

EXPLANATORY STATEMENT

Issued by authority of the Assistant Minister for Customs, Community Safety and Multicultural Affairs

Migration Act 1958

Migration (MARA—Extension of eligible period for restricted legal practitioners) Instrument (LIN 21/020) 2021

- 1 The instrument, Departmental reference LIN 21/020, is made under subsection 278A(9) of the *Migration Act 1958* (the Migration Act).
- 2 The instrument commences on the day after it is registered on the Federal Register of Legislation, and is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

Purpose

- 3 The *Migration Amendment (Regulation of Migration Agents) Act 2020* (the Amendment Act) amended the Migration Act to improve the effectiveness of the scheme that regulates migration agents. The Amendment Act removed unrestricted legal practitioners from the regulatory scheme that governs migration agents to provide that unrestricted legal practitioners cannot register as migration agents and are entirely regulated by their own professional bodies.
- 4 The amendments made by the Amendment Act also permit eligible restricted legal practitioners to be both registered migration agents and restricted legal practitioners for a period of up to two years.
- 5 Subsection 278A(3) of the Migration Act provides that the eligible period is two years from the time the person first held a restricted practising certificate. However, section 333C of the Act provides that the eligible period for a person who was a restricted legal practitioner immediately before the day Division 8 commenced (22 March 2021) is two years after that commencement day.
- 6 Subsection 278A(4) provides that an eligible restricted legal practitioner may apply to the Migration Agents Registration Authority (MARA) for an extension of the eligible period for a period of up to two years.
- 7 Under subsection 278A(6), the MARA must decide whether or not to grant the extension no later than 28 days before the end of the eligible period. Under subsection 278(7), the MARA may only grant the extension if it considers it reasonable to do so in the circumstances, including (but not limited to) any circumstances determined under subsection 278A(9).
- 8 Subsection 278A(8) provides that the notice of the decision made by the MARA must include any details determined under subsection 278A(9).
- 9 Under subsection 278A(9), the Minister may, by legislative instrument, make a determination for the purposes of subsections 278A(7) or (8).
- 10 The purpose of the instrument is to specify the circumstances for extension of the eligible period for restricted legal practitioners and the details to be included in a written notice of the decision, for subsections 278A(7) and (8) of the Migration Act.

- 11 In considering whether there are reasonable circumstances for subsection 278A(7) of the Act, the MARA may take into account, but is not limited to, any circumstances determined under section 3 of the instrument. As such, section 3 of the instrument provides a non-exhaustive list of the circumstances in which the MARA may consider it reasonable to extend the eligible period for restricted legal practitioners for up to an additional two years.
- 12 This allows a restricted legal practitioner who requires longer than the standard eligible period to obtain an unrestricted legal practicing certificate to register with the MARA for a maximum period of four years in total. Once the legal practitioner obtains an unrestricted practicing certificate, they are permitted to provide immigration assistance in connection with legal practice, and are no longer able to register with the MARA.
- 13 For subsection 278A(8) of the Act, written notice of the MARA's decision to either extend the eligible period by a stated period of no more than two years or refuse to extend the eligible period must include the details set out under section 4 of the instrument. This is to ensure that the written notice addresses the question as to whether the circumstances of a restricted legal practitioner warrant the time extension by the MARA.

Consultation

- 14 The Department of Home Affairs has consulted with migration advice industry peak bodies – the Migration Institute of Australia, the Migration Alliance and the Law Council of Australia – when making this instrument.
- 15 The Office of Best Practice Regulation (OBPR) was consulted and considered that the instrument dealt with matters of a minor nature and no regulatory impact statement was required. The OBPR reference number is 22900.

Details of the instrument

- 16 Section 1 sets out the name of the instrument.
- 17 Section 2 provides for the commencement of the instrument, which is on the day after registration on the Federal Register of Legislation.
- 18 Section 3 determines, for subsection 278A(7) of the Act, the general circumstances in which the MARA may consider it reasonable to extend the eligible period for an eligible person who has made an application (the applicant) under subsection 278A(4) of the Act by up to two years.
- 19 These circumstances are:
 - (a) the applicant's employment, business and volunteering commitments; and
 - (b) the applicant's financial circumstances; and
 - (c) any attempt made by the applicant to secure a supervised legal practice placement on a full-time basis for a two-year period; and
 - (d) the applicant's study commitments; and
 - (e) the applicant's family responsibilities; and

(f) any medical condition that the applicant has; and

(g) any other hardship that applies to the applicant.

- 20 The MARA may assess the reasonableness and decide whether it is reasonable to extend the eligible period by a particular period in the circumstances outlined above. However, the MARA is not required to take into account any particular circumstance set out in section 3 of the instrument if the circumstance would not be relevant. In addition, under subsection 278A(7) of the Act, it is also open to the MARA to take into account any other circumstances it considers to be reasonable.
- 21 Section 4 determines the details, for subsection 278A(8) of the Act, to be included in a written notice provided by MARA of its decision under subsection 278A(6). Section 4 provides that this must include the reasons for the decision, findings on material questions of fact relied upon in making the decision and reference to the evidence or other material on which those findings were based. The MARA may also include any other relevant details in the notice under subsection 278A(6) of the Act.

Parliamentary scrutiny etc.

- 22 The instrument is subject to disallowance under section 42 of the Legislation Act. A Statement of Compatibility with Human Rights has been prepared in relation to the instrument, and provides that the instrument does not engage any of the applicable human rights or freedoms. The Statement is included at **Attachment A** to this explanatory statement.
- 23 The instrument was made by Jason Wood, Assistant Minister for Customs, Community Safety and Multicultural Affairs, in accordance with subsection 278A(9) of the Migration Act.

Statement of Compatibility with Human Rights

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

***Migration (MARA—Extension of eligible period for restricted legal practitioners) Instrument
(LIN 21/020) 2021***

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 *Migration (MARA—Extension of eligible period for restricted legal practitioners) Instrument (LIN 21/020) 2021* (the Instrument) is made under subsection 278A(9) of the *Migration Act 1958* (the Act).

The Instrument specifies circumstances that the Migration Agents Registration Authority (MARA) is to consider when deciding whether there are reasonable circumstances for extension of the eligible period during which a restricted legal practitioner can be registered with the MARA. The Instrument specifies the following circumstances: employment, business and volunteering commitments, financial circumstances, any attempt to secure a supervised legal practice placement on a full-time basis for a two-year period, study commitments, family responsibilities, medical conditions and any other hardship applies to the eligible restricted legal practitioners who have made applications under subsection 278A(4) of the Act. The MARA is not limited to the circumstances specified in the Instrument. This part of the Instrument complements the following provisions of the Act:

- Subsection 278A(3), which provides that the eligible period is the period of 2 years after the person first held a restricted practicing certificate.
- Subsection 278A(4), which provides that the MARA may extend the eligible period for a period of up to 2 years.
- Subsection 278A(7), which provides that the MARA may only extend the eligible period by a particular period if the MARA considers it reasonable to do so in the circumstances.

The Instrument also specifies the details to be included in the notice of the decision by the MARA to grant or not to grant an extension of the eligible period. The Instrument specifies the following details to be included in the notice of the decision: reasons for the decision, findings on material questions of fact relied upon in making the decision and reference to the evidence that the applicant's circumstances warranted the time extension by the MARA. The Instrument complements subsection 278A(8) of the Act, which provides that the notice of the decision must include any details determined under subsection 278A(9).

Human rights implications

This Disallowable Legislative Instrument does not engage any of the applicable human rights or freedoms.

Conclusion

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

**The Hon Jason Wood MP, Assistant Minister for Customs, Community Safety and
Multicultural Affairs**