THE HON PETER DUTTON MP
MINISTER FOR IMMIGRATION AND BORDER PROTECTION

Ref No: MS17-003863

Chair
Senate Standing Committee on Regulations and Ordinances
Suite S1.111
Parliament House
CANBERRA ACT 2600

Dear Chair

I thank the Senate Standing Committee on Regulations and Ordinances for its letter of 19 October 2017. I understand the Committee is seeking agreement to insert a requirement that the review documentation (including the final report) prepared for the purposes of new regulation 5.44A of the *Migration Regulations 1994* (the Migration Regulations) be tabled in Parliament.

As the Committee would be aware, both the Department of Immigration and Border Protection and the migration legislation are undergoing a significant programme of reform at present.

As one example, as announced on 31 July 2017, the Australian Government has undertaken a period of public consultation on transforming Australia's visa system to make it easier to understand, easier to navigate and more responsive to our economic, social and security interests.

The consultation process considered:

- the scope for a reduction in the number of visas from 99 at present, to approximately 10 visas;
- the delineation between temporary entry and long-term or permanent residence;
- the role a period of provisional residence could play in enhancing the integrity of the visa system and easing the burden on taxpayers; and
- ensuring that our visa system supports Australia as a competitive and attractive destination for temporary and longer-term entrants.

Should the Committee wish to review submissions received over this period they may be found on the Department's website at www.border.gov.au/Trav/visa-reform/visa-simplification-submissions.

Periodically, more information will be made available on the Department's website as further progress is made in relation to these important reforms.

The transformation of Australia's visa system is likely to require amendment of the Migration Regulations. This body of work may take place over a number of years.

As a result of the above, I anticipate documentation relating to the review of the Migration Regulations, and the final report, are likely to encompass matters that are still under consideration by Government. I therefore do not consider it appropriate or necessary to insert a legislative requirement for either the documentation prepared in relation to the review of the Migration Regulations, or the final review report, to be tabled in Parliament.

I note the Committee's concerns that significant legislation should be subject to Parliamentary oversight. I also note the report of the Sunsetting Review Committee on the Operation of Sunsetting Provisions in the *Legislation Act 2003*, which was recently released. The report noted the Committee's position that the outcomes of the review of the Migration Regulations should be tabled. Ultimately, the Sunsetting Review Committee concluded that it is a matter for the responsible minister to determine, in prescribing a statutory review requirement, whether it is appropriate for the outcomes of the review to be tabled in Parliament.

Regardless of the above, any future amendments to the migration legislation would be subject to the usual Parliamentary oversight. Where amendments are made to the Migration Regulations it would, as always, be open to Parliament to disallow the amendments if this was considered appropriate.

I trust that this information is of assistance to the Committee.

Yours sincerely

PETER DUTTON 16/11/17

THE HON ALEX HAWKE MP
ASSISTANT MINISTER FOR IMMIGRATION AND BORDER PROTECTION

Ref No: MS17-004236

Senator John Williams
Chair
Senate Regulations and Ordinances Committee
Room S1.111
Parliament House
CANBERRA ACT 2600

Dear Senator

Thank you for requesting my advice in Delegated Legislation Monitor 14 of 2017 in relation to the *Migration Agents (IMMI 17/047: CPD Activities, Approval of CPD Providers and CPD Provider Standards) Instrument 2017* [F2017L01236] (the Instrument).

Incorrect authorising regulations and incorrect classification of the Instrument as exempt from disallowance

The Committee expressed concern that the Explanatory Statement to the Instrument states that it is made under the *Migration Regulations 1994* (the Migration Regulations) rather than the *Migration Agents Regulations 1998* (the Migration Agent Regulations). Further, the Federal Register of Legislation (FRL) listed the enabling regulations as the Migration Regulations at the time of tabling of the Instrument. The Committee requested that the Explanatory Statement be amended to correct the reference to the Instrument's authorising regulations.

In accordance with the Committee's request, a replacement Explanatory Statement, correcting the reference to the Instrument's authorising regulations, has been prepared and is **attached**. This replacement Explanatory Statement has been uploaded on the FRL.

The Committee also expressed concern that the Instrument was classified as exempt from disallowance when received by the Parliament and the Committee, and was tabled in the House of Representatives and the Senate on 16 October 2017 on that basis. The Committee requested advice in regard to the misclassification of the Instrument as exempt from disallowance.

The misclassification of the Instrument as exempt from disallowance was an administrative error made at the time of registering the Instrument on the FRL. I agree with the Committee that an administrative error of this nature has the potential to hinder the effective oversight of the Instrument by Parliament. The area of my department that is responsible for registering instruments on the FRL has impressed on staff the importance of ensuring information is entered accurately and implications if it is not and processes have been revised to ensure a senior officer reviews all registrations on the FRL to prevent administrative errors like this recurring.

I note that a Statement of Compatibility with Human Rights was prepared for the Instrument in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* as required for disallowable legislative instruments.

Unclear basis for determining fees

The Committee requested the Minister's advice as to the basis on which the application fee for Continuing Professional Development (CPD) providers has been calculated. The Committee explained that its longstanding view is that fees imposed by legislative instruments should be limited to cost recovery and that the Explanatory Statement should make clear the specific basis on which the application fee for approval as a CPD provider has been calculated.

Prior to the commencement of the Instrument, the Migration Agents Registration Authority (MARA) assessed applications for approval as a CPD provider free of charge. The process for assessment meant that each CPD provider submitted an application for approval of every CPD activity they intended to deliver. This, in turn, became an 'approved activity' as defined in the Migration Agent Regulations. The MARA charged $99 per activity assessed and each CPD Provider lodged approximately 20 activities for approval over a two-year period.

The process is simplified considerably under the Instrument. Rather than charging multiple small fees on a per-activity basis, the MARA now charges a single, up-front fee for a person who makes an application for approval as a CPD Provider. Once approved, the CPD Provider can then offer as many CPD activities as they want, provided they accord with the standards and conditions set out in the Migration Agent Regulations.

The application fee of $1240 (including GST) represents the cost to the MARA in receiving and assessing an application, requesting further information, and approving or refusing the application. The fee aligns with the Australian Government Charging Framework and Cost Recovery Guidelines, administered by the Department of Finance. Although the application fee of $1240 is a change to the existing charging structure, it continues to apply to the same cohort and merely adjusts the mechanism by which CPD activities are charged, from the individual activity to the provider.

Operational and policy implications of disallowing the instrument

As stated above, this situation arose from an administrative error and actions have been taken to ensure this does not recur. There are significant policy and operational implications for my department and CPD providers if the Instrument is disallowed. The policy behind this Instrument is designed to ensure that registered migration agents maintain appropriate professional training. The benefit of trained migration agents supports the integrity of the Australian migration visa system, assists to prevent vexatious visa applicants and supports my department in providing efficient and transparent visa decision making.

From an operational perspective, CPD providers who applied for registration after the commencement of this instrument are likely to have committed significant private investment to comply with the CPD Provider Standards specified in the Instrument. They will have also paid the CPD provider approval fee of $1240 to the MARA.

In the event that this Instrument is disallowed these providers will be disadvantaged as future CPD providers applying for registration after the date of disallowance will not be required to comply with these specified CPD provider standards, or to pay this specified CPD provider approval fee until another instrument can be made.

If you require further information, please contact the Assistant Secretary of the Legislation Branch in my department, Heimura Ringi,

Thank you for bringing this matter to my attention.

Yours sincerely

ALEX HAWKE

EXPLANATORY STATEMENT

Migration Agents Regulations 1998

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 *Migration Agents Regulations 1998* (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. The fee of $1240 to apply for approval as a CPD provider represents the cost to the OMARA in receiving and assessing an application, requesting further information from the applicant, and approving or refusing the application.

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

The Hon Greg Hunt MP

Minister for Health
Minister for Sport

Ref No: MC17-017455
5 NOV 2017

Senator John Williams
Chair
Senate Regulations and Ordinances Committee
Suite S1.111 Parliament House
CANBERRA ACT 2600

Dear Senator John

I refer to your letter of 7 September 2017 concerning the Senate Standing Committee on Regulations and Ordinances' request for advice on the *Private Health Insurance (Benefit Requirements) Amendment Rules 2017 (No.6) (No.6 Rules)*. I regret the delay in responding.

The Committee has sought clarification on the consultation undertaken in relation to the Rules. My Department was contacted by the South Australian Department of Health immediately following publication of circular PHI 33/17 on 30 June 2017. This circular advised key stakeholders, including the South Australian Department of Health, of registration of the *Private Health Insurance (Benefit Requirements) Amendment Rules 2017 (No.5) (No.5 Rules)*.

Shortly after this circular was released, the South Australian Department of Health advised of an error in the minimum benefit payable per night for nursing-home type patients by private health insurers in South Australian public hospitals.

This error potentially disadvantaged nursing-home type patients in South Australian public hospitals who may have received a lower benefit for their hospital accommodation than that to which they were entitled. In recognition of this potential disadvantage, my Department immediately corrected the error through the No.6 Rules rather than through the next routine amendment to the principal rules. Following your letter my Department will also seek to update the consultation component of the explanatory statement.

This prompt action reduced, to one week, the period the incorrect benefit was in effect. In addition, my Department's use of circulars to advise stakeholders of changes to private health insurance legislation enabled health service providers, including the South Australian Department of Health, to identify any potential shortfall when providing patients with informed financial consent.

Thank you for writing on this matter.

Yours sincerely

Greg Hunt