



# **Migration Agents Regulations 1998**

**Statutory Rules No. 53, 1998**

made under the

*Migration Act 1958*

## **Compilation No. 24**

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## About this compilation

### This compilation

This is a compilation of the *Migration Agents Regulations 1998* that shows the text of the law as amended and in force on 1 October 2017 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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## Part 1—Introductory

### 1 Name of Regulations

These Regulations are the *Migration Agents Regulations 1998*.

### 3 Interpretation

(1) In these Regulations:

*Act* means the *Migration Act 1958*.

*approved activity* means an activity approved by the Minister under subregulation 9E(1).

*approved provider* means a person approved by the Minister under subregulation 9H(1).

*Authority* means the Migration Agents Registration Authority.

*client*, of a registered migration agent, means a person to whom the agent agrees (whether or not in writing) to provide immigration assistance.

*consumer guide* means the current version of the document produced for regulation 9A.

*CPD activity* means an activity that:

- (a) is specified in an instrument made under regulation 3AA; and
- (b) relates to a topic specified in an instrument made under regulation 3AA; and
- (c) is conducted by a CPD provider in accordance with any conditions specified for the activity in an instrument made under regulation 3AA.

*CPD provider* means a person for whom an approval under Part 3C as a CPD provider is in effect.

*CPD provider standards* has the meaning given by subregulation 9Q(2).

*electronic communication* has the meaning given by the *Electronic Transactions Act 1999*.

*expiry day* for an approval has the meaning given by subregulation 9R(3).

*financial institution* means a body corporate that, as part of its normal activities:

- (a) takes money on deposit and makes advances of money; and
- (b) does so under a regulatory regime, governed by the central bank (or its equivalent) of the country in which it operates, that the Minister is satisfied provides effective prudential assurance.

*prescribed institution* means:

## Regulation 3AA

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- (a) an institution of higher education within the meaning of the *Higher Education Funding Act 1988*; or
- (b) Bond University, within the meaning of the *Bond University Act 1987* of Queensland.

***suitable mentoring arrangement*** means an arrangement between 2 registered migration agents under which one of the agents provides mentoring to the other agent about practice as a registered migration agent.

***voluntary organisation*** means an organisation that provides immigration assistance without charging a fee.

Note: Examples of voluntary organisations are:

- (a) a non-profit immigration advice organisation; and
- (b) a migrant resource centre; and
- (c) an ethnic community organisation.

- (2) In these Regulations, an individual applies for ***repeat registration*** if the individual:
  - (a) applies for registration; and
  - (b) has been registered at some time in the period of 12 months before making the application.

### 3AA Instrument specifying matters relating to CPD activities

The Minister may, by legislative instrument, specify any or all of the following matters:

- (a) activities;
- (b) topics to which activities may relate;
- (c) conditions for the conduct of activities;
- (d) the points that activities are worth;
- (e) activities that are mandatory and a minimum number of points for such activities.

Note: These matters are specified for the purposes of the definition of ***CPD activity*** in subregulation 3(1).



## **Part 2—Immigration assistance given by persons not registered**

### **Division 2.1—Assistance given by employers and their employees**

#### **3A Definitions for Division 2.1**

In this Division:

*employee* has the meaning given by regulation 3B.

*employer* has the meaning given by regulation 3B.

*migrating employee*, in relation to an employer, means an employee, or a prospective employee, of the employer:

- (a) whom the employer intends to sponsor or nominate for the *Migration Regulations 1994*; or
- (b) whom the employer is likely to sponsor or nominate for those Regulations.

#### **3B Meaning of *employer* and *employee***

For this Division, a person is the *employer* of an individual, and the individual is the *employee* of the person, if:

- (a) the person engages the individual to work in the person's workplace for an indefinite period rather than for a specified term or for the duration of a specified task; and
- (b) the person is responsible for paying the individual's salary or wages.

#### **3BA Specification of kinds of visas for this Division**

The Minister may, by legislative instrument, specify kinds of visas for the purposes of this Division.

#### **3C Assistance given to migrating employees**

For the purposes of subsection 276(4) of the Act, a person does not give immigration assistance if the person gives assistance referred to in subsection 276(1) or (2) of the Act in these circumstances:

- (a) the person is:
  - (i) the employer or prospective employer of the person to whom the assistance is given; or
  - (ii) an employee of the employer or prospective employer of the person to whom the assistance is given who is acting on the employer's behalf; and
- (b) the person to whom the assistance is given is a migrating employee of the employer or prospective employer; and

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- (c) the migrating employee has made or intends to make an application for a kind of visa specified in an instrument made under regulation 3BA; and
- (d) the assistance is given in relation to the application; and
- (e) the person giving the assistance is not a registered migration agent.

**3D Representations made on behalf of migrating employees**

For the purposes of subsection 282(5) of the Act, a person does not make immigration representations if the person makes representations of the kind referred to in subsection 282(4) of the Act in these circumstances:

- (a) the person is:
  - (i) the employer or prospective employer of the person on whose behalf the representations are made; or
  - (ii) an employee of the employer or prospective employer of the person on whose behalf the representations are made who is acting on the employer's behalf; and
- (b) the person on whose behalf the representations are made is a migrating employee of the employer or prospective employer; and
- (c) the migrating employee has made or intends to make an application for a kind of visa specified in an instrument made under regulation 3BA; and
- (d) the representations are made in relation to the application; and
- (e) the person making the representations is not a registered migration agent.

## **Division 2.2—Assistance given by professional development sponsors**

### **3E Definitions for Division 2.2**

In this Division:

*employee* has the same meaning as in Division 2.1 (see regulation 3B).

*professional development sponsor* means an organisation that is sponsoring, or intends to sponsor, a person who is in a class of persons specified in an instrument made under regulation 3EA in relation to an application for a visa the person has made or intends to make.

### **3EA Specification of classes of persons for this Division**

The Minister may, by legislative instrument, specify classes of persons for the purposes of this Division.

### **3F Assistance given to professional development applicants**

For the purposes of subsection 276(4) of the Act, a person (the *adviser*) does not give immigration assistance if the adviser gives assistance referred to in subsection 276(1) or (2) of the Act to another person (the *applicant*) in these circumstances:

- (a) the adviser is:
  - (i) a professional development sponsor of the applicant; or
  - (ii) an employee of a professional development sponsor of the applicant who is acting on the sponsor's behalf; and
- (b) the applicant is in a class of persons specified in an instrument made under regulation 3EA; and
- (c) the applicant has made or intends to make an application for a visa in relation to which the professional development sponsor has sponsored, or intends to sponsor, the applicant; and
- (d) the assistance is given in relation to the application; and
- (e) the adviser is not a registered migration agent.

### **3G Representations made on behalf of professional development applicants**

For the purposes of subsection 282(5) of the Act, a person (the *adviser*) does not make immigration representations if the adviser makes representations of the kind referred to in subsection 282(4) of the Act on behalf of another person (the *applicant*) in these circumstances:

- (a) the adviser is:
  - (i) a professional development sponsor of the applicant; or
  - (ii) an employee of a professional development sponsor of the applicant who is acting on the sponsor's behalf; and

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**Division 2.2** Assistance given by professional development sponsors

**Regulation 3G**

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- (b) the applicant is in a class of persons specified in an instrument made under regulation 3EA; and
- (c) the applicant has made or intends to make an application for a visa in relation to which the professional development sponsor has sponsored, or intends to sponsor, the applicant; and
- (d) the representations are made in relation to the application; and
- (e) the adviser is not a registered migration agent.

## **Division 2.3—Assistance given by other persons**

### **3H Assistance given by close family members**

For the definition of *close family member* in subsection 280(7) of the Act, *close family member*, in relation to a person, means:

- (a) the person's spouse; or
- (b) a child, adopted child, parent, brother or sister of the person.

Regulation 3I

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## **Division 2.4—Infringement notices relating to giving of immigration assistance**

### **3I Definitions for Division 2.4**

In this Division:

*authorised officer* includes the Secretary.

*infringement notice* means a notice under regulation 3J.

*offence* means a contravention of subsection 280(1) of the Act.

*penalty* means the penalty mentioned in paragraph 504(1)(ja) of the Act.

Note: *Authorised officer* is defined in subsection 5(1) of the Act.

### **3J When can an infringement notice be served?**

- (1) If an authorised officer has reason to believe that a person has committed an offence, he or she may serve an infringement notice on the person in accordance with this Division.
- (2) To avoid doubt, if an authorised officer has reason to believe that a person has committed 2 or more offences of the same kind, he or she may serve a separate infringement notice on the person in accordance with this Division in respect of each alleged offence.

### **3K What must an infringement notice contain?**

- (1) An infringement notice must:
  - (a) state the name of the authorised officer who served the notice; and
  - (b) set out the day on which, or period during which, the offence is alleged to have been committed; and
  - (c) give brief particulars of the alleged offence; and
  - (d) set out the penalty; and
  - (e) state that, if the person on whom it is served does not wish the matter to be dealt with by a court, he or she may pay that penalty within 28 days after the date of service of the notice unless the notice is withdrawn before the end of that period; and
  - (f) specify where and how that penalty may be paid; and
  - (g) set out the procedures relating to the withdrawal of notices and the consequences of the withdrawal of a notice.
- (2) An infringement notice may contain any other information that the authorised officer considers necessary.

### **3L Can the time for payment be extended?**

If an infringement notice has been served on a person, an authorised officer may, if he or she is satisfied that in all the circumstances it is proper to do so, allow a further period for payment of the penalty, whether or not the period of 28 days after the date of service of the notice has expired.

### **3M What happens if the penalty is paid?**

- (1) This regulation applies if the person on whom an infringement notice is served pays the penalty in relation to the alleged offence before the end of:
  - (a) the period of 28 days after the date of service of the notice; or
  - (b) if a further period has been allowed under regulation 3L—that further period.
- (2) Any liability of the person in relation to the alleged offence is discharged.
- (3) No further proceedings may be taken in relation to the alleged offence.
- (4) The person is not to be taken to have been convicted of the alleged offence.
- (5) However, this regulation does not apply if an infringement notice is withdrawn in accordance with regulation 3N, whether or not the penalty has been paid in accordance with subregulation (1).
- (6) If 2 or more infringement notices are served on a person in respect of separate alleged offences, this regulation applies only in respect of the alleged offence or offences in respect of which the penalty is paid in accordance with subregulation (1).

### **3N Can an infringement notice be withdrawn?**

If an infringement notice has been served on a person, an authorised officer may withdraw it by notice in writing served on the person in accordance with this Division, at any time before:

- (a) the end of 28 days after the date of service of the infringement notice; or
- (b) if a further period has been allowed under regulation 3L—the end of that further period.

Example: An infringement notice may be withdrawn by an authorised officer for the purposes of further investigation of the alleged offence.

### **3O Refund of penalty if notice withdrawn**

If:

- (a) an infringement notice has been served on a person; and
- (b) the person has paid the penalty in accordance with the notice, or within any further period allowed under regulation 3L; and
- (c) the notice has been withdrawn;

### Regulation 3P

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an authorised officer must arrange for the refund to the person of an amount equal to the amount paid.

Note: In accordance with subregulation 3M(5), if an amount is refunded to a person under regulation 3O in respect of a penalty paid in accordance with an infringement notice that has been withdrawn, regulation 3M does not apply in relation to the alleged offence for which the infringement notice was issued. Accordingly, the person's liability in relation to the alleged offence is not discharged, further proceedings may be taken in relation to the alleged offence and the person may be convicted of the alleged offence.

### 3P Evidence

- (1) At the hearing of a prosecution for an offence specified in an infringement notice, a certificate signed by an authorised officer and stating:
  - (a) that the authorised officer did not allow a further period under regulation 3L for payment of the penalty set out in the notice; and
  - (b) that the penalty has not been paid in accordance with the notice;is evidence of those matters.
- (2) At the hearing of a prosecution for an offence specified in an infringement notice, a certificate signed by an authorised officer and stating:
  - (a) that the authorised officer allowed, under regulation 3L, the further period specified in the certificate for payment of the penalty; and
  - (b) that the penalty has not been paid in accordance with the notice or within the further time allowed;is evidence of those matters.
- (3) At the hearing of a prosecution for an offence specified in an infringement notice, a certificate signed by an authorised officer and stating that the notice was withdrawn on a day specified in the certificate is evidence of that fact.
- (4) A certificate that purports to have been signed by an authorised officer is taken to have been signed by that person unless the contrary is proved.

### 3Q Can there be more than one infringement notice for the same offence?

If:

- (a) an infringement notice is served on a person in relation to an alleged offence; and
- (b) that infringement notice is withdrawn;

nothing in this Division prevents a further infringement notice being served on the person in relation to that alleged offence.

### 3R What if payment is made by cheque?

If a cheque is offered as payment of all or part of the amount of a penalty set out in an infringement notice, payment is taken not to have been made unless the cheque is honoured upon presentation.



### **3S Infringement notice not compulsory**

Nothing in this Division:

- (a) requires an infringement notice to be served on a person in relation to an alleged offence; or
- (b) affects the liability of a person to be prosecuted for an alleged offence if the person does not comply with an infringement notice; or
- (c) affects the liability of a person to be prosecuted for an alleged offence if an infringement notice is not served on the person in relation to the offence; or
- (d) affects the liability of a person to be prosecuted for an alleged offence if an infringement notice is served and withdrawn; or
- (e) limits the amount of the fine that may be imposed by a court on a person convicted of an offence.

### **3T How must a notice be served?**

A notice to be served in accordance with this Division must be served on a person by:

- (a) giving it to the person personally; or
- (b) sending it to the person's residential or business address last known to the authorised officer.

## Part 3—Registered Migration Agents

### 3U Relation by employment

- (1) For subsection 278(2) of the Act, an individual is *related by employment* to another individual if both of them are employed by a third individual.
- (2) For subsection 278(2) of the Act, an individual is *related by employment* to another individual if:
  - (a) one of the individuals holds 25% or more of the shares issued by a corporation that provides immigration assistance, or services including immigration assistance; and
  - (b) the other individual is employed by the corporation.

Note: *Immigration assistance* is defined in section 276 of the Act.

- (3) For subsection 278(2) of the Act, an individual is *related by employment* to another individual if:
  - (a) one of the individuals holds a charge (whether fixed or floating) or a mortgage or any other form of security over some or all of the assets of a business or corporation that provides immigration assistance, or services including immigration assistance; and
  - (b) the other individual is employed by the business or corporation.

Note: *Immigration assistance* is defined in section 276 of the Act.

### 3V Information on the Register of Migration Agents

For paragraph 287(2)(i) of the Act, the following matters are prescribed:

- (a) the registered migration agent's facsimile number;
- (b) the registered migration agent's web site address;
- (c) the registered migration agent's postal address;
- (d) the registered migration agent's e-mail address;
- (da) the registered migration agent's association with the business shown on the Register;
- (e) if a decision has been made under section 303, 306AG or 306AGAC of the Act to caution the registered migration agent, or to suspend or cancel the registered migration agent's registration:
  - (i) particulars of any application for review lodged by the agent against the decision; and
  - (ii) particulars of any order by the Administrative Appeals Tribunal or a court to stay the decision.

### 3W Publication of names of former registered migration agents

For subsection 287(3A) of the Act:

- (a) the prescribed way is by publishing the list on the Authority's web site; and

- (b) the prescribed period is not later than 12 months after the date of publication.

### **3X Removal of disciplinary details from the Register of Migration Agents**

- (1) For subsection 287(6) of the Act, if particulars of a caution that has ceased to have effect are recorded on the Register, the Authority must remove the details from the Register not later than 14 days after the caution has ceased to have effect.
- (2) For subsection 287(6) of the Act, if particulars of a suspension that has ceased to have effect are recorded on the Register, the Authority must remove the details from the Register not later than 14 days after the suspension has ceased to have effect.

### **3XA Application for repeat registration**

- (1) An individual who applies for repeat registration must, if requested to do so by the Authority, give the Authority a statement in writing setting out the average fees charged by the individual, as a registered migration agent, during the period specified in the request.

Note: See subregulation 3(2) for the definition of *repeat registration*.

- (2) The request:
  - (a) must be made in writing; and
  - (b) may be included in a form approved under regulation 11 for use in making applications for registration; and
  - (c) must not specify a period that begins more than 12 months before the individual's application for repeat registration.

### **3Y Time of registration application**

For subsection 288(4) of the Act, the day on which a registration application is taken to have been made is either:

- (a) if the registration application is sent by pre-paid post—the day on which the registration application is delivered to the Authority's post office box; or
- (b) the day on which a person gives the registration application by hand to a person employed by the Authority at an Authority office.

## **4 Publication of notice of intention to apply for registration**

- (1) For subsections 288A(2) and (3) of the Act:
  - (a) an individual; or
  - (b) two or more individuals who are employees of the same employer;must publish the notice in the way set out in this regulation.
- (2) The notice must include the following information about the individual or each of the individuals:

## Regulation 5

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- (a) full name;
  - (b) any other name by which he or she is or has been known;
  - (ba) present citizenship;
  - (c) address for correspondence;
  - (d) the physical address of any place at which the individual intends to practise as a registered migration agent;
  - (e) if the individual intends to work as an employee:
    - (i) the employer's business name (if any); and
    - (ii) the employer's name and address for correspondence; and
    - (iii) the employer's business address;
  - (f) if the individual does not intend to work as an employee:
    - (i) the business name (if any) that the individual is proposing to use; and
    - (ii) the individual's address for correspondence; and
    - (iii) the individual's business address.
- (3) The notice must also state:
- (a) the address of the Authority for correspondence; and
  - (b) that information about other applicants can be found on the Authority's web site.

Note: The URL for the Authority's web site is <http://www.themara.com.au>.

- (4) However, subregulations (2) and (3) do not require the individual or each of the individuals to include the same address more than once.
- (6) The notice must be published on the Registration Applicants page of the Authority's web site for a continuous period of at least 30 days.

Note: The URL for the Authority's web site is <http://www.themara.com.au>.

## 5 Prescribed qualifications

- (1) For paragraph 289A(c) of the Act, a prescribed course is a course specified by the Minister in an instrument in writing for this subregulation.
- (2) For paragraph 289A(c) of the Act, if a person is in a class of persons specified by the Minister in an instrument in writing for this subregulation, an exam specified by the Minister in an instrument in writing for this subregulation is a prescribed exam.
- (3) For paragraph 289A(c) of the Act, if a person is not in a class of persons specified by the Minister in an instrument in writing for subregulation (2), a prescribed exam is the combination of:
- (a) an exam specified by the Minister in an instrument in writing for this paragraph; and
  - (b) an exam in English language proficiency specified by the Minister in an instrument in writing for this paragraph.

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- (4) For paragraph (3)(b), 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 for this subregulation.
- (5) For paragraph 289A(c) of the Act, the prescribed period for the completion of a particular course or exam is the period specified by the Minister in an instrument in writing for this subregulation.
- (6) For paragraph 289A(d) of the Act, a current legal practising certificate issued by an Australian body authorised by law to issue it is a prescribed qualification.

**6 Continuing professional development**

- (1) For section 290A of the Act, the table sets out the requirements for continuing professional development of registered migration agents.

Note: Under section 290A of the Act, the requirements relate to applicants who have been registered at some time in the 12 months before making the application.

<b>Item</b>	<b>For ...</b>	<b>the requirements are in ...</b>
1	an applicant whose registration is due to expire on or after 1 January 2014	subregulation (2) and Schedule 1
2	an applicant: (a) whose application was made on or after 1 January 2014; and (b) whose registration ended not more than 12 months before the date the application was made	subregulation (2) and Schedule 1
3	any other applicant	Schedule 1

- (2) For items 1 and 2 of the table in subregulation (1), the applicant must:
- have achieved at least the minimum score in an exam in English language proficiency specified by the Minister in an instrument in writing for this paragraph; or
  - hold a current legal practising certificate issued by an Australian body authorised by law to issue it; or
  - be in a class of person specified by the Minister in an instrument in writing for this paragraph.

**6B Prescribed professional indemnity insurance**

- (1) Subject to subregulation (2), for subsection 292B(1) of the Act, professional indemnity insurance for at least \$250 000:
- held by an individual; or
  - held by an organisation of which the individual is a director, employee or member;
- is prescribed.
- (2) An individual is taken to have complied with subregulation (1) if he or she:
- is:

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- (i) a member or employee of a partnership; or
  - (ii) a director or employee of an incorporated legal practice; or
  - (iii) a sole legal practitioner or an employee of a sole legal practitioner;
- and
- (b) has satisfied the Authority that he or she has a current legal practising certificate.

Note: An individual described in subregulation (2) would already hold professional indemnity insurance for at least \$250 000 as part of the requirements for their current legal practising certificate. The individual would not need to provide evidence of professional indemnity insurance to the Authority once the Authority is satisfied that the individual has the certificate.

An individual who is not mentioned in subregulation (2) will need to provide evidence to satisfy the Authority that the individual has professional indemnity insurance for at least \$250 000.

### 6C Registration application—Australian permanent resident

For paragraph 294(1)(b) of the Act, *Australian permanent resident* means a non-citizen who is the holder of a permanent visa.

## 7 Publication of statement about a caution, or the cancellation or suspension of registration

- (1) For paragraphs 305A(1)(a) and 306AL(1)(a) of the Act, the Authority must publish the statement in writing on the Authority's web site.
- (2) For subsection 332C(2) of the Act, the Authority must remove any statement published on its web site under subregulation (1):
  - (a) if a statement about any caution is published—either:
    - (i) not later than 12 months after the Authority is satisfied that the agent has met any imposed conditions and the Authority has removed the caution from the Register of Migration Agents; or
    - (ii) not later than 12 months after the date of expiry of the agent's registration if the agent fails to meet any condition set for removing the caution from the Register of Migration Agents; or
    - (iii) not later than 12 months after the date of expiry of the agent's registration if no conditions have been imposed; or
  - (b) if a statement about any suspension is published—not later than 5 years after the date of publication; or
  - (c) if a statement about any cancellation is published—not later than 10 years after the date of publication.

### 7A Requiring registered migration agents to give information or documents

For subsection 305C(2) of the Act:

- (a) prescribed information, for each of the registered migration agent's clients, or each client of the business or corporation which employs the agent, is:
  - (i) the client's contact information; and

- (ii) the departmental client number or file number; and
  - (iii) the client reference number issued by the agent; and
  - (iv) the client's date of birth; and
- (b) prescribed documents are:
- (i) copies of the client files of the registered migration agent, or of the business or corporation which employs the agent, including copies of the documents described in clause 6.1 of Schedule 2; and
  - (ii) copies of client ledgers, client account documents, and any other financial documents which relate to moneys paid by or owed to clients of the registered migration agent, or clients of the business or corporation which employs the agent.

### **7B Stay orders—prescribed supervisory requirements**

- (1) For sections 306AA and 306AK of the Act, the supervisory requirements mentioned in subregulations (2), (2A), (3) and (4) are prescribed.
- (2) The registered migration agent who benefits from the stay of a decision to either cancel or suspend his or her registration (the *supervised agent*) must be supervised by another registered migration agent (the *supervising agent*).
- (2A) The supervising agent must have at least 5 years experience as a registered migration agent, being a period that does not include any time during which:
  - (a) the agent's registration was suspended; or
  - (b) the agent was subject to a caution that was in effect.
- (3) The supervising agent must not:
  - (a) be the subject of a complaint in relation to which the Authority is considering the cancellation or suspension of the supervising agent's registration, or cautioning the supervising agent, or refusing an application for registration by the supervising agent; or
  - (b) be subject to any disciplinary action; or
  - (c) be employed by the business or corporation that employs the supervised agent.
- (4) The supervising agent must:
  - (a) meet with or telephone any new client of the supervised agent within 28 days of the supervised agent agreeing to represent the client, and explain the supervising agent's role; and
  - (b) make file notes of all meetings with any new client of the supervised agent; and
  - (c) check any new visa or review application, and the client's file, prior to lodging by the supervised agent; and
  - (d) check preparations for any Tribunal hearing involving the supervised agent, and attend the hearing with the supervised agent; and
  - (e) work directly and regularly (at least once every 21 calendar days) with the supervised agent to ensure compliance with the Code of Conduct in Schedule 2; and

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- (f) notify the Authority in writing within 14 days after agreeing to supervise the supervised agent; and
- (g) notify the Authority in writing within 14 days after ceasing to supervise the supervised agent.

Note: For *Tribunal*, see subsection 5(1) of the Act.

### 7C Immigration assistance in a prescribed capacity

For subsection 306AC(4) of the Act, a registered migration agent engaged by the Department under the Immigration Advice and Application Assistance Scheme is prescribed.

### 7D Matters to be considered when referring to the Authority

For subsections 306AC(5) and 311H(2) of the Act, the following matters are prescribed:

- (a) whether:
  - (i) the registered migration agent's, or former registered migration agent's, client failed to satisfy one or more time of decision visa criteria; and
  - (ii) each of those criteria would have been satisfied if the client had been assessed against the criteria at the time of application;
- (b) whether the registered migration agent's, or former registered migration agent's, client failed to satisfy one or more visa criteria because of changes to legislation or policy between the time of application and the time of decision;
- (c) whether the circumstances in the country of origin of a registered migration agent's, or former registered migration agent's, client have changed sufficiently for the client to be refused the grant of a protection visa;
- (d) whether any applications by a registered migration agent's, or former registered migration agent's, clients:
  - (i) which were refused by the Department; and
  - (ii) in relation to which that refusal has subsequently been affirmed by merits review;  
have since been approved as a result of a successful application for either:
    - (iii) judicial review of the decision; or
    - (iv) the substitution of a more favourable decision by the Minister under section 351, 391, 417, 454 or 501J of the Act;
- (e) any other relevant matter.

### 7E Publication of statement about barring former agents from registration

- (1) For paragraphs 311C(1)(a) and 311P(1)(a) of the Act, the Authority must publish the statement in writing on the Authority's web site.



- (2) For subsection 332D(2) of the Act, the Authority must remove a statement published on its web site under subregulation (1) not later than 10 years after the date of publication.

### **7F Requiring former registered migration agents to give information or documents**

For subsection 311EA(2) of the Act:

- (a) prescribed information, for each of the registered migration agent's clients, or each client of the business or corporation which employs the agent, is:
- (i) the client's contact information; and
  - (ii) the client reference number issued by the Department; and
  - (iii) the departmental client number or file number; and
  - (iv) the client's date of birth; and
- (b) prescribed documents are:
- (i) copies of the client files of the registered migration agent, or of the business or corporation which employs the agent, including copies of the documents described in clause 6.1 of Schedule 2; and
  - (ii) copies of client ledgers, client account documents, and any other financial documents which relate to moneys paid by or owed to clients of the registered migration agent, or clients of the business or corporation which employs the agent.

### **7G Method of notification of giving of immigration assistance to visa applicants**

- (1) For section 312A of the Act, the registered migration agent must notify the Department by:
- (a) sending a completed Form 956 to the Department; or
  - (b) sending a letter to the Department that:
    - (i) is dated; and
    - (ii) is signed by the agent; and
    - (iii) includes the name of the visa applicant; and
    - (iv) includes the visa applicant's departmental client number or file number (if known); and
    - (v) includes the agent's Migration Agent Registration Number; or
  - (c) completing the 'Migration Agent's Details' section of a visa application form.
- (2) The registered migration agent must notify the Department in relation to subregulation (1), either:
- (a) at the time of lodging the applicant's visa application with the Department; or
  - (b) if the visa application has already been lodged—not later than 28 days after commencing to act on behalf of the visa applicant.

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### **7H Method of notification of giving of immigration assistance to review applicants**

- (1) For section 312B of the Act, the registered migration agent must notify the Tribunal by:
  - (a) sending a completed approved form to the Tribunal; or
  - (b) sending a letter to the Tribunal that:
    - (i) is dated; and
    - (ii) is signed by the agent; and
    - (iii) includes the name of the review applicant; and
    - (iv) includes the agent's Migration Agent Registration Number.
- (2) The registered migration agent must notify the Tribunal in relation to subregulation (1):
  - (a) at the time of lodging the applicant's review application with the Tribunal; or
  - (b) if the review application has already been lodged—not later than 28 days after commencing to act on behalf of the review applicant.

Note 1: The requirement to notify the Tribunal applies in relation to the review of Part 5-reviewable decisions and Part 7-reviewable decisions. For **Part 5-reviewable decision** and **Part 7-reviewable decision**, see subsection 5(1) of the Act.

Note 2: For **Tribunal**, see subsection 5(1) of the Act.

### **7I Statement of services**

For paragraph 313(3)(c) of the Act, the period is 28 days after the decision, in relation to the immigration assistance, is made about:

- (a) a visa application; or
- (b) a cancellation review application; or
- (c) a nomination or sponsorship application; or
- (d) a request to the Minister to exercise his or her power under section 351, 391, 417 or 454 of the Act.

## **8 Code of Conduct**

For subsection 314(1) of the Act, the Code of Conduct is set out in Schedule 2.

## **9 Complaints**

For paragraphs 316(c) and (e) of the Act, any person or body may make a complaint, including:

- (a) a client of the registered migration agent or lawyer;
- (b) an official;
- (c) an employee or member of the Institute;
- (d) an employee of the Authority;
- (e) a parliamentarian;

- (f) a tribunal or court;
- (g) a community organisation;
- (h) the Department.

Note 1: *Institute* means the Migration Institute of Australia Limited: see Act, s 275.

Note 2: The terms *official* and *parliamentarian* are defined in s 275 of the Act.

## 9A Consumer guide

The Authority must arrange for the production of a consumer guide that the Authority is satisfied will adequately inform potential clients of a registered migration agent about:

- (a) the migration advice profession; and
- (b) the functions of the Authority and the legislation regulating the profession; and
- (c) what a client can reasonably expect from a registered migration agent; and
- (d) complaint procedures.

## 9B Disclosure of personal information by the Authority

- (1) For subsection 321A(2) of the Act, each of the following is a prescribed circumstance:
  - (a) a registered migration agent, or an inactive migration agent, is currently under investigation for possible offences under the Act;
  - (b) a client of a registered migration agent, or an inactive migration agent, is currently under investigation for possible offences under the Act;
  - (c) the Minister is considering referring a registered migration agent, or an inactive migration agent, to the Authority for mandatory sanctioning;
  - (d) the Department is considering making a complaint to the Authority about a registered migration agent, or an inactive migration agent;
  - (e) a registered migration agent, or an inactive migration agent, has been sanctioned by the Authority;
  - (f) the personal information is required to allow the Secretary, an authorised officer or a review authority to collect information about the conduct of registered migration agents, or inactive migration agents.
- (2) For subsection 321A(3) of the Act, the recipient may disclose personal information disclosed under subsection 321A(1) of the Act to a relevant professional body if:
  - (a) the information is about the conduct of a registered migration agent or an inactive migration agent; and
  - (b) the recipient believes that that conduct may be of concern to the relevant professional body.
- (3) For subregulation (2), *relevant professional body* means a professional body of which the agent is or was a member.

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### 9C Disclosure of personal information by the Secretary

- (1) For subsection 332F(2) of the Act, each of the following is a prescribed circumstance:
  - (a) a registered migration agent, or an inactive migration agent, is currently under investigation for possible offences under the Act;
  - (b) a client of a registered migration agent, or an inactive migration agent, is currently under investigation for possible offences under the Act;
  - (c) the Minister is considering referring a registered migration agent, or an inactive migration agent, to the Authority for mandatory sanctioning;
  - (d) the Department is considering making a complaint to the Authority about a registered migration agent, or an inactive migration agent;
  - (e) a registered migration agent, or an inactive migration agent, has been sanctioned by the Authority;
  - (f) the personal information is required to allow a review authority to collect information about the conduct of registered migration agents, or inactive migration agents.
- (2) For subsection 332F(3) of the Act, the review authority may disclose personal information disclosed under subsection 332F(1) of the Act to a relevant professional body if:
  - (a) the information is about the conduct of a registered migration agent or an inactive migration agent; and
  - (b) the review authority believes that that conduct may be of concern to the relevant professional body.
- (3) For subregulation (2), **relevant professional body** means a professional body of which the agent is or was a member.

### 9D Disclosure of personal information by a review authority

- (1) For subsection 332G(2) of the Act, each of the following is a prescribed circumstance:
  - (a) a registered migration agent, or an inactive migration agent, is currently under investigation for possible offences under the Act;
  - (b) a client of a registered migration agent, or an inactive migration agent, is currently under investigation for possible offences under the Act;
  - (c) the Minister is considering referring a registered migration agent, or an inactive migration agent, to the Authority for mandatory sanctioning;
  - (d) the Department is considering making a complaint to the Authority about a registered migration agent, or an inactive migration agent;
  - (e) a registered migration agent, or an inactive migration agent, has been sanctioned by the Authority;
  - (f) the personal information is required to allow the Secretary or an authorised officer to collect information about the conduct of registered migration agents, or inactive migration agents.

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- (2) For subsection 332G(3) of the Act, the Secretary or authorised officer may disclose personal information disclosed under subsection 332G(1) of the Act to a relevant professional body if:
- (a) the information is about the conduct of a registered migration agent or an inactive migration agent; and
  - (b) the Secretary or authorised officer believes that that conduct may be of concern to the relevant professional body.
- (3) For subregulation (2), ***relevant professional body*** means a professional body of which the agent is or was a member.

## Part 3A—Approved activities

### 9E General

- (1) The Minister:
  - (a) may approve an activity as an **approved activity** in relation to the continuing professional development of registered migration agents; and
  - (b) may revoke the approval of an activity if the Minister is satisfied that there is, or there is no longer, any basis on which the activity could be approved.
- (2) The Minister may consider approving an activity:
  - (a) at the request of the provider of the activity; or
  - (b) on the Minister's initiative.
- (3) An activity must relate specifically to one or more of the following:
  - (a) the *Migration Act 1958*;
  - (b) the *Migration Regulations 1994*;
  - (c) other legislation relating to migration procedure;
  - (d) portfolio policies and procedures;
  - (e) the application of paragraphs (a), (b), (c) and (d) to a registered migration agent's practice;
  - (f) a topic of a legal or business nature that is relevant to a registered migration agent's practice as a registered migration agent.
- (4) An activity may include one or more of the following:
  - (a) a program of education that is:
    - (i) conducted by a person who is, or persons who are, qualified by practical experience or academic qualifications in the subject matter of the course; and
    - (ii) comprehensive or refresher training;
  - (b) distance learning, which:
    - (i) may include the collective or private study of written material or live or recorded material in electronic form; and
    - (ii) may or may not require a facilitator;

Note: Examples for paragraph (b) are:

  - (a) participation in a web-based seminar; and
  - (b) watching live streaming or a recorded event; and
  - (c) participation in video conferencing.
  - (c) attendance at a seminar, workshop, conference or lecture that is conducted by a person who is, or persons who are, qualified by practical experience or academic qualifications in the subject matter of the activity;
  - (d) authorship and publication of an article of at least 1,000 words;
  - (e) preparation or presentation of written or oral material for the purposes of paragraph (a), (b) or (c), or for use in an examination that demonstrates competency as a registered migration agent;

- (f) authorship, shared authorship or editorship of a book;
  - (g) providing immigration assistance without charge for a voluntary organisation;
  - (h) participation in a suitable mentoring arrangement;
  - (i) any other activity, specified by the Minister in an instrument in writing for this paragraph, for the purpose of meeting continuing professional development requirements.
- (5) If a registered migration agent commences an approved activity before the approval of the activity is revoked under paragraph (1)(b), the revocation is taken not to apply in relation to the registered migration agent.

### **9F Assessment before decision**

- (1) If the Minister:
- (a) considers approving an activity at the request of the provider of the activity; and
  - (b) assesses the activity;
- the Minister may charge the provider a fee, specified by the Minister in an instrument in writing for this subregulation, for performing the assessment.
- (2) If the Minister:
- (a) considers approving an activity otherwise than at the request of the provider of the activity; and
  - (b) assesses the activity; and
  - (c) specifies the activity as an approved activity;
- the Minister may charge the provider a fee, specified by the Minister in an instrument in writing for this subregulation, for performing the assessment.

### **9G Decision**

- (1) In deciding whether or not to approve an activity, the Minister may take the following into account:
- (a) whether he or she is satisfied that:
    - (i) the activity will help improve the professionalism of each participant in the approved activity as a registered migration agent, including the participant's knowledge of migration procedures, professional ethics and relevant skills; and
    - (ii) the provider of the activity has a way of ensuring that the activity will achieve the outcome mentioned in subparagraph (i); and
    - (iii) the delivery of the activity is focussed on the achievement of the outcome mentioned in subparagraph (i);
  - (b) whether the activity would meet the requirements for registration to practise in another profession, including:
    - (i) mandatory continuing legal education for legal practitioners; or
    - (ii) continuing professional education for accountants;

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- (c) whether the provider of the activity has agreed, in writing, to comply with standards for the provision of professional development activities approved by the Minister by instrument in writing for this paragraph;

Note: When paragraph (c) commenced, the standards were set out in the document known as *CPD Approved Provider Standard Conditions*, published by the Authority.

- (d) whether the provider of the activity has complied with the requirement to give information in relation to other activities;
- (e) the character and reputation, or a doubt about the character and reputation, of a person connected with the activity.

- (2) Without limiting subregulation (1), the following persons are taken to be connected with an activity:

- (a) a person who conducts, produces, writes or presents material for it;
- (b) a person concerned in the management of a company or a body of persons that conducts, produces, writes or presents material for it;
- (c) a person who has been appointed as a consultant to advise a person mentioned in paragraph (a) or (b) about the activity.

- (3) If the Minister approves an activity under paragraph 9E(1)(a):

- (a) the Authority must include the activity in a publicly available list of approved activities maintained on the Authority's website; and
- (b) the list must include:
- (i) the name of the activity; and
  - (ii) the number of points for the activity; and
  - (iii) the provider (if any) of the activity; and
- (c) the list may set requirements for completion of the activity.

Note 1: Paper copies of the list will be made available from the Authority on request.

Note 2: Examples for paragraph (c) are:

- (a) a minimum mark for an examination; and
- (b) a requirement that the quality of a presentation be certified by qualified persons; and
- (c) journals in which a publication must appear; and
- (d) a requirement that the quality of work for an activity be assessed in a particular way; and
- (e) a requirement dealing with work for an activity undertaken jointly with another person.

- (4) If the Minister:

- (a) considers approving an activity as an approved activity at the request of the provider of the activity or the Authority; and
- (b) decides not to approve the activity;

the Minister must notify the provider and the Authority of the decision as soon as practicable.



## Part 3B—Approved providers of approved activities

### 9H General

- (1) The Minister:
  - (a) may approve a person as an ***approved provider*** of an approved activity; and
  - (b) may revoke the person's approval if the person fails to comply with the conditions to which the approval is subject.

Note: ***Person*** includes an individual and other persons such as a business entity.

- (2) The Minister may consider approving a person only on application by the person.

### 9J Assessment before decision

If the Minister:

- (a) considers approving a person as an approved provider; and
- (b) assesses the person;

the Minister may charge the person a fee, specified by the Minister in an instrument in writing for this regulation, for performing the assessment.

### 9K Decision

- (1) In deciding whether or not to approve a person as an approved provider, the Minister may take the following into account:
  - (a) whether he or she is satisfied that:
    - (i) the person has a way of ensuring that the approved activity will help improve the professionalism of each participant in the approved activity as a registered migration agent, including the participant's knowledge of migration procedures, professional ethics and relevant skills; and
    - (ii) the person's delivery of the approved activity will be focussed on the achievement of the outcome mentioned in subparagraph (i);
  - (b) whether the person is qualified by practical experience or academic qualifications in the subject matter of the approved activity;
  - (c) whether the person has agreed, in writing, to comply with standards for the provision of professional development activities approved by the Minister by instrument in writing for this paragraph;
  - (d) if the person has previously been an approved provider—whether the person complied with the requirement to give information in relation to other activities;
  - (e) the character and reputation, or a doubt about the character and reputation, of:
    - (i) the person; and
    - (ii) a person connected with the person in the conduct of an approved activity.

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Note: When paragraph (c) commenced, the standards were set out in the document known as *CPD Approved Provider Standard Conditions*, published by the Authority.

- (2) Without limiting subregulation (1), the following persons are taken to be connected with a person in the conduct of an approved activity:
  - (a) a person who conducts, produces, writes or presents material for it;
  - (b) a person concerned in the management of a company or a body of persons that conducts, produces, writes or presents material for it;
  - (c) a person who has been appointed as a consultant to advise a person mentioned in paragraph (a) or (b) about the activity.
- (3) If the Minister approves a person as an approved provider, the Authority must include the person's name in a publicly available list of approved providers maintained on the Authority's website.
- (4) If the Minister decides not to approve a person as an approved provider, the Minister must notify the person and the Authority of the decision as soon as practicable.

### 9L Conditions of approval

The approval of a person as an approved provider is subject to the person's compliance with:

- (a) the standards for the provision of professional development activities approved by the Minister by instrument in writing for paragraph 9G(1)(c); and
- (b) any other conditions specified by the Minister in the approval.

Note: When paragraph (a) commenced, the standards were set out in the document known as *CPD Approved Provider Standard Conditions*, published by the Authority.

## **Part 3C—Approval of CPD providers**

### **9M Application for approval as CPD provider**

- (1) A person may apply to the Minister for approval as a CPD provider.
- (2) The application must be:
  - (a) in the form approved in writing by the Minister; and
  - (b) accompanied by the fee specified by the Minister in an instrument in writing for the purposes of this paragraph.
- (3) A fee specified in an instrument made under paragraph (2)(b) may be nil.

### **9N Approval of CPD providers**

- (1) The Minister may, in writing, approve a person who has applied in accordance with regulation 9M as a CPD provider, if the applicant satisfies the Minister that the applicant meets the requirements for approval set out in subregulation 9P(1).
- (2) However, the Minister must not approve the applicant as a CPD provider if the Minister has any reason to doubt that the fit and proper person requirements set out in subregulation 9P(2) are met.
- (3) If the Minister decides not to approve the applicant as a CPD provider, the Minister must notify the applicant as soon as practicable, in writing, of the decision and the reasons for it.

### **9P Requirements to be approved as CPD provider**

- (1) For the purposes of subregulation 9N(1), the requirements for approval are the following:
  - (a) either:
    - (i) the applicant has experience in providing relevant types of adult learning programs or activities, or has or intends to obtain the services of a person who has such experience; or
    - (ii) the applicant holds a relevant qualification in training and assessment at the Certificate IV level or higher, or has or intends to obtain the services of a person who holds such a qualification;
  - (b) the applicant has suitable policies and administrative arrangements in relation to:
    - (i) learning and assessment; and
    - (ii) evaluation and continuous improvement; and
    - (iii) records management, reporting and privacy; and
    - (iv) handling complaints; and
    - (v) handling cancellations and refunds; and
    - (vi) support and monitoring of distance learning participants;

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- (c) the applicant has experience in providing, or understands and intends to provide, suitable training infrastructure, materials and resources for CPD activities;
  - (d) the applicant is able to deliver training, in a professional level of English, which is of significant intellectual and practical content and relevant to migration law and procedure and to the professional development needs of registered migration agents, or has or intends to obtain the services of a person who is able to do so;
  - (e) the applicant is suitably qualified, whether formally or by experience, to conduct CPD activities, or has or intends to obtain the services of a person who is suitably qualified.
- (2) For the purposes of subregulation 9N(2), the fit and proper person requirements are that each of the following persons is a fit and proper person and a person of good character, good reputation and integrity:
- (a) the applicant;
  - (b) any person employed by, or providing services to or on behalf of, the applicant in relation to the conduct of CPD activities or activities that would be CPD activities if the applicant were approved as a CPD provider.

### 9Q Conditions of approval as CPD provider

- (1) A person's approval as a CPD provider is subject to the person's compliance with:
- (a) any conditions specified by the Minister in the approval; and
  - (b) the standards specified for CPD providers in the CPD provider standards.
- (2) The Minister may, by legislative instrument (the *CPD provider standards*), specify standards to be complied with by CPD providers.

Note: Standards are specified for the purposes of paragraph (1)(b) of this regulation.

### 9R Period of approval as CPD provider

- (1) Unless subregulation 9S(5) applies, a person's approval as a CPD provider takes effect:
- (a) on the day the Minister approves the person; or
  - (b) if the Minister approves the person while a previous approval is in effect and before the end of the expiry day for that approval—at the end of the expiry day for the previous approval.
- Note: If a person applies to be approved again while a previous approval is in effect, and the Minister approves the person after the expiry day for the previous approval, subregulation 9S(5) deals with when the new approval takes effect.
- (2) Unless continued by subregulation 9S(3) or cancelled under regulation 9T, a person's approval as a CPD provider continues in effect until the end of its expiry day.
- (3) The *expiry day* for an approval is:
- (a) the second anniversary of the day the approval took effect; or

- (b) if subregulation 9S(5) applies (Minister approves the person while a previous approval is in effect and after the expiry day for that approval)—the second anniversary of the expiry day for the previous approval.

Example 1: The Minister approves a person for the first time on 31 October 2018. The approval takes effect on that day and continues in effect until its expiry day, which is 31 October 2020 (the second anniversary of the day it took effect).

Example 2: The expiry day for a person's approval is 31 October 2020. Before that day, the person applies to be approved again and the Minister approves the person on 10 October 2020. The previous approval continues in effect until the end of 31 October 2020. The new approval takes effect at the end of 31 October 2020 and continues in effect until its expiry day, which is 31 October 2022 (the second anniversary of the day it took effect).

### **9S Automatic continuation of approval as CPD provider until application to be approved again is dealt with**

#### *When person's approval is automatically continued*

- (1) Subregulation (3) applies to continue a person's approval as a CPD provider beyond its expiry day if:
- before the end of the expiry day, the person made an application to be approved again as a CPD provider in accordance with regulation 9M; and
  - the Minister had not decided the application by the end of the expiry day.

#### *Exception—cancellation*

- (2) However, subregulation (3) does not apply to continue a person's approval as a CPD provider if, before the end of the expiry day, the Minister cancelled the approval.

#### *Period of continuation of approval*

- (3) The person's approval as a CPD provider is taken to continue after the expiry day until:
- the end of the day the Minister decides the application; or
  - if the Minister decides to cancel the person's approval—the day the cancellation takes effect; or
  - the end of the period of 21 months beginning on the day after the expiry day.

#### *Approval if no decision within a certain period*

- (4) If, before the end of the period of 21 months beginning on the day after the expiry day, the Minister has neither decided the application nor cancelled the approval, then the Minister is taken to have approved the person as a CPD provider at the end of the last day of that period. The approval is taken to be subject to any conditions specified by the Minister in the previous approval in accordance with paragraph 9Q(1)(a).

## Regulation 9T

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### *When approval is in effect*

- (5) If the Minister decides to approve, or is taken to have approved, the person as a CPD provider, the approval:
- (a) takes effect at the end of the day the Minister approves or is taken to have approved the person; and
  - (b) unless continued by subregulation (3) or cancelled under regulation 9T, continues in effect until the end of its expiry day (see paragraph 9R(3)(b)).

Example: The expiry day for a person's approval is 31 October 2020. On 20 October the person applies to be approved again. The Minister has not decided the person's application by the end of 31 October.

The person's approval continues automatically past 31 October.

The Minister approves the person on 15 November. The new approval takes effect at the end of 15 November 2020 and continues in effect from that time until its expiry day on 31 October 2022 (the second anniversary of the expiry day for the previous approval—see paragraph 9R(3)(b)).

## **9T Cancellation of approval as CPD provider**

- (1) The Minister may, by written notice given to a person, cancel the person's approval as a CPD provider if:
- (a) the Minister is satisfied that the person has failed to comply with a condition referred to in paragraph 9Q(1)(a) or a standard in the CPD provider standards; or
  - (b) the Minister is not satisfied that the person meets the requirements for approval in subregulation 9P(1), or that the person has done as the person intended in relation to any such requirement met on the basis of an intention; or
  - (c) the Minister has reason to doubt that the fit and proper person requirements set out in subregulation 9P(2) are met.
- (2) The Minister must, by written notice given to a person, cancel the person's approval as a CPD provider if the person requests the Minister in writing to do so.
- (3) Cancellation takes effect on the day notice of the cancellation is given to the person, or on a later day specified in the notice.

## **9U Delegation**

- (1) The Minister may, in writing, delegate to an APS employee in the Department any or all of the Minister's functions and powers under this Part, other than a power to make, vary or revoke a legislative instrument.
- (2) In performing functions and exercising powers under a delegation, the delegate must comply with any directions of the Minister.

## **Part 4—Miscellaneous**

### **11 Approved forms**

- (1) The Authority may, in writing, approve forms for:
  - (a) use in making an application for registration; or
  - (b) any other purpose authorised or required by these Regulations.
- (2) Each of the following is an approved form:
  - (a) a paper form;
  - (b) an interactive computer program that is made available at an Internet site operated under the authority of the Authority.

**Part 5** Transitional provisions

**Division 1** Amendments made by Migration Legislation Amendment Regulation 2012 (No. 4)

Regulation 12

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**Part 5—Transitional provisions**

**Division 1—Amendments made by Migration Legislation  
Amendment Regulation 2012 (No. 4)**

**12 Operation of amendments**

The amendments of these Regulations made by Schedule 5 to the *Migration Legislation Amendment Regulation 2012 (No. 4)* apply in relation to an application for a visa made on or after 24 November 2012.



**Division 2—Amendments made by the Migration Legislation  
Amendment Regulation 2013 (No. 1)**

**13 Operation of amendments**

The amendments of these Regulations made by Schedule 5 to the *Migration Legislation Amendment Regulation 2013 (No. 1)* apply in relation to an application for repeat registration made on or after 23 March 2013.

**Part 5** Transitional provisions

**Division 3** Amendments made by the Migration Legislation Amendment Regulation 2013 (No. 2)

Regulation 14

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**Division 3—Amendments made by the Migration Legislation  
Amendment Regulation 2013 (No. 2)**

**14 Operation of amendments**

The amendments of these Regulations made by Schedule 2 to the *Migration Legislation Amendment Regulation 2013 (No. 2)* apply in relation to an application for repeat registration made on or after 1 July 2013.

## **Division 4—Amendments made by the Migration Legislation Amendment (2017 Measures No. 1) Regulations 2017**

### **15 Definitions**

In this Division:

*amending Regulations* means the *Migration Legislation Amendment (2017 Measures No. 1) Regulations 2017*.

*approved activity* means an approved activity within the meaning of these Regulations as in force immediately before 1 January 2018.

*approved provider* means an approved provider within the meaning of these Regulations as in force immediately before 1 January 2018.

### **16 Operation of amendments of regulation 3XA**

The amendments of regulation 3XA of these Regulations made by Schedule 6 to the amending Regulations apply in relation to applications for repeat registration made on or after 18 April 2017.

### **17 Operation of amendments of Divisions 2.1 and 2.2 of Part 2**

The amendments of Divisions 2.1 and 2.2 of Part 2 of these Regulations made by Schedule 5 to the amending Regulations apply in relation to assistance given, and representations made, on or after 18 April 2017.

### **18 Operation of amendment of clause 2.1A of Code of Conduct**

The amendment of clause 2.1A of Schedule 2 to these Regulations made by Schedule 5 to the amending Regulations applies in relation to accepting a person as a client on or after 18 April 2017.

### **19 Operation of clauses 8.3A and 8.3B of Code of Conduct**

- (1) Clause 8.3A of Schedule 2 to these Regulations, as inserted by Schedule 5 to the amending Regulations, applies in relation to assistance given on or after 18 April 2017.
- (2) Clause 8.3B of Schedule 2 to these Regulations, as inserted by Schedule 5 to the amending Regulations, applies in relation to representations made on or after 18 April 2017.

### **20 Transition from approved activities to CPD activities**

- (1) A person who provides an approved activity must ensure that registered migration agents who commence the activity are able to complete it before 1 January 2018.

**Part 5** Transitional provisions

**Division 4** Amendments made by the Migration Legislation Amendment (2017 Measures No. 1) Regulations 2017

**Regulation 21**

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- (2) In working out on or after 1 January 2018 whether an applicant has met the requirements in subregulation 6(1) as amended by Part 2 of Schedule 4 to the amending Regulations, points for an approved activity completed by the applicant before 1 January 2018, and not counted for the purposes of deciding any previous application, may be counted.
- (3) A person who is approved as a CPD provider must not conduct CPD activities before 1 January 2018.
- (4) The amendments of regulation 6 made by Part 2 of Schedule 4 to the amending Regulations apply in relation to CPD activities conducted on or after 1 January 2018.

**21 Transition from approved providers to CPD providers**

To avoid doubt, a person (including a person who is or was an approved provider) is not a CPD provider for the purposes of these Regulations unless the person is approved as a CPD provider under Part 3C of these Regulations on or after 1 October 2017 and the approval is in effect.

**22 Approval as CPD provider before 1 January 2018**

Despite subregulation 9R(1), any approval of a person as a CPD provider before 1 January 2018 takes effect on 1 January 2018.

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## Schedule 1—Continuing professional development

(regulation 6)

1. (1) A registered migration agent must, in the 12 months immediately before the day the agent applies for repeat registration, complete approved activities that have a value of at least 10 points.
- (2) However, if:
  - (a) a registered migration agent applies for repeat registration on a day (the ***application day***); and
  - (b) the agent did not complete approved activities that have a value of at least 10 points in the 12 months immediately before the application day; and
  - (c) no later than 3 months after the application day, but before the Authority makes a decision on the application, the agent completes approved activities of a value sufficient to produce at least 10 points when added to the agent's points for the 12 months immediately before the application day; and
  - (d) the Authority is satisfied that the agent did not complete the approved activities before the application day because of exceptional circumstances beyond the agent's control;the agent is taken to have met the requirements of this clause.
- 1A. Any points attributed to any approved activity previously relied on by a registered migration agent for an application for repeat registration are not to be counted as part of any subsequent application.
- 7A. The Minister may, by instrument in writing, declare that specified activities, up to the value specified by the Minister by instrument in writing for this clause, are mandatory for:
  - (a) certain registered migration agents in a particular year of registration; or
  - (b) all registered migration agents in any year of registration.
- 7B. The Minister may, by instrument in writing, declare that specified activities, up to the value specified by the Minister by instrument in writing for this clause, are assessable for:
  - (a) certain registered migration agents in a particular year of registration; or
  - (b) all registered migration agents in any year of registration.
11. A registered migration agent who claims an activity under paragraph 9E(4)(g) in relation to a voluntary organisation that is an approved provider must:
  - (a) undertake the activity outside the agent's normal employment; and
  - (b) obtain a statement by a person in the voluntary organisation:
    - (i) stating that the work relating to the activity has been completed; and
    - (ii) setting out the number of hours worked; and
  - (c) show the statement to the Authority on request.

12. A registered migration agent applying for registration, or an individual who had been registered at any time in the 12 months immediately before making an application for repeat registration, must:
- (a) give the Authority a written statement made by the agent that:
    - (i) states that the agent has met the requirements of this Schedule; and
    - (ii) includes a list of the activities that the agent has completed for which the Agent claims points; and
  - (b) have kept written records about each activity for which the agent claims points, including any documents given to the agent by the provider of the activity (if any) confirming that the activity was completed.
13. For paragraph 12(b), records must:
- (a) enable an assessment of the activity to confirm that the activity meets the requirements of this Schedule; and
  - (b) be shown to the Authority on request; and
  - (c) be kept:
    - (i) in English; and
    - (ii) until 2 years after the end of the registration period during which the activity was completed.

## Schedule 2—Code of conduct

Note: See regulation 8.

*Migration Act 1958*, subsection 314(1)

### Part 1—Introduction

- 1.1 This Code of Conduct (the *Code*) is intended to regulate the conduct of registered migration agents.
- 1.2 The Migration Agents Registration Authority (the *Authority*) is responsible for administering the Code.
- 1.3 A person who wants to operate as a registered migration agent must register with the Authority.
- 1.4 The Code applies to an individual who is listed in the Register of Migration Agents kept by the Authority under section 287 of the *Migration Act 1958* (the *Migration Act*).
- 1.5 To ensure compliance with the Code, the Authority may impose an administrative sanction if a breach of the Code is found to have occurred.
- 1.6 An administrative sanction may range from a caution through to suspension of registration or the ultimate sanction of cancellation of registration.
- 1.7 Accordingly, the Code does not impose criminal sanctions.
- 1.8 However, there are a number of offences under the Migration Act and the *Migration Regulations 1994* (the *Migration Regulations*) that also deal with the kind of activity covered by the Code. These activities include misleading statements and advertising, practising when unregistered and misrepresenting a matter. Provisions of the *Crimes Act 1914*, the *Criminal Code Act 1995* and the *Trade Practices Act 1974* may also apply to these activities.
- 1.9 The Code is not intended to displace any duty or liability that a registered migration agent may have under the common law, or the statute law of the Commonwealth, a State or a Territory, in relation to a matter covered by the Code. The provisions of the Code should be read in the light of this principle.
- 1.10 The aims of the Code are:
  - (a) to establish a proper standard for the conduct of a registered migration agent;
  - (b) to set out the minimum attributes and abilities that a person must demonstrate to perform as a registered migration agent under the Code, including:
    - (i) being a fit and proper person to give immigration assistance;
    - (ia) being a person of integrity and good character;

- (ii) knowing the provisions of the Migration Act and Migration Regulations, and other legislation relating to migration procedure, in sufficient depth to offer sound and comprehensive advice to a client, including advice on completing and lodging application forms;
  - (iii) completing continuing professional development as required by the *Migration Agents Regulations 1998*;
  - (iv) being able to perform diligently and honestly;
  - (v) being able and willing to deal fairly with clients;
  - (vi) having enough knowledge of business procedure to conduct business as a registered migration agent, including record keeping and file management;
  - (vii) properly managing and maintaining client records;
  - (c) to set out the duties of a registered migration agent to a client, an employee of the agent, and the Commonwealth and its agencies;
  - (d) to set out requirements for relations between registered migration agents;
  - (e) to establish procedures for setting and charging fees by registered migration agents;
  - (f) to establish a standard for a prudent system of office administration;
  - (g) to require a registered migration agent to be accountable to the client;
  - (h) to help resolve disputes between a registered migration agent and a client.
- 1.11 The Code does not list exhaustively the acts and omissions that may fall short of what is expected of a competent and responsible registered migration agent.
- 1.12 However, the Code imposes on a registered migration agent the overriding duty to act at all times in the lawful interests of the agent's client. Any conduct falling short of that requirement may make the agent liable to cancellation of registration.
- 1.13 If a registered migration agent has a contract in force with a client that complies with this Code, but the Code is amended in a way that relates to the content of the contract:
- (a) the agent is not in breach of this Code solely because the contract does not comply with the amended Code; but
  - (b) the agent must do everything practicable to vary the contract to ensure that it complies with the amended Code.



## **Part 2—Standards of professional conduct**

- 2.1 A registered migration agent must always:
- (a) act in accordance with the law (including, for an agent operating as an agent in a country other than Australia, the law of that country) and the legitimate interests of his or her client; and
  - (b) deal with his or her client competently, diligently and fairly.
- However, a registered migration agent operating as an agent in a country other than Australia will not be taken to have failed to comply with the Code if the law of that country prevents the agent from operating in compliance with the Code.
- 2.1A A registered migration agent must not accept a person as a client if the agent would have any of the following conflicts of interest:
- (a) the agent has had previous dealings with the person, or intends to assist the person, in the agent's capacity as a marriage celebrant;
  - (d) there is any other interest of the agent that would affect the legitimate interests of the client.
- 2.1B If it becomes apparent that a registered migration agent has a conflict of interest mentioned in clause 2.1A in relation to a client, the agent must, as soon as practicable taking into account the needs of the client, but in any case within 14 days:
- (a) tell the client about the conflict of interest; and
  - (b) advise the client that, under the Code, the agent can no longer act for the client; and
  - (c) advise the client about appointing another registered migration agent; and
  - (d) cease to deal with the client in the agent's capacity as registered migration agent.
- 2.1C Part 10 of the Code then applies as if the client had terminated the registered migration agent's instructions.
- 2.1D A registered migration agent who has ceased to act for a client in accordance with paragraph 2.1B(d), must, as soon as practicable, but in any case within 14 days, inform the Department that he or she is no longer acting for the client.
- 2.2 If a registered migration agent:
- (a) gives advice of a non-migration nature to a client in the course of giving immigration assistance; and
  - (b) could receive a financial benefit because of the advice;
- the agent must tell the client in writing, at the time the advice is requested or given, that the agent may receive a financial benefit.
- 2.3 A registered migration agent's professionalism must be reflected in a sound working knowledge of the Migration Act and Migration Regulations, and other legislation relating to migration procedure, and a capacity to provide accurate and timely advice.
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- 2.3A A registered migration agent's professionalism must be reflected in the making of adequate arrangements to avoid financial loss to a client, including the holding of professional indemnity insurance mentioned in regulation 6B for the period of the migration agent's registration.
- 2.4 A registered migration agent must have due regard to a client's dependence on the agent's knowledge and experience.
- 2.5 A registered migration agent must:
- (a) take appropriate steps to maintain and improve his or her knowledge of the current versions of:
    - (i) the *Migration Act 1958*; and
    - (ii) the *Migration Regulations 1994*; and
    - (iii) other legislation relating to migration procedure; and
    - (iv) portfolio policies and procedures; and
  - (b) either:
    - (i) maintain a professional library that includes those materials; or
    - (ii) if the agent's employer, or the business in which he or she works, maintains a professional library that includes those materials—take responsibility for ensuring that he or she has access to the library.
- Note 1: A comprehensive list of the materials mentioned in subparagraphs (a)(iii) and (iv) may be obtained from the Professional Library page of the Authority's web site (<http://www.themara.com.au>).
- Note 2: A registered migration agent must satisfy the requirements for continuing professional development set out in Schedule 1.
- 2.6 To the extent that a registered migration agent must take account of objective criteria to make an application under the Migration Act or Migration Regulations, he or she must be frank and candid about the prospects of success when assessing a client's request for assistance in preparing a case or making an application under the Migration Act or Migration Regulations.
- 2.7 A registered migration agent who is asked by a client to give his or her opinion about the probability of a successful outcome for the client's application:
- (a) must give the advice, in writing, within a reasonable time; and
  - (b) may also give the advice orally to the extent that the oral advice is the same as the written advice; and
  - (c) must not hold out unsubstantiated or unjustified prospects of success when advising clients (orally or in writing) on applications under the Migration Act or Migration Regulations.
- 2.8 A registered migration agent must:
- (a) within a reasonable time after agreeing to represent a client, confirm the client's instructions in writing to the client; and
  - (b) act in accordance with the client's instructions; and
  - (c) keep the client fully informed in writing of the progress of each case or application that the agent undertakes for the client; and

(d) within a reasonable time after the case or application is decided, tell the client in writing of the outcome of the client's case or application.

2.9 A registered migration agent must not make statements in support of an application under the Migration Act or Migration Regulations, or encourage the making of statements, which he or she knows or believes to be misleading or inaccurate.

2.9A In communicating with, or otherwise providing information to, the Authority, a registered migration agent must not mislead or deceive the Authority, whether directly or by withholding relevant information.

2.10 A registered migration agent must not engage in false or misleading advertising, including advertising in relation to:

- (a) the agent's registration as a registered migration agent; or
- (b) the implications of Government policy for the successful outcome of an application under the Migration Act or Migration Regulations; or
- (c) guaranteeing the success of an application.

Note: Advertising includes advertising on the Internet.

2.11 A registered migration agent must, when advertising:

- (a) include in the advertisement the words "Migration Agents Registration Number" or "MARN", followed by the agent's individual registration number; and
- (b) if the agent is advertising in a language other than English—include in the advertisement words in that other language equivalent to "Migration Agents Registration Number" or "MARN", followed by the agent's individual registration number.

Note 1: Advertising includes advertising on the Internet.

Note 2: Clause 2.12, which relates to implying a relationship with the Department or the Authority, also applies to the registered migration agent's advertising mentioned in clause 2.11.

2.12 A registered migration agent must not, when advertising, imply the existence of a relationship with the Department or the Authority, for example by using terms such as:

- (a) Australian Government registered; or
- (b) Migration Agents Registration Authority registered; or
- (c) Department registered.

Note: Advertising includes advertising on the Internet.

2.14 A registered migration agent must not portray registration as involving a special or privileged relationship with the Minister, officers of the Department or the Authority, for example to obtain priority processing, or to imply that the agent undertakes part or full processing for the Department.

2.14A A registered migration agent must not represent that he or she can procure a particular decision for a client under the Migration Act or the Migration Regulations.

- 2.15 A registered migration agent must not intimidate or coerce any person for the benefit of the agent or otherwise. For example, a registered migration agent must not engage in any of the following:
- (a) undue pressure;
  - (b) physical threats;
  - (c) manipulation of cultural or ethnic anxieties;
  - (d) threats to family members in Australia or overseas;
  - (e) untruthful claims of Departmental sanctions;
  - (f) discrimination on the grounds of religion, nationality, race, ethnicity, politics or gender.
- 2.16 A registered migration agent with operations overseas may indicate that he or she is registered in Australia, but must not create an impression that registration involves accreditation by the Commonwealth Government for work overseas for the Commonwealth or for a client.
- 2.17 If an application under the Migration Act or the Migration Regulations is vexatious or grossly unfounded (for example, an application that has no hope of success) a registered migration agent:
- (a) must not encourage the client to lodge the application; and
  - (b) must advise the client in writing that, in the agent's opinion, the application is vexatious or grossly unfounded; and
  - (c) if the client still wishes to lodge the application—must obtain written acknowledgment from the client of the advice given under paragraph (b).
- Note: Under section 306AC of the Act, the Minister may refer a registered migration agent to the Authority for disciplinary action if the agent has a high visa refusal rate in relation to a visa of a particular class.
- 2.18 A registered migration agent must act in a timely manner if the client has provided all the necessary information and documentation in time for statutory deadlines. For example, in most circumstances an application under the Migration Act or Migration Regulations must be submitted before a person's visa ceases to be in effect.
- 2.19 Subject to a client's instructions, a registered migration agent has a duty to provide sufficient relevant information to the Department or a review authority to allow a full assessment of all the facts against the relevant criteria. For example, a registered migration agent must avoid the submission of applications under the Migration Act or Migration Regulations in a form that does not fully reflect the circumstances of the individual and prejudices the prospect of approval.
- 2.20 A registered migration agent must:
- (a) find out the correct amount of any visa application charge and all other fees or charges required to be paid for a client's visa application under the Migration Act or the Migration Regulations; and
  - (b) give the client written advice of the amount of each fee and charge; and
  - (c) if the agent is to pay an amount for the client—give the client written advice of the date by which the amount must be given to the agent so that the interests of the client are not prejudiced; and
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- (d) give the client a written notice of each amount paid by the agent for the client.
- 2.21 A registered migration agent must not submit an application under the Migration Act or Migration Regulations without the specified accompanying documentation. For example, in a marriage case, threshold documentation would include a marriage certificate and evidence that the sponsor is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen, without which assessment of the case could not proceed (unless the agent has a reasonable excuse or the client has requested the agent to act despite incomplete documentation).
- 2.22A A registered migration agent must, when providing translating or interpreting services, include on a prominent part of the translated document the following sequence:
- (a) the name of the migration agent;
  - (b) followed by the words ‘Migration Agent’s Registration Number’;
  - (c) followed by the agent’s registration number.
- 2.22B A registered migration agent must:
- (a) notify the Authority, in writing, of any changes to the registration details of the agent in relation to any of the following matters:
    - (i) the agent’s full name;
    - (ii) any business names of the agent or the agent’s employer;
    - (iii) the business address for the agent;
    - (iv) the telephone number for contacting the agent;
    - (v) any of the matters mentioned in paragraphs 3V(a) to (da) of these Regulations; and
  - (b) notify the Authority:
    - (i) in advance; or
    - (ii) not later than 14 days after the change or changes if advance notice would be unreasonable in the circumstances.
- 2.23 A registered migration agent must take all reasonable steps to maintain the reputation and integrity of the migration advice profession.
- 2.24 This Code is a responsive document that will change from time to time to meet the needs of clients and to ensure the delivery of relevant, up to date advice.

## Part 3—Obligations to clients

- 3.1 A registered migration agent has a duty to preserve the confidentiality of his or her clients.
- 3.2 A registered migration agent must not disclose, or allow to be disclosed, confidential information about a client or a client's business without the client's written consent, unless required by law.
- 3.2A Once a registered migration agent has agreed to work for a client, but before commencing that work, the agent must:
- (a) provide the client with a copy of the consumer guide; and
  - (b) make a record that the copy has been provided.
- Note: The consumer guide is a document produced by the Authority with information about the migration advice profession, the functions of the Authority, the legislation regulating the profession, what a client can reasonably expect from a registered migration agent, and complaint procedures.
- 3.3 A registered migration agent must inform clients that they are entitled to receive copies of the application under the Migration Act or Migration Regulations and any related documents if they want copies. The agent may charge a reasonable amount for any copies provided.
- 3.4 A registered migration agent must have an address and telephone number where the agent can be contacted during normal business hours.
- 3.5 If a registered migration agent changes his or her address, telephone number or any other details that are recorded on the Register of Migration Agents, the agent must give a written notice to the Department, the Authority, any review authority and all current clients of the agent:
- (a) in advance; or
  - (b) not later than 14 days after the change or changes if advance notice would be unreasonable in the circumstances.
- 3.6 A registered migration agent must ensure that clients have access to an interpreter if necessary.

## **Part 4—Relations between registered migration agents**

- 4.1 Before accepting immigration work, a registered migration agent must consider whether he or she is qualified to give the advice sought by the client. If the agent is unsure, he or she must seek the appropriate advice or assistance, or refer the matter to another registered migration agent.
- 4.2 A referral may be made, for example, if a registered migration agent is asked for advice on matters for which he or she does not regularly provide immigration assistance.
- 4.3 A registered migration agent must not encourage another agent's client to use the first agent's services, for example by denigrating other agents or offering services that the first agent cannot, or does not intend to, provide.
- 4.4 A registered migration agent must not take over work from another registered migration agent unless he or she receives from the client a copy of written notice by the client to the other agent that the other agent's services are no longer needed.
- 4.5 A registered migration agent must act with fairness, honesty and courtesy when dealing with other registered migration agents.
- 4.6 A registered migration agent who gives a written undertaking to another registered migration agent must make sure the undertaking is performed within a reasonable time, if possible.

## Part 5—Fees and charges

- 5.1 There is no statutory scale of fees. However, a registered migration agent must set and charge a fee that is reasonable in the circumstances of the case.
- 5.2 A registered migration agent must:
- (a) before starting work for a client, give the client:
    - (i) an estimate of charges in the form of fees for each hour or each service to be performed, and disbursements that the agent is likely to incur as part of the services to be performed; and
    - (ii) an estimate of the time likely to be taken in performing the services; and
  - (b) as soon as possible after receiving instructions, obtain written acceptance by the client, if possible, of:
    - (i) the estimate of fees; and
    - (ii) the estimate of the time likely to be taken in performing the services; and
  - (c) give the client written confirmation (an *Agreement for Services and Fees*) of:
    - (i) the services to be performed; and
    - (ii) the fees for the services; and
    - (iii) the disbursements that the agent is likely to incur as part of the services; and
  - (d) give the client written notice of any material change to the estimated cost of providing a service, and the total likely cost because of the change, as soon as the agent becomes aware of the likelihood of a change occurring.
- 5.3 A registered migration agent:
- (a) must not carry out work in a manner that unnecessarily increases the cost to the client; and
  - (b) must, if outside expertise is to be engaged and the client agrees, fully inform the client of the likely extra cost; and
  - (c) must, especially if a solicitor or barrister, warn clients of possible delays and likely cost involved in pursuing a particular course of action before tribunals and in the courts, for example:
    - (i) any need to engage and pay expert witnesses;
    - (ii) the need to meet legal costs if a case were lost;
    - (iii) the need to pay Departmental fees and charges;
    - (iv) the need to pay translation and interpreter fees and charges.
- 5.4 A registered migration agent must give clients written advice of the method of payment of fees and charges, including Departmental fees and charges.
- 5.5 A registered migration agent must be aware of the effect of section 313 of the Act, and act on the basis that:



- (a) the agent is not entitled to be paid a fee or other reward for giving immigration assistance to a client unless the agent gives the client a statement of services that is consistent with the services, fees and disbursements in the Agreement for Services and Fees mentioned in clause 5.2; and

Note: The statement of services may be an itemised invoice or account. See clauses 7.2 and 7.4.

- (b) a statement of services must set out:
- (i) particulars of each service performed; and
  - (ii) the charge made in respect of each such service; and
- (c) a client is entitled by the Act to recover the amount of a payment as a debt due to him or her if he or she:
- (i) made the payment to the agent for giving immigration assistance; and
  - (ii) did not receive a statement of services before making the payment; and
  - (iii) does not receive a statement of services within 28 days after a final decision is made about the visa application, cancellation review application, nomination or sponsorship to which the immigration assistance related.

## Part 6—Record keeping and management

- 6.1 A registered migration agent must maintain proper records that can be made available for inspection on request by the Authority, including files containing:
- (a) a copy of each client’s application; and
  - (b) copies of each written communication between:
    - (i) the client and the agent; and
    - (ii) the agent and any relevant statutory authority; and
    - (iii) the agent and the Department regarding the client; and
  - (c) file notes of every substantive or material oral communication between:
    - (i) the client and the agent; and
    - (ii) the agent and an official of any relevant statutory authority; and
    - (iii) the agent and the Department regarding the client.
- 6.1A A registered migration agent must keep the records mentioned in clause 6.1 for a period of 7 years after the date of the last action on the file for the client.
- 6.2 A registered migration agent must keep all documents to which a client is entitled securely and in a way that will ensure confidentiality while the agent is giving services to the client and until the earlier of:
- (a) 7 years after the date of the last action on the file for the client; or
  - (b) when the documents are given to the client or dealt with in accordance with the client’s written instructions.
- Note: On the completion or termination of services, all documents to which a client is entitled are to be dealt with in accordance with Part 10.
- 6.2A For clause 6.2, the documents to which a client is entitled include (but are not limited to) documents that are:
- (a) provided by, or on behalf of, the client; and
  - (b) paid for by, or on behalf of, the client;
- such as passports, birth certificates, qualifications, photographs and other personal documents.
- 6.3 A registered migration agent must respond to a request for information from the Authority within a reasonable time specified by the Authority.
- 6.4 A registered migration agent must act on the basis that the agent’s electronic communications are part of the agent’s records and documents.

## **Part 7—Financial duties**

- 7.1 Subject to clause 7.1B, a registered migration agent must keep separate accounts with a financial institution for:
- (a) the agent’s operating expenses (the *operating account*); and
  - (b) money paid by clients to the agent for fees and disbursements (the *clients’ account*).
- 7.1A The words ‘clients’ account’ must be included in the name of the financial institution account mentioned in paragraph 7.1(b).
- 7.1B If a registered migration agent is operating as an agent in a country other than Australia that does not allow, under its law, the use of a clients’ account as described in paragraph 7.1(b):
- (a) the agent is not required to keep a separate account of that name; but
  - (b) the agent must:
    - (i) keep an account for money paid by clients to the agent for fees and disbursements in a way that is as similar as practicable to the requirements in this Part; and
    - (ii) comply with this Part as far as practicable in relation to keeping records of the account and making the records available for inspection.
- 7.2 A registered migration agent must hold, in the clients’ account, an amount of money paid by a client for an agreed block of work until:
- (a) the agent has completed the services that comprise the block of work; and
  - (b) an invoice has been issued to the client for the services performed in accordance with the Agreement for Services and Fees mentioned in clause 5.2, showing:
    - (i) each service performed; and
    - (ii) the fee for each service.
- 7.3 The registered migration agent may, at any time, withdraw money from the clients’ account for disbursements that are required to be paid to the Department, or any other agency, for the client.
- 7.4 A registered migration agent must keep records of the clients’ account, including:
- (a) the date and amount of each deposit made to the clients’ account, including an indication of the purpose of the deposit and the client on whose behalf the deposit is made; and
  - (b) the date and amount of each withdrawal made in relation to an individual client, and the name of each recipient of money that was withdrawn; and
  - (c) receipts for any payments made by the client to the agent; and
  - (d) statements of services; and
  - (e) copies of invoices or accounts rendered in relation to the account.

- 7.5 A registered migration agent must make available for inspection on request by the Authority:
- (a) records of the clients' account; and
  - (b) records of each account into which money paid by a client to the agent for fees and disbursements has been deposited.
- 7.6 If a registered migration agent provides a service to a client on the basis of a conditional refund policy, a 'no win, no fee' policy or an undertaking to similar effect:
- (a) the agent must have sufficient funds available to be able to cover any amount that the agent may become liable to pay to the client under the policy or undertaking; and
  - (b) the agent must meet that obligation by:
    - (i) keeping funds in the clients' account; or
    - (ii) keeping a security bond; or
    - (iii) maintaining adequate insurance.
- 7.7 Nothing in clause 7.1, 7.1A, 7.2, 7.3, 7.4 or 7.6 affects the duty of a registered migration agent, who is also a legal practitioner and who acts in that capacity, to deal with clients' funds in accordance with the relevant law relating to legal practitioners.

## **Part 8—Duties of registered migration agents to employees**

- 8.1 A registered migration agent has a duty to exercise effective control of his or her office for the purpose of giving immigration advice and assistance.
- 8.2 A registered migration agent must properly supervise the work carried out by staff for the agent.
- 8.3 All immigration assistance must be given by a registered migration agent unless the assistance is permitted under section 280 of the Migration Act.
- 8.3A A registered migration agent must ensure that, if an employee gives assistance in the circumstances mentioned in regulation 3C or 3F of the *Migration Agents Regulations 1998*, the assistance is given in accordance with the standards of conduct this Code requires of a registered migration agent.
- 8.3B A registered migration agent must ensure that, if an employee makes representations in the circumstances mentioned in regulation 3D or 3G of the *Migration Agents Regulations 1998*, the representations are made in accordance with the standards of conduct this Code requires of a registered migration agent.
- 8.4 A registered migration agent must make all employees, including those not involved in giving immigration assistance (for example receptionists and typists), familiar with the Code, for example by:
- (a) displaying the Code prominently in the agent’s office;
  - (b) establishing procedures to ensure that employees become familiar with the Code including supplying employees with copies of the Code.
- 8.5 A registered migration agent must ensure that his or her employees are of good character and act consistently with the Code in the course of their employment.

## Part 9—Complaints

- 9.1 A registered migration agent must respond properly to a complaint by a person (whether or not the person is a client) about the work or services carried out by the agent or the agent's employee.
- 9.2 A registered migration agent must submit to the procedures for mediation as recommended by the Authority about handling and resolving complaints by the client against the agent.
- 9.3 If the Authority gives a registered migration agent details of a complaint made to the Authority about:
- (a) the work or services carried out by the agent or the agent's employees; or
  - (b) any other matter relating to the agent's compliance with this Code—
- the agent must respond properly to the Authority, within a reasonable time specified by the Authority when it gives the details to the agent.

## **Part 10—Termination of services**

- 10.1 A registered migration agent must complete services as instructed by a client unless:
- (a) the agent and client agree otherwise; or
  - (b) the client terminates the agent's instructions; or
  - (c) the agent terminates the contract and gives reasonable written notice to the client.
- 10.1A For paragraph 10.1(c), a written notice must state:
- (a) that the agent ceases to act for the client; and
  - (b) the date from which the agent ceases to act; and
  - (c) the terms of any arrangements made in respect of appointing another registered migration agent.
- 10.1B Within 7 days of giving the written notice, the agent must:
- (a) update the client's file to reflect the current status of each case or application undertaken by the agent for the client; and
  - (b) deliver all documents to which the client is entitled to the client or to the appointed registered migration agent; and
  - (c) ensure that all financial matters have been dealt with as specified in the contract.
- 10.2 A client is entitled to ask a registered migration agent (orally or in writing) to return any document that belongs to the client. The agent must return the document within 7 days after being asked.
- 10.3 Australian passports, and most foreign passports, are the property of the issuing Government and must not be withheld.
- 10.4 A registered migration agent must not withhold a document that belongs to a client, as part of a claim that the agent has a right to withhold a document by a lien over it, unless the agent holds a current legal practising certificate issued by an Australian body authorised by law to issue it.
- 10.5 On completion of services, a registered migration agent must, if asked by the client, give to the client all the documents:
- (a) given to the agent by the client; or
  - (b) for which the client has paid.
- 10.6 If the client terminates the instructions, a registered migration agent must take all reasonable steps to deliver all documents quickly to the client or any other person nominated by the client in writing. If the agent claims a lien on any documents, the agent must take action to quantify the amount claimed and tell the client in a timely manner.
- Note 1: Only registered migration agents who hold a current legal practising certificate issued by an Australian body authorised by law to issue it are able to claim a lien on any client documents.

**Schedule 2** Code of conduct  
**Part 10** Termination of services

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Note 2: A **document** includes an application, nomination, sponsorship, statement, declaration, affidavit, certificate or certified copy. See *Acts Interpretation Act 1901* s 25, Migration Regulations regulation 5.01



## **Part 11—Client awareness of the Code**

- 11.1 A registered migration agent must ensure that at least 1 copy of the Code is displayed prominently in:
- (a) any waiting room or waiting area that is:
    - (i) at the agent’s place of business; and
    - (ii) used by clients; and
  - (b) any office or room in which the agent conducts business with clients.
- 11.2 A registered migration agent must ensure that a client who asks to see the Code can be supplied immediately with 1 copy for the client to keep.
- 11.3 Each contract made between a registered migration agent and a client must:
- (a) include a statement about the existence and purpose of the Code; and
  - (b) guarantee that the client can obtain a copy of the Code, on request, from the agent.
- 11.4 A registered migration agent who has an Internet web site must provide a link to the copy of the Code that is displayed on the Authority’s web site.

## Endnotes

Endnote 1—About the endnotes

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## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

**Endnote 2—Abbreviation key**

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

## Endnotes

### Endnote 3—Legislation history

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### Endnote 3—Legislation history

Number and year	FRLI registration or gazettal	Commencement	Application, saving and transitional provisions
53, 1998	1 Apr 1998	r 6 and Sch 1: 21 Jan 1999 (r 2(1)) Remainder: 1 Apr 1998 (r 2(2))	
69, 1999	7 May 1999	1 July 1999 (r 2)	—
64, 2000	4 May 2000	1 July 2000 (r 2)	—
309, 2000	23 Nov 2000	23 Nov 2000 (r 2)	—
143, 2001	20 June 2001	1 July 2001 (r 2)	—
229, 2002	26 Sept 2002	1 Nov 2002 (r 2)	—
346, 2002	20 Dec 2002	1 Mar 2003 (r 2)	—
92, 2003	22 May 2003	1 July 2003 (r 2)	—
129, 2004	18 June 2004	1 July 2004 (r 2)	—
391, 2004	23 Dec 2004	Sch 2: 1 July 2005 (r 2(b)) Remainder: 2 Apr 2005 (r 2(a))	—
131, 2005	20 June 2005 (F2005L01500)	Sch 2: 1 July 2006 (r 2(b)) Remainder: 1 July 2005 (r 2(a))	r 4
158, 2006	26 June 2006 (F2006L01877)	1 July 2006 (r 2)	r 4
249, 2006	25 Sept 2006 (F2006L03044)	1 Oct 2006 (r 2)	—
250, 2011	12 Dec 2011 (F2011L02650)	r 6 and Sch 4: 1 Jan 2012 (r 2)	r 6
106, 2012	19 June 2012 (F2012L01244)	Sch 3: 1 July 2012 (s 2)	—
238, 2012	15 Oct 2012 (F2012L02041)	Sch 5: 24 Nov 2012 (s 2)	—
33, 2013	19 Mar 2013 (F2013L00490)	Sch 5: 23 Mar 2013 (s 2(1) item 5)	—
96, 2013	31 May 2013 (F2013L00885)	Sch 2 (items 1, 2): 1 July 2013 (s 2(1) item 3)	—
103, 2015	29 June 2015 (F2015L00972)	Sch 6 (items 1–4): 1 July 2015 (s 2(1) item 1)	—

## Endnote 3—Legislation history

Name	Registration	Commencement	Application, saving and transitional provisions
Migration Legislation Amendment (2017 Measures No. 1) Regulations 2017	13 Apr 2017 (F2017L00437)	Sch 4 (items 1–3) and Sch 7 (items 2, 3): 1 Oct 2017 (s 2(1) items 3, 7) Sch 4 (items 4–9): <u>1 Jan 2018</u> (s 2(1) item 4) Sch 5, 6 and Sch 7 (item 1): 18 Apr 2017 (s 2(1) items 5, 6)	—

## Endnotes

### Endnote 4—Amendment history

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### Endnote 4—Amendment history

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Provision affected	How affected
<b>Part 1</b>	
Part 1 heading.....	ad No 229, 2002
r 2 .....	rep LA s 48D
r 3 .....	am No 64, 2000; No 143, 2001; No 346, 2002; No 92, 2003; No 129, 2004; No 391, 2004; No 249, 2006; No 106, 2012; No 33, 2013; F2017L00437 ( <a href="#">Sch 4 item 4</a> )
r 3AA.....	ad F2017L00437 am <a href="#">F2017L00437</a>
<b>Part 2</b>	
Part 2 heading.....	rs No 92, 2003
Part 2 .....	ad No 229, 2002
<b>Division 2.1</b>	
Division 2.1 heading.....	ad No 92, 2003
r 3A .....	ad No 229, 2002 am No 92, 2003; F2017L00437
r 3B.....	ad No 229, 2002 am No 92, 2003
r 3BA.....	ad F2017L00437
r 3C.....	ad No 229, 2002 rs F2017L00437
r 3D .....	ad No 229, 2002 rs F2017L00437
<b>Division 2.2</b>	
Division 2.2 heading.....	ad No 92, 2003
r 3E.....	ad No 92, 2003 rs No 238, 2012; F2017L00437
r 3EA .....	ad F2017L00437
r 3F .....	ad No 92, 2003 am No 238, 2012 rs F2017L00437
r 3G .....	ad No 92, 2003 am No 238, 2012 rs F2017L00437
<b>Division 2.3</b>	
Division 2.3 .....	ad No 129, 2004
r 3H .....	ad No 129, 2004
<b>Division 2.4</b>	
Division 2.4 .....	ad No 129, 2004
r 3I.....	ad No 129, 2004

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## Endnote 4—Amendment history

Provision affected	How affected
r 3J.....	ad No 129, 2004 am No 131, 2005
r 3K.....	ad No 129, 2004
r 3L.....	ad No 129, 2004
r 3M.....	ad No 129, 2004 am No 131, 2005
r 3N.....	ad No 129, 2004 am No 131, 2005
r 3O.....	ad No 129, 2004 am No 131, 2005
r 3P.....	ad No 129, 2004
r 3Q.....	ad No 129, 2004 rs No 131, 2005
r 3R.....	ad No 129, 2004
r 3S.....	ad No 129, 2004
r 3T.....	ad No 129, 2004
<b>Part 3</b>	
Part 3 heading.....	ad No 229, 2002 am No 129, 2004
r 3U.....	ad No 129, 2004
r 3V.....	ad No 129, 2004 am No 249, 2006
r 3W.....	ad No 129, 2004
r 3X.....	ad No 129, 2004
r 3XA.....	ad No 391, 2004 rs No 131, 2005; F2017L00437
r 3Y.....	ad No 129, 2004
r 4.....	am No 64, 2000; No 143, 2001; No 129, 2004; No 391, 2004; No 158, 2006
r 5.....	am No 129, 2004; No 249, 2006 rs No 106, 2012
r 6.....	am No 143, 2001; No 129, 2004 rs No 106, 2012; <a href="#">F2017L00437</a>
r 6A.....	ad No 143, 2001 am No 92, 2003 rep No 33, 2013
r 6B.....	ad No 131, 2005 am No 131, 2005
r 6C.....	ad No 131, 2005
r 7.....	rs No 129, 2004 am No 391, 2004

## Endnotes

### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
r 7A .....	ad No 229, 2002 rs No 129, 2004
r 7B.....	ad No 129, 2004 am No 249, 2006; No 103, 2015
r 7C.....	ad No 129, 2004
r 7D .....	ad No 129, 2004 am No 131, 2005
r 7E.....	ad No 129, 2004 am No 391, 2004
r 7F.....	ad No 129, 2004
r 7G .....	ad No 129, 2004
r 7H .....	ad No 129, 2004 am No 103, 2015 ed C23
r 7I.....	ad No 129, 2004
r 9 .....	am No 346, 2002; No 129, 2004; No 131, 2005
r 9A .....	ad No 346, 2002 am No 129, 2004; No 391, 2004; No 106, 2012
r 9B.....	ad No 129, 2004 am No 391, 2004
r 9C.....	ad No 129, 2004 am No 391, 2004
r 9D .....	ad No 129, 2004 am No 391, 2004
<b>Part 3A</b>	
Part 3A .....	ad No 33, 2013 rep <a href="#">F2017L00437</a>
r 9E.....	ad No 33, 2013 rep <a href="#">F2017L00437</a>
r 9F.....	ad No 33, 2013 rep <a href="#">F2017L00437</a>
r 9G .....	ad No 33, 2013 rep <a href="#">F2017L00437</a>
<b>Part 3B</b>	
Part 3B.....	ad No 33, 2013 rep <a href="#">F2017L00437</a>
r 9H .....	ad No 33, 2013 rep <a href="#">F2017L00437</a>
r 9J.....	ad No 33, 2013 rep <a href="#">F2017L00437</a>

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
r 9K .....	ad No 33, 2013 rep <a href="#">F2017L00437</a>
r 9L .....	ad No 33, 2013 rep <a href="#">F2017L00437</a>
<b>Part 3C</b>	
Part 3C .....	ad F2017L00437
r 9M .....	ad F2017L00437
r 9N .....	ad F2017L00437
r 9P .....	ad F2017L00437
r 9Q .....	ad F2017L00437
r 9R .....	ad F2017L00437
r 9S .....	ad F2017L00437
r 9T .....	ad F2017L00437
r 9U .....	ad F2017L00437
<b>Part 4</b>	
Part 4 heading .....	ad No 131, 2005
r 10 .....	rep LA s 48C
r 11 .....	ad No 131, 2005
<b>Part 5</b>	
Part 5 .....	ad No 238, 2012
<b>Division 1</b>	
r 12 .....	ad No 238, 2012
<b>Division 2</b>	
Division 2 .....	ad No 33, 2013
r 13 .....	ad No 33, 2013
<b>Division 3</b>	
Division 3 .....	ad No 96, 2013
r 14 .....	ad No 96, 2013
<b>Division 4</b>	
Division 4 .....	ad F2017L00437
r 15 .....	ad F2017L00437 am F2017L00437
r 16 .....	ad F2017L00437
r 17 .....	ad F2017L00437
r 18 .....	ad F2017L00437
r 19 .....	ad F2017L00437
r 20 .....	ad F2017L00437
r 21 .....	ad F2017L00437
r 22 .....	ad F2017L00437

## Endnotes

### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
<b>Schedule 1</b>	
Schedule 1 .....	am No 309, 2000; No 143, 2001; No 92, 2003; No 129, 2004; No 391, 2004; No 33, 2013; No 96, 2013 rep <a href="#">F2017L00437</a>
<b>Schedule 2</b>	
Schedule 2 .....	am No 69, 1999; No 64, 2000; No 309, 2000; No 143, 2001; No 346, 2002; No 129, 2004; No 391, 2004; No 131, 2005; No 249, 2006; No 250, 2011; No 106, 2012; <a href="#">F2017L00437</a> (Sch 4 item 9)

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