

# Migration Agents Regulations 1998 1998 No. 53

## EXPLANATORY STATEMENT

### STATUTORY RULES 1998 NO. 53

Issued by the Authority of the Minister for Immigration and Multicultural Affairs

Migration Act 1958

Migration Agents Regulations 1998

Section 504 of the *Migration Act 1958* ("the Act") provides that the Governor-General may make regulations, not inconsistent with the Act, to prescribe all matters which are required or permitted to be prescribed by the Act or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act. In addition, regulations may be made pursuant to the following powers:

- subsection 288(1A) provides that an individual must publish in the prescribed way a notice stating his or her intention to apply for registration; and stating that anyone may give the Migration Agents Registration Authority a written objection to registration of the individual;
- paragraph 290(2)(b) provides that a person may be registered as a migration agent if the person holds prescribed qualifications;
- subsection 305(1) provides for the Migration Agents Registration Authority to publish in the prescribed way a statement in relation to the cancellation or suspension of the registration of a registered agent;
- subsection 314(1) provides that the Regulations may prescribe a Code of Conduct for migration agents;
- section 290A commences on 21 January 1999. That section applies to any person who has been registered at some time in the 12 months prior to an application for repeat registration. That section prohibits registration of a person who has failed to satisfy prescribed requirements for continuing professional development; and
- section 4 of the *Acts Interpretation Act 1901* provides the power to make regulations notwithstanding that section 290A of Act has not yet commenced.

The purpose of the Regulations is to:

- \* provide for the way in which an individual must publish a notice stating an intention to apply for registration as a migration agent and stating how objections to the individual's application for registration may be made. For example, if an applicant intended that the Chinese Community would be a substantial part of his or her practice, the individual could publish a notice in the *Chinese Herald* (regulation 4);
- \* prescribe the qualifications for paragraph 290(2)(b) of the Act. The Migration Agents Registration Authority must take into account, whether a person is a fit and proper person to be registered and has a prescribed qualification (regulation 5);
- \* set out the requirements for the continuing professional development of registered migration agents. Continuing professional development of registered agents is required to ensure

that only persons with appropriate expertise are able to be registered (regulation 6 and Schedule 1);

\* provide for the way in which the Migration Agents Registration Authority must publish a notice of cancellation or suspension of a migration agent's registration (regulation 7);

\* prescribe a Code of Conduct for migration agents for subsection 314(1) of the Act. The Code, as set out in Schedule 2, is intended to regulate the conduct of persons acting as migration agents. It is not exhaustive. It provides a duty for migration agents to act in the lawful interests of their clients. It is not intended to displace any right a person may have under the common law or statute to take action in relation to a matter covered by the Code (regulation 8 and Schedule 2);

\* prescribe for paragraphs 316(c) and (e) of the Act that any person may make a complaint including those listed in the regulations. Paragraph 316(c) of the Act provides that the Migration Agents Registration Authority must investigate complaints against registered agents in relation to their provision of immigration assistance. Paragraph 316(e) of the Act provides that the Migration Agents Registration Authority must investigate complaints against lawyers in relation to their provision of immigration legal assistance. It is intended to clarify that any person, and not just a client, can make a complaint regarding a migration agent or a lawyer (regulation 9); and

\* repeal previous Statutory Rules (regulation 10).

Details of the Regulations are set out in the Attachment.

The Regulations commence on gazettal, except for Regulation 6 and Schedule 1 which will commence on 21 January 1999 to coincide with the commencement of section 290A of the Act.

## ATTACHMENT

### Regulation 1 - Name of Regulations

This regulation provides that these Regulations are the Migration Agents Regulations 1998.

### Regulation 2 - Commencement

This regulation provides for regulation 6 and Schedule 1 to commence on 21 January 1999 and for the remainder of these Regulations to commence on gazettal.

### Regulation 3 - Interpretation

This regulation inserts definitions of "Act", "Authority" and "prescribed institution" for these Regulations.

### Regulation 4 - Publication-of notice of intention to apply for registration

This regulation sets out the publication requirements for a notice of intention to apply for registration as a migration agent.

Subregulation 4(1) provides that for subsection 288(1A) of the Act, the individual must publish the notice in the way set out in this regulation.

Subregulations 4(2) and 4(3) set out certain information about the individual that the notice must contain and also an address for correspondence of the Authority.

Subregulation 4(4) provides that the notice must be published in writing.

Paragraph 4(4)(a) provides that the notice must be published in the public notices section of the Saturday edition of a newspaper that: is published at least daily from Monday to Saturday; circulates in each State, the Australian Capital Territory and the Northern Territory; and is specified by the Minister in a Gazette Notice.

Paragraph 4(4)(b) provides that the notice must also be published in either. the public notices section of a newspaper which is published on each business day; or an ethnic press publication; which are specified by the Minister in a *Gazette* Notice and which circulates generally in the State or Territory in which the individual intends to practise.

The provisions enable an individual who intends to practise as a registered migration agent for a particular ethnic group to choose to publish the notice in an ethnic press publication for that ethnic group rather than a newspaper for that paragraph.

### Regulation n 5 - Prescribed qualifications

Paragraph 290(2)(b) of the Act provides that a person may be registered as a migration agent if the person holds prescribed qualifications. This regulation prescribes those qualifications.

### Regulation 6 - Continuing- professional development

This regulation provides that, for section 290A of the Act, the requirements for continuing professional development of registered agents are set out in Schedule 1.

### Regulation 7 - Publication of notice of cancellation or suspension of registration

This regulation sets out, for paragraph 305(1)(b) of the Act, the publication requirements for a notice of cancellation or suspension of registration.

Subregulation 7(1) provides that the Migration Agents Registration Authority must publish the notice in the way set out in this regulation.

Subregulation 7(2) provides that the notice must be published in writing.

Paragraph 7(2)(a) provides that the notice must be published in writing in the public notices section of the Saturday edition of a newspaper that

- \* is published at least daily from Monday to Saturday;
- \* circulates in each State, the Australian Capital Territory and the Northern Territory; and
- \* is specified by the Minister in a *Gazette* Notice.

Paragraph 7(2)(b) provides that the notice must also be published in either:

- \* the public notices section of a newspaper which is published on each business day; or
- \* an ethnic press publication;

which are specified by the Minister in a *Gazette* Notice and which circulates generally in the State or Territory in which the individual practised.

Subregulation 7(3) provides that where an individual has published a notice of intention to apply for registration under subsection 288(1A) of the Act, the notice of cancellation or suspension of registration under regulation 7 must be published in the same publications, where possible. Publication requirements for subsection (1A) of the Act are set out in regulation 4 of these Regulations.

Subregulation 7(4) provides that the notice referred to in subregulation (3) may, in addition, be published in any other publications.

#### Regulation 8 - Code of Conduct

This regulation provides that for subsection 314(1) of the Act, the Code of Conduct is set out in Schedule 2.

#### Regulation 9 --Complaints

This regulation clarifies that for paragraphs 316(c) and (e) of the Act, any person may make a complaint about registered agents or lawyers in relation to their provision of immigration assistance or immigration legal assistance including the persons listed in paragraphs 9(a) to (e).

#### Regulation 10 - Repeal of Migration Agents Regulations

This regulation provides that the Migration Agents Regulations are repealed.

#### Schedule 1 - Continuing Professional Development

Schedule 1 sets out the requirements for migration agents with respect to continuing professional development for section 290A of the Act.

Clause 1 provides that a migration agent must complete approved activities with a cumulative total of at least 10 points in the year preceding the year for which the applicant is applying for registration as a migration agent.

Clause 2 provides that at least 6 points must be awarded for core activities. The requirements for core activities are outlined further in clauses 7 and 8 below.

Clause 3 provides that the Minister may specify, by notice published in the Gazette, approved activities for continuing professional development.

Details of the approved activities to be gazetted include course names, course providers, whether an activity is a core activity or an elective activity, and the number of points to be allocated for each activity. The requirements for elective activities are outlined further in clauses 9 and 10 below.

Clause 4 provides that the withdrawal of the approval of an activity will not affect its approval for a migration agent who started the activity before the activity had its approval withdrawn.

Clause 5 provides that an activity may be approved if it meets the requirements for registration to practise in another profession. Such activities could include mandatory continuing legal education (or the equivalent) for legal practitioners, and continuing professional education (or the equivalent) for accountants.

Clause 6 provides that an approved activity may include:

- \* a program of education, to be conducted by certain persons;
- \* certain private study;
- \* presentation of, or attendance at, a seminar, workshop, conference or lecture. If the agent is a presenter, the agent must be qualified to give the presentation. If the agent is attending, the presenter must be qualified to give the presentation;
- \* authorship and publication of an article of at least 1000 words. The agent need not be the publisher, but need only have his or her article published; and
- \* preparation and presentation of written or oral material.

Clause 7 provides that a core activity must relate specifically to the Migration Act and Migration Regulations, other legislation relating to migration procedure, or to portfolio policies and procedures.

Clause 8 provides that, in addition to the activities in clause 6, a core activity may include:

- \* passing an examination that demonstrates competency as a migration agent; and
- \* keeping an up to date professional library.

Clause 9 provides that an elective activity is a program of education dealing with topics of a legal or business nature relating to the agent's practice as a migration agent.

Clause 10 provides that, in addition to the activities in clause 6, an elective activity may include providing immigration assistance without charge for a voluntary organisation, such as a migrant resource centre or an ethnic community organisation.

Clause 11 provides that an agent who claims an activity under clause 10 must comply with the conditions set out in paragraphs 11 (a) to (c).

Clause 12 provides that an agent must.

- \* give the Migration Agents Registration Authority a statutory declaration stating that

he or she has met the requirements of this Schedule, in relation to an application for repeat registration; and

- \* keep written records evidencing the agent's completion of all activities for which the agent claims points.

Clause 13 provides that, for paragraph 12(b), the records must..

- \* enable an assessment of the agent's undertaking of the activity. This, in turn, should show that the requirements of the approved activity have been satisfied; and

- \* be shown to the Migration Agents Registration Authority on request; and

- \* be kept:

- in English, and

- until 21 March 2000.

Schedule 2 - Code of Conduct

Schedule 2 sets out the Code of Conduct for migration agents for subsection 314(1) of the Act. The Code of Conduct is intended to regulate the conduct of migration agents and, in particular, provides for the following:

- \* standards of professional conduct;

- \* obligations to clients; .

- \* relations between agents;

- \* fees and charges;

- \* record keeping and management;

- \* financial duties;

- \* duties of agents to employees;

- \* complaints; and

- \* termination of services.