

## EXPLANATORY STATEMENT

Minute No. 17 of 2020 – Assistant Minister for Customs, Community Safety and Multicultural Affairs, Parliamentary Secretary to the Minister for Home Affairs

Subject – *Migration Agents Registration Application Charge Act 1997*  
*Migration Agents Registration Application Charge Amendment (Rates of Charge) Regulations 2020*

This *Migration Agents Registration Application Charge Amendment (Rates of Charge) Regulations 2020* (the amending Regulations) will make amendments consequential to the *Migration Agents Registration Application Charge Amendment (Rates of Charge) Act 2020* (the Rates of Charge Act) and complement the amendments made by that Act.

The *Migration Agents Registration Application Charge Act 1997* (the Charge Act) is an Act to impose charge on applications by individuals for registration as migration agents.

Section 8 of the Charge Act provides that the Governor-General may make regulations for the purposes of section 6 of the Charge Act. Subsection 6(1) of the Charge Act provides that the amount of charge payable on an individual's making of a registration application is the amount prescribed by the regulations for an individual of that kind. Subsection 6(2) of the Charge Act provides that the regulations may prescribe different amounts (including nil amounts) for different kinds of individuals making registration applications.

On 22 June 2020, the Rates of Charge Act received the Royal Assent.

The Rates of Charge Act amends the Charge Act to ensure that a person who paid the non-commercial application charge in relation to their current period of registration, but gives immigration assistance otherwise than on a non-commercial basis, is liable to pay an adjusted charge.

The amending Regulations will amend the *Migration Agents Registration Application Charge Regulations 1998* (the Charge Regulations) as a consequence of the amendments made by the Rates of Charge Act, and to complement that Act.

In particular, the amending Regulations will:

- make consequential amendments to the Charge Regulations by adopting the same definitional terms inserted by Schedule 1 to the Rates of Charge Act; and
- update the provisions to reflect modern drafting practices.

The amending Regulations will complement the amendments made by Schedule 1 to the Rates of Charge Act, and Schedule 5 to the *Migration Amendment (Regulation of Migration Agents) Act 2020* (Regulation of Migration Agents Act). The amendments in Schedule 5 to the Regulation of Migration Agents Act provide for when an agent who begins to give immigration assistance otherwise than on a non-commercial basis must notify the Migration Agents Registration Authority, and ensure that certain terms used in the Migration Act has the same meaning as the Charge Act.

Given the extensive consultation on the topic of registration fees, conducted as part of the 2014 Independent Review of the Office of the Migration Agents Registration Authority, and the fact that the amending Regulations will make consequential amendments and complement that Act, no further consultation is considered necessary.

Details of the amending Regulations are set out in the Attachment C.

The Office of Best Practice Regulation has been consulted and advised that no Regulatory Impact Statements are required: OBPR Reference: 22900.

The Charge Act specifies no conditions that need to be satisfied before the power to make the amending Regulations may be exercised.

The amending Regulations will be a legislative instrument for the purposes of the *Legislation Act 2003*.

Schedule 1 to the amending Regulations will commence immediately after the commencement of Schedule 1 to the Rates of Charge Act. It is intended for the Rates of Charge Act to commence on a single date to be fixed by Proclamation. The Department of Home Affairs will follow standard practices to notify clients about the introduction of the amending Regulations, including updating the Departmental websites and notifying relevant peak bodies.

The Minute recommends that the amending Regulations be made in the current form.

Authority: Section 8 of the  
*Migration Agents  
Registration Application  
Charge Act 1997*

## AUTHORISING PROVISIONS

Section 8 of the *Migration Agents Registration Application Charge Act 1997* (the Charge Act) provides that the Governor-General may make regulations for the purposes of section 6, which relevantly provides for the amount of charge payable on an individual's making of a registration application.

In addition, the following provisions of the Charge Act may apply:

- section 3, which provides:
  - ***begins***: a registered migration agent ***begins*** to give immigration assistance otherwise than on a non-commercial basis on a day worked out in accordance with regulations made for the purposes of this definition.
  - ***general charge*** means an amount of charge imposed by Part 2 of the Charge Act that is prescribed by regulation, for the purposes of section 6, as the general charge.
  - ***immigration assistance*** has the same meaning as in Part 3 of the *Migration Act 1958*.
  - ***non-commercial application charge*** means an amount of charge imposed by Part 2 that is prescribed by regulation, for the purposes of section 6, as the non-commercial application charge;
- section 6, which provides:
  - the amount of charge payable on an individual's making of a registration application is the amount prescribed by the regulations for an individual of that kind;
  - the regulations may prescribe different amounts (including nil amounts) for different kinds of individuals making registration applications; and
  - the regulations must not prescribe an amount more than the charge limit for the registration application; and
- section 13 of the Charge Act, which provides:
  - the Governor- General may make regulations for the purposes of Part 3 of the Charge Act, which provides for the imposition of charge on basis of the status of the migration agent.

**Statement of Compatibility with Human Rights**

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

***Migration Agents Registration Application Charge Amendment (Rates of Charge) Regulations 2020***

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 Disallowable Legislative Instrument**

The *Migration Agents Registration Application Charge Amendment (Rates of Charge) Regulations 2020* (the amending Regulations) will make consequential amendments to the *Migration Agents Registration Application Charge Regulations 1998* (the Regulations) in order to complement the changes made by the *Migration Agents Registration Application Charge Amendment (Rates of Charge) Act 2020* (the Rates of Charge Act), which received the Royal Assent on 22 June 2020.

The Rates of Charge Act will amend the *Migration Agents Registration Application Charge Act 1997* (the Charge Act) to ensure that a registered migration agent who has paid the non-commercial application charge, but gives immigration assistance otherwise than on a non-commercial basis, is liable to pay an adjusted charge.

The amending Regulations will complement the Rates of Charge Act by making consequential amendments to the Regulations, adopting the same definitional terms inserted by Schedule 1 to the Rates of Charge Act, and update the provisions to reflect modern drafting practices.

**Human rights implications**

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

**Conclusion**

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

**The Hon Jason Wood MP,  
Assistant Minister for Customs, Community Safety and Multicultural Affairs,  
Parliamentary Secretary to the Minister for Home Affairs**

**Details of the amending *Migration Agents Registration Application Charge Amendment (Rates of Charge) Regulations 2020***

**Section 1 – Name**

This section will provide that the title of the amending Regulations is the *Migration Agents Registration Application Charge Amendment (Rates of Charge) Regulations 2020* (the amending Regulations).

**Section 2 – Commencement**

Subsection 2(1) will provide that each provision of the amending Regulations specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

The table under subsection 2(1) sets out the commencement information for the amending Regulations.

Table item 1 will provide that sections 1 to 4 and anything in this instrument not elsewhere covered by this table commences the day after this instrument is registered.

Table item 2 will provide that Schedule 1 to the amending Regulations will commence immediately after Schedule 1 to the *Migration Agents Registration Application Charge Amendment (Rates of Charge) Act 2020* (Rates of Charge Act) commences. A note under the table clarifies that this table relates only to the provisions of the amending Regulations as originally made. It will not be amended to deal with any later amendments of the amending Regulations.

Subsection 2(2) will provide that any information in column 3 of the table is not part of the amending Regulations. Information may be inserted in this column, or information in it may be edited, in any published version of the amending Regulations.

**Section 3 – Authority**

This section will provide that the amending Regulations are made under the *Migration Agents Registration Application Charge Act 1997* (the Charge Act).

**Section 4 – Schedules**

This section will provide that each instrument that is specified in a Schedule to the amending Regulations will be amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument will have effect according to its terms.

## Schedule 1 – Amendments

### *Migration Agents Registration Application Charge Regulations 1998*

#### Item [1] – Subregulation 3(1)

This item will omit “(1) In these Regulations” and substitute “In these Regulations” in subregulation 3(1) of the *Migration Agents Registration Application Charge Regulations 1998* (the Charge Regulations).

The amendment will be consequential to Item 3 below.

#### Item [2] – Subregulation 3(1)

This item will insert a new definition of **repeat registration** into subregulation 3(1) of the Charge Regulations.

Previously, the meaning of **repeat registration** is provided for in subregulation 3(2) of the Charge Regulations.

The amendment will provide that **repeat registration** has the same meaning as in the *Migration Agents Regulations 1988* (Agents Regulations).

The amendment will have the effect of removing the current definition of **repeat registration** and, instead, ensure that the Charge Regulations adopt the meaning of **repeat registration** that is in the Agents Regulations.

The meaning of **repeat registration** will be the same between the Charge Regulations and the Agents Regulations, given the interlinkage between the two regulations.

#### Item [3] – Subregulation 3(2)

This item will repeal subregulation 3(2) from the Charge Regulations.

The amendment will be consequential to Item 2 above.

#### Item [4] – Part 2 (heading)

This item will repeal the heading of Part 2 of the Charge Regulations and substitute with “Part 2 – General charge and non-commercial application charge”.

Previously, the heading of Part 2 is “Amount of registration application charge”.

The amendment will substitute a new heading for Part 2 of the Charge Regulations, which will reflect the new definition terms of **general charge** and **non-commercial application charge** that have been inserted by Schedule 1 to the Rates of Charge Act.

The amendment will complement Schedule 1 to the Rates of Charge Act.

#### Items [5] and [10] – Regulation 4 (heading) and Regulation 5 heading

Item 5 will repeal the heading of regulation 4 of the Charge Regulations and substitute with “Amount of general charge”.

Item 10 will repeal the heading of regulation 5 of the Charge Regulations and substitute with “Amount of non-commercial application charge”.

Previously, the heading of regulation 4 was “Amount of charge: general”, and the heading of regulation 5 was “Amount of charge: non-commercial or non-profit assistance”.

Similar to Item 4 above, the amendments will substitute a new heading for regulations 4 and 5, which will reflect the new definition terms of **general charge** and **non-commercial application charge** that have been inserted by Schedule 1 to the Rates of Charge Act.

The amendments will complement Schedule 1 to the Rates of Charge Act.

#### Items [6] and [12] – Subregulation 4(2) and Subregulation 5(2)

Item 6 omits “Act:” from subregulation 4(2) of the Charge Regulations and substitutes “Act, the amount of general charge payable is as follows:”.

Item 12 omits “Act:” from subregulation 5(2) of the Charge Regulations and substitutes “Act, the amount of non-commercial application charge payable is as follows:”.

The amendments reflect changes made by Schedule 1 to the Rates of Charge Act, which inserted the new definition terms of **general charge** and **non-commercial application charge**. These new definition terms refer to an amount of charge imposed by Part 2 of the Charge Act that is prescribed by regulation, for the purposes of section 6 of the Charge Act as the general charge and non-commercial application charge, respectively.

The amendments will complement Schedule 1 to the Rates of Charge Act.

#### Items [7], [9], [13] and [15] – Paragraph 4(2)(a), Paragraph 4(2)(b), Paragraph 5(2)(a) and Paragraph 5(2)(b)

Items 7 and 9 generally omits “charge” and substitutes “general charge” in subregulation 4(2) of the Charge Regulations.

Items 13 and 15 generally omits “charge” and substitutes “non-commercial application charge” in subregulation 5(2) of the Charge Regulations.

The amendments will be consequential to Items 6 and 12 above.

#### Items [8] and [14] – Paragraph 4(2)(a) and Paragraph 5(2)(a)

Items 8 and 14 omit “and” from paragraphs 4(2)(a) and 5(2)(a) of the Charge Regulations, respectively.

The amendment will be a machinery change to reflect modern drafting practices and is technical in nature.

#### Item [11] – Subregulation 5(1)

This item will repeal and substitute subregulation 5(1) of the Charge Regulations.

Previously, subregulation 5(1) provides this regulation applies to an individual who intends to provide immigration assistance, if the assistance is intended to be provided solely:

- on a non-commercial or non-profit basis; and
- as a member of, or a person associated with, an organisation that operates in Australia solely:
  - on a non-commercial or non-profit basis; and
  - as a charity, or for the benefit of the Australian community.

The note under subregulation 5(1) provides that **charity** has the meaning given by Part 2 of the *Charities Act 2013* (see section 2B of the *Acts Interpretation Act 1901*).

New subregulation 5(1) will provide this regulation applies to an individual who intends to provide immigration assistance on a non-commercial basis.

The amendment will take advantage of the definition of **non-commercial basis** in subsection 3(1) of the Charge Act by adopting that term in this provision.

The amendment will complement Schedule 1 to the Rates of Charge Act.

#### Item [16] – After regulation 5

This item will insert a new heading “Part 2A – Charge on basis of status of migration agent” after regulation 5 of the Charge Regulations.

The purpose and effect of the amendment is to indicate to the reader the part of the Charge Regulations which sets out the charges applicable to migration agents on the basis of their status; that is, whether they operate on a non-commercial basis or otherwise than on a non-commercial basis.

#### Item [17] – Regulation 6

This item will repeal and substitute regulation 6 of the Charge Regulations, including a new heading for the regulation.

Previously, the heading of regulation 6 was “Day when registered migration agents begins working on a commercial basis”.

The new heading of regulation 6 will be “Working out amount of charge”.

The amendment will shorten the heading, and the new title will better reflect the purpose of regulation 6.

Previously regulation 6 set out when a registered migration agent begins to give immigration assistance on a commercial basis (and therefore is liable to pay the general application charge).

New regulation 6 will be substantially the same as current regulation 6, except for a new heading and changes to take advantage of the new definition terms inserted by Schedule 1 to the Rates of Charge Act and to ensure consistency between the Charge Regulations and the Charge Act. In particular, this provision will provide for when a registered migration agent



begins to give immigration assistance otherwise than on a non-commercial basis, instead of providing for when a person gives immigration assistance on a commercial basis.

Consistent with the Charge Act, this provision will make clear that the default position is for the applicant to pay the general application charge, unless they are giving immigration assistance on a non-commercial basis.

A new note under new regulation 6 will provide that **charity** has the meaning given by Part 2 of the *Charities Act 2013* (see section 2B of the *Acts Interpretation Act 1901*).

This new note will direct the attention of readers to the definition of **charity** outlined in the *Charities Act 2013*.

#### Item [18] – In the appropriate position in Part 3

This item will insert new regulation 8 in the appropriate position in Part 3 of the Charge Regulations.

The heading of new regulation 8 will provide: “Amendment made by the *Migration Agents Registration Application Charge Amendment (Rates of Charge) Regulations 2020*.”

New regulation 8 will provide for the application of the amendments made by Schedule 1 to the amending Regulations. Relevantly, regulation 8 will provide that these amendments apply in relation to:

- an amount of general charge or non-commercial application charge in respect of a registration application made on or after the commencement of this regulation; and
- an amount of charge imposed under section 10 of the Charge Act (on the basis of the status of a migration agent) in respect of a registered migration agent’s current period of registration resulting from a registration application made on or after the commencement of this regulation.

Regulation 8 will ensure that the charges payable by a migration agent will only be payable in relation to a registration application made on or after the commencement date.

Consistent with the policy intention of Schedule 1 to the Rates of Charge Act, the intention of new regulation 8 is to ensure that those agents who make a registration application on or after the time that the amendments commence and who are registered on a non-commercial basis should only be able to provide immigration assistance on a non-commercial basis. If the agent gives immigration assistance otherwise than on a non-commercial basis at any time during their current registration period, the agent is liable to pay an adjusted charge under section 10 of the Charge Act.