.

The regulations also vary the period for which agents must keep written records of completion of continuing professional development activities; and make technical changes.

Details of the Regulations are set out in the Attachment.

The Regulations commence on 23 November 2000.

ATTACHMENT

Regulation 1 - Name of Regulations

This regulation provides that these Regulations are the *Migration Agents Amendment Regulations 2000 (No. 2)*.

Regulation 2 - Commencement

This regulation provides that these Regulations commence on 23 November 2000.

Regulation 3 - Amendment of *Migration Agents Regulations 1998*

This regulation provides that Schedule 1 amends the *Migration Agents Regulations 1998*.

Schedule 1 - Amendments

Item 1 - Schedule 1, after clause 3

This item inserts new clause 3A.

Subclause 3A(1) allows the Minister, when deciding whether or not to specify an activity as an approved continuing professional development ("CPD") activity, to consider:

- * the character and reputation of a person connected with the activity; or
- * a doubt about the person's character or reputation.

CPD requirements were introduced to enhance the integrity and competence of migration agents. Providers of CPD activities may be seen as exemplars to the migration advice profession and it is important that there are no questions relating to their integrity. These provisions make it clear that the Minister may consider the integrity and reputation of those connected with an activity in considering whether to gazette it.

Subclause 3A(2) lists persons who are connected with an activity. This is not intended as an exhaustive list. Included are:

- * a person who conducts the activity or produces, writes or presents material for it;
- * a person concerned in the management of a company or body of persons that conducts the activity or produces, writes or presents material for it; and
- * a person who has been appointed as a consultant to advise a person mentioned above about the activity.

Item 2 - Schedule 1, clause 7

This item makes a technical amendment to clause 7 of Schedule 1, by replacing the words "the Migration Act" with "the Act", and replacing "the Migration Regulations" with the correct citation "the *Migration Regulations 1994*".

Item 3 - Schedule 1, subparagraph 13(c)(ii)

This item amends subparagraph 13(c)(ii). The subparagraph specifies the period for which agents must keep written records of completion of CPD activities. Currently, it provides that

records must be kept until 21 March 2000. This date reflected the previous sunset date for Part 3 of the Act. The operation of Part 3 has now been extended until 21 March 2003 (section 333). The date in subparagraph 13(c)(ii) therefore requires updating.

Item 3 substitutes a requirement to keep records for 2 years after the end of the registration period during which the activity was completed. A requirement to keep records for 2 years will provide more certainty for agents and obviates the need to amend the provision in the event of future extensions of the Act. It will also allow appropriate auditing of agents' records.

Item 4 - Schedule 2, heading

This item updates the address for the Migration Agents Registration Authority.