

EXPLANATORY STATEMENT

Migration Act 1958

Migration (Collection of Registration Status Charge) Instrument (LIN 20/225) 2020

(subsection 332A(1))

1. The instrument, LIN 20/225, is made under subsection 332A(1) of the *Migration Act 1958* (the Act).
2. In accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (the AIA), the instrument repeals *Determination of the Collection of the Registration Status Charge* (IMMI 14/027) (F2014L00501) made under subsection 332A(1) of the Act. Subsection 33(3) of the AIA 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. Subsection 332A(1) of the Act provides that a registration status charge is due and payable at the time worked out in accordance with a determination made, by legislative instrument, by the Migration Agents Registration Authority. Whilst the Act and the instrument made under subsection 332A(1) of the Act determines when a charge is to become due and payable, the imposition of the charge is determined under section 10 of the *Migration Agents Registration Application Charge Act 1997* (the MARAC Act).
4. The MARAC Act has been amended by the *Migration Agents Registration Application Charge Amendment (Rates of Charge) Act 2020* which, amongst other things, repeals the definition of **commercial basis**. Instead, a definition of **non-commercial basis** has been inserted to more accurately fulfil the policy intention. This change has been reflected in the new section 10 of the MARAC Act, which now refers to the giving of ‘immigration assistance otherwise than on a non-commercial basis’.
5. As the language of IMMI 14/027 closely mirrored the language in section 10 of the MARAC Act, the amendment to that section has necessitated an update to the language of the legislative instrument made under subsection 332A(1) of the Act. The new instrument, LIN 20/225, ensures that the terminology used is consistent with changes made to the MARAC Act.

6. The purpose of the instrument is to:
 - a. repeal the previous instrument, IMMI 14/027; and
 - b. provide that the registration status charge imposed under section 10 of the MARAC Act becomes due and payable on the earlier time of either:
 - i. the registered migration agent notifying the Migration Agents Registration Authority that the agent has begun to give immigration assistance otherwise than on a non-commercial basis; or
 - ii. the day after 14 days of the agent giving immigration assistance otherwise than on a non-commercial basis; and
 - c. make formatting changes and to improve readability for users of the instrument.
7. In accordance with paragraph 15J(2)(e) of the *Legislation Act 2003*, consultation was not necessary. The changes made by the instrument are of a minor or machinery nature and does not substantially alter existing arrangements.
8. The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is not required (OBPR Reference 22900).
9. Under section 42 of the *Legislation Act 2003*, the instrument is subject to disallowance and therefore a Statement of Compatibility with Human Rights has been provided at **Attachment A**.
10. The instrument commences on 15 October 2020.

ATTACHMENT A

Statement of Compatibility with Human Rights

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

Migration (LIN 20/225: Collection of Registration Status Charge) Instrument 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 (LIN 20/225: Collection of Registration Status Charge) Instrument 2020* (the Instrument) is made under subsection 332A(1) of the *Migration Act 1958*.

The Instrument repeals and remakes the *Determination of the Collection of the Registration Status Charge* (IMMI 14/027), which uses terminology that has become outdated with the commencement of the amendments made by the *Migration Agents Registration Application Charge Amendment (Rates of Charge) Act 2020* to the *Migration Agents Registration Application Charge Act 1997* (the MARAC Act).

The purpose of the Instrument is to:

- a. repeal the previous instrument, IMMI 14/027; and
- b. provide that the registration status charge imposed under section 10 of the MARAC Act becomes due and payable on the earlier of either:
 - iii. the registered migration agent notifying the Migration Agents Registration Authority that the agent has begun to give immigration assistance otherwise than on a non-commercial basis; or
 - iv. the day after 14 days of the agent giving immigration assistance otherwise than on a non-commercial basis; and
- c. make formatting changes and to improve readability for users of the Instrument.

By determining when a charge is to become due and payable, the Instrument complements the MARAC Act, which provides how to determine the amount of charge payable.

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