

**2002 – 2003**

**THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA**

**HOUSE OF REPRESENTATIVES**

**MIGRATION AGENTS REGISTRATION APPLICATION  
CHARGE AMENDMENT BILL 2003**

**EXPLANATORY MEMORANDUM**

(Circulated by authority of the  
Minister for Citizenship and Multicultural Affairs,  
The Hon. Gary Hardgrave MP)

## **MIGRATION AGENTS REGISTRATION APPLICATION CHARGE AMENDMENT BILL 2003**

### **OUTLINE**

1. This Bill implements part of recommendation 19 of the 2001-02 Review of Statutory Self- Regulation of the Migration Advice Industry (the Review) to introduce a new charge for migration agents who avoid paying the higher application fee for registration as a commercial agent, by registering as a non-commercial agent.
2. To apply for registration as a migration agent, a person must pay the relevant application charge set out in the *Migration Agents Registration Application Charge Regulations 1998* (the regulations).
3. Currently, the regulations provide for two different registration fees, depending on whether an applicant is applying for registration to provide immigration assistance on a commercial or non-commercial basis. The charge to register on a commercial basis is higher than the charge to register on a non-commercial basis.
4. Some migration agents register to provide immigration assistance on a non-commercial basis, but give immigration assistance on a commercial basis during the course of their 12 month registration period. In these circumstances they have avoided paying the higher commercial application fee.
5. To rectify this, the Bill requires such agents to pay a pro rata amount of the application fee for registration as a commercial migration agent.

### **FINANCIAL IMPACT STATEMENT**

6. The amendments contained in the Bill will have a minimal financial impact.

**MIGRATION AGENTS REGISTRATION APPLICATION CHARGE AMENDMENT  
BILL 2003****NOTES ON INDIVIDUAL CLAUSES****Clause 1      Short title**

1. Clause 1 is a formal provision specifying the short title of the Bill.

**Clause 2                      Commencement**

2. Sections 1 to 3 of the Bill will commence on the day it receives royal assent.
3. Schedule 1 to the Bill will commence at the same time as Schedule 1 to the *Migration Legislation Amendment (Migration Agents Integrity Measures) Act 2003*. That is on a day to be fixed by proclamation, or 6 months from the date that the Act receives royal assent, whichever occurs first.

**Clause 3                      Schedule(s)**

4. The *Migration Agents Registration Application Charge Act 1997* is amended or repealed as set out in Schedule 1 to the Bill.

## **SCHEDULE 1 – Amendments**

### *Migration Act 1958*

#### **Item 1            Title**

1.        This item amends the title to the *Migration Agents Registration Application Charge Act 1997* (the Act) consequential to new Part 3, inserted by item 5 of this Schedule. New Part 3 broadens the scope of the Act to impose a charge if a migration agent, who paid the non-commercial application fee for the agent’s current registration period, gives immigration assistance on a commercial basis at any time during the current period or registration.

#### **Item 2            Before section 1**

#### **Item 3            After section 2**

2.        These items divide the existing provisions of the Act into two Parts consequential to new Part 3, inserted by item 5 of this Schedule.

3.        New Part 1 is a preliminary part and contains existing section 1. New Part 2 relates to the imposition of a charge for making a registration application and contains existing sections 2, 3, 4, 5, 6, 7 and 8.

#### **Item 4            Section 3**

4.        This item makes a minor technical amendment consequential to the division of the Act into Parts 1, 2 and 3.

#### **Item 5            At the end of the Act**

5.        This item inserts new Part 3 into the Act to contain new provisions relating to the imposition of a charge on a migration agent who changes registration status from non-commercial to commercial during the agent’s current registration period.

#### **Section 9        Interpretation**

6.        New subsection 9(1) inserts definitions of “Charge Regulations”, “immigration assistance”, “non-commercial application fee” and “registered migration agent” for the purposes of new Part 3 of the Act.

7.        New subsection 9(2) describes the circumstances in which a migration agent will be considered to give immigration assistance on a commercial basis.

8.        New subsection 9(3) enables the regulations to provide when a registered migration agent begins to give immigration assistance on a commercial basis. For example, the regulations may provide that an agent begins to work on a commercial basis when the agent provides a client with an estimate of fees, or when an agent gives a client a bill of costs for services provided, whichever occurs first.

## **Section 10     Imposition of charge**

9. New section 10 imposes a charge on a registered migration agent, who paid the non-commercial application fee for the agent's current registration period, but gives immigration assistance on a commercial basis at any time during that period ("registration status charge").

10. New section 10 will ensure that there is no financial benefit for a migration agent to pay the lesser application fee for registration on a non-commercial basis.

## **Section 11     Who must pay charge?**

11. New section 11 provides that registration status charge is payable by the registered migration agent.

## **Section 12     Amount of charge**

12. New section 12 sets out a formula for determining the amount of registration status charge a migration agent must pay under new section 10. It also inserts definitions of "commercial application fee", "paid fee" and "remaining period" for the purposes of the formula.

13. The effect of section 12 is that a migration agent will be required to pay the difference between the pro rata amount of the commercial application fee for the remaining period of his or her registration period and the pro rata amount of the non-commercial application fee already paid for that same period.

14. For example, if an agent who paid the non-commercial application fee has 300 days remaining of his or her current registration period (from the day the agent first gives immigration assistance on a commercial basis), and the commercial application fee is \$1760 and the non-commercial application fee is \$160, then the agent will be required to pay a registration status charge according to the following formula:

$$\left( 1760 \times \frac{300}{365} \right) - \left( 160 \times \frac{300}{365} \right)$$

15. The fees for making a registration application are set out in regulations 4 and 5 of the Charge Regulations.

## **Section 13     Regulations**

16. New section 13 enables the Governor-General to make regulations for the purpose of new Part 3.

## **Item 6            Application**

17. The effect of this item is that the registration status charge will only apply to a migration agent who is registered after the commencement of this Schedule. This means that if a migration agent who was registered on a non-commercial basis before the Bill commenced, gives immigration assistance on a commercial basis after commencement of the Bill, the agent will not be required to pay registration status charge.