

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) (Capstone provider) Amendment Instrument (LIN 21/044) 2021

- 1 The instrument, Departmental reference LIN 21/044, 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* (IMMI 18/003), which is made under subregulation 5(4) of the Regulations. The amendment is made by this instrument in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (the Acts Interpretation Act). That subsection provides that a power to make a legislative instrument includes a power to amend or repeal that instrument in the same manner, and subject to the same conditions, as the power to make the instrument.
- 3 The instrument commences the day after registration on the Federal Register of Legislation, and is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

Purpose

- 4 IMMI 18/003 specifies the prescribed courses and prescribed examinations for registration as a migration agent for the purposes of the Regulations. This includes specifying the prescribed examination as the Capstone assessment (the Capstone) by reference to the provider of that assessment.
- 5 The instrument amends IMMI 18/003 to reflect that the Office of the Migration Agents Registration Authority (the OMARA) has obtained the services of a new Capstone provider and removes references to the common assessment items (CAIs). The instrument also updates and clarifies the drafting of IMMI 18/003.
- 6 The OMARA has undertaken a procurement process and determined that Legal Training Australia Pty Ltd is the new and sole Capstone provider beginning 1 January 2021. As The College of Law Limited ceased being the Capstone provider on 31 December 2020, the instrument updates the specification of the Capstone as the prescribed examination under the Regulations.
- 7 The instrument specifies the Capstone as the examination that is named as the Capstone assessment offered by Legal Training Australia on or after 1 January 2021, or offered by the College of Law before 1 January 2021. As candidates have 12 months after passing the Capstone to apply for registration, applicants who passed the Capstone offered by The College of Law on or before 31 December 2020, have 12 months from the date of passing, to apply for registration based on that exam. References to the Capstone as offered by The College of Law remain in the instrument for the benefit of these applicants.
- 8 The instrument also amends IMMI 18/003 to remove references to the common assessment items relating to registration (CAIs). CAIs were assessment items that formed part of the Graduate Certificate in Australian Migration Law and Practice (Graduate Certificate). The CAIs was only specified as a prescribed examination under the Regulations until 31 December 2017, meaning that applicants could

only rely on the CAIs to apply for registration for 12 months after passing—i.e. until 31 December 2018. This means that the reference to the CAIs in IMMI 18/003 is redundant and can be repealed.

- 9 CAIs were removed as the prescribed examination in response to recommendation 16 of the 2014 Independent Review of the Office of the Migration Agents Registration Authority (the Kendall Review), which recommended that the prescribed examination should be a stand-alone Capstone de-linked from the Graduate Diploma or any of the universities offering it. The Government supported this recommendation, and the Capstone became the prescribed examination for migration agents from 1 January 2018.
- 10 Whilst references to the CAIs have been removed, the instrument continues to refer to the Graduate Certificates completed before 1 January 2018, but only as a prescribed course for the purpose of subregulation 5(2) of the Regulations. CAIs, which form part of the Graduate Certificates, are no longer a prescribed exam for the purpose of paragraph 5(3)(a) of the Regulations. Holders of Graduate Certificates completed before 1 January 2018 seeking to be registered as migration agents need to pass the Capstone to qualify for registration as migration agents.

Consultation

- 11 The Department undertook a procurement process to determine the Capstone provider, which involved publishing an open Request for Proposal on the AusTender website for anyone in the market to apply for. The removal of redundant provisions referring to the old examination format is undertaken as part of implementation of recommendation 16 of the Kendall Review.
- 12 The Office of Best Practice Regulation (OBPR) was also consulted and considered that the instrument dealt with matters of a minor nature and no regulatory impact statement was required. The OBPR reference number is 44065.

Details of the instrument

- 13 Section 1 sets out the name of the instrument.
- 14 Section 2 provides for the commencement of the instrument on the day after registration on the Federal Register of Legislation.
- 15 Section 3 provides that Schedule 1 to the instrument amends *Migration (IMMI 18/003: Specified courses and exams for registration as a migration agent) Instrument 2018* as set out in the Schedule.
- 16 Item 1 of Schedule 1 to the instrument updates the definition of ‘Capstone Assessment’ in section 4 of the instrument. This definition now defines the Capstone as the exam of that name delivered by The College of Law before 1 January 2021 or by Legal Training Australia on or after 1 January 2021. This reflects that Legal Training Australia is the current Capstone provider. To the extent that this creates any retrospective operation, this will be consistent with subsection 12(2) of the Legislation Act as the instrument will not disadvantage any person or impose any liabilities on a person.
- 17 Item 2 omits the definition of ‘common assessment items relating to registration’ in section 4. Prior to commencement of this amendment instrument, assessment items which formed part of the Graduate Certificate courses in subsection 6(2), were defined as the CAIs. Subsection 6(2) of IMMI 18/003 continues to specify the Graduate Certificate courses as being courses for registration as a migration agent, provided they were completed before 1 January 2018.

- 18 Items 3, 4, 9 and 10 substitute ‘exam’ or ‘exams’ with ‘examination’ or ‘examinations’ throughout IMMI 18/003. This is a technical amendment to ensure that the language of the instrument is consistent with the Regulations and the Act, which refer to ‘examinations’.
- 19 Items 5 removes subsection 7(1) of IMMI 18/003, as this provision is no longer required as a result of the amendments made to subsection 7(2) by item 6.
- 20 Item 6 amends IMMI 18/003 to provide that the Capstone is the examination specified to be the prescribed examination under paragraph 5(3)(a) of the Regulations for the classes of person listed in paragraphs (a) and (b) of subsection 7(2). The amendment makes clear that the Capstone is specified, by reference to the classes of persons mentioned as permitted by subsection 33(3A) of the Acts Interpretation Act.
- 21 Item 7 is a technical amendment following from item 6 to update the wording of subsection 7(3) by replacing ‘specified’ with ‘mentioned’ in relation to the class of persons mentioned in subsection 7(2).
- 22 Item 8 substitutes a new paragraph 7(3)(a) to provide that the Capstone Assessment is the prescribed examination for a person in a class of persons not specified in subsection 7(2).
- 23 Item 11 removes the reference to a ‘course or exam’ in subsection 9(1) and substitutes a reference to ‘examination’. Section 9 specifies the periods of time during which an applicant may use particular examination results to apply for registration as a migration agent. Subsection 9(1) refers to paragraph 5(3)(c) of the Regulations, which in turn refers to paragraph 289A(2)(b) of the Act. Both of those provisions refer only to examinations, not courses. Consequently, item 10 removes the reference to a ‘course’.
- 24 Item 12 removes paragraphs 9(1)(a) and (c) of the instrument. Paragraph 9(1)(a), which refers to the courses in section 6, is being removed because (as noted above) section 9 specifies only examinations and not courses. Paragraph 9(1)(c) is being removed to delete references to the CAIs from the instrument.
- 25 Item 13 is an application provision that provides that this instrument (LIN 21/044) applies to applications for registration as a migration agent:
- received before the commencement of this instrument and the Migration Agents Registration Authority (which has the same meaning as in section 315 of the Act) has not registered the applicant under section 289 of the *Migration Act 1958* (Migration Act) or refused to register the applicant under section 295 of the Migration Act before the commencement of this instrument; or
 - received after the commencement of this instrument.
- 26 Item 13 ensures that applicants who undertook the Capstone Assessment as offered by Legal Training Australia before the commencement of this instrument will be able to rely on the results of that examination, provided their application had not already been finalised prior to the commencement of this instrument. To the extent that section 4 creates any retrospective operation, this will be consistent with subsection 12(2) of the Legislation Act as the item will not disadvantage any person or impose any liabilities on a person.

Parliamentary scrutiny etc.

- 27 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.
- 28 The instrument was made by the Hon Jason Wood MP, 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) (Capstone provider) Amendment Instrument (LIN 21/044) 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) (Capstone provider) Amendment Instrument (LIN 21/044) 2021 (the Instrument) is made under subregulation 5(4) of the *Migration Agents Regulations 1998* (the Regulations).

The instrument amends *Migration (IMMI 18/003: Specified courses and exams for registration as a migration agent) Instrument 2018* (IMMI 18/003), to update the exams an applicant can take to register as a migration agent. IMMI 18/003 specifies courses and exams for registration as a migration agent for the purposes of the Regulations. This includes specifying a provider for the Capstone Assessment (Capstone).

The instrument provides that beginning 1 January 2021, the new and sole provider of the Capstone is Legal Training Australia, as determined by the procurement process undertaken by the Office of the Migration Agents Registration Authority (the OMARA).

The Department undertook a procurement process to determine the Capstone provider, which involved publishing an open Request for Proposal on the AusTender website for anyone in the market to apply for. The Office of Best Practice Regulation was also consulted and considered that the instrument dealt with matters of a ‘minor nature’ and that ‘no regulatory impact statement was required’.

Whilst The College of Law Limited ceased being the Capstone provider on 31 December 2020, applicants will continue to be able to rely on the assessment delivered by The College of Law for registration as a migration agent until 31 December 2021. This will ensure that applicants who passed the exam before 1 January 2021 are still able to use their exam results to register with the OMARA, as the exam results are valid for 12 months as per subsection 9(1) of the IMMI 18/003. Consequently, there will be no adverse impact on applicants who have previously received an assessment delivered by The College of Law.

The instrument also amends IMMI 18/003 to remove references to the common assessment items (the CAIs) as the CAIs were specified to be a prescribed examination only if passed before 1 January 2018. CAIs were only valid for 12 months, and as such, are no longer current. The CAIs were assessment items that formed part of the Graduate Certificate in Australian Migration Law and Practice. Recommendation 16 of the 2014 Independent Review of the Office of the Migration Agents

Registration Authority (the Kendall Review) recommended a stand-alone Capstone de-linked from the prescribed university courses or any of the universities offering it. The Government supported this recommendation, and the Capstone became the prescribed examination in 2018.

Human rights implications

This Disallowable Legislative Instrument does not engage any of the applicable human rights or freedoms. The appointment of a new Capstone provider and removal of CAIs will not exclude applicants from the occupation, provided they meet the specified standards, which are reasonable and transparent. The amendments ensure that the clients of migration agents continue to receive the same high standard of service.

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**