

EXPLANATORY STATEMENT

Migration Agents Regulations 1998

Migration (IMMI 18/003: Specified courses and exams for registration as a migration agent) Instrument 2018

(subregulations 5(1), 5(2), 5(4) and 5(5) and paragraphs 5(3)(a) and (b) of the Regulations)

1. Instrument IMMI 18/003 is made under subregulations 5(1), 5(2), 5(4) and 5(5) and paragraphs 5(3)(a) and (b) of the *Migration Agents Regulations 1998* (the Regulations).
2. The instrument repeals IMMI 12/097 (F2012L01932) in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*, which states that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.
3. Section 289A of the *Migration Act 1958* (the Act) provides that an applicant for registration as a migration agent who has never been registered, or who is applying to be registered more than 12 months after the end of his or her previous registration, must not be registered unless the Migration Agents Registration Authority is satisfied that he or she either has completed a prescribed course within the prescribed period and has passed a prescribed exam within the prescribed period, or he or she holds a prescribed qualification. These courses, exams, periods and qualifications are prescribed in regulation 5 of the Regulations.
4. The instrument specifies the following:
 - (a) prescribed courses for subregulation 5(1) of the Regulations, which provides that a prescribed course is a course specified by the Minister in an instrument in writing;
 - (b) classes of persons and prescribed exams for the purposes of subregulation 5(2) of the Regulations, which provides that if a person is in a class of persons specified by the Minister in an instrument in writing, an exam specified by the Minister in an instrument in writing is a prescribed exam;

- (c) exams for the purposes of paragraph 5(3)(a) of the Regulations and exams in English language proficiency for the purposes of paragraph 5(3)(b). Subregulation 5(3) of the Regulations provides that if a person is not in a class of persons specified in an instrument in writing for subregulation 5(2), a prescribed exam is the combination of an exam specified by the Minister in an instrument in writing for the purposes of paragraph 5(3)(a) and an exam in English language proficiency specified by the Minister in an instrument in writing for the purposes of paragraph 5(3)(b);
 - (d) minimum scores for the purposes of subregulation 5(4) of the Regulations, which provides that an applicant is taken to have passed an exam in English language proficiency if the applicant achieves at least the minimum score specified by the Minister in an instrument in writing; and
 - (e) prescribed periods for completing particular courses or exams for the purposes of subregulation 5(5), which provides that the prescribed period for the completion of a particular course or exam is the period specified by the Minister in an instrument in writing.
5. One purpose of the instrument is to update specified courses, for the purposes of subregulation 5(1) of the Regulations, to be certain Graduate Diplomas offered by certain universities and the Master of Australian Migration Law and Practice offered by Griffith University. The Graduate Certificate in Australian Migration Law and Practice (Graduate Certificate) offered by certain universities is only a specified course if completed before 1 January 2018.
- (a) This update to the specified courses for subregulation 5(1) was in response to recommendations 11 and 13 of the *2014 Independent Review of the Office of the Migration Agents Registration Authority* (the Independent Review). Recommendation 11 was “that the current Graduate Certificate be replaced with a Graduate Diploma in Migration Law and Practice.” Recommendation 13 was that “while the OMARA should continue to determine who should be permitted to offer the Prescribed Course and what core subject areas must be offered, the OMARA should play no role in dictating how those courses are to be run, assessed and structured.” The Assistant Minister’s approval of the new specified courses was based on information submitted to the Office

of Migration Agents Registration Authority (OMARA) by the successful providers. The OMARA has no further involvement in the running and assessment of the courses.

(b) In October 2016, all Australian universities were contacted to express interest in developing and providing a Graduate Diploma to be the entry-level qualification for the migration profession. In November 2016, the universities that had expressed an interest were asked to provide proposals for a Graduate Diploma to be delivered from January 2018. In April 2017, the OMARA advised successful universities that the Assistant Minister had accepted their proposals and notified all providers of the Graduate Certificate that, from 1 January 2018, the Graduate Certificate would no longer be recognised as the entry-level qualification for the migration profession.

(c) From April 2017, the OMARA website published a notice stating that the entry-level qualification for the migration profession would be rising to a Graduate Diploma in Migration Law and Practice. This notice also explained that the Graduate Certificate must be successfully completed by 31 December 2017 in order for an applicant to register as a migration agent with that qualification.

6. A further purpose of the instrument is to provide that, for the purposes of subregulation 5(2) and paragraph 5(3)(a) of the Regulations, the specified exam is the Capstone Assessment, and that ‘the common assessment items relating to registration’ (CAIs) is only a specified exam if completed before 1 January 2018.

(a) The CAIs were assessment items that formed part of the Graduate Certificate. The CAIs were developed jointly by the university providers of the Graduate Certificate and were a standard assessment requirement of the Graduate Certificate, regardless of the provider.

(b) Recommendation 16 of the Independent Review was to “tender for the development of a stand-alone Capstone Exam, which should ultimately be prescribed in a legislative instrument. This prescribed examination should

be a stand-alone assessment de-linked from the Prescribed Course or any of the service providers currently offering the Prescribed Course.” In response to this recommendation, the OMARA approached the market for expressions of interest from providers to develop and deliver a stand-alone Capstone Assessment.

- (c) The College of Law Limited was the successful provider, and will develop the Capstone Assessment for 1 July 2018, which will be the first date students undertaking a specified Graduate Diploma or Masters degree may be eligible to sit the exam. The Capstone Assessment will be de-linked from the specified courses as it will only be offered by the College of Law Limited, which is not the provider of a specified course.
7. A further purpose of this instrument is to update, for the purposes of subregulation 5(4) of the Regulations, the specified minimum scores for the TOEFL iBT test. From 1 January 2018, applicants will no longer be required to show an overall score of 100 with a minimum score in each subtest of: 22 in speaking; 22 in listening; 22 in reading; and 22 in writing. Applicants from 1 January 2018 will be required to show an overall score of 94 with a minimum score in each subtest of: 20 in speaking; 20 in listening; 19 in reading; and 24 in writing.
- (a) Applicants who are not in a class of persons specified in the instrument for the purposes of subregulation 5(2) of the Regulations, must meet minimum English language requirements using either the International English Language Testing System (IELTS) Academic test or the Internet Based Test of English as a Foreign Language (TOEFL iBT).
 - (b) The TOEFL iBT test scores have been updated to align the scores required to pass the TOEFL iBT for the purposes of subsection 5(4) of the Regulations with the benchmarked scores previously agreed between the Department and the TOEFL and IELTS test providers for visa purposes.
8. A further purpose of this instrument is, for the purpose of subregulation 5(5) of the Regulations, to specify a prescribed period for the completion of the Capstone Assessment and to update the specified period for the completion of a course. The

instrument specifies that the period for completion of the Capstone Assessment is within the 12 month period before the person applies for registration. The instrument specifies that period for the completion of a course is any time before the person applies for registration.

(a) Under IMMI 12/097, the specified period for the completion of a course specified for subregulation 5(1) was within the 12 period before registration. Recommendation 12 of the Independent Review was that “the time period for registration after completing the Prescribed Course be extended from one year to five years.” In updating the specified period for completion of a prescribed course, it was considered appropriate to specify that a prescribed course may be completed at any time prior to registration, as an applicant’s competency to be registered as a migration agent may be ensured by specifying that the prescribed exam be passed within the 12 month period before application.

9. The instrument implements recommendations made by the Independent Review. As part of the Independent Review, submissions about the entry qualifications for migration agents were received from: the Migration Institute of Australia; Ernst and Young; KPMG; Griffith Law School; Victoria University; and Murdoch University.
10. Following the Independent Review, the Independent Reference Group to the OMARA provided advice to the OMARA on the implementation of the recommendations. The Independent Reference Group consisted of representatives for: the Migration Institute of Australia; the Law Council of Australia; the business sector; the education sector; and a consumer advocate group.
11. Before the instrument was made, further consultation was undertaken with: the Australian National University; Griffith University; Murdoch University; the University of Technology Sydney; Victoria University; Australian Catholic University; the University of New South Wales; Western Sydney University; and The College of Law Limited.
12. The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is not required (OBPR Reference 18313).

13. Under section 42 of the *Legislation Act 2003*, the instrument is subject to disallowance. A Statement of Compatibility with Human Rights (the Statement) has been completed in accordance with section 9 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The overall assessment is that the instrument is compatible with human rights. A copy of the Statement is at Attachment A.

14. The instrument commences on 1 January 2018.

Attachment A**Statement of Compatibility with Human Rights**

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

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This disallowable legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the changes

This legislative instrument supports the recommendations contained in the 2014 Independent Review of the Office of the Migration Agents Registration Authority (OMARA Review), targeted at reforming the migration advice industry.

These recommendations are the basis for the proposed changes, which intend to strengthen the educational qualifications of migration agents.

The recommendations relevant to this legislative instrument deal with the replacement of the current Graduate Certificate with a Graduate Diploma in Migration Law and Practice; the time period for registration by migration agents after completion of the Prescribed Course; and the development of a stand-alone Capstone assessment as the Prescribed Exam, which should ultimately be prescribed in a legislative instrument. This Prescribed Exam should be a stand-alone assessment de-linked from the Prescribed Course.

Provisions of the new instrument*New Prescribed Course*

The legislative instrument provides a grandfathering provision, such that Graduate Certificates completed before 1 January 2018 will be the Prescribed Course, required for registration as a migration agent under subsection 5(1) of the *Migration Agents Regulations 1998*.

The legislative instrument will remove the Graduate Certificate as the Prescribed Course, from 1 January 2018, and replace it with the following Prescribed Courses:

- The Graduate Diploma in Migration Law and Practice, as offered by specified universities OR
- The Masters level course in migration law offered by Griffith University.

It will remove references to the Prescribed Exam as ‘common assessment items’ from 1 January 2018, which currently form part of the Prescribed Course, and replace with the Capstone assessment as the Prescribed Exam.

Prescribed Exam

For those who complete the Graduate Certificate before 1 January 2018, the Prescribed Exam will be common assessment items, which form part of the Graduate Certificate (Prescribed Course).

For those who complete the Graduate Diploma (the Prescribed Course from 1 January 2018), and achieve specified educational outcomes from approved countries and where English was the primary language of instruction, the Capstone assessment shall be the Prescribed Exam.

For those who have completed the Graduate Diploma, but have not achieved the specified educational outcomes as described above, the Prescribed Exam shall consist of the Capstone assessment, plus proof of having attained the requisite International English Language Testing System Academic (IELTS Academic) or Internet Based Test of English as a Foreign Language (TOEFL iBT) test scores.

The new instrument will remove the requirement that an applicant must apply for registration as a migration agent 12 months after completion of the Prescribed Course.

The Prescribed Period, for the purposes of subregulation 5(5) of the *Migration Agents Regulations 1998*, for the completion of a course or exam is specified:

- For the Capstone assessment and for the common assessment items relating to registration, within the 12 month period before the person applies for registration;
- For the IELTS and for the TOEFL iBT tests, within the two year period before the person applies for registration.

Human rights implications

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms.

Strengthening educational requirements for the migration agent industry does not exclude applicants from the profession, provided they meet the specified standards, which are reasonable and transparent.

Given the complexities of the Australian migration system, requiring successful completion of both a Prescribed Course and separate Prescribed Exam, as a prerequisite to registration as a migration agent, ensures that their clients receive high standards of service.

The longer prescribed period for registration for re-registration (three years) reflects that the agent will have gained considerable experience during their first and subsequent years of practice, as well as having kept up to date with the latest changes and best practice through the completion of their annual Continuing Professional Development requirements.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.