

EXPLANATORY STATEMENT

Issued by authority of the Assistant Minister for Customs, Community Safety and Multicultural Affairs

Migration Agents Regulations 1998

Migration (Specified courses and exams for registration as a migration agent) Amendment Instrument (LIN 21/005) 2021

- 1 The instrument, Departmental reference LIN 21/005, is made under subregulation 5(4) of the *Migration Agents Regulations 1998* (the Regulations).
- 2 The instrument amends the *Migration (IMMI 18/003: Specified courses and exams for registration as a migration agent) Instrument 2018* (F2017L01708) (IMMI 18/003), which was made under subregulations 5(1), 5(2), 5(4) and 5(5) and paragraphs 5(3)(a) and (b) of the Regulations. The amendment is made accordance with subsection 33(3) of the *Acts Interpretation Act 1901* and paragraph 13(1)(a) of the *Legislation Act 2003* (the Legislation Act), which provide that a power to make a legislative instrument under delegated legislation includes a power to amend or repeal that instrument, subject to any conditions that apply to the initial instrument-making power.
- 3 The instrument commences on the later of:
 - immediately after the commencement of Parts 1 and 2 of Schedule 1 to the *Migration Agents Amendment (Regulation of Migration Agents) Regulations 2020* (the Amendment Regulations); and
 - the day after registration on the Federal Register of Legislation.
- 4 The instrument is a legislative instrument for the Legislation Act.

Purpose

- 5 The *Migration Amendment (Regulation of Migration Agents) Act 2020* (the Amendment Act) will, upon commencement of Schedule 2 to that Act, repeal and substitute new section 289A of the *Migration Act 1958* (the Act). New section 289A of the Act outlines academic and vocational requirements that a new applicant for registration as a migration agent, or a person who has not been registered for the prescribed period, must meet. The Amendment Regulations prescribes a period of three years. Such an applicant cannot be registered unless the Migration Agents Registration Authority is satisfied that the applicant has completed a prescribed course (paragraph 289A(2)(a)) and passed a prescribed examination within a prescribed period (paragraph 289A(2)(b)).
- 6 Regulation 5 of the Regulations prescribes the relevant matters for the purpose of section 289A of the Act. The Amendment Regulations will, upon commencement, repeal and remake regulation 5 to align with new section 289A of the Act. This relevantly provides that the Minister may, by legislative instrument made under subregulation 5(4):
 - specify the course for the purpose of paragraph 289A(2)(a) of the Act (subregulation 5(2));
 - specify the prescribed examination, minimum pass mark, and prescribed period for passing the examination for the purpose of paragraph 289A(2)(b) (paragraphs 5(3)(a), (b) and (c) respectively).

- 7 These matters were all previously prescribed by reference to legislative instrument in regulation 5 of the Regulations, but this provision is being redrafted to align with new section 289A of the Act.
- 8 The instrument makes amendments to IMMI 18/003 that are required as a result of the commencement of the Amendment Act and Amendment Regulations, to accurately reflect that:
- the prescribed courses specified in section 6 of IMMI 18/003 for the purposes of section 289A of the Act before the commencement of the Amendment Act and Amendment Regulations continue to be specified;
 - the prescribed examinations specified in section 7 of IMMI 18/003 for the purposes of section 289A of the Act continue to be specified;
 - the prescribed examination scores and periods for completion of scores and exams in sections 8 and 9 of IMMI 18/003 continue to be specified.
- 9 The instrument also amends IMMI 18/003 to reflect the fact that the Capstone Assessment examination must be passed before 1 January 2021. This is required because The College of Law Limited ceased to be a provider of the Capstone Assessment on 31 December 2020. However, as candidates have 12 months after passing the Capstone Assessment to apply for registration, the Capstone Assessment delivered by The College of Law Limited will continue to be a specified exam until 31 December 2021, if the candidates successfully completed the exam before 1 January 2021.

Consultation

- 10 Consultation with relevant stakeholders was not necessary as the instrument is of a minor or machinery nature and does not substantially alter existing arrangements.
- 11 The Office of Best Practice Regulation (OBPR) was consulted and considered that the instrument deals with matters of a minor or machinery nature and no regulatory impact statement is required. The OBPR reference number is 22900.

Details of the instrument

- 12 Section 1 sets out the name of the instrument.
- 13 Section 2 provides for the commencement of the instrument, which is the later of:
- immediately after the commencement of Parts 1 and 2 of Schedule 1 to the Amendment Regulations; and
 - the day after registration on the Federal Register of Legislation.
- 14 Section 3 provides that Schedule 1 to the instrument amends the *Migration (IMMI 18/003: Specified courses and exams for registration as a migration agent) Instrument 2018 (F2017L01708)* as set out in the Schedule.
- 15 Items 1, 2, 3, 6, 7 and 8 of Schedule 1 substitute existing references in the instrument to particular provisions of the Regulations to the corresponding provisions in the amended Regulations.
- 16 Item 4 of Schedule 1 repeals and substitutes paragraph 7(1)(a) of the instrument, to provide that the Capstone Assessment is a specified examination if passed before 1 January 2021.

- 17 Item 5 of Schedule 1 specifies the exam requirements in relation to persons not covered by subsection 7(2) of the instrument. This will cover persons who were not primarily educated in English in a specified English speaking country. The exam requirements for these persons will include the English language exams set out in section 7(3). Subsection 7(3) will also refer to the Capstone Assessment as a specified examination if passed before 1 January 2021.

Parliamentary scrutiny etc.

- 18 The instrument is subject to disallowance under section 42 of the Legislation Act. A Statement of Compatibility with Human Rights has been prepared in relation to the instrument, and provides that the instrument does not engage any of the applicable human rights or freedoms. The Statement is included at **Attachment A** to this explanatory statement.
- 19 The instrument was made by Jason Wood, Assistant Minister for Customs, Community Safety and Multicultural Affairs, in accordance with subregulation 5(4) of the Regulations.

Statement of Compatibility with Human Rights

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

Migration (Specified Courses and Exams for Registration as a Migration Agent) Amendment Instrument (LIN 21/005) 2021

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 (Specified Courses and Exams for Registration as a Migration Agent) Amendment Instrument (LIN 21/005) 2021* (the Instrument) is made under subregulation 5(4) of the *Migration Agents Regulations 1998* (the Regulations) and amends *Migration (IMMI 18/003: Specified courses and exams for registration as a migration agent) Instrument 2018* (IMMI 18/003).

IMMI 18/003 specifies courses and examinations that a person must have passed to be registered as a migration agent, where the person has not previously been registered or has not been registered in the preceding 3 years. The Instrument amends IMMI 18/003 to:

- update references to the instrument-making power in regulation 5 of the Regulations to reflect amendments made to that regulation and section 289A of the *Migration Act 1958*. These are consequential amendments that do not change the substance of the requirements already in place under IMMI 18/003;
- reflect that The College of Law Limited ceased to be a provider of the Capstone Assessment on 31 December 2020, and that this examination is only relevant if passed on or before that date.

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