

EXPLANATORY STATEMENT

Migration Regulations 1994

Migration Agents (IMMI 17/047: CPD Activities, Approval of CPD Providers and CPD Provider Standards) Instrument 2017

(Regulations 3AA, 9F and 9J, subregulations 9M(2) and 9Q(2), paragraphs 6(2)(c), 9G(1)(c) and 9K(1)(c) and clause 7A of Schedule 1) .

1. Instrument IMMI 17/047 repeals instrument IMMI 15/106 (F2015L01710) and instrument IMMI 13/153 (F2013L02053) on 1 January 2018. The repeal of IMMI 15/106 and 13/153 is in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*, which states that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.
2. The purpose of instrument IMMI 17/047 is to specify certain matters relating to the Continuing Professional Development (CPD) requirements for registered migration agents and providers. Those matters specified include the fee for approval of CPD providers, CPD activities and the CPD provider standards for the purposes of the regulation amendments made by Part 1 of Schedule 4 to the *Migration Legislation Amendment (2017 Measures No. 1) Regulations 2017* (Amendment Regulations) commencing on 1 October 2017.
3. Instrument IMMI 17/047 operates for the Minister to specify, under regulation 3AA of the Regulations, activities that are “CPD activities” for the purposes of the definition in subregulation 3(1) of the Regulations, the conditions for the conduct of these activities and the points that these activities are worth. The definition of CPD activity inserted in regulation 3(1) of the Regulations by the Amendment Regulations, provides that a CPD activity is to be conducted by a CPD Provider.

4. The specified CPD activities are: workshops; conferences, seminars or lectures; private study with assessment; a unit in a course relating to migration law at the Australian Qualification Framework (AQF) level 8 or above (Programme of Education); and the Practice Ready Programme.
5. A Programme of Education is a unit of a course at the AQF8 level or above. AQF8 requires the completion of courses including a Graduate Certificate, Graduate Diploma, or Bachelor Honours degree. They may be offered by universities or higher education providers regulated by the Tertiary Education Quality and Standards Agency. To be recognised as a CPD activity, the higher education course must be conducted by a CPD provider, as defined in regulation 3(1) of the Regulations, and must be related to Australian migration law.
6. The Practice Ready Programme is an established continuing professional development course for registered migration agents in their first year of practice. It is interactive and practical in nature and requires participants to demonstrate that they have achieved basic competency against all of the Occupational Competency Standards (OCS) for registered migration agents. Successful completion of the Practice Ready Programme, as provided in the instrument, includes assessments to ensure learning outcomes have been achieved by participants.
7. The OCS for Migration Agents, dated September 2016, is published on the website of the Office of the Migration Agents Registration Authority (OMARA), which is part of the Department of Immigration and Border Protection. The OCS for Migration Agents set out the nine competency standards, which are explicit statements of what is required to practice successfully as migration agents.
8. The instrument also specifies the topics to which CPD activities must relate. The definition of “CPD activity” in subregulation 3(1) of the Regulations provides that, to be a “CPD activity”, the activity must relate to a topic specified in the instrument.

9. The instrument further operates to specify, under paragraph 3AA(e) of the Regulations, CPD activities a CPD Provider may offer which are mandatory and the minimum number of points for such activities.
10. The specifications under 3AA in regard to activities will operate in conjunction with new regulation 6 which will be inserted into the Regulations from 1 January 2018 and provide the new framework for CPD of a registered migration agent.
11. The instrument further operates to specify under paragraph 9M(2)(b) of the Regulations the fee that must accompany an application for approval as a CPD provider.
12. The requirements for approval of a CPD provider by the Amendment Regulations will commence on 1 October 2017. However, under Schedule 7 of the Amendment Regulations any approval as a CPD provider before 1 January 2018 takes effect on 1 January 2018 in line with the new framework for CPD of a registered migration agent. This is to allow current providers of CPD to be approved under the new arrangements and be set up prior to 1 January 2018, including preparing for the CPD activities specified in this instrument, so that CPD will be able to be delivered under the new framework for CPD in the Regulations from 1 January 2018.
13. The instrument further operates to specify, under subregulation 9Q(2) of the Regulations, the standards to be complied with by CPD providers for paragraph 9Q(1)(b) of the Regulations (the CPD provider standards). The CPD provider standards set out the minimum standards for the provision of CPD activities for registered migration agents and for the conduct of approved CPD providers. CPD providers who fail to comply with the CPD provider standards will be liable for cancellation of approval as a CPD provider.
14. Prior to making the instrument, extensive external consultation took place as part of the Independent Review of the OMARA. The Independent Reference Group to the OMARA (IRG) was consulted in relation to implementation of this measure. The IRG comprises representatives from the Migration Institute of Australia, the Law Council of Australia, the business sector, the education sector and a consumer advocate.

15. The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is not required (OBPR Reference: 18313).
16. A Statement of Compatibility with Human Rights (the Statement) has been completed in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The overall assessment is that the instrument is compatible with human rights. A copy of the Statement is at Attachment A.
17. Parts 1 and 2 of, and Schedules 1 and 2 to, instrument IMMI 17/047 commence on 1 October 2017.
18. Schedule 3 to instrument IMMI 17/047 commences on 1 January 2018. Schedule 3 to the instrument repeals instrument IMMI 13/153 and instrument IMMI 15/106 to align with the repeal of regulation 6 and Parts 3A and 3B of the Regulations by the Amendment Regulations.

ATTACHMENT A**Statement of Compatibility with Human Rights**

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

Migration Agents (IMMI 17/047: CPD Activities, Approval of CPD Providers and CPD Provider Standards) Instrument 2017

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 changes

This legislative instrument supports the recent regulation changes made by Schedule 4 of the *Migration Legislation Amendment (2017 Measures No. 1) Regulations 2017*, which are intended to implement Recommendation 10 of the 2014 Independent Review of the Office of Migration Agents Registration Authority (the OMARA Review). The OMARA Review made 24 recommendations, the majority of which the Government has accepted and will be implemented over time.

Recommendation 10, which is the basis for the proposed changes, is intended to strengthen continuing professional development (CPD) requirements for registered migration agents applying for re-registration. Recommendation 10 specifically recommends the creation of a more open and competitive market-based framework for the provision of CPD with the role of the OMARA to be significantly reduced, and generally restricting the role of the OMARA to determining the eligibility of a firm or organisation to provide CPD services.

In accordance with Part 1 of Schedule 4 of the *Migration Legislation Amendment (2017 Measures No. 1) Regulations 2017*, which commences on 1 October 2017, this instrument specifies the activities which will constitute CPD activities from 1 January 2018, the conditions for conduct of these activities and the amount of CPD points that these activities are worth. The instrument also specifies the topics to which the CPD activities must relate.

This legislative instrument specifies a fee for the approval as a CPD provider of \$1240 and specifies the standards required of CPD providers. These CPD provider standards set out the minimum standards for provision of high quality CPD activities for registered migration agents and for the conduct of approved CPD providers when they take effect on 1 January 2018. This allows intending CPD providers to apply to deliver activities under the new scheme from 1 January 2018 in full knowledge of the requirements they must meet. The *Migration Legislation Amendment (2017 Measures No. 1) Regulations 2017* provide that CPD providers who fail to comply with the CPD provider standards will be liable for cancellation of approval as a CPD provider.

In accordance with Part 2 of Schedule 4 of the *Migration Legislation Amendment (2017 Measures No. 1) Regulations 2017*, which commences on 1 January 2018, this instrument specifies which CPD activities are mandatory, the minimum number of points for such activities and the migration agent applicants that are required to complete the mandatory CPD activities.

Human rights implications

The amendments in this Legislative Instrument aim to clarify and specify CPD requirements for migration agents as well as the standards for CPD providers and do not engage or limit any of the applicable rights, individual freedoms or discriminate against any person or groups of persons.

Conclusion

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

The Hon Alex Hawke MP, Assistant Minister for Immigration and Border Protection