

# **Migration Agents Registration Application Charge Amendment Regulations 2004 (No. 1) 2004 No. 130**

## EXPLANATORY STATEMENT STATUTORY RULES 2004 NO. 130

Issued by the Minister for Citizenship  
and Multicultural Affairs

*Migration Agents Registration Application Charge Act 1997*

*Migration Agents Registration Application Charge Amendment Regulations 2004 (No. 1)*

A review of the self-regulation of the migration advice industry was conducted in 2001 and 2002 for the Minister for Citizenship and Multicultural Affairs. The review made numerous recommendations to strengthen and improve the regulation of the migration advice industry. Relevant legislation has been amended to give effect to the review's recommendations. In particular, the *Migration Agents Registration Application Charge Act 1997* (the Act) has been amended by the *Migration Agents Registration Application Charge Amendment Act 2004* (the Amendment Act).

Schedule 1 to the Amendment Act inserts a new Part 3 ("Imposition of charge in respect of the status of a migration agent's registration") into the Act. Section 13 of new Part 3 provides that the Governor-General may make regulations for the purpose of new Part 3. In addition, subsection 9(3) of new Part 3 provides that regulations may be made to make provision for and in relation to working out the day on which a registered migration agent begins to give immigration assistance on a commercial basis.

The purpose of the Regulations is to specify how to determine when a registered migration agent begins to give immigration assistance on a commercial basis.

Details of the Regulations are set out in the Attachment.

The Regulations commence on the commencement of the Amendment Act. Schedule 1 to the Amendment Act commences at the same time as Schedule 1 to the *Migration Legislation Amendment (Migration Agents Integrity Measures) Act 2004* which has been fixed, by Proclamation, as 1 July 2004.

Subsections 4(1) and (2A) of the Acts Interpretation Act 1901, read together, allow regulations to be made between the passing and commencement of legislation upon which those regulations depend for their authority, as long as the regulations do not commence before the legislation.

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## ATTACHMENT

### **Details of the *Migration Agents Registration Application Charge Amendment Regulations 2004 (No. 1)***

#### Regulation 1 - Name of Regulations

This regulation provides that these Regulations are the *Migration Agents Registration Application Charge Amendment Regulations 2004 (No. 1)*.

#### Regulation 2 - Commencement

This regulation provides that these Regulations commence on the commencement of the *Migration Agents Registration Application Charge Amendment Act 2004*. Schedule 1 to that Act is to commence at the same time as Schedule 1 to the *Migration Legislation Amendment (Migration Agents Integrity Measures) Act 2004* which has been fixed, by Proclamation, as 1 July 2004.

#### Regulation 3 - Amendment of *Migration Agents Registration Application Charge Regulations 1998*

This regulation provides that Schedule 1 amends the *Migration Agents Registration Application Charge Regulations 1998* (the Principal Regulations).

#### Schedule 1 - Amendments

##### Item [1] - After regulation 5

This item inserts new regulation 6 in the Principal Regulations.

New regulation 6 provides, for subsection 9(3) of the *Migration Agents Registration Application Charge Act 1997* (the Act), that a registered migration agent begins to give immigration assistance on a commercial basis on the day that the earliest of either of the following occurs:

- the agent gives a client an estimate of fees before starting work on behalf of a client; or
- the agent charges a client a fee for services provided.

The purpose of this amendment is to provide for working out the day on which a registered migration agent begins to give immigration assistance on a commercial basis.

Registered migration agents who act on a non-commercial or non-profit basis and are associated with an organisation that operates in Australia solely on a non-commercial or non-profit basis (non-commercial agents) pay a significantly reduced application fee compared to registered migration agents who provide immigration assistance on a commercial basis. Part 3 of the Act provides a mechanism by which non-commercial agents who commence providing immigration assistance on a commercial basis are obliged to pay an additional charge calculated in accordance with section 12 of the Act for the proportion of the period of registration remaining.

Part 3 of the Act and new regulation 6 are related to new paragraph 312(1)(ea), inserted by the *Migration Legislation Amendment (Migration Agents Integrity Measures) Act 2004* in the *Migration Act 1958*. This new paragraph requires a non-commercial agent to notify the Migration Agents Registration Authority as soon as possible after he or she gives immigration assistance on a commercial basis.