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Migration Agents Amendment Regulations 2000 (No. 64)

Statutory Rules 2000 No. 64

I, WILLIAM PATRICK DEANE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Migration Act 1958*.

Dated 27 APR 2000 2000

WILLIAM DEANE
Governor-General

By His Excellency's Command

PHILIP RUDDOCK
Minister for Immigration and Multicultural Affairs



Migration Agents Amendment Regulations 2000 (No. 2)¹

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Statutory Rules 2000 No. 2²

64

made under the

Migration Act 1958

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1 Name of Regulations

These Regulations are the *Migration Agents Amendment Regulations 2000 (No. 2)*. 1

2 Commencement

These Regulations commence on 1 July 2000.

3 Amendment of *Migration Agents Regulations 1998*

Schedule 1 amends the *Migration Agents Regulations 1998*.

Schedule 1 Amendments

(regulation 3)

[1] Regulation 3, after definition of *Authority*

insert

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

[2] Paragraphs 4 (2) (c), (d) and (e)

substitute

- (c) address for correspondence;
- (d) the physical address of any place at which the individual intends to practise as a 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] Subregulation 4 (4)

substitute

- (4) However, subregulations (2) and (3) do not require the agent to include the same address more than once.

- (5) The notice must be published in writing in the public notices section of the Saturday edition of a newspaper that:
- (a) is ordinarily published every day from Monday to Saturday; and
 - (b) circulates in each State, the Australian Capital Territory and the Northern Territory; and
 - (c) is specified by the Minister by a notice published in the *Gazette* for the purposes of this paragraph.

[4] Schedule 2, after clause 1.12

insert

- 1.13 If a 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.

[5] Schedule 2, after clause 2.3

insert

- 2.3A A migration agent's professionalism should be reflected in the making of adequate arrangements to avoid financial loss to a client. The Authority recommends the holding of adequate professional indemnity insurance as a suitable arrangement.

[6] Schedule 2, clause 2.22*substitute*

2.22 If a migration agent:

(a) has been registered:

(i) on a non-commercial, or non-profit, basis;
or(ii) as a member of, or a person associated with,
an organisation that operates on a non-
commercial, or non-profit, basis; but

(b) starts to act:

(i) on a commercial, or for-profit, basis; or

(ii) as a member of, or a person associated with,
an organisation that operates on a
commercial, or for-profit, basis —the agent must tell the Authority about the change as
part of the agent's next registration application.**[7] Schedule 2, paragraph 5.2 (a)***substitute*

(a) before starting work for a client, give the client:

(i) an estimate of fees in the form of charges
for each hour or each service, and
disbursements that the agent is likely to
incur as part of the work; and(ii) an estimate of the time likely to be taken in
performing a service; and**[8] Schedule 2, after clause 5.4***insert*5.5 A 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; and

- (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.

[9] Schedule 2, after clause 6.3

insert

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

[10] Schedule 2, clause 7.2

substitute

- 7.2 A 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.

[11] Schedule 2, paragraph 7.4 (b)

substitute

- (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

[12] Schedule 2, clauses 7.5 and 7.6

substitute

7.5 A 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 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, 7.2, 7.3, 7.4 or 7.6 affects the duty of a 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.

[13] Schedule 2, clause 9.1*omit*

a client

insert

a person (whether or not the person is a client)

[14] Schedule 2, after clause 9.2*insert*

9.3 If the Authority gives a 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.

[15] Schedule 2, clause 10.2*substitute*

10.2 A client is entitled to ask a 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.

[16] Schedule 2, clause 10.4*substitute*

10.4 A migration agent must not withhold a document that belongs to a client by claiming that the agent has a right to withhold a document by a lien over it.

[17] Schedule 2, after Part 10*insert***Part 11 Client awareness of the Code**

- 11.1 A 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 An 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 an 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 migration agent who has an Internet website must provide a link to the copy of the Code that is displayed on the Authority's website.

Notes

1. These Regulations amend Statutory Rules 1998 No. 53, as amended by 1999 No. 69.
2. Made by the Governor-General on *the Commonwealth of Australia Gazette* on *27 April* *4 May* 2000, and notified in *2000.*