

**EXPLANATORY STATEMENT**

*Migration Act 1958*

*Migration Agents Regulations 1998*

**PRESCRIBED QUALIFICATIONS FOR APPLICANTS FOR REGISTRATION AS A  
MIGRATION AGENT  
(REGULATION 5)**

1. This Instrument is made under Regulation 5 of the *Migration Agents Regulations 1998* ('the Regulations').
2. Section 289A of the *Migration Act 1958* (the Act) provides that an applicant for registration as a migration agent who has never been registered, or who is applying to be registered more than 12 months after the end of his or her previous registration, must not be registered unless the Migration Agents Registration Authority is satisfied that he or she has passed a prescribed exam within the prescribed period.
3. Subregulation 5(1) of the Regulations provides that, for the purposes of paragraph 289A(c) of the Act a prescribed course is a course that the Minister has specified in an instrument in writing.
4. Subregulation 5(2) of the Regulations provides that, for the purposes of paragraph 289A(c) of the Act, if a person is in a class of persons specified by the Minister in an instrument in writing, an exam specified by the Minister in an instrument in writing is a prescribed exam.
5. Subregulation 5(3) of the Regulations provide that if the person is not in the class of persons specified under Subregulation 5(2) a prescribed exam is a combination of an exam specified by the Minister in writing and an exam in English language proficiency specified by the Minister in an Instrument in writing.
6. Subregulation 5(4) specifies that an applicant is taken to have passed an exam as specified in paragraph 5(3)(b) if the applicant achieves at least the minimum score specified by the Minister in an Instrument in writing.
7. Subregulation 5(5) specifies that the prescribed period for applying for registration as a migration agent after the completion of a particular course or exam is the period specified by the Minister in an instrument in writing.

8. The purpose of this Instrument is to support the criteria in the Act and the Regulations that prospective migration agents must satisfy in order to be registered.
9. The Instrument operates to specify exams and courses that are prescribed exams and courses, and the period in which an applicant must apply for registration after completing the prescribed course and passing the prescribed exam, for persons who want to become a registered migration agent and do not hold an Australian legal practicing certificate.
10. The Instrument revokes the previous Instrument IMMI 12/035 *Prescribed courses and exams for applicants for registration as a Migration Agent (Regulation 5)* that commenced on 1 July 2012..
11. An error has been identified in the construction of Instrument IMMI 12/035, with the word “exam” having been mistakenly omitted from Item 7(d).
12. Further, the wording that specifies the prescribed period has been revised to address concerns that the wording of Instrument IMMI 12/035 could be interpreted as changing the application of the prescribed period by requiring individuals to complete the prescribed course and exam within a set timeframe. This was not the intention and the application of the prescribed period remains as before, the length of time an individual has to apply for registration after the completion of the prescribed course and passing the prescribed exam.
13. Consultation was undertaken with the Migration Agents Registration Authority who regulate the migration advice profession and are responsible for registering migration agents.
14. Under section 42 of the *Legislative Instruments Act 2003* the Instrument is subject to disallowance and therefore a Human Rights Statement of Compatibility has been provided.
15. The Office of Best Practice Regulation has advised that a Regulatory Impact Statement is not required (OBPR Ref 14142).
16. This Instrument, IMMI 12/097, commences on 1 October 2012.

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### **Legislative Instrument IMMI 12/097**

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Legislative Instrument**

In Legislative Instrument IMMI 12/035 *Prescribed courses and exams for applicants for registration as a Migration Agent (Regulation 5)*, the word “exam” is mistakenly omitted from subclause 7(d). The Instrument seeks to correct this error.

In addition, the wording of clause 7 (clause 6 in IMMI 12/097) has been further amended to clarify that the ‘prescribed periods’ relate to the period in which an applicant has to apply for registration as a migration agent after completing the prescribed course and exam rather than the period in which an applicant has to undertake the prescribed course and exam. This change is merely a clarification and not a substantive change.

#### **Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms articulated in the seven core international human rights treaties.

#### **Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**The Hon. Chris Bowen, Minister for Immigration and Citizenship**