



Migration Agents (IMMI 17/047: CPD Activities, Approval of CPD Providers and CPD Provider Standards) Instrument 2017

I, Alex Hawke, Assistant Minister for Immigration and Border Protection, make the following Instrument.

Dated 19 September 2017

Alex Hawke
THE HON ALEX HAWKE MP
Assistant Minister for Immigration and Border Protection

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Part 1 – Preliminary

1 Name

- (1) This instrument is the *Migration Agents (IMMI 17/047: CPD Activities, Approval of CPD Providers and CPD Provider Standards) Instrument 2017*.
- (2) This instrument may be cited as IMMI 17/047.

2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Part 1 and 2 and anything in this instrument not elsewhere covered by this table	1 October 2017	
2. Schedule 1 and Schedule 2	1 October 2017	
3. Schedule 3	1 January 2018	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the following provisions of the Regulations:

- (a) regulation 3AA;
- (b) paragraph 6(2)(c);
- (c) regulation 9F;
- (d) paragraph 9G(1)(c);
- (e) regulation 9J;
- (f) paragraph 9K(1)(c);
- (g) subregulation 9M(2);
- (h) subregulation 9Q(2);
- (i) clause 7A of Schedule 1.

4 Definitions

Note: A number of expressions used in this instrument are defined in the *Migration Act 1958* or the definitions section of the Regulations, including the following:

- (a) CPD activity;
- (b) CPD provider;
- (c) CPD provider standards;
- (d) registered migration agent.

In this instrument:

Regulations means the *Migration Agents Regulations 1998*.

OMARA means the Office of the Migration Agents Registration Authority.

5 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Part 2 – Matters relating to CPD activities

6 Matters relating to CPD activities

- (1) For the purposes of the definition of CPD activity in subregulation 3(1) of the Regulations, the following matters are specified in Schedule 1 to this instrument for each item:
 - (a) activities (Column 1);
 - (b) the conditions for the conduct of each activity (Column 2);
 - (c) the points that each activity is worth (Column 3).
- (2) For the purposes of the definition of CPD activity in subregulation 3(1) of the Regulations, the activities in Column 1 of Schedule 1 to this instrument must relate to one or more of the following specified topics:
 - (a) the *Migration Act 1958*;
 - (b) the Regulations;
 - (c) other legislation relating to migration procedure;
 - (d) portfolio policies and procedures;
 - (e) the application of paragraphs (a), (b), (c) or (d) to the registered migration agent's practice;
 - (f) a topic of a legal or business nature that is relevant to a registered migration agent's practice as a registered migration agent;
 - (g) a topic relating to the ethical standards for migration agents, or relating to the Code of Conduct at Schedule 2 to the Regulations.

Note: The definition of CPD activity in subregulation 3(1) of the Regulations requires that a CPD activity be conducted by a CPD Provider.

7 Mandatory activities and minimum number of points for mandatory activities

- (1) For the purposes of the definition of CPD activity in subregulation 3(1) of the Regulations, the activities mentioned for each item in column 1, and the minimum number of points for each activity in column 2, are specified as mandatory for an applicant described in column 3 of the following table:

Item	Column 1 Mandatory activities	Column 2 Minimum number of points for mandatory activities	Column 3 Applicants for which the activity is mandatory
1	The Practice Ready Programme mentioned in column 1 of Schedule 1 to this instrument.	10 points	An applicant who has applied for repeat registration as a migration agent within 12 months of being registered as a migration agent for the first time (“a <i>first year migration agent</i> ”) and who: <ul style="list-style-type: none"> (a) was registered as a migration agent on the basis of obtaining a Graduate Certificate in Australian Migration Law and Practice; and (b) does not hold an Australian legal practicing certificate at the time of application.
2	Any of the activities in column 1 of Schedule 1 to this instrument which are marked as Category A activities.	5 points	An applicant for repeat registration as a migration agent, except an applicant who: <ul style="list-style-type: none"> (a) is a first year migration agent who is required to complete the Practice Ready Programme as a mandatory activity; or (b) holds an Australian legal practicing certificate at the time of application.
3	Any CPD activity (whether marked as a Category A or Category B activity in column 1 of Schedule 1 to this instrument) relating to the topic of ethics, or the Code of Conduct at Schedule 2 to the Regulations.	1 point	An applicant for repeat registration as a migration agent, except an applicant who: <ul style="list-style-type: none"> (a) is a first year migration agent who is required to complete the Practice Ready Programme as a mandatory activity; or (b) holds an Australian legal practicing certificate at the time of application.

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8 Application for approval as CPD provider

For the purposes of paragraph 9M(2)(b) of the Regulations, the application for approval as a CPD provider must be accompanied by a fee of \$1240.

9 CPD provider standards

For the purposes of subregulation 9Q(2), the standards to be complied with by CPD providers are specified in Schedule 2 to this instrument.

Schedule 1 – Matters relating to CPD activities

Item	Column 1 Activities	Column 2 Conditions for the conduct of activities	Column 3 Points that activities are worth
1	<u>Category A:</u> A workshop.	The workshop must be: (a) conducted in real time by a facilitator either face-to-face or online; (b) interactive; and (c) have a maximum of 30 participants.	1 point per hour of participation in the workshop.
2	<u>Category A:</u> A unit in a course relating to Australian migration law at the Australian Qualification Framework (AQF) level 8 or above (<i>Programme of Education</i>).		5 points per unit in the Programme of Education which is successfully completed.
3	<u>Category A:</u> Practice Ready Programme.	The Practice Ready Programme must: (a) be practical and interactive; (b) include assessment tasks; (c) include 30 hours of tuition in addition to the time spent on assessment tasks; (d) have a maximum of 30 participants per class; and (e) assess all of the Occupational Competency Standards for Migration Agents dated September 2016.	10 points for successful completion of the Practice Ready Programme.
4	<u>Category B:</u> A conference, seminar or lecture.	The conference, seminar or lecture must be conducted in real time by a facilitator either face-to-face or online.	1 point per 1.5 hours of participation in the conference, seminar or lecture.
5	<u>Category B:</u> Private study with assessment.	The private study must include an assessment.	1 point per 1.5 hours spent on completing private study (including an assessment), where the private study results in successful completion of the assessment.

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Schedule 2 – CPD provider standards

1. Delivery of CPD activities – learning and assessment

- 1.1 A CPD provider must only deliver a CPD activity if the CPD activity complies with the Regulations.
- 1.2 A CPD provider must only report registered migration agents as having completed a CPD activity if the CPD activity complies with the Regulations.
- 1.3 A CPD provider must commence delivering CPD activities within six months of approval as a CPD provider. A CPD provider must not cease to deliver CPD activities for a period of 12 months or more.

Note: A CPD provider may request the Minister in writing to cancel their approval as a CPD provider if they no longer intend to deliver CPD activities.

- 1.4 The content of a CPD activity must be consistent with the Code of Conduct for registered migration agents at Schedule 2 to the Regulations and the ethical standards expected within the migration advice profession. Material is to be presented in a respectful and professional way.
- 1.5 A CPD activity must be:
- directly related to one or more of the Occupational Competency Standards for migration agents issued by the OMARA and dated September 2016;
 - of significant intellectual and practical content;
 - delivered in a professional level of English;
 - current and accurate; and
 - designed to improve the knowledge, skills and professionalism of registered migration agent participants in the CPD activity.
- 1.6 A CPD provider must utilise a suitable physical learning environment for the delivery of face-to-face activities. Such an environment must:
- be quiet without external competing noise; and
 - provide adequate seating, lighting and ventilation and a comfortable room temperature.
- 1.7 Where a CPD activity is conducted by distance learning, the CPD provider must have suitable policies and administrative arrangements in relation to support and monitoring of distance learning participants.

2. Administration

- 2.1 A CPD provider must comply with relevant Commonwealth, State and Territory legislation and regulatory requirements in relation to, but not limited to:
- a. workplace, harassment and anti-discrimination;
 - b. privacy;
 - c. Australian consumer law;
 - d. consumer rights;
 - e. occupational health and safety; and
 - f. intellectual property.
- 2.2 A CPD provider must maintain current contact details with the OMARA.
- 2.3 A CPD provider must have suitable policies and administrative arrangements in relation to:
- a. learning and assessment;
 - b. evaluation and continuous improvement;
 - c. records management, reporting and privacy;
 - d. handling complaints; and
 - e. handling cancellations and refunds.
- 2.4 A CPD provider's policies and administrative arrangements for handling complaints must be fair and reasonable. The policies must be either published on the CPD provider's website or provided to participants at the time of enrolment.
- 2.5 A CPD provider's policies and administrative arrangements for handling cancellations and refunds must:
- a. be fair and reasonable;
 - b. include that fees paid in advance will be protected, enabling participants to obtain a full refund if the CPD activity is cancelled by the CPD provider; and
 - c. be published on the CPD provider's website or be provided to participants at the time of enrolment.

3. Personnel

- 3.1 A CPD provider must ensure that a CPD activity is prepared or presented by persons who are suitably qualified, whether formally or by experience, to conduct the CPD activity.
- 3.2 A CPD provider, and any person employed by, or providing services to or on behalf of, the CPD provider in relation to the conduct of CPD activities, is not to use the learning environment as a means of discouraging registered migration agents from cooperating with or working constructively with the Department, including the OMARA, or to bring the migration advice profession into disrepute.
- 3.3 A CPD provider must take all reasonable steps to avoid any conflict of interest (real or perceived) in connection with its dealings with the OMARA.

4. Marketing and Advertising

- 4.1 A CPD provider must ensure that the marketing and advertising of CPD activities is undertaken in a professional and lawful manner and maintains the integrity and reputation of CPD providers and the migration advice profession.
- 4.2 In marketing and other related material for participants, including when in electronic form, a CPD provider must:
- a. clearly identify the CPD provider's name;
 - b. include the duration and type of the CPD activity;
 - c. include the number of points that the CPD activity is worth; and
 - d. not give false or misleading information or advice in relation to the CPD activity or the CPD provider.
- 4.3 A CPD provider must advertise upcoming CPD activities on the OMARA website, utilising the Advertising Activities facility, which enables the electronic reporting of attendance.
- 4.4 If a CPD provider has a website, the CPD provider must ensure that any information published on the website regarding CPD activities is accurate and current. The CPD provider must also ensure that the information is consistent with any information provided through the Advertising Activities facility on the OMARA website.
- 4.5 A CPD provider must ensure the marketing and advertising of its activities and services complies with the *Spam Act 2003*, as amended from time to time. In particular, any commercial electronic messages must contain a functional unsubscribe facility.

5. Evaluation and Continuous Improvement

- 5.1 A CPD provider must have evaluation processes in place whereby participants, and presenters, facilitators and trainers, can provide feedback on each activity conducted. Feedback must be recorded, and retained for 2 years by the CPD provider.
- 5.2 A CPD provider must accommodate and cooperate with quality assurance processes conducted by the OMARA, including, but not limited to:
- a. providing access to OMARA staff to conduct evaluations of the delivery of a CPD activity; and
 - b. providing OMARA with any information or documentation requested regarding the CPD provider's CPD activities, and operations in relation to the conduct of CPD activities; and
 - c. participating in periodic reviews undertaken by the OMARA of compliance with the CPD provider standards specified in this Schedule.
- 5.3 A CPD provider must be able to demonstrate to the Minister that the CPD provider has suitable policies and administrative arrangements as required by paragraph 9P(1)(b) of the Regulations.
- 5.4 A CPD provider must conduct regular internal audits of their compliance with the CPD provider standards specified in this Schedule.
- 5.5 If OMARA informs a CPD provider of non-compliance with these standards, the CPD provider must implement remedial action required by the OMARA.

6. Records Management and Reporting

- 6.1 A CPD provider must keep the following kinds of records for a period of at least 2 years from the date the relevant CPD activity was delivered:
- a. feedback on the activity;
 - b. evidence that the participant completed the activity;
 - c. the learning and assessment materials which relate to the activity, and the dates those materials were used; and
 - d. electronic notifications sent to and from the OMARA for participants who have successfully completed the activity.
- 6.2 A CPD provider must electronically notify the OMARA of the successful completion of a CPD activity by a registered migration agent. The notification must be submitted via the OMARA website reporting facility within 14 days of the participant completing the CPD activity.
- 6.3 A CPD provider must have processes that:
- a. accurately identify participants and record their attendance; and
 - b. provide that a participant remains in attendance for the duration of the activity.

Schedule 3 – Repeals

Value of Activities, Fees for Assessments and Standards for Professional Development Activities 2015, IMMI 15/106

1 The whole of the instrument

Repeal the instrument.

Class of Persons, IMMI 13/153

2 The whole of the instrument

Repeal the instrument.