

EXPLANATORY STATEMENT

Issued by the Minister for Immigration, Citizenship and Multicultural Affairs

Migration Act 1958

Migration Agents Amendment (CPD Requirements) Regulations 2019

The *Migration Act 1958* (the Migration Act) is an Act relating to the entry into, and presence in, Australia of aliens, and the departure or deportation from Australia of aliens and certain other persons.

Subsection 504(1) of the Migration Act provides that the Governor-General may make regulations, not inconsistent with the Migration Act, prescribing matters required or permitted to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Migration Act.

In addition, regulations may be made pursuant to section 290A of the Act. Section 290A provides that if an applicant for registration as a migration agent has been registered at some time in the 12 months before making the application, the applicant must not be registered if the Migration Agents Registration Authority is satisfied that the applicant has not met, within the prescribed period, the requirements prescribed by the regulations for continuing professional development of registered migration agents.

The *Migration Agents Amendment (CPD Requirements) Regulations 2019* (the Regulations) amend the *Migration Agents Regulations 1998* (the Migration Agents Regulations) to exempt lawyers who hold practising certificates from continuing professional development (CPD) requirements for migration agents when applying for repeat registration as a migration agent.

In particular, the Regulations amend the Migration Agents Regulations to insert new regulation 6A. This new regulation ensures that registered migration agents who are also lawyers with legal practising certificates are not required to complete migration agent as well as legal CPD requirements.

No consultation was considered necessary as the Regulations are considered to be machinery in nature. This accords with subsection 17(1) of the *Legislation Act 2003* (the Legislation Act) which envisages consultations where necessary and reasonably practicable.

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 Regulations are compatible with human rights. A copy of the Statement is at [Attachment A](#).

The Office of Best Practice Regulation (the OBPR) has been consulted in relation to the amendments made to the Regulations, and has advised that a regulatory impact statement is not required. The OBPR reference is 25087.

Details of the Regulations are set out in [Attachment B](#).

The Migration Act specifies no conditions that need to be satisfied before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the Legislation Act.

The Regulations commence the day after registration.

Authority: Section 504(1) of the
Migration Act 1958

Statement of Compatibility with Human Rights

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

Migration Agents Amendment (CPD Requirements) Regulations 2019

This Disallowable 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 Disallowable Legislative Instrument

The purpose of the *Migration Agents Amendment (CPD Requirements) Regulations 2019* (the amendments) is to amend the *Migration Agents Regulations 1998* (the Regulations) to exempt lawyers who hold practising certificates from continuing professional development (CPD) requirements for migration agents when applying for repeat registration as a migration agent. Prior to these amendments, the CPD requirements for migration agents were in addition to those lawyers were required to undertake for the purposes of holding a practising certificate.

The *Migration Act 1958* requires that an individual must be registered with the Migration Agents Registration Authority to provide immigration assistance. When re-registering every 12 months, migration agents are required to satisfy the CPD requirements, made under the Regulations.

The amendments insert new regulation 6A, which has the effect of ensuring that registered migration agents who are also lawyers with legal practising certificates are not required to complete both legal and migration agent CPD requirements. The note at the end of regulation 6A makes it clear that to hold a legal practising certificate, a lawyer must already satisfy CPD requirements of the relevant legal professional association in that Australian State or Territory.

The amendments apply not only from commencement, but also in respect of applications for repeat registration made prior to the commencement of the amendments, if no decision on the repeat registration application had been made immediately before the commencement of the proposed Regulations.

Human rights implications

This Disallowable Legislative Instrument provides for technical amendments and does not engage any of the applicable rights or freedoms.

Conclusion

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

The Hon David Coleman MP
Minister for Immigration, Citizenship and Multicultural Affairs

Details of the Migration Agents Amendment (CPD Requirements) Regulations 2019

Section 1 – Name

This section provides that the title of the Regulations is the *Migration Agents Amendment (CPD Requirements) Regulations 2019* (the Regulations).

Section 2 – Commencement

Subsection 2(1) provides that each provision of the Regulations specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

The table states that the whole of the instrument commences on the day after the instrument is registered.

A note clarifies that this table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

Subsection 2(2) provides that any information in column 3 of the table is not part of the Regulations. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument. Column 3 of the table provides the date/details of the commencement date.

The purpose of this section is to provide for when the amendments made by the Regulations commence.

Section 3 – Authority

This section provides that the Regulations are made under the *Migration Act 1958* (the Migration Act).

Section 4 – Schedules

The purpose of this section is to provide for how the amendments in these Regulations operate.

Schedule 1 – Amendments

Migration Agents Regulations 1998

Item 1 – After regulation 6

This item amends the *Migration Agents Regulations 1998* (the Migration Agents Regulations) by inserting new regulation 6A to provide that regulation 6, which outlines continuing professional development (CPD) requirements of a registered migration agent who makes an application for repeat registration, does not apply in relation to an application for repeat registration by a registered migration agent if, at the time of making the application, the applicant is a lawyer who holds a current practising certificate granted under a law of an Australian State or Territory.

New regulation 6A has the effect of ensuring that registered migration agents who are also lawyers with legal practising certificates are not required to complete both legal and migration agent CPD requirements. The note at the end of new regulation 6A makes it clear that to hold a legal practising certificate, a lawyer must satisfy the CPD requirements of the relevant legal professional association in the relevant State or Territory.

Item 2 – In the appropriate position in Part 5

This item inserts new regulation 23 in new Division 5 of Part 5 (Transitional Provisions) to the Migration Agents Regulations, and makes transitional provisions in respect of the amendments made by these Regulations.

New regulation 23 provides for the amendments to apply not only from commencement, but also in respect of applications for repeat registration made prior to the commencement of the Regulations, if no decision on the repeat registration application had been made immediately before the commencement of the Regulations. This will benefit those lawyers with practising certificates who have already lodged an application for repeat registration as a migration agent.