

# Migration Agents Amendment Regulations 2000 (No. 1) 2000 No. 64

## EXPLANATORY STATEMENT

### STATUTORY RULES 2000 No. 64

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

#### *Migration Act 1958*

#### Migration Agents Amendment Regulations 2000 (No. 1)

Subsection 504(1) of the *Migration Act 1958* (the Act) provides for the Governor-General to make regulations, not inconsistent with the Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act. In addition, subsection 314(1) of the Act provides that the regulations may prescribe a Code of Conduct for migration agents.

The purpose of these Regulations is to implement recommendations from the *Review of Statutory Self-Regulation of the Migration Advice Industry* of August 1999 in order to enhance the operation of statutory self-regulation of the migration advice industry.

The Regulations will:

- \* strengthen the Code of Conduct, as proposed by the *Review of Statutory Self-Regulation of the Migration Advice Industry*; and
- \* implement more cost effective arrangements for publishing the details of prospective migration agents.

Details of the Regulations are set out in the Attachment.

The Regulations commence 1 July 2000.

## ATTACHMENT

### Regulation 1 - Name of Regulations

This regulation provides that these Regulations are the *Migration Agents Amendment Regulations 2000 (No. 1)*.

### Regulation 2 - Commencement

This regulation provides that these Regulations commence on 1 July 2000.

### Regulation 3 - Amendment of *Migration Agents Regulations 1998*

This regulation provides for the *Migration Agents Regulations 1998* to be amended as set out in Schedule 1 to these Regulations.

### Schedule 1 - Amendments

#### Item 1 - Regulation 3, after definition of *Authority*

This item inserts a definition of "electronic communication" in regulation 3. This amendment is consequential to amendments to Part 6 of the Code of Conduct in Schedule 2 providing that a

migration agent must act on the basis that the agent's electronic communications are part of the agent's records and documents.

#### Item 2 - Paragraphs 4(2)(c), (d) and (e)

This item amends subregulation 4(2) to add the further types of information that are required in a notice under regulation 4. The amendments ensure that full contact details of the person who intends to apply for registration as a registered migration agent are given in the notice.

#### Item 3 - Subregulation 4(4)

This item replaces subregulation 4(4) with new subregulation 4(4). The amendments reduce the requirements for publication of a notice of intention to apply for registration in order to achieve more streamlined and cost effective publication requirements for potential registered migration agents.

#### Item 4 - Schedule 2, after clause 1.12

This item inserts new clause 1.13 into the Code of Conduct in Schedule 2. New clause 1.13 provides that where a migration agent has a contract in force with a client that complies with the Code of Conduct, but the Code of Conduct is amended, if the contract no longer complies with the Code of Conduct the migration agent must do everything practicable to vary the contract to ensure compliance with the Code of Conduct.

#### Item 5 - Schedule 2, after clause 2.3

This item inserts new clause 2.3A into the Code of Conduct in Schedule 2. Under this clause, the Authority encourages migration agents to hold professional indemnity insurance in order to avoid financial loss to their clients.

#### Item 6 - Schedule 2, clause 2.22

This item amends clause 2.22, consequential to amendments to the *Migration Agents Registration Application Charge Regulations 1998*.

A migration agent is charged a fee for an application for registration. The amount of this charge is set out in *the Migration Agents Registration Application Charge Regulations 1998*.

The amendments to the *Migration Agents Registration Application Charge Regulations 1998* change the provisions under which a fee is charged for registration. The amendment to clause 2.22 of the *Migration Agents Regulations 1998* reflects those changes by referring to a migration agent who acts or ceases to act on a non-profit basis or a migration agent who acts or ceases to act on a commercial, or for-profit, basis.

#### Item 7 - Schedule 2, paragraph 5.2(a)

This item amends paragraph 5.2(a) to ensure that an estimate of disbursements is included in the estimate of fees which the agent must give to the client.

#### Item 8 - Schedule 2, after clause 5.4

This item inserts new clause 5.5 into the Code of Conduct in Schedule 2. New clause 5.5 provides that the migration agent must be aware and act on the basis of section 313 of the Act, which deals with fees and rewards for giving immigration assistance to a person. The substance of new clause 5.5 reflects the substance of section 313 of the Act.

#### Item 9 - Schedule 2, after clause 6.2

This item inserts new clause 6.2A into the Code of Conduct in Schedule 2. Under this clause, a migration agent must act on the basis that his or her electronic communications are part of the agent's records and documents. Proposed item 1 of Schedule 1 inserts a new definition of "electronic communication" in regulation 3 of the Migration Agents Regulations 1998.

#### Item 10 - Schedule 2, clause 7.2

This item replaces clause 7.2 with new clause 7.2. The new clause provides that a migration agent must hold money paid by a client in the clients' account for an agreed block of work until both paragraphs 7.2(a) and (b) are satisfied. This allows an to be paid for discrete components of contracted work, rather than waiting for the whole matter to be completed.

#### Item 11 - Schedule 2, paragraph 7.4(b)

This item replaces paragraph 7.4(b) with new paragraph 7.4(b). The effect of this amendment is that a migration agent must keep more detailed records in relation to withdrawals made from the clients' account.

#### Item 12 - Schedule 2, clauses 7.5 and 7.6

This item replaces clauses 7.5 and 7.6 with new clauses 7.5, 7.6 and 7.7.

New clause 7.5 is strengthened so that in addition to making records of the clients' account available for inspection on request by the Migration Agents Registration Authority ("the Authority"), a migration agent must also make records available to the Authority of all accounts into which clients' money has been deposited for fees and disbursements.

This ensures that the Authority has powers of inspection of all accounts containing client monies.

New clause 7.6 provides that where a migration agent is providing services to a client on a conditional refund policy ('no win, no fee'), the agent must have sufficient funds available to be able to cover that contingent liability. An agent must meet this obligation by either:

- \* keeping funds in the clients' account; or
- \* keeping a security bond; or
- \* maintaining adequate insurance.

The amendments made in new clause 7.7 are consequential to the insertion of new clauses 7.5 and 7.6. New clause 7.7 is identical to clause 7.6 which was omitted by this item.

#### Item 13 - Schedule 2, clause 9.1

This item ensures that a migration agent must respond to a complaint about a migration agent, whether or not the complaint is made by a client.

#### Item 14 - Schedule 2, after clause 9.2

This item inserts new clause 9.3 into the Code of Conduct in Schedule 2. The new clause provides that where the Authority provides a migration agent with details of a complaint as set out in paragraphs 9.3(a) or (b), the migration agent must respond properly to the Authority in relation to the complaint. That is, it is intended that the migration agent must take the complaint seriously and address the matters raised by the Authority accordingly.

In addition, there is a requirement that the migration agent must respond within a reasonable time specified by the Authority. It is intended that the Authority should be able to specify this

timeframe because the Authority is in the best position to understand and determine the need for the level of urgency in an agent giving a response. For example, in extreme circumstances the Authority may believe that a response should be given urgently where a serious complaint, has been made about an agent, and the Authority is concerned to protect other clients ;of the agent or where a clients permission to stay in Australia is close to expiry.

#### Item 15 - Schedule 2

This item replaces clause 10.2 with new clause 10.2. The effect of the amendment is to give a reasonable and certain period of time within which an agent must return a client's documents to the client, upon the request of the client.

#### Item 16 - Schedule 2, clause 10.4

This item replaces clause 10.4 with new clause 10.4. The new clause clarifies that a migration agent cannot retain a client's document by claiming a lien over the document. A lien is the right to hold the property of another as security for the performance of an obligation.

#### Item 17 -After Part 10

This item inserts new Part 11 into the Code of Conduct in Schedule 2. The aim of the

new Part is to ensure that:

- \* clients are aware of the Code of Conduct (by various means);
- \* clients can obtain copies of the Code of Conduct; and
- \* the Code of Conduct is mentioned in contracts between migration agents and their clients.