

2002-2003

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Migration Legislation Amendment
(Migration Agents Integrity Measures)
Bill 2003**

No. , 2003

(Citizenship and Multicultural Affairs)

**A Bill for an Act to amend the *Migration Act 1958*,
and for related purposes**

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1 **A Bill for an Act to amend the *Migration Act 1958*,**
2 **and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Migration Legislation Amendment*
6 (*Migration Agents Integrity Measures*) Act 2003.

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.
12

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Schedule 1	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	

1 Note: This table relates only to the provisions of this Act as originally
2 passed by the Parliament and assented to. It will not be expanded to
3 deal with provisions inserted in this Act after assent.

4 (2) Column 3 of the table contains additional information that is not
5 part of this Act. Information in this column may be added to or
6 edited in any published version of this Act.

7 **3 Schedule(s)**

8 Each Act that is specified in a Schedule to this Act is amended or
9 repealed as set out in the applicable items in the Schedule
10 concerned, and any other item in a Schedule to this Act has effect
11 according to its terms.

1
2 **Schedule 1—Amendments**

3 **Part 1—Amendments**

4 *Migration Act 1958*

5 **1 Section 275**

6 Insert:

7 *high visa refusal rate*, in relation to a visa of a particular class, has
8 the meaning given by section 306AC.

9 **2 Section 275 (definition of *registered agent*)**

10 Repeal the definition.

11 **3 Section 275**

12 Insert:

13 *registered migration agent* means an individual registered as a
14 migration agent under section 286.

15 **4 Section 275 (definition of *registration application fee*)**

16 After “imposed by”, insert “section 4 of”.

17 **5 Section 275**

18 Insert:

19 *registration status charge* means charge imposed by section 10 of
20 the *Migration Agents Registration Application Charge Act 1997*.

21 **6 After subsection 276(2)**

22 Insert:

- 23 (2A) For the purposes of this Part, a person also gives *immigration*
24 *assistance* if the person uses, or purports to use, knowledge of, or
25 experience in, migration procedure to assist another person by:
- 26 (a) preparing, or helping to prepare, a request to the Minister to
27 exercise his or her power under section 351, 391, 417, 454 or
28 501J in respect of a decision (whether or not the decision
29 relates to the other person); or
-

1 (b) advising the other person about making such a request.

2 **7 Subsection 276(3)**

3 Omit “subsections (1) and (2)”, substitute “subsections (1), (2) and
4 (2A)”.

5 **8 At the end of section 277**

6 Add:

7 (4) A lawyer does not give immigration legal assistance in giving
8 advice to another person that is for the purpose of the preparation
9 or making of a request to the Minister to exercise his or her power
10 under section 351, 391, 417, 454 or 501J in respect of a decision
11 (whether or not the decision relates to the other person).

12 **9 Paragraph 278(a)**

13 Omit “employed by”, substitute “an employee of”.

14 **10 At the end of section 278**

15 Add:

16 *Regulations*

17 (2) For the purposes of this Part, an individual is also *related by*
18 *employment* to another individual in any other prescribed
19 circumstance.

20 *Expanded meaning of employee*

21 (3) In this section:

22 *employee* includes a person engaged as a consultant or as an
23 independent contractor.

24 **11 Subsection 280(1)**

25 After “registered”, insert “migration”.

26 **12 Subsection 280(1) (penalty)**

27 Omit “50”, substitute “60”.

28 **13 At the end of subsection 280(1)**

1 Add:

2 Note: See also paragraph 504(1)(ja) (which deals with the payment of
3 penalties as an alternative to prosecution).

4 **14 At the end of subsection 280(2)**

5 Add:

6 Note: A defendant bears an evidential burden in relation to the matter in this
7 subsection (see subsection 13.3(3) of the *Criminal Code*).

8 **15 At the end of subsection 280(3)**

9 Add:

10 Note: A defendant bears an evidential burden in relation to the matter in this
11 subsection (see subsection 13.3(3) of the *Criminal Code*).

12 **16 At the end of subsection 280(4)**

13 Add:

14 Note: A defendant bears an evidential burden in relation to the matter in this
15 subsection (see subsection 13.3(3) of the *Criminal Code*).

16 **17 Subsection 280(5)**

17 Repeal the subsection, substitute:

18 (5) This section does not prevent an individual from giving
19 immigration assistance of a kind covered by subsection 276(2A) if
20 the assistance is not given for a fee or other reward.

21 Note: A defendant bears an evidential burden in relation to the matter in this
22 subsection (see subsection 13.3(3) of the *Criminal Code*).

23 (5A) This section does not prevent a close family member of a person
24 from giving immigration assistance to the person.

25 Note: A defendant bears an evidential burden in relation to the matter in this
26 subsection (see subsection 13.3(3) of the *Criminal Code*).

27 (5B) This section does not prevent a person nominating a visa applicant
28 for the purposes of the regulations from giving immigration
29 assistance to the applicant.

30 Note: A defendant bears an evidential burden in relation to the matter in this
31 subsection (see subsection 13.3(3) of the *Criminal Code*).

32 (5C) This section does not prevent a person sponsoring a visa applicant
33 for the purposes of the regulations from giving immigration
34 assistance to the applicant.

Schedule 1 Amendments

Part 1 Amendments

1 Note: A defendant bears an evidential burden in relation to the matter in this
2 subsection (see subsection 13.3(3) of the *Criminal Code*).

3 **18 At the end of subsection 280(6)**

4 Add:

5 Note: A defendant bears an evidential burden in relation to the matter in this
6 subsection (see subsection 13.3(3) of the *Criminal Code*).

7 **19 Subsection 280(7)**

8 Insert:

9 *close family member* has the meaning given by the regulations.

10 **20 Subsection 281(1)**

11 After “registered”, insert “migration”.

12 **21 Subsection 281(2)**

13 After “registered”, insert “migration”.

14 **22 At the end of subsection 281(3)**

15 Add:

16 Note: A defendant bears an evidential burden in relation to the matter in this
17 subsection (see subsection 13.3(3) of the *Criminal Code*).

18 **23 Subsection 282(1)**

19 After “registered”, insert “migration”.

20 **24 Subsection 282(2)**

21 After “registered”, insert “migration”.

22 **25 At the end of subsection 282(4)**

23 Add:

24 ; or (e) on behalf of a person who has made (or is proposing to
25 make) a request to the Minister to exercise his or her power
26 under section 351, 391, 417, 454 or 501J in respect of a
27 decision (whether or not the decision relates to that person),
28 about the request.

29 **26 Subsection 283(1)**

30 After “registered”, insert “migration”.

1 Note: The heading to section 283 is altered by inserting “**migration**” after “**registered**”.

2 **27 Subsection 283(2)**

3 After “registered”, insert “migration”.

4 **28 Subsection 284(1)**

5 After “registered”, insert “migration”.

6 **29 At the end of subsection 284(2)**

7 Add:

8 Note: A defendant bears an evidential burden in relation to the matter in this
9 subsection (see subsection 13.3(3) of the *Criminal Code*).

10 **30 At the end of subsection 284(3)**

11 Add:

12 Note: A defendant bears an evidential burden in relation to the matter in this
13 subsection (see subsection 13.3(3) of the *Criminal Code*).

14 **31 At the end of subsection 284(4)**

15 Add:

16 Note: A defendant bears an evidential burden in relation to the matter in this
17 subsection (see subsection 13.3(3) of the *Criminal Code*).

18 **32 Subsection 285(1)**

19 After “registered”, insert “migration”.

20 **33 At the end of subsection 285(2)**

21 Add:

22 Note: A defendant bears an evidential burden in relation to the matter in this
23 subsection (see subsection 13.3(3) of the *Criminal Code*).

24 **34 At the end of subsection 285(3)**

25 Add:

26 Note: A defendant bears an evidential burden in relation to the matter in this
27 subsection (see subsection 13.3(3) of the *Criminal Code*).

28 **35 At the end of subsection 285(4)**

29 Add:

Schedule 1 Amendments
Part 1 Amendments

1 Note: A defendant bears an evidential burden in relation to the matter in this
2 subsection (see subsection 13.3(3) of the *Criminal Code*).

3 **36 Subsection 287(2)**

4 After “registered” (first occurring), insert “migration”.

5 **37 At the end of subsection 287(2)**

6 Add:
7 ; and (i) particulars of any other prescribed matter.

8 **38 Paragraph 287(3)(b)**

9 Repeal the paragraph, substitute:
10 (b) particulars of any cancellation or suspension of a registered
11 migration agent’s registration or of any caution given to such
12 an agent.

13 **39 At the end of section 287**

14 Add:
15 *Removal of disciplinary details*
16 (5) The Authority must remove from the Register the following
17 details:
18 (a) particulars of any suspension of a registered migration
19 agent’s registration (if the suspension is no longer in effect);
20 (b) particulars of any caution given to such an agent (if the
21 caution is no longer in effect).

22 *Time for removal*
23 (6) The Authority must remove the details within the period worked
24 out in accordance with the regulations.
25 (7) The regulations may prescribe different periods in relation to
26 details about suspensions or cautions.

27 **40 Section 288**

28 Repeal the section, substitute:

1 **288 Application for registration**

- 2 (1) An individual may apply to the Migration Agents Registration
3 Authority to be registered as a registered migration agent.

4 *Publishing requirement*

- 5 (2) The individual must satisfy 1 of 2 publishing options set out in
6 section 288A (unless he or she has been registered at some time in
7 the 12 months immediately before making the application).

8 *Form of application*

- 9 (3) A registration application is to be in a form approved in writing by
10 the Authority and contain such information relevant to the
11 application as is required by the form.

12 Note: The applicant may be required to make a statutory declaration, or to
13 answer questions, in relation to the application: see section 288B.

14 *Time of application*

- 15 (4) The day on which a registration application is taken to have been
16 made is the day worked out in accordance with the regulations.

17 *Registration application fee*

- 18 (5) The Authority must not consider a registration application unless
19 the applicant has paid the registration application fee (if any) on
20 the application.

21 *Evidence of publication*

- 22 (6) If the applicant is required under this section to satisfy 1 of 2
23 publishing options, the Authority must not consider the application
24 unless the applicant has:
25 (a) satisfied one of those options; and
26 (b) given the Authority evidence of the publication concerned.

27 *Withdrawal of application*

- 28 (7) The applicant may withdraw an application by giving notice in
29 writing to the Authority. However, the applicant is not entitled to a
30 refund of the registration application fee paid in relation to the
31 application.
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1 **288A Publishing requirement**

- 2 (1) For the purposes of subsection 288(2), this section sets out an
3 individual's 2 publishing options.

4 *Individual publication*

- 5 (2) The first option is for the individual to publish in the prescribed
6 way a notice:
7 (a) stating his or her intention to apply for registration; and
8 (b) stating that anyone may give the Migration Agents
9 Registration Authority a written objection to his or her
10 registration within the period of 30 days after publication of
11 the notice (or 30 days after the day on which the notice is last
12 published, if it must be published more than once).

13 *Joint publication*

- 14 (3) The second option is for the individual and one or more other
15 individuals, who are all employees of the same employer and who
16 all intend to apply for registration, to publish in the prescribed way
17 a single notice:
18 (a) stating their intention to apply for registration; and
19 (b) stating that anyone may give the Migration Agents
20 Registration Authority a written objection to registration of
21 any one or more of them within the period of 30 days after
22 publication of the notice (or 30 days after the day on which
23 the notice is last published, if it must be published more than
24 once).

25 **288B Requiring applicants to make statutory declarations or to**
26 **answer questions**

- 27 (1) The Migration Agents Registration Authority may require an
28 applicant who, on the day the application is taken to have been
29 made, is not a registered migration agent:
30 (a) to make a statutory declaration in relation to information or
31 documents provided by the applicant in relation to the
32 application; or
33 (b) to appear before one or more individuals specified by the
34 Authority and to answer questions in relation to the
35 application.
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1 (2) If an applicant is required under this section to make a statutory
2 declaration or to answer questions, the Authority must not further
3 consider the application until the applicant does so.

4 **41 Subsection 289(1)**

5 Omit “section 290, 290A, 291, 292, 292A, 293 or 294”, substitute “this
6 Part”.

7 **42 Subsection 289(1) (note)**

8 Omit “because of one or more of those sections”.

9 **43 Subsection 289(2)**

10 After “Authority”, insert “must”.

11 **44 Subsection 289(3)**

12 Omit “If the applicant was required to publish notice of his or her
13 intention to apply for registration”, substitute “However, if the applicant
14 was required under section 288 to satisfy 1 of 2 publishing options”.

15 **45 Paragraph 289(3)(a)**

16 Omit “notice, despite subsection (2)”, substitute “notice concerned”.

17 **46 Paragraph 289(3)(b)**

18 Omit “section 290, 291, 292, 293 or 294 prohibits registration of”,
19 substitute “to register”.

20 **47 After section 289**

21 Insert:

22 **289A Applicant must not be registered if does not satisfy**
23 **registration requirements**

24 An applicant:

- 25 (a) who has never been registered; or
26 (b) who is applying to be registered more than 12 months after
27 the end of his or her previous registration;
28 must not be registered unless the Migration Agents Registration
29 Authority is satisfied that he or she:

- 1 (c) has completed a prescribed course within the prescribed
2 period and has passed a prescribed exam within the
3 prescribed period; or
4 (d) holds the prescribed qualifications.

5 **48 Paragraph 290(2)(b)**

6 Repeal the paragraph.

7 **49 Paragraph 290(2)(f)**

8 Omit “a professional association is taking, or has taken,” substitute “is
9 being taken, or has been taken,”.

10 **50 Paragraph 290(3)(d)**

11 Omit “a professional association is taking, or has taken,” substitute “is
12 being taken, or has been taken,”.

13 **51 At the end of section 290**

14 Add:

- 15 (4) To avoid doubt, this section applies to all applicants (not just first
16 time applicants).

17 **52 Section 290A**

18 After “not met”, insert “, within the prescribed period,”.

19 **53 Section 290A**

20 After “registered” (last occurring), insert “migration”.

21 **54 After section 290A**

22 Insert:

23 **290B Applicant must not be registered if any unpaid registration
24 status charge**

25 An applicant must not be registered if any registration status charge
26 payable by him or her remains unpaid after the time when it
27 becomes due for payment.

28 **55 At the end of section 291**

29 Add:

1 (2) To avoid doubt, this section applies to all applicants (not just first
2 time applicants).

3 **56 Section 292**

4 After “section 303”, insert “or 306AG”.

5 **57 Section 292A**

6 After “subsection 311A(1)”, insert “or 311L(1)”.

7 **58 Paragraph 292A(a)**

8 After “registered”, insert “migration”.

9 **59 At the end of section 294**

10 Add:

11 (2) To avoid doubt, this section applies to all applicants (not just first
12 time applicants).

13 **60 Subsection 299(1)**

14 Omit “302 and 303”, substitute “302, 303 and 306AG”.

15 **61 Subsection 299(1)**

16 After “registered”, insert “migration”.

17 **62 Subsection 299(3)**

18 After “registered”, insert “migration”.

19 **63 Paragraph 300(1)(a)**

20 After “registered”, insert “migration”.

21 **64 Section 301**

22 Omit “One month”, substitute “At least 30 days”.

23 **65 Section 301**

24 After “registered” (first occurring), insert “migration”.

25 **66 Subsection 302(1)**

26 After “registered”, insert “migration”.

1 **67 Paragraph 303(a)**

2 After “registered”, insert “migration”.

3 Note: The heading to section 303 is replaced by the heading “**Disciplining registered**
4 **migration agents**”.

5 **68 Section 303 (note)**

6 Repeal the note, substitute:

7 Note 1: The Authority is required to cancel or suspend a registered migration
8 agent’s registration in certain circumstances: see Division 3AA.

9 Note 2: If the Authority is considering making a decision under this section, it
10 must invite the registered migration agent to make a submission: see
11 sections 309 and 310.

12 **69 At the end of section 303 (after the note)**

13 Add:

14 *Unpaid registration status charge*

15 (2) The Authority may also suspend the registration of a registered
16 migration agent if any registration status charge payable by him or
17 her remains unpaid after the time when it becomes due for
18 payment.

19 **70 Subsection 304(1)**

20 After “registered”, insert “migration”.

21 **71 After section 304**

22 Insert:

23 **304A Conditions for lifting cautions**

24 The Migration Agents Registration Authority may set one or more
25 conditions for the lifting of a caution it gives to a registered
26 migration agent.

27 Note: Particulars of cautions are shown on the Register: see section 287.

28 **72 Sections 305 and 305A**

29 Repeal the sections, substitute:

1 **305 Notice of disciplinary decision**

2 *Notice to agent*

- 3 (1) The Migration Agents Registration Authority must give a
4 registered migration agent written notice of a decision made under
5 section 303 in relation to the agent.
- 6 (2) The notice must set out the reasons for the decision.

7 *When decision takes effect*

- 8 (3) The decision takes effect at the time the agent is given written
9 notice of it.

10 Note: Section 332H sets out when the agent is taken to have been given the
11 notice.

12 **305A Making disciplinary details publicly available**

13 *No application for review*

- 14 (1) If, within 28 days after a registered migration agent is given notice
15 of a decision under section 303, the agent has not applied for:
16 (a) review of the decision under the *Administrative Appeals*
17 *Tribunal Act 1975*; or
18 (b) judicial review of the decision;
19 then:
20 (c) the Migration Agents Registration Authority must as soon as
21 possible make available in the prescribed way a statement
22 that sets out the decision and specifies the grounds for the
23 decision; and
24 (d) the Authority may prepare a statement about the decision and
25 make it available to one or more groups of persons, or to one
26 or more persons, in any way the Authority thinks fit.

27 *Application for review*

- 28 (2) If:
29 (a) within 28 days after a registered migration agent is given
30 notice of a decision (the ***initial decision***) under section 303,
31 the agent applies for review of the initial decision under the

- 1 *Administrative Appeals Tribunal Act 1975* or for judicial
2 review of the initial decision; and
3 (b) at the end of all the proceedings (including any appeals)
4 resulting from the application, there is a decision (the *final*
5 *decision*) to cancel or suspend the agent's registration or to
6 caution the agent (which may be the initial decision);
7 then:
8 (c) the Migration Agents Registration Authority must as soon as
9 possible make available in the prescribed way a statement
10 that sets out the final decision and specifies the grounds for
11 the final decision; and
12 (d) the Authority may prepare a statement about the final
13 decision and make it available to one or more groups of
14 persons, or to one or more persons, in any way the Authority
15 thinks fit.

16 *Content of statement*

- 17 (3) A statement under this section need not set out the findings on
18 material questions of fact and need not refer to the evidence or
19 other material on which those findings were based.

20 *Protection from civil proceedings*

- 21 (4) No action or other proceeding for damages lies against a person for
22 publishing in good faith:
23 (a) a copy of; or
24 (b) an extract from; or
25 (c) a summary of;
26 a statement under this section.

27 **73 Before section 306**

28 Insert:

29 **305B Providing disciplinary details to clients**

- 30 (1) If the Migration Agents Registration Authority makes a decision
31 under section 303 in relation to a registered migration agent, the
32 Authority or the Secretary may inform one or more of the clients of
33 the agent about any one or more of the following:
34 (a) the making of the decision;

1 (b) whether or not the agent has applied for review of the
2 decision;

3 (c) the status of any such review.

4 (2) This section has effect despite section 305A.

5 (3) In this section:

6 *client* has the meaning given by section 306C.

7 **305C Requiring registered migration agents to give information or**
8 **documents**

9 (1) This section applies if the Migration Agents Registration Authority
10 is considering:

11 (a) refusing a registration application from a registered migration
12 agent; or

13 (b) making a decision under section 303 to cancel or suspend
14 such an agent's registration or to caution such an agent.

15 (2) The Authority may, by written notice given to the agent, require
16 him or her to provide the Authority with prescribed information or
17 prescribed documents within the specified period and in the
18 specified manner.

19 (3) A period specified in a notice under this section must end at least
20 14 days after the notice was given.

21 Note: Section 332H sets out when the agent is taken to have been given the
22 notice.

23 *Offence*

24 (4) A person commits an offence if:

25 (a) the person is subject to a requirement under this section; and

26 (b) the person contravenes the requirement.

27 Penalty: 60 penalty units.

28 (5) An offence against subsection (4) is an offence of strict liability.

29 Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

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Self-incrimination

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(6) A person is not excused from giving information or providing a document on the ground that the information or provision of the document may tend to incriminate the person.

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(7) However:

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(a) any information or document provided in response to a requirement under subsection (2); and

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(b) any information or thing (including any document) obtained as a direct or indirect result of information or a document provided in response to a requirement under subsection (2);

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is not admissible in evidence against the person in any criminal proceedings (except proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to this Act or the regulations).

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74 At the end of Division 3 of Part 3

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Add:

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306AA Stay orders

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If the Administrative Appeals Tribunal or a court orders a stay of a decision under section 303 to cancel or suspend a registered migration agent's registration, it is taken to be a condition of the order that the prescribed supervisory requirements apply in relation to the agent during the period of the order.

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75 After Division 3 of Part 3

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Insert:

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Division 3AA—Disciplining registered migration agents for engaging in vexatious activity

26

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Subdivision A—Definitions

28

306AB Definitions

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In this Division:

1 ***mandatory decision*** means a decision of the Migration Agents
2 Registration Authority under section 306AG.

3 ***referral decision*** means a decision of the Minister under
4 section 306AC.

5 **Subdivision B—Referral of registered migration agents for**
6 **disciplinary action**

7 **306AC Minister may refer registered migration agent for**
8 **disciplinary action**

9 *Referral*

10 (1) The Minister may refer a registered migration agent to the
11 Migration Agents Registration Authority for disciplinary action if
12 the agent has a high visa refusal rate in relation to a visa of a
13 particular class.

14 Note 1: If the Minister is considering doing so, the Minister must invite the
15 agent to make a submission on the matter and must consider any
16 submission that is made: see section 306AE.

17 Note 2: If the Minister refers an agent, the Authority must discipline the agent:
18 see section 306AG.

19 Note 3: The Minister's decision is reviewable by the Administrative Appeals
20 Tribunal: see section 306AJ.

21 *High visa refusal rate*

22 (2) This is how to work out if the agent has a high visa refusal rate in
23 relation to a visa of a particular class:

24 *Method statement*

25 *Step 1.* Work out the number of:

26 (a) valid applications for a visa of that class; and

27 (b) applications for review by a review authority of a
28 decision to refuse to grant a visa of that class;

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made during a period determined by the Minister under this Division in respect of which the agent has given immigration assistance to the applicants concerned.

Note: Subsections (3) and (4) provide for certain applications not to be counted.

Step 2. Work out if the number at step 1 is equal to or greater than the number determined by the Minister under this Division.

Step 3. If it is, work out in respect of the applications covered by step 1 the number of decisions to refuse to grant a visa that are standing at the end of all the proceedings (including any appeals) resulting from such decisions.

Step 4. The agent has a **high visa refusal rate** in relation to a visa of that class once the number at step 3 expressed as a percentage of the number at step 1 is equal to or greater than the percentage determined by the Minister under this Division in relation to that class of visa.

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Immigration assistance at visa application stage and review stage

- (3) If:
- (a) the agent gives immigration assistance to a person in respect of a valid application by the person for a visa of a particular class; and
 - (b) the agent later gives immigration assistance to the person in respect of an application (the **review application**) by the person for review by a review authority of a decision to refuse to grant that visa;
- then the review application is not to be counted for the purposes of step 1 of the method statement.

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Immigration assistance in a prescribed capacity

- (4) An application of a kind covered by step 1 of the method statement is not to be counted if the agent gave the immigration assistance in a prescribed capacity.

1 **306AD Ministerial determinations**

2 *Period for making applications*

- 3 (1) The Minister may, by writing, determine a period for the purposes
4 of step 1 of the method statement in section 306AC.

5 *Minimum number of applications*

- 6 (2) The Minister may, by writing, determine a number for the purposes
7 of step 2 of that method statement.

8 *Refusal percentage*

- 9 (3) The Minister may, by writing, determine a percentage for a
10 specified class of visa for the purposes of step 4 of that method
11 statement.

12 *Disallowable instruments*

- 13 (4) A determination under this section is a disallowable instrument for
14 the purposes of section 46A of the *Acts Interpretation Act 1901*.

15 **306AE Registered migration agent may make submissions**

- 16 (1) If the Minister is considering referring a registered migration agent
17 to the Migration Agents Registration Authority for disciplinary
18 action, the Minister must give the agent a written notice:
19 (a) stating that the Minister is considering making such a
20 decision and the reasons for it; and
21 (b) inviting the agent to make a written submission to the
22 Minister:
23 (i) on the reasons for the agent having a high visa refusal
24 rate in relation to the class of visa concerned; and
25 (ii) on any other matter the agent considers relevant; and
26 (c) stating that any submission must be made within the period
27 (the *objection period*) of 14 days after the notice is given.

28 *Extension*

- 29 (2) Before the end of the objection period, the agent may, by notice in
30 writing, request an extension of that period.

- 1 (3) The Minister must grant an extension of 14 days if the notice
2 contains reasons for the request.

3 *Minister to consider any submission*

- 4 (4) The Minister must consider any written submission received within
5 the objection period (or that period as extended).

6 **306AF Notice of referral decision**

7 *Notice to Migration Agents Registration Authority*

- 8 (1) The Minister must give the Migration Agents Registration
9 Authority written notice of a decision to refer a registered
10 migration agent to the Authority for disciplinary action.
11 (2) The notice must be given to the Authority by one of the methods
12 specified in section 494B. The notice must specify the grounds for
13 the referral.

14 *Notice to agent*

- 15 (3) The Minister must give the registered migration agent written
16 notice of the decision to refer him or her to the Authority for
17 disciplinary action.
18 (4) The notice must be given to the agent on the same day that notice
19 of the referral is given to the Authority.
20 (5) The notice given to the agent must set out the grounds for the
21 referral.

22 **306AG Taking of disciplinary action**

- 23 (1) If the Minister refers a registered migration agent to the Migration
24 Agents Registration Authority for disciplinary action, the Authority
25 must:
26 (a) in the case of a first referral—suspend the agent’s registration
27 for 12 months; or
28 (b) in the case of any later referral—cancel the agent’s
29 registration.

1 *Time of decision*

- 2 (2) The Authority must make its decision as soon as possible, but not
3 later than 7 days, after receiving notice of the referral.

4 Note: Section 494C sets out when the Authority is taken to have received
5 notice of the referral.

6 *Notice to agent*

- 7 (3) The Authority must give the agent written notice of its decision.

- 8 (4) The decision takes effect at the time the agent is given written
9 notice of it.

10 Note: Section 332H sets out when the agent is taken to have been given the
11 notice.

12 *Section subject to sections 306AI and 306AK*

- 13 (5) This section has effect subject to sections 306AI and 306AK.

14 **Subdivision C—Revocation of mandatory decision**

15 **306AH Minister may direct the Migration Agents Registration**
16 **Authority to revoke mandatory decision**

- 17 (1) The Minister may direct the Migration Agents Registration
18 Authority to revoke a mandatory decision made in relation to a
19 registered migration agent if the Minister thinks that it is
20 appropriate to do so.

21 *Notice to Authority*

- 22 (2) A direction must be given by written notice to the Authority by one
23 of the methods specified in section 494B.

24 *Other action*

- 25 (3) In the notice, the Minister may also direct the Authority to take
26 further specified action after it revokes the mandatory decision.

27 *Power to be exercised personally*

- 28 (4) The power under subsection (1) may only be exercised by the
29 Minister personally.

1 *No duty to consider whether to exercise the power*

- 2 (5) The Minister does not have a duty to consider whether to exercise
3 the power under subsection (1), whether or not the agent or anyone
4 else requests him or her to do so, or in any other circumstances.

5 **306AI Revocation of mandatory decision**

- 6 (1) If the Minister directs the Migration Agents Registration Authority
7 to revoke a mandatory decision made in relation to a registered
8 migration agent, the Authority must do so.

9 *Time of decision*

- 10 (2) The Authority must make its decision as soon as possible, but not
11 later than 7 days, after receiving notice of the direction.

12 Note: Section 494C sets out when the Authority is taken to have received
13 notice of the direction.

14 *Notice to agent*

- 15 (3) The Authority must give the agent written notice of its decision.

16 *Mandatory decision taken never to have been made*

- 17 (4) If a mandatory decision is revoked under this section, it is taken
18 never to have been made.

19 *Other action*

- 20 (5) If the Minister also directs the Authority to take further action after
21 it revokes the mandatory decision, it must take the action as soon
22 as possible after the revocation.

23 **Subdivision D—Review**

24 **306AJ Review by the Administrative Appeals Tribunal**

25 An application may be made to the Administrative Appeals
26 Tribunal for review of a referral decision.

1 **306AK Effect of review of referral decision on the Migration Agents**
2 **Registration Authority’s mandatory decision**

3 (1) If:

- 4 (a) an application is made to the Administrative Appeals
5 Tribunal for review of a referral decision; or
6 (b) an application is made to a court for judicial review of a
7 referral decision;

8 then, in relation to those proceedings or any proceedings on appeal
9 resulting from the application, the Tribunal or a court may make
10 such orders (including stay orders) as it thinks fit in relation to the
11 mandatory decision that was made as a result of the referral
12 decision.

13 *Orders binding the Migration Agents Registration Authority*

14 (2) However, the Tribunal or a court cannot make an order binding the
15 Migration Agents Registration Authority unless the Authority has
16 been accorded procedural fairness in relation to the making of the
17 order.

18 *Stay orders*

19 (3) If the Tribunal or a court orders a stay of a mandatory decision
20 made in relation to a registered migration agent, it is taken to be a
21 condition of the order that the prescribed supervisory requirements
22 apply in relation to the agent during the period of the order.

23 (4) Subsection (3) applies whether or not the stay order is made under
24 this section.

25 **Subdivision E—Making disciplinary details available**

26 **306AL Making disciplinary details publicly available**

27 *No application for review*

28 (1) If, within 28 days after a registered migration agent is given written
29 notice of a referral decision, the agent has not applied for:

- 30 (a) review of the referral decision under the *Administrative*
31 *Appeals Tribunal Act 1975*; or
32 (b) judicial review of the referral decision;

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then:

- (c) the Migration Agents Registration Authority must as soon as possible make available in the prescribed way a statement that:
 - (i) sets out the referral decision and specifies the grounds for the referral decision; and
 - (ii) sets out the mandatory decision that was made as a result of the referral decision; and
- (d) the Authority may prepare a statement about the referral decision and the mandatory decision and make it available to one or more groups of persons, or to one or more persons, in any way the Authority thinks fit.

Application for review

(2) If:

- (a) within 28 days after a registered migration agent is given written notice of a referral decision, the agent applies for review of the referral decision under the *Administrative Appeals Tribunal Act 1975* or for judicial review of the referral decision; and
- (b) at the end of all the proceedings (including any appeals) resulting from the application, there is a decision (the ***final decision***) to cancel or suspend the agent's registration (which may be the mandatory decision that was made as a result of the referral decision);

then:

- (c) the Migration Agents Registration Authority must as soon as possible make available in the prescribed way a statement that:
 - (i) sets out the referral decision and specifies the grounds for the referral decision; and
 - (ii) sets out the final decision; and
- (d) the Authority may prepare a statement about the referral decision and the final decision and make it available to one or more groups of persons, or to one or more persons, in any way the Authority thinks fit.

1 *Content of statement*

- 2 (3) A statement under this section need not set out the findings on
3 material questions of fact and need not refer to the evidence or
4 other material on which those findings were based.

5 *Protection from civil proceedings*

- 6 (4) No action or other proceeding for damages lies against a person for
7 publishing in good faith:
8 (a) a copy of; or
9 (b) an extract from; or
10 (c) a summary of;
11 a statement under this section.

12 **306AM Providing disciplinary details to clients**

- 13 (1) If the Migration Agents Registration Authority makes a mandatory
14 decision in relation to a registered migration agent, the Authority
15 or the Secretary may inform one or more of the clients of the agent
16 about any one or more of the following:
17 (a) the making of the mandatory decision;
18 (b) the making of the referral decision that resulted in the making
19 of the mandatory decision;
20 (c) whether or not the agent has applied for review of the referral
21 decision;
22 (d) the status of any such review.

- 23 (2) This section has effect despite section 306AL.

- 24 (3) In this section:

25 *client* has the meaning given by section 306C.

26 **76 Division 3A of Part 3 (heading)**

27 Repeal the heading, substitute:

28 **Division 3A—Documents relating to clients of inactive**
29 **migration agents and deceased migration agents**

30 **77 Paragraph 306A(a)**

1 After “inactive” (first occurring), insert “migration”.

2 **78 Paragraph 306A(b)**

3 After “deceased”, insert “migration”.

4 **79 Paragraph 306A(c)**

5 After “obtain”, insert “originals or”.

6 **80 Paragraph 306A(c)**

7 After “inactive”, insert “migration”.

8 **81 Paragraph 306A(c)**

9 After “deceased”, insert “migration”.

10 **82 Paragraph 306A(d)**

11 After “give the”, insert “originals or”.

12 **83 Paragraph 306B(a)**

13 After “registered” (first occurring), insert “migration”.

14 Note: The heading to section 306B is altered by inserting “**migration**” after “**Inactive**”.

15 **84 Subparagraph 306B(a)(i)**

16 After “*inactive*”, insert “*migration*”.

17 **85 Subparagraph 306B(a)(ii)**

18 After “inactive”, insert “migration”.

19 **86 Subparagraph 306B(a)(ii)**

20 After “registered”, insert “migration”.

21 **87 Subparagraph 306B(b)(i)**

22 After “*inactive*”, insert “*migration*”.

23 **88 Subparagraph 306B(b)(ii)**

24 After “inactive”, insert “migration”.

25 **89 Subparagraph 306B(b)(ii)**

26 After “registered”, insert “migration”.

1 **90 Paragraph 306B(c)**

2 After “section 303”, insert “or 306AG”.

3 **91 Subparagraph 306B(c)(i)**

4 After “*inactive*”, insert “*migration*”.

5 **92 Subparagraph 306B(c)(ii)**

6 After “inactive”, insert “migration”.

7 **93 Paragraph 306B(d)**

8 After “section 303”, insert “or 306AG”.

9 **94 Subparagraph 306B(d)(i)**

10 After “*inactive*”, insert “*migration*”.

11 **95 Subparagraph 306B(d)(ii)**

12 After “inactive”, insert “migration”.

13 **96 Paragraph 306B(e)**

14 After “registered”, insert “migration”.

15 **97 Subparagraph 306B(e)(i)**

16 After “*inactive*”, insert “*migration*”.

17 **98 Subparagraph 306B(e)(ii)**

18 After “inactive”, insert “migration”.

19 **99 Section 306C**

20 Repeal the section, substitute:

21 **306C Clients**

22 For the purposes of this Division, if a registered migration agent
23 gave, or anticipated giving, immigration assistance to another
24 person:

- 25 (a) the other person is a *client* of the registered migration agent
26 and, if the registered migration agent dies, the other person
27 remains a *client* of the deceased registered migration agent;
28 and
-

1 (b) if the registered migration agent becomes an inactive
2 migration agent—the other person remains a *client* of the
3 inactive migration agent and, if the inactive migration agent
4 dies, the other person remains a *client* of the deceased
5 inactive migration agent.

6 **100 Subsection 306D(1)**

7 After “inactive” (first occurring), insert “migration”.

8 Note: The heading to section 306D is replaced by the heading “**Power to obtain documents**
9 **from inactive migration agent**”.

10 **101 Paragraph 306D(1)(a)**

11 After “inactive”, insert “migration”.

12 **102 Paragraph 306D(1)(a)**

13 After “registered”, insert “migration”.

14 **103 Paragraph 306D(1)(b)**

15 After “inactive”, insert “migration”.

16 **104 Subsection 306D(2)**

17 Repeal the subsection, substitute:

- 18 (2) The Migration Agents Registration Authority may, by written
19 notice given to the inactive migration agent, require him or her:
20 (a) to make copies of any such documents and to produce those
21 copies to the Authority within the specified period and in the
22 specified manner; or
23 (b) to produce to the Authority, within the specified period and
24 in the specified manner, any such documents that are owned
25 by those clients or that were provided to the agent by, or on
26 behalf of, those clients.

27 Note: An example of a document provided to a registered migration agent is
28 a client’s passport.

29 **105 At the end of section 306D**

30 Add:

31 Note: Section 332H sets out when the inactive migration agent is taken to
32 have been given the notice.

1 **106 Subsection 306E(1)**

2 After “inactive” (wherever occurring), insert “migration”.

3 Note: The heading to section 306E is replaced by the heading “**Power to obtain documents**
4 **from representative of deceased inactive migration agent**”.

5 **107 Paragraph 306E(1)(a)**

6 After “registered”, insert “migration”.

7 **108 Paragraphs 306E(2)(a) and (b)**

8 Repeal the paragraphs, substitute:

9 (a) to make copies of any such documents and to produce those
10 copies to the Authority within the specified period and in the
11 specified manner; or

12 (b) to produce to the Authority, within the specified period and
13 in the specified manner, any such documents that are owned
14 by those clients or that were provided to the registered
15 migration agent by, or on behalf of, those clients.

16 **109 At the end of subsection 306E(2)**

17 Add:

18 Note: An example of a document provided to a registered migration agent is
19 a client’s passport.

20 **110 At the end of section 306E**

21 Add:

22 Note: Section 332H sets out when the legal personal representative is taken
23 to have been given the notice.

24 **111 Subsection 306F(1)**

25 After “registered” (wherever occurring), insert “migration”.

26 Note: The heading to section 306F is replaced by the heading “**Power to obtain documents**
27 **from representative of deceased registered migration agent**”.

28 **112 Paragraphs 306F(2)(a) and (b)**

29 Repeal the paragraphs, substitute:

30 (a) to make copies of any such documents and to produce those
31 copies to the Authority within the specified period and in the
32 specified manner; or

1 (b) to produce to the Authority, within the specified period and
2 in the specified manner, any such documents that are owned
3 by those clients or that were provided to the registered
4 migration agent by, or on behalf of, those clients.

5 **113 At the end of subsection 306F(2)**

6 Add:

7 Note: An example of a document provided to a registered migration agent is
8 a client's passport.

9 **114 At the end of section 306F**

10 Add:

11 Note: Section 332H sets out when the legal personal representative is taken
12 to have been given the notice.

13 **115 Subsection 306H(1) (penalty)**

14 Omit "30", substitute "60".

15 **116 Section 306J**

16 Repeal the section, substitute:

17 **306J Self-incrimination**

18 (1) An individual is not excused from producing a document under
19 section 306D, 306E or 306F on the ground that the production of
20 the document may tend to incriminate the individual or expose the
21 individual to a penalty.

22 (2) However:

23 (a) any document so produced; and

24 (b) any information or thing (including any document) obtained
25 as a direct or indirect result of a document so produced;

26 is not admissible in evidence against the individual in any criminal
27 proceedings (except proceedings for an offence against
28 section 137.1 or 137.2 of the *Criminal Code* that relates to this Act
29 or the regulations).

30 **117 Paragraph 306K(1)(a)**

31 Omit "a copy of".

32 Note: The heading to section 306K is altered by omitting "**copies of**".

1 **118 Paragraphs 306K(1)(a) and (b)**

2 After “inactive”, insert “migration”.

3 **119 Paragraph 306K(1)(c)**

4 Repeal the paragraph, substitute:

5 (c) give the document to:

6 (i) the client; or

7 (ii) if the client has, by written notice given to the
8 Authority, nominated a person to receive such
9 documents—that person; and

10 **120 Paragraph 306K(1)(d)**

11 After “registered”, insert “migration”.

12 **121 Paragraph 306K(2)(a)**

13 Omit “a copy of”.

14 **122 Subparagraph 306K(2)(a)(i)**

15 After “inactive”, insert “migration”.

16 **123 Subparagraph 306K(2)(a)(ii)**

17 After “registered”, insert “migration”.

18 **124 Paragraph 306K(2)(b)**

19 After “deceased”, insert “migration”.

20 **125 Paragraph 306K(2)(c)**

21 Repeal the paragraph, substitute:

22 (c) give the document to:

23 (i) the client; or

24 (ii) if the client has, by written notice given to the
25 Authority, nominated a person to receive such
26 documents—that person; and

27 **126 Paragraph 306K(2)(d)**

28 After “registered”, insert “migration”.

29 **127 Subsection 308(1)**

1 After “registered”, insert “migration”.

2 Note: The heading to section 308 is altered by inserting “migration” after “registered”.

3 **128 Paragraph 308(1)(b)**

4 After “individual”, insert “or individuals”.

5 **129 Subsection 308(2)**

6 Repeal the subsection, substitute:

7 (2) If a registered migration agent appears before one individual to
8 answer questions, that individual must record the questions and
9 answers and give the record to the Authority.

10 (2A) If a registered migration agent appears before 2 or more individuals
11 to answer questions, one of them must record the questions and
12 answers and give the record to the Authority.

13 **130 Subsection 308(3)**

14 After “registered”, insert “migration”.

15 **131 Subsection 308(4)**

16 After “registered”, insert “migration”.

17 **132 Subsection 309(1)**

18 Omit “the Board”, substitute “it”.

19 **133 Subsection 309(2)**

20 Omit “the cancellation or suspension of a registered agent’s registration,
21 or the cautioning of the agent,”, substitute “making a decision under
22 section 303 to cancel or suspend a registered migration agent’s
23 registration, or to caution such an agent,”.

24 **134 Division 4A of Part 3 (heading)**

25 Repeal the heading, substitute:

1 **Division 4A—Disciplining former registered migration**
2 **agents**

3 **Subdivision A—Complaints about provision of immigration**
4 **assistance**

5 **135 Subsection 311A(1)**

6 After “registered” (wherever occurring), insert “migration”.

7 Note: The heading to section 311A is altered by inserting “**migration**” after “**former**
8 **registered**”.

9 **136 Subsection 311A(1) (note)**

10 After “registered”, insert “migration”.

11 **137 Sections 311B and 311C**

12 Repeal the sections, substitute:

13 **311B Notice of disciplinary decision**

14 *Notice to former agent*

15 (1) The Migration Agents Registration Authority must give a former
16 registered migration agent written notice of a decision made under
17 section 311A in relation to the former agent.

18 (2) The notice must set out the reasons for the decision and the period
19 that the former agent is barred from being a registered migration
20 agent.

21 *When decision takes effect*

22 (3) The decision takes effect at the time the former agent is given
23 written notice of it.

24 Note: Section 332H sets out when the former agent is taken to have been
25 given the notice.

1 **311C Making disciplinary details publicly available**

2 *No application for review*

3 (1) If, within 28 days after a former registered migration agent is given
4 notice of a decision under section 311A, the former agent has not
5 applied for:

6 (a) review of the decision under the *Administrative Appeals*
7 *Tribunal Act 1975*; or

8 (b) judicial review of the decision;

9 then:

10 (c) the Migration Agents Registration Authority must as soon as
11 possible make available in the prescribed way a statement
12 that sets out the decision and specifies the grounds for the
13 decision; and

14 (d) the Authority may prepare a statement about the decision and
15 make it available to one or more groups of persons, or to one
16 or more persons, in any way the Authority thinks fit.

17 *Application for review*

18 (2) If:

19 (a) within 28 days after a former registered migration agent is
20 given notice of a decision (the *initial decision*) under
21 section 311A, the former agent applies for review of the
22 initial decision under the *Administrative Appeals Tribunal*
23 *Act 1975* or for judicial review of the initial decision; and

24 (b) at the end of all the proceedings (including any appeals)
25 resulting from the application, there is a decision (the *final*
26 *decision*) to bar the former agent from being a registered
27 migration agent for a period (which may be the initial
28 decision);

29 then:

30 (c) the Migration Agents Registration Authority must as soon as
31 possible make available in the prescribed way a statement
32 that sets out the final decision and specifies the grounds for
33 the final decision; and

34 (d) the Authority may prepare a statement about the final
35 decision and make it available to one or more groups of
36 persons, or to one or more persons, in any way the Authority
37 thinks fit.

1 *Content of statement*

- 2 (3) A statement under this section need not set out the findings on
3 material questions of fact and need not refer to the evidence or
4 other material on which those findings were based.

5 *Protection from civil proceedings*

- 6 (4) No action or other proceeding for damages lies against a person for
7 publishing in good faith:
8 (a) a copy of; or
9 (b) an extract from; or
10 (c) a summary of;
11 a statement under this section.

12 **138 Subsection 311D(1)**

13 After “registered”, insert “migration”.

14 Note: The heading to section 311D is altered by inserting “**migration**” after “**registered**”.

15 **139 At the end of subsection 311D(1)**

16 Add:

17 Note: Section 332H sets out when the former agent is taken to have been
18 given the notice.

19 **140 Paragraph 311D(4)(b)**

20 After “registered”, insert “migration”.

21 **141 After section 311E**

22 Insert:

23 **311EA Requiring former registered migration agents to give**
24 **information or documents**

- 25 (1) This section applies if the Migration Agents Registration Authority
26 is considering making a decision under section 311A to bar a
27 former registered migration agent from being a registered
28 migration agent for a period.
- 29 (2) The Authority may, by written notice given to the former agent,
30 require him or her to provide the Authority with prescribed

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1 information or prescribed documents within the specified period
2 and in the specified manner.

3 (3) A period specified in a notice under this section must end at least
4 14 days after the notice was given.

5 Note: Section 332H sets out when the former agent is taken to have been
6 given the notice.

7 *Offence*

8 (4) A person commits an offence if:

- 9 (a) the person is subject to a requirement under this section; and
10 (b) the person contravenes the requirement.

11 Penalty: 60 penalty units.

12 (5) An offence against subsection (4) is an offence of strict liability.

13 Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

14 *Self-incrimination*

15 (6) A person is not excused from giving information or providing a
16 document on the ground that the information or provision of the
17 document may tend to incriminate the person.

18 (7) However:

- 19 (a) any information or document provided in response to a
20 requirement under subsection (2); and
21 (b) any information or thing (including any document) obtained
22 as a direct or indirect result of information or a document
23 provided in response to a requirement under subsection (2);
24 is not admissible in evidence against the person in any criminal
25 proceedings (except proceedings for an offence against
26 section 137.1 or 137.2 of the *Criminal Code* that relates to this Act
27 or the regulations).

28 **142 At the end of Division 4A of Part 3**

29 Add:

1 **Subdivision B—Engaging in vexatious activity**

2 **311G Definitions**

3 In this Subdivision:

4 *mandatory decision* means a decision of the Migration Agents
5 Registration Authority under section 311L.

6 *referral decision* means a decision of the Minister under
7 section 311H.

8 **311H Minister may refer former registered migration agent for**
9 **disciplinary action**

10 The Minister may refer a former registered migration agent to the
11 Migration Agents Registration Authority for disciplinary action if,
12 in relation to his or her provision of immigration assistance while
13 he or she was a registered migration agent, he or she had a high
14 visa refusal rate in relation to a visa of a particular class.

15 Note 1: If the Minister is considering doing so, the Minister must invite the
16 former agent to make a submission on the matter and must consider
17 any submission that is made: see section 311J.

18 Note 2: If the Minister does refer a former agent, the Authority must discipline
19 the former agent: see section 311L.

20 Note 3: The Minister's decision is reviewable by the Administrative Appeals
21 Tribunal: see section 311M.

22 **311J Former registered migration agent may make submissions**

23 (1) If the Minister is considering referring a former registered
24 migration agent to the Migration Agents Registration Authority for
25 disciplinary action, the Minister must give the former agent a
26 written notice:

27 (a) stating that the Minister is considering making such a
28 decision and the reasons for it; and

29 (b) inviting the former agent to make a written submission to the
30 Minister:

31 (i) on the reasons for the former agent having a high visa
32 refusal rate in relation to the class of visa concerned;
33 and

- 1 (ii) on any other matter the former agent considers relevant;
2 and
3 (c) stating that any submission must be made within the period
4 (the *objection period*) of 14 days after the notice is given.

5 *Extension*

- 6 (2) Before the end of the objection period, the former agent may, by
7 notice in writing, request an extension of that period.
8 (3) The Minister must grant an extension of 14 days if the notice
9 contains reasons for the request.

10 *Minister to consider any submission*

- 11 (4) The Minister must consider any written submission received within
12 the objection period (or that period as extended).

13 **311K Notice of referral decision**

14 *Notice to Migration Agents Registration Authority*

- 15 (1) The Minister must give the Migration Agents Registration
16 Authority written notice of a decision to refer a former registered
17 migration agent to the Authority for disciplinary action.
18 (2) The notice must be given to the Authority by one of the methods
19 specified in section 494B. The notice must specify the grounds for
20 the referral.

21 *Notice to former agent*

- 22 (3) The Minister must give the former registered migration agent
23 written notice of the decision to refer him or her to the Authority
24 for disciplinary action.
25 (4) The notice must be given to the former agent on the same day that
26 notice of the referral is given to the Authority.
27 (5) The notice given to the former agent must set out the grounds for
28 the referral.

1 **311L Taking of disciplinary action**

- 2 (1) If the Minister refers a former registered migration agent to the
3 Migration Agents Registration Authority for disciplinary action,
4 the Authority must:
5 (a) if, while the former agent was a registered migration agent,
6 his or her registration was not suspended under
7 section 306AG—bar him or her from being a registered
8 migration agent for 12 months starting on the day that the
9 Authority’s decision takes effect; or
10 (b) if, while the former agent was a registered migration agent,
11 his or her registration was suspended under that section—bar
12 him or her from being a registered migration agent for 5
13 years starting on the day that the Authority’s decision takes
14 effect.

15 *Time of decision*

- 16 (2) The Authority must make its decision as soon as possible, but not
17 later than 7 days, after receiving notice of the referral.

18 Note: Section 494C sets out when the Authority is taken to have received
19 notice of the referral.

20 *Notice to agent*

- 21 (3) The Authority must give the former agent written notice of its
22 decision.

- 23 (4) The decision takes effect at the time the former agent is given
24 written notice of it.

25 Note: Section 332H sets out when the former agent is taken to have been
26 given the notice.

27 *Section subject to section 311N*

- 28 (5) This section has effect subject to section 311N.

29 **311M Review by the Administrative Appeals Tribunal**

30 An application may be made to the Administrative Appeals
31 Tribunal for review of a referral decision.

1 **311N Effect of review of referral decision on the Migration Agents**
2 **Registration Authority’s mandatory decision**

3 (1) If:

- 4 (a) an application is made to the Administrative Appeals
5 Tribunal for review of a referral decision; or
6 (b) an application is made to a court for judicial review of a
7 referral decision;

8 then, in relation to those proceedings or any proceedings on appeal
9 resulting from the application, the Tribunal or a court may make
10 such orders (including stay orders) as it thinks fit in relation to the
11 mandatory decision that was made as a result of the referral
12 decision.

13 *Orders binding the Migration Agents Registration Authority*

14 (2) However, the Tribunal or a court cannot make an order binding the
15 Migration Agents Registration Authority unless the Authority has
16 been accorded procedural fairness in relation to the making of the
17 order.

18 **311P Making disciplinary details publicly available**

19 *No application for review*

20 (1) If, within 28 days after a former registered migration agent is given
21 written notice of a referral decision, the former agent has not
22 applied for:

- 23 (a) review of the referral decision under the *Administrative*
24 *Appeals Tribunal Act 1975*; or
25 (b) judicial review of the referral decision;

26 then:

- 27 (c) the Migration Agents Registration Authority must as soon as
28 possible make available in the prescribed way a statement
29 that:
30 (i) sets out the referral decision and specifies the grounds
31 for the referral decision; and
32 (ii) sets out the mandatory decision that was made as a
33 result of the referral decision; and
34 (d) the Authority may prepare a statement about the referral
35 decision and the mandatory decision and make it available to
-

1 one or more groups of persons, or to one or more persons, in
2 any way the Authority thinks fit.

3 *Application for review*

4 (2) If:

5 (a) within 28 days after a former registered migration agent is
6 given written notice of a referral decision, the former agent
7 applies for review of the referral decision under the
8 *Administrative Appeals Tribunal Act 1975* or for judicial
9 review of the referral decision; and

10 (b) at the end of all the proceedings (including any appeals)
11 resulting from the application, there is a decision (the ***final***
12 ***decision***) to bar the former agent from being a registered
13 migration agent for a period (which may be the mandatory
14 decision that was made as a result of the referral decision);

15 then:

16 (c) the Migration Agents Registration Authority must as soon as
17 possible make available in the prescribed way a statement
18 that:

19 (i) sets out the referral decision and specifies the grounds
20 for the referral decision; and

21 (ii) sets out the final decision; and

22 (d) the Authority may prepare a statement about the referral
23 decision and the final decision and make it available to one or
24 more groups of persons, or to one or more persons, in any
25 way the Authority thinks fit.

26 *Content of statement*

27 (3) A statement under this section need not set out the findings on
28 material questions of fact and need not refer to the evidence or
29 other material on which those findings were based.

30 *Protection from civil proceedings*

31 (4) No action or other proceeding for damages lies against a person for
32 publishing in good faith:

33 (a) a copy of; or

34 (b) an extract from; or

35 (c) a summary of;

1 a statement under this section.

2 **143 Division 5 of Part 3 (heading)**

3 Repeal the heading, substitute:

4 **Division 5—Obligations of registered migration agents**

5 **144 Subsection 312(1)**

6 After “registered”, insert “migration”.

7 **145 Subsection 312(1)**

8 Omit “as soon as is reasonably possible”, substitute “in writing within
9 14 days”.

10 **146 After paragraph 312(1)(e)**

11 Insert:

12 (ea) if he or she paid, in relation to his or her current period of
13 registration, the charge payable under regulation 5 of the
14 *Migration Agents Registration Application Charge*
15 *Regulations 1998*—he or she begins to give immigration
16 assistance:

- 17 (i) on a commercial, or for-profit, basis; or
18 (ii) as a member of, or a person associated with, an
19 organisation that operates on a commercial, or
20 for-profit, basis;

21 **147 After paragraph 312(1)(f)**

22 Insert:

23 (fa) he or she becomes a member of a partnership and will give
24 immigration assistance in that capacity;

25 **148 At the end of section 312**

26 Add:

27 (3) The day on which the event mentioned in paragraph (1)(ea) occurs
28 is to be worked out in accordance with the *Migration Agents*
29 *Registration Application Charge Regulations 1998*.

30 **149 After section 312**

1 Omit “an assisted person”, substitute “another person (the *assisted*
2 *person*)”.

3 **153 Paragraph 313(3)(a)**

4 After “registered”, insert “migration”.

5 **154 Paragraph 313(3)(c)**

6 Omit “28 days after a final decision is made about the visa application,
7 cancellation review application, nomination or sponsorship that the
8 immigration assistance related to”, substitute “the period worked out in
9 accordance with the regulations”.

10 **155 Subsection 314(2)**

11 After “registered”, insert “migration”.

12 **156 Subsection 316(1)**

13 After “registered” (wherever occurring), insert “migration”.

14 **157 Subsection 316(1A)**

15 After “registered”, insert “migration”.

16 **158 Subsection 316(1B)**

17 After “registered” (wherever occurring), insert “migration”.

18 **159 Section 318**

19 After “registered”, insert “migration”.

20 **160 Subsection 319(1)**

21 After “registered” (wherever occurring), insert “migration”.

22 **161 Subsection 319(2)**

23 After “registered”, insert “migration”.

24 Note: The heading to subsection 319(2) is altered by inserting “*migration*” after “*registered*”.

25 **162 Subsection 319(2) (note)**

26 After “registered” (wherever occurring), insert “migration”.

27 **163 Subsection 319(3)**

28 After “registered”, insert “migration”.

1 Note: The heading to subsection 319(3) is altered by inserting “*migration*” after “*registered*”.

2 **164 Subsection 319(3) (note)**

3 After “registered” (wherever occurring), insert “migration”.

4 **165 After section 319**

5 Insert:

6 **319A Institute may delegate powers and functions**

- 7 (1) While the Institute is appointed under section 315, the Institute
8 may, by writing, delegate any or all of the Migration Agents
9 Registration Authority’s functions or powers under this Part to:
- 10 (a) a committee of the Institute; or
 - 11 (b) an officer of the Institute; or
 - 12 (c) an employee of the Institute.

13 *Directions*

- 14 (2) In performing a delegated function or exercising a delegated
15 power, a delegate must comply with any written directions given
16 by the Institute.

17 *How committee to perform function or exercise power*

- 18 (3) A function or power so delegated to a committee may be
19 performed or exercised by a majority of the members of the
20 committee and may not otherwise be performed or exercised under
21 the delegation.

22 Note: The heading to section 320 is altered by omitting “**Delegation of**” and substituting
23 “**Minister may delegate**”.

24 **166 After section 321**

25 Insert:

26 **321A Disclosure of personal information by the Migration Agents**
27 **Registration Authority**

- 28 (1) The Migration Agents Registration Authority may disclose
29 personal information about a registered migration agent, or an
30 inactive migration agent, to any of the following (the *recipient*):

- 1 (a) the Secretary or an authorised officer;
2 (b) a review authority.
- 3 (2) However, the Authority may do so only in the prescribed
4 circumstances.
- 5 (3) The regulations may prescribe circumstances in which the recipient
6 may use or disclose personal information disclosed under
7 subsection (1).
- 8 (4) In this section:
- 9 *inactive migration agent* has the meaning given by section 306B.
10 *personal information* has the same meaning as in the *Privacy Act*
11 *1988*.

12 **167 Division 6A of Part 3 (heading)**

13 Repeal the heading, substitute:

14 **Division 6A—Registration application fees and registration**
15 **status charges**

16 **168 Section 332A**

17 Repeal the section, substitute:

18 **332A Collection of registration status charge**

19 *When charge due and payable*

- 20 (1) Registration status charge is due and payable at the time worked
21 out in accordance with a written determination made by the
22 Migration Agents Registration Authority.

23 *Disallowable instrument*

- 24 (2) A determination under subsection (1) is a disallowable instrument
25 for the purposes of section 46A of the *Acts Interpretation Act 1901*.

1 *Recovery of charge*

- 2 (3) Registration status charge that has become due for payment may be
3 recovered by the Migration Agents Registration Authority, on
4 behalf of the Commonwealth, as a debt due to the Commonwealth.

5 **169 After subsection 332B(1)**

6 Insert:

- 7 (1A) There is payable to the Institute out of the Consolidated Revenue
8 Fund an amount equal to the sum of registration status charges
9 collected (including amounts recovered under section 332A) while
10 an instrument under section 315 appointing the Institute is in force.

11 **170 At the end of Part 3**

12 Add:

13 **Division 7—Other things**

14 **332C Removing disciplinary details—registered migration agents**

- 15 (1) The Migration Agents Registration Authority must remove any of
16 the following details that are made available by electronic means
17 under this Part:
18 (a) any statement relating to the cancellation or suspension of a
19 registered migration agent’s registration;
20 (b) any statement about the cautioning of such an agent.

21 *Time for removal*

- 22 (2) The Authority must remove the details within the period worked
23 out in accordance with the regulations.
24 (3) The regulations may prescribe different periods in relation to
25 details about cancellations, suspensions or cautions.

26 **332D Removing disciplinary details—former registered migration
27 agents**

- 28 (1) The Migration Agents Registration Authority must remove any
29 statement that is made available by electronic means under
30 section 311C or 311P.

- 1 (2) The Authority must remove the statement within the period worked
2 out in accordance with the regulations.

3 **332E Protection from civil proceedings**

4 *Complaints about registered migration agents*

- 5 (1) No action or other proceeding for damages lies against a person in
6 respect of loss, damage or injury of any kind suffered by another
7 person because of any of the following acts done in good faith:
8 (a) the making of a complaint to the Migration Agents
9 Registration Authority in relation to the provision of
10 immigration assistance by a registered migration agent;
11 (b) the making of a statement to, or the giving of a document or
12 information to, the Authority in connection with the
13 investigation of such a complaint.

14 *Complaints about persons who are not registered migration agents*

- 15 (2) No action or other proceeding for damages lies against a person in
16 respect of loss, damage or injury of any kind suffered by another
17 person because of any of the following acts done in good faith:
18 (a) the making of a complaint to the Department in relation to
19 the provision of immigration assistance by a person who is
20 not a registered migration agent;
21 (b) the making of a statement to, or the giving of a document or
22 information to, the Department in connection with the
23 investigation of such a complaint;
24 (c) the investigation of such a complaint.

25 *Institute etc.*

- 26 (3) The Institute, or an officer or employee of the Institute, is not liable
27 to an action or other proceeding for damages for or in relation to
28 any of the following acts done in good faith:
29 (a) the performance or purported performance of any function
30 conferred on the Migration Agents Registration Authority
31 under this Part;
32 (b) the exercise or purported exercise of any power conferred on
33 the Authority under this Part.

1 *Commonwealth etc.*

2 (4) None of the following:

3 (a) the Commonwealth;

4 (b) the Minister;

5 (c) an officer;

6 (d) any other person;

7 is liable to an action or other proceeding for damages for or in
8 relation to any of the following acts done in good faith:

9 (e) the performance or purported performance of any function
10 conferred on the Minister under this Part;

11 (f) the exercise or purported exercise of any power conferred on
12 the Minister under this Part.

13 **332F Disclosure of personal information by the Secretary**

14 (1) The Secretary may disclose personal information about a registered
15 migration agent, or an inactive migration agent, to a review
16 authority.

17 (2) However, the Secretary may do so only in the prescribed
18 circumstances.

19 (3) The regulations may prescribe circumstances in which the review
20 authority may use or disclose personal information disclosed under
21 subsection (1).

22 (4) In this section:

23 *inactive migration agent* has the meaning given by section 306B.

24 *personal information* has the same meaning as in the *Privacy Act*
25 1988.

26 **332G Disclosure of personal information by a review authority**

27 *Discretionary disclosure*

28 (1) A review authority may disclose personal information about a
29 registered migration agent, or an inactive migration agent, to the
30 Secretary or an authorised officer.

1 (2) However, a review authority may do so only in the prescribed
2 circumstances.

3 (3) The regulations may prescribe circumstances in which the
4 Secretary or authorised officer may use or disclose personal
5 information disclosed under subsection (1).

6 *Mandatory disclosure*

7 (4) If a registered migration agent notifies a review authority that the
8 agent has given immigration assistance to a person in respect of a
9 review application made by the person, the review authority must
10 notify the Department, in accordance with the regulations, that the
11 agent has given immigration assistance to the person in respect of
12 the review application.

13 *Definitions*

14 (5) In this section:

15 *inactive migration agent* has the meaning given by section 306B.

16 *personal information* has the same meaning as in the *Privacy Act*
17 *1988*.

18 *review application* means an application for review by a review
19 authority of a decision to refuse to grant a person a visa.

20 **332H Giving of notices under this Part**

- 21 (1) If a provision of this Part requires or permits the Migration Agents
22 Registration Authority to give a notice to a person (the *recipient*):
23 (a) the Authority must give the notice to the recipient by 1 of the
24 4 methods set out in the following table; and
25 (b) the time at which the recipient is taken to have been given the
26 notice is the time set out in the table.

27

Giving of notices under this Part

Item	Methods of giving notices	Timing rule
1	Handing the notice to the recipient	When it is handed to the recipient

Giving of notices under this Part

Item	Methods of giving notices	Timing rule
2	Handing the notice to another person who: <ul style="list-style-type: none"> (a) is at the last residential or business address provided to the Authority by the recipient for the purposes of receiving notices; and (b) appears to live there (in the case of a residential address) or work there (in the case of a business address); and (c) appears to be at least 16 years of age 	When it is handed to the other person
3	Dating the notice, and then dispatching it: <ul style="list-style-type: none"> (a) within 3 working days (in the place of dispatch) of the date of the notice; and (b) by prepaid post or by other prepaid means; and (c) to: <ul style="list-style-type: none"> (i) the last address for service provided to the Authority by the recipient for the purposes of receiving notices; or (ii) the last residential or business address provided to the Authority by the recipient for the purposes of receiving notices 	<ul style="list-style-type: none"> (a) if the notice was dispatched from a place in Australia to an address in Australia—7 working days (in the place of that address) after the date of the notice; or (b) in any other case—21 days after the date of the notice
4	Transmitting the notice by: <ul style="list-style-type: none"> (a) fax; or (b) e-mail; or (c) other electronic means; to the last fax number, e-mail address or other electronic address, as the case may be, provided to the Authority by the recipient for the purposes of receiving notices	At the end of the day on which the notice is transmitted

Schedule 1 Amendments

Part 1 Amendments

1 (2) This section has effect despite any provision in the *Electronic*
2 *Transactions Act 1999*.

3 **171 After paragraph 504(1)(j)**

4 Insert:

5 (ja) enabling a person who is alleged to have committed an
6 offence against subsection 280(1) to pay to the
7 Commonwealth, as an alternative to prosecution, a penalty of
8 12 penalty units; and

1

2 **Part 2—Application and transitional provisions**

3 **172 Application—relation by employment**

4 The amendments made by items 9 and 10 apply in relation to the
5 consideration of registration applications made after the commencement
6 of those items (regardless of whether the engagements occurred before
7 or after that commencement).

8 **173 Application—infringement notices**

9 The amendments made by items 13 and 171 apply in relation to all
10 offences (whether alleged to have been committed before or after those
11 items commence) in respect of which no penalty has been imposed at
12 the time of that commencement.

13 **174 Application—removal of disciplinary details**

14 The amendment made by item 39 applies in relation to details entered
15 on the Register either before or after the commencement of that item.

16 **175 Transitional—removal of disciplinary details**

- 17 (1) This item applies in relation to:
- 18 (a) particulars of a caution given to a registered migration agent
19 that had been on the Register for at least 12 months before
20 the commencement of this item; and
- 21 (b) particulars of a suspension of a registered migration agent’s
22 registration that had been on the Register for at least 5 years
23 before the commencement of this item.
- 24 (2) The Migration Agents Registration Authority must remove the
25 particulars from the Register within 28 days after the commencement of
26 this item.

27 **176 Application—withdrawal of applications**

28 Subsection 288(7) of the *Migration Act 1958*, as inserted by item 40,
29 applies in relation to registration applications made either before or after
30 the commencement of that item.

31 **177 Application—statutory declarations and answering of**
32 **questions**

1 Section 288B of the *Migration Act 1958*, as inserted by item 40, applies
2 in relation to registration applications made after the commencement of
3 that item.

4 **178 Application—registration requirements**

5 The amendments made by items 47 and 48 apply in relation to
6 registration applications made after the commencement of those items
7 (regardless of whether the previous registration occurred before or after
8 that commencement).

9 **179 Application—disciplinary action**

10 The amendments made by items 49 and 50 apply in relation to the
11 consideration of registration applications made either before or after the
12 commencement of those items (regardless of whether the disciplinary
13 action occurred before or after that commencement).

14 **180 Application—cautions**

15 The amendment made by item 71 applies in relation to cautions given
16 after the commencement of that item.

17 **181 Application—disciplinary decisions**

18 The amendments made by items 72, 74 and 137 apply in relation to
19 decisions made after the commencement of those items.

20 **182 Application—informing clients about disciplinary
21 decisions**

22 Section 305B of the *Migration Act 1958*, as inserted by item 73, applies
23 in relation to decisions made either before or after the commencement
24 of that item.

25 **183 Application—high visa refusal rates**

26 The amendments made by items 75 and 142 apply in relation to
27 applications for visas, or applications for review, made after the
28 commencement of those items.

29 **184 Application—production of documents**

30 The amendments made by items 104, 108, 109, 112, 113, 116, 117, 119,
31 121 and 125 apply in relation to documents created either before or after
32 the commencement of those items.

