

EXPLANATORY STATEMENT

Select Legislative Instrument 2005 No. 132

Issued by the Minister for Immigration
and Multicultural and Indigenous Affairs

Migration Agents Registration Application Charge Act 1997

Migration Agents Registration Application Charge Amendment Regulations 2005 (No. 1)

Sections 8 and 13 of the *Migration Agents Registration Application Charge Act 1997* (the Act) provide that the Governor-General may make regulations for the purpose of section 6 and Part 3 of the Act, respectively:

- section 6 of the Act provides that the charge payable to the Migration Agents Registration Authority on making a registration application is the amount prescribed by the regulations, and that the regulations may prescribe different amounts for different kinds of individuals making registration applications.
- Part 3 of the Act relates to the calculation and imposition of a charge payable where a Migration Agent has registered and paid the fee applicable for a non-commercial agent and has provided commercial advice during that period of registration.

The purpose of the Regulations is to amend the *Migration Agents Registration Application Charge Regulations 1998* (the Principal Regulations) to:

- increase the repeat registration fees for commercial migration agents charged by the Migration Agents Registration Authority; and
- ensure that non-commercial registered migration agents pay the requisite commercial agent fee when moving to the commercial sector.

Details of the Regulations are set out in the Attachment.

The Act specifies no conditions that need to be met before the power to make the proposed Regulations may be exercised.

The Regulations commence on 1 July 2005.

The Office of Regulation Review in the Productivity Commission has been consulted and advises that the regulations are not likely to have a direct effect, or substantial indirect effect, on business and are not likely to restrict competition.

The Migration Agents Registration Authority was also consulted in determining when a registered migration agent begins working on a commercial basis.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

ATTACHMENT**Details of the proposed *Migration Agents Registration Application Charge Amendment Regulations 2005 (No. 1)*****Regulation 1 – Name of Regulations**

This regulation provides that these Regulations are the *Migration Agents Registration Application Charge Amendment Regulations 2005 (No. 1)*.

Regulation 2 – Commencement

This regulation provides for the Regulations to commence on 1 July 2005.

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

This regulation provides that the *Migration Agents Registration Application Charge Regulations 1998* (the Principal Regulations), are amended as set out in the Schedule.

Regulation 4 – Transitional

This regulation provides that the amendment made by item [1] of Schedule 1 to these Regulations applies in relation to an application for repeat registration made on or after 1 July 2005.

Schedule 1 Amendments**Item [1] – Paragraph 4 (2)(b)**

This item omits the reference to the cost of repeat registration for commercial agents in paragraph 4(2)(b) of the Principal Regulations, introduced from 1 July 2003, and inserts the new cost of \$1595 for repeat registration from 1 July 2005.

The fee increase is required to:

- adequately fund the regulatory activities of the Migration Agents Registration Authority; and
- counter the fall in revenue which has resulted from the recent decline in the number of applicants seeking initial registration as a migration agent.

Item [2] - Regulation 6

The item amends regulation 6 of the Principal Regulations by omitting the word ‘earlier’ and inserting the word ‘earliest’. This is a technical amendment and is consequential to the insertion of new paragraphs 6(c) and 6(d) in regulation 6 of the Principal Regulations by these Regulations (see Item [4] below).

Item [3] - Paragraph 6(b)

This item amends paragraph 6(b) of the Principal Regulations by omitting the word 'provided' and inserting the words 'provided; and'. This is a technical amendment and is consequential to the insertion of new paragraphs 6(c) and 6(d) in regulation 6 of the Principal Regulations by these Regulations (see Item [4] below).

Item [4] - After paragraph 6(b)

Subsection 9(3) of the Act provides that the Regulations may set out ways of determining the day a registered migration agent begins to give immigration assistance on a commercial basis.

This item inserts new paragraphs 6(c) and 6(d) after paragraph 6(b) of the Principal Regulations. The effect of the insertion of new paragraphs 6(c) and 6(d) is that, for the purposes of subsection 9(3) of the Act, a registered migration agent is taken to begin to give immigration assistance on a commercial basis on the earliest of:

- the day on which the agent gives a client an estimate of fees before starting work on behalf of the client; and
- the day on which the agent charges a client a fee for services provided; and
- the day on which the agent becomes a person associated with an organisation that gives immigration assistance on a commercial, or for-profit, basis; and
- the day on which the agent becomes a member of an organisation that gives immigration assistance on a commercial, or for-profit basis.

The purpose of this amendment is to ensure that an agent is liable for the higher commercial registration fee from the earliest of any of the days listed above.