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# FAQs – removal of unrestricted legal practitioners from the Office of the Migration Agents Registration Authority (OMARA) regulatory scheme (information for lawyers)

## Holders of unrestricted legal practising certificates (ULPCs)

- 1. I understand there are new laws expected to commence on 22 March 2021 that affect holders of ULPCs – what will the impact of these laws be?**

The *Migration Amendment (Regulation of Migration Agents) Act 2020* (the new legislation) was passed by both Houses of Parliament on 15 June 2020. The new legislation will come into effect on 22 March 2021.

The new legislation will amend the *Migration Act 1958* to provide that ULPC holders will no longer be eligible to register as a migration agent. The new legislation will enable ULPC holders to give immigration assistance in the course of legal practice, which will remove dual regulation of ULPC holders.

The ULPC holders who are also registered migration agents (RMAs) will be removed from the Register of Migration Agents (the Register) by the OMARA on 22 March 2021.

- 2. I hold a ULPC and am currently also registered as a migration agent with a registration expiry date after commencement of the new legislation. What will happen to my registration on commencement?**

As the holder of a ULPC, you will be exempt from the requirement to register as a migration agent in order to give immigration assistance. Until the commencement of the new legislation, nothing will change in regard to your registration as a migration agent. On 22 March 2021, your name will no longer appear on the Register. You will be able to give immigration assistance in connection with legal practice without being registered as a migration agent.

- 3. I hold a ULPC and I am currently registered as an RMA with an expiry day before commencement of the new legislation. What will happen if I do not renew my current registration when it expires?**

If you do not submit an application for repeat registration before your current period of registration expires, you will no longer be registered and you will not be able to provide immigration assistance from the date your registration expires until the date the new legislation comes into effect.

Giving immigration assistance while not registered is an offence (if not exempt from registration under the *Migration Act 1958*). If you have current client matters before the Department of Home Affairs and you do not intend to apply for repeat registration, you will need to terminate your representation of your clients in accordance with Part 10 of the Code of Conduct.

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**4. Will there be a reduced application fee if I only need registration for less than a year?**

There are no provisions for reduced or pro rata registration application fees. Under the *Migration Agents Registration Application Charge Act 1997*, the charge paid when submitting a registration application is for the making of that application.

**5. I hold a ULPC and I have a registration application before the OMARA that has not as yet been decided. What will happen to my application if it is not decided before commencement of the new legislation?**

Where possible, the OMARA will decide all registration applications lodged by ULPC holders before commencement. Any registration applications made by ULPCs that remain undecided after commencement will be refused in accordance with the new legislation (section 333D of the *Migration Act 1958*).

**6. Will I receive a refund of my registration application fee, or part of my registration application fee, once the new legislation commences and I can no longer be registered?**

There is no legislative provision for the refund of the registration application charge. The registration application charge imposed by section 4 of the *Migration Agents Registration Application Charge Act 1997* is for the making of a registration application.

All registration applications by ULPC holders will be decided as soon as practicable. If the new legislation commences before the OMARA decides your application, you may withdraw your application, but you are not entitled to a refund of the registration application fee paid in relation to the application.

**7. I am aware that the OMARA is currently considering a complaint(s) against me. What will happen to the complaint(s) after commencement of the new legislation?**

The OMARA will forward any un-finalised complaints about ULPC holders to the relevant state or territory legal professional body for consideration and possible action.

After the new legislation commences, the OMARA will continue to have the power to refer the conduct of current and former RMAs who are also lawyers to state and territory law societies. Arrangements will be put in place that will assist the OMARA and legal professional bodies to share relevant information.

**8. I hold a ULPC but am currently the subject of an OMARA sanction (cancellation, suspension, caution or barring). From commencement of the new legislation, can I once again provide immigration assistance?**

When the new legislation commences, ULPC holders will be able to provide immigration assistance without being registered as a migration agent in accordance with the amended legislation.

Any disciplinary action by the OMARA in relation to ULPC holders will cease to have effect when the new legislation commences. However, the OMARA will share information about disciplinary actions and related misconduct of ULPC holders with the relevant state or territory legal professional bodies. Any subsequent action will be a matter for that body to consider.

**9. I hold a ULPC and my caution/suspension/cancellation/barring is published on the OMARA website. Will this be removed once holders of ULPCs are removed from OMARA regulation?**

Because ULPC holders will no longer be included on the Register, cautions and suspensions in relation to ULPC holders will no longer appear on the Register from 22 March 2021.

Importantly, statutory provisions governing the publication of disciplinary decisions have not been repealed. Therefore, statements about all disciplinary decisions (cautions, suspensions, cancellations and barrings) will continue to be published on the OMARA website in accordance with the relevant legislative provisions (regulations 7 and 7E of the *Migration Agents Regulations 1998*).

**10. If ULPC holders who have been disciplined by the OMARA are able to give immigration assistance again, how will consumers be protected?**

Although disciplinary actions taken by the OMARA in relation to ULPC holders will cease to have effect when the new legislation commences, the OMARA will inform the relevant state or territory legal professional body about the disciplinary action and the related misconduct. The relevant body, as the regulator of the legal profession in that state or territory, will make a decision about potential repercussions for the ULPC holders concerned.

The relevant state and territory legal professional bodies have a broader range of powers (underpinned by statutory schemes) to resolve consumer-related issues than the OMARA. This includes penalties outside the OMARA's jurisdiction, including financial penalties for improper conduct, and recommending compensation for affected clients.

The Senate Legal and Constitutional Affairs Legislation Committee, which ran a public inquiry into the new legislation between November 2019 and February 2020, stated that it is "confident that the legal profession in Australia is well regulated and offers effective consumer protection mechanisms, including for vulnerable consumers, such as those who seek migration assistance".

**11. If I pay the registration application fee, can I choose to remain registered as a migration agent and be displayed on the OMARA register?**

From 22 March 2021, the OMARA will be prevented by law from registering ULPC holders as migration agents. Any RMA who is also a ULPC holder at the time the amended legislation commences will be removed from the Register.

**12. Why are ULPC holders prevented from being registered?**

The new legislation implements Recommendation 1 of the 2014 *Independent Review of the Migration Agents Registration Authority* (the Review). The Review found that legal practitioners are already subject to a strict professional regulatory regime, and recommended that ULPC holders be entirely regulated by relevant state and territory legal professional bodies, to avoid dual regulation. The Review report is available on the [Department's website](#).

**13. From 22 March 2021, ULPC holders will be able to provide immigration assistance in connection with legal practice. What is the meaning of 'in connection with legal practice'?**

The Senate Legal and Constitutional Affairs Legislation Committee explained that the meaning of 'in connection with legal practice' is 'not about identifying a specific organisational structure, and instead it relates to referring legal practitioners to the legal regulatory rules of the relevant state and territory legal professional bodies'. Questions of whether immigration assistance given by the holder of an Australian legal practicing certificate has been given in connection with legal practice will be a matter for the relevant legal regulatory authorities in each state and territory.

## **Holders of restricted legal practising certificates (RLPCs)**

**14. I'm an RLPC holder – can I continue to be registered with the OMARA after the new legislation commences?**

Yes. The registration status of RLPC holders who are also RMAs will not be immediately affected by the commencement of the new legislation. Holders of RLPCs who are also RMAs on commencement of the new legislation can continue to be registered with the OMARA for a period of two years from commencement of the legislation (which may be extended, see Q17 – Q19), or until the legal practitioner attains an unrestricted legal practising certificate. Under the new legislation, this period is called their “eligible period”. The “eligible period” for RLPC holders who are not RMAs immediately before commencement is the period of 2 years after a person first held a RLPC.

**15. Do I need to do anything to ensure my registration continues after the commencement of the new legislation?**

No. If you are a RLPC holder and also an RMA, your registration will continue after commencement until its expiry date. If you wish to maintain your registration as a migration agent beyond your current expiry date, and are still holding a RLPC, you will need to submit a repeat registration application as per current arrangements.

**16. Can I apply to extend the two-year period when I am allowed to be registered as an RMA (eligible period)?**

You can apply to the OMARA for an extension of your eligible period for a further period of up to two years.

**17. How do I apply for an extension of my eligible period?**

Applications to extend the eligible period must be made on an approved form and submitted at least three months before the end of the eligible period. Information about this process will be made available on the OMARA's website closer to the commencement date of the new legislation. You may apply to extend your eligible period whether or not you are an RMA at the time of your extension application. You may not make more than one application for an extension of your eligible period.

**18. What criteria do I need to meet to be granted an extension to the eligible period?**

The OMARA may extend the eligible period for up to two years, only if the OMARA considers it reasonable to do so in the circumstances. Further information about the circumstances in which the OMARA may exercise this discretion will be published when available.

**19. I am the holder of a RLPC but have never been registered as a migration agent. Can I be registered as a migration agent after the new legislation commences?**

If you are already a RLPC holder, you can be registered as a migration agent during the two year eligible period from 22 March 2021, if you satisfy the relevant registration criteria. If you obtain a RLPC after 22 March 2021, your eligible period starts on the day you obtain a RLPC.

If you apply for initial registration as a migration agent after the commencement of the new legislation, you will need to also complete the prescribed course (the Graduate Diploma in Australian Migration Law and Practice) and the prescribed exam (the Capstone). A legal practising certificate will no longer be a prescribed qualification.

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Further information about registration requirements is available on the OMARA website. Your migration agent registration will cease at the end of your eligible period, or once you obtain an unrestricted practising certificate, whichever happens sooner.

**20. As the holder of an RLPC, will I need to meet Continuing Professional Development (CPD) requirements for RMAs if I continue to be registered?**

The OMARA will continue to award 10 CPD points to RMA/RLPC holders when they update their legal practising certificates. No further CPD is required for RLPC holders prior to applying for repeat registration as an RMA.

**21. Will RLPC holders need to hold Professional Indemnity Insurance (PII) to be registered?**

Yes. To maintain registration as a migration agent, holders of RLPCs will need to meet the PII requirements that apply to all RMAs.

**22. I hold an RLPC and I work for a law firm – do I need to be registered as a migration agent to give immigration assistance?**

If you are being supervised by a ULPC holder, you can provide immigration assistance without being registered as an RMA. Please note that holders of RLPCs must comply with the conditions attached to their legal practising certificate, including supervision conditions, to give immigration assistance lawfully. If you require more information about the conditions attached to your legal practising certificate, please refer to your state or territory legal professional body.

**23. I'm an RLPC holder working in a law firm and I do not want to be registered as a migration agent after the new legislation commences. Do I need to take steps to end my registration?**

Yes. Registration as a migration agent of RLPC holders will not cease on commencement of the new legislation. Any RMA who wishes to cease their registration may request OMARA to remove their name from the Register in accordance with section 302 of the *Migration Act 1958*.

**24. I am a law student in the final year of my degree. I expect to qualify for a RLPC for the first time after commencement of the new legislation. I have never been registered as a migration agent. Will I be able to apply for registration as a migration agent once I hold a RLPC?**

Yes. Individuals who are admitted to legal practice and obtain a RLPC after commencement of the new legislation will have an eligible period of two years in which they can be registered as a migration agent.

In these circumstances, the eligible period is the period of 2 years after the person first held an RLPC. RLPC holders seeking registration as a migration agent must meet all of the legislative requirements for registration, including having completed the prescribed course (the Graduate Diploma in Australian Migration Law and Practice) and having passed the prescribed exam (the Capstone).

**25. Does an RMA need to notify the OMARA once they become a RLPC holder?**

Yes, an RMA must notify the OMARA within 28 days after obtaining a RLPC. A failure to notify the OMARA within this period may result in a penalty of up to 100 penalty units.

**26. Does an RMA who is also a RLPC need to notify the OMARA once they obtain an ULPC?**

Yes, an RMA who also holds an RLPC must notify the OMARA within 28 days after obtaining a ULPC. That person will then be removed from the Register, per the new legislation.

A failure to notify the OMARA within this period may result in a penalty of up to 100 penalty units.

**27. What does a RLPC mean for the purposes of the new legislation?**

For the purposes of the new legislation, a RLPC is a practising certificate held by an Australian legal practitioner that is subject to a condition requiring the practitioner to undertake supervised legal practice for a specified period, where that condition was not imposed as a disciplinary measure by an authority responsible for disciplining Australian legal practitioners in a state or territory.