

Migration Agents Amendment Regulations 2001 (No. 1) 2001 No. 143

EXPLANATORY STATEMENT

STATUTORY RULES 2001 No. 143

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

Migration Act 1958

Migration Agents Amendment Regulations 2001 (No. 1)

Subsection 504(1) of the *Migration Act 1958* ("the Act") provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters which by the Act are required or permitted to be prescribed 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 met the requirements prescribed by the regulations for continuing professional development of registered agents in the 12 months before making the application.

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

Pursuant to section 290A of the Act, Schedule 1 to the *Migration Agents Regulations 1998* sets out CPD requirements. In particular, 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, in a Gazette Notice.

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:

- strengthen the ability of the Migration Agents Registration Authority to check that migration agents have been fulfilling CPD requirements;
- allow the Migration Agents Registration Authority to impose a fee for recommending activities to the Minister in relation to CPD; and
- make minor amendments.

Details of the Regulations are set out in the Attachment.

The Regulations commence on 1 July 2001.

Attachment

Regulation 1 - Name of Regulations

This regulation provides that these Regulations are the *Migration Agents Amendment Regulations 2001 (No. 1)*.

Regulation 2 - Commencement

This regulation provides that these Regulations commence on 1 July 2001.

Regulation 3 - Amendment of *Migration Agents Regulations 1998*

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

Schedule 1 - Amendments

Item [1] - Regulation 3, after definition of *Act*

This item inserts a new definition which stipulates that under clause 3 of Schedule 1, the Minister may specify an 'approved activity' in relation to continuing professional development of registered agents. The insertion of the definition is consequential to the insertion of new subregulation 6(2), by item [4] below.

Item [2] - Subregulation 4(3)

This item substitutes a redrafted subregulation 4(3) to correct a grammatical error.

Item [3] - Regulation 6

This item is a technical amendment, consequential to the addition of subregulation 6(2), by item [4] below.

Item [4] - After subregulation 6(1)

This item inserts new subregulation 6(2) to strengthen the power of the Migration Agents Registration Authority ('the Authority') to require activity providers to provide information to the Authority to determine whether an agent has successfully completed an activity.

Item [5] - After regulation 6

This item inserts new regulation 6A.

Subregulation 6A(1) provides that the Authority may recommend to the Minister that an activity be specified, for the purposes of CPD, under clause 3 of Schedule 1.

Subregulation 6A(2) provides that where the Authority performs an assessment of an activity upon the request of the activity provider, the Authority may charge a fee for this service. As providers benefit financially from running activities that meet the CPD requirements, it is reasonable that they contribute towards the Authority's costs of administering the CPD framework.

Subregulation 6A(3) provides that where the Authority has performed an assessment of an activity, but not at the request of the activity provider, then the Authority may only charge a fee if this activity is approved for the purposes of CPD.

Subregulation 6A(4) provides that the fee for making assessments under subregulation 6A(2) or 6A(3) is \$33.

Item [6] - Schedule 1, clause 2

This item clarifies that at least 6 of the 10 points that migration agents must accumulate to be eligible for repeat registration must relate to the completion of core activities. Core activities are defined in the existing regulations and may include passing an examination that demonstrates competency as a migration agent.

Item [7] - Schedule 1, clause 3

This item replaces clause 3 with a new clause 3.

The new clause is intended to clarify that:

- providers of activities are not limited to 'course providers'. That is, although activity providers may provide courses, they are not intended to be prevented from providing other approved activities; and
- the Gazette Notice can set requirements for completion of an activity, such as a minimum mark in an examination, or the name of an acceptable journal in which an article can be published (to enable a migration agent to claim points for the publication of the article).

Item [8] - Schedule 1, subclause 3A(1)

This item replaces subclause 3A (1) with new subclause 3A(1).

The changes to the existing provision are as follows:

- paragraph 3A(1)(a) provides that in deciding whether or not to specify an activity under clause 3, the Minister may take into account any recommendations of the Authority regarding approved activities under regulation 6A;
- paragraph 3A(1)(b) provides that in deciding whether or not to specify an activity under clause 3, the Minister may take into account whether the provider of the activity has complied with the requirement to give information to the Authority under subregulation 6(2) in relation to other activities; and
- paragraph 3A(1)(c) is the same as existing subclause 3A(1).

Item [9] - Schedule 1, paragraph 6(a)

This item contains a technical amendment.

Item [10] - Schedule 1, paragraph 6(c)

This item substitutes a new paragraph 6(c) to omit a reference to presentation of the activities listed in that paragraph. Presentation of such activities is dealt with by the amendments to paragraph 6(e) below.

Item [11] - Schedule 1, paragraph 6(e)

This item substitutes a new paragraph 6(e) so that a migration agent may claim points for either the preparation or presentation of any activity mentioned in clause 6 (a), (b) or (c) and in paragraph 8(a) which refers to the passing of an examination. This expands the list of activities for which an agent may claim points.

Item [12] - Schedule 1, clause 7

This item amends clause 7 by setting out the requirements in point form, so that the materials that a core activity must specifically relate to, are more immediately understood by migration agents.

Item [13] - Schedule 1, paragraph 8(b)

This item amends paragraph 8(b) to set out the requirements in point form so that the materials that a migration agent must have knowledge and current versions of, in his or her professional library for the purposes of Schedule 1, are more immediately understood by migration agents.

Item [14] - Schedule 1, clause 9

This item amends clause 9 to broaden the requirements of an elective activity so that is not confined to an education program. This creates a more general description so that activities such as authorship of articles in approved journals or completion of an approved assessment task clearly fall within the provision.

Item [15] - Schedule 1, clause 12

This item amends paragraph 12 (a) to remove the formal requirement that a migration agent applying for repeat registration must provide a statutory declaration to the Authority. A written statement is all that is now required.

However, new subparagraph 12(a)(ii) requires that an agent applying for repeat registration must include in the written statement a list of activities that he or she has completed, in order to claim points. This will enable the Authority to compare the list of activities with statements from the course providers in accordance with subregulation 6(2).

This item also strengthens paragraph 12(b) so that an agent applying for repeat registration must keep any evidence from the provider of the fact that he or she has undertaken and completed an activity, where such documentation is supplied by the provider. Where there is no provider, the agent is also required to keep evidence that he or she has completed an activity in order to claim points. For example, an agent could keep evidence of the publication of an article, or proof of purchase of resource materials in the case of a library.

Item [16] - Schedule 2, clause 2.5

This item amends clause 2.5 which sets out the existing requirement that under the Code of Conduct a migration agent must have current versions and knowledge of certain materials for their professional library. The intention is that the professional library must include Gazette Notices. The amendment is intended to enable the provision to be more immediately understood by migration agents.