

IS302

Settlement Agents Act 1981

Settlement Agents Amendment Regulations 2020

SL 2020/259

Made by the Governor in Executive Council.

1. Citation

These regulations are the *Settlement Agents Amendment Regulations 2020*.

2. Commencement

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on 1 January 2021.

3. Regulations amended

These regulations amend the *Settlement Agents Regulations 1982*.

4. Regulation 2 amended

- (1) In regulation 2 delete the definitions of:
approved educational activity
core professional development subject points

- (2) In regulation 2 insert in alphabetical order:

approved educational activity, for a calendar year, means an educational activity approved for the year under regulation 4D;

core professional development subject, for a calendar year, means a professional development subject that the Commissioner approves as a core professional development subject for the year under regulation 4D(1)(a)(i);

educational activity —

- (a) means an activity that relates to a professional development subject that is —
- (i) delivered in person, electronically or by audio or audiovisual means; or
 - (ii) a recording;
- and
- (b) includes —
- (i) a course of study; and
 - (ii) the successful completion of any assessment required by the activity;

point value, in relation to an approved educational activity, means the point value approved for the activity by the Commissioner under regulation 4D(3)(a);

professional development subject means a subject listed in Schedule 1A;

5. Regulation 4A amended

Delete regulation 4A(2) and insert:

- (2) The holding fee is payable —
- (a) on or before the day that is 60 days after the day on which a licensee ceases to hold a current triennial certificate in respect of their licence; and
 - (b) subsequently at 3-year intervals on or before the day in that year that is 30 days after the anniversary of the day on which the licensee pays the holding fee under paragraph (a).

6. Regulations 4B and 4C replaced

Delete regulations 4B and 4C and insert:

4B. Educational requirements (Act s. 41B)

- (1) For the purposes of section 41B of the Act, the prescribed educational requirements for a calendar year for a licensee who is an individual are that the licensee complete approved educational activities for the calendar year that —
 - (a) have a combined point value of at least 6 points; and
 - (b) include at least 2 activities that relate to 2 of the core professional development subjects for the calendar year.
- (2) A licensee is taken to have complied with subregulation (1) for a calendar year if —
 - (a) both of the following apply —
 - (i) the licensee's licence is granted between 1 October and 31 December of the calendar year;
 - (ii) the licensee completed a prescribed examination for the grant of the licence in the 12 months immediately before the day on which the licence is granted;
 - or
 - (b) both of the following apply —
 - (i) the Commissioner grants the licensee an exemption under regulation 4C from all or part of the educational requirements for the calendar year;
 - (ii) the licensee complies with the requirements of the exemption.
- (3) If a licensee commences an educational activity in a calendar year before the Commissioner's approval of the activity as an approved educational activity under regulation 4D, the licensee is taken not to have completed the activity for the purposes of subregulation (1).

4C. Exemption from educational requirements

- (1) A licensee (the *applicant*) may apply to the Commissioner for a total or partial exemption from the educational requirements under regulation 4B(1) for a calendar year.

- (2) The application for the exemption must —
 - (a) be made in the calendar year to which the application relates; and
 - (b) set out in sufficient detail —
 - (i) the exemption applied for, including whether the application is for a total or partial exemption; and
 - (ii) the basis upon which the exemption is being sought;
 - and
 - (c) otherwise be in the approved form.
- (3) The Commissioner may grant the applicant the exemption if the Commissioner considers it appropriate to do so.
- (4) Without limiting subregulation (3), the Commissioner may grant the applicant the exemption if, during the calendar year to which the application relates, the applicant —
 - (a) has a disability or is affected by illness or injury; or
 - (b) has undertaken other educational or professional activities; or
 - (c) would suffer undue hardship if required to comply with the educational requirements.
- (5) The Commissioner may grant the exemption subject to conditions.
- (6) The Commissioner must give the applicant a notice in writing setting out —
 - (a) the Commissioner's decision on the application; and
 - (b) if the decision is to grant the exemption —
 - (i) whether the exemption is a total or partial exemption; and
 - (ii) if the exemption is a partial exemption — the educational requirements the applicant must comply with; and
 - (iii) any conditions to which the exemption is subject.

4D. Commissioner to approve educational activities

- (1) Before 1 January of a calendar year, the Commissioner —
 - (a) must, by written notice —
 - (i) approve 4 professional development subjects as core professional development subjects for the year; and
 - (ii) approve 1 or more educational activities in respect of each core professional development subject for the year;and
 - (b) may, by written notice, approve 1 or more educational activities for the year in respect of any other professional development subject.
- (2) After 1 January of a calendar year, the Commissioner may, by written notice, approve for the year an educational activity as an approved educational activity for the year in respect of a professional development subject.
- (3) The Commissioner must —
 - (a) approve a point value for undertaking each approved educational activity; and
 - (b) ensure that the approved educational activities approved under subregulation (1) for each licensee have a combined point value of at least 6 points.
- (4) The Commissioner may approve —
 - (a) an approved educational activity for particular licensees or particular classes of licensees; and
 - (b) a different point value for an approved CPD activity for particular licensees or particular classes of licensees; and
 - (c) different core professional development subjects for particular licensees or particular classes of licensees.
- (5) A written notice made under this regulation must —
 - (a) set out the point value for undertaking each activity; and
 - (b) be published on a website maintained by the Commissioner; and
 - (c) specify the date on which the notice takes effect (which must not be a date earlier than the day on which the notice is published).

4E. Commissioner to publish details of approved educational activities on website

The Commissioner must maintain, on a website maintained by the Commissioner, a list of—

- (a) the 4 core professional development subjects for a calendar year; and
- (b) approved educational activities for a calendar year, including —
 - (i) the approved educational activities for licensees for the year; and
 - (ii) the professional development subject to which each approved educational activity relates, and whether that subject is a core professional development subject; and
 - (iii) the point value for each approved educational activity for licensees for the year.

7. Regulation 15 amended

After regulation 15(2A) insert:

- (2B) An offence under section 41B of the Act is an offence for which an infringement notice may be issued under the *Criminal Procedure Act 2004* Part 2.

8. Regulation 18 inserted

After regulation 17 insert:

18. Transitional regulation for *Settlement Agents Amendment Regulations 2020*

- (1) In this regulation —
 - commencement day* means the day on which the *Settlement Agents Amendment Regulations 2020* regulation 8 comes into operation;
 - former regulation 4C* means regulation 4C as in force immediately before commencement day.
- (2) An approval of core professional development subjects, educational activities and points for 2020 made under former regulation 4C is taken, on and from commencement day, to be an approval of core professional development subjects, educational activities and points values made under regulation 4D for 2020.

9. Schedule 1A amended

Delete the reference after the heading to Schedule 1A and insert:

[r. 2]

10. Schedule 5 amended

At the end of Schedule 5 insert:

Part 3 — Other offence

<i>Provision of the Settlement Agents Act 1981</i>	Modified Penalty
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s. 41B	\$1 000
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11. Schedule 6 Form 1 amended

In Schedule 6 Form 1 delete “Department of Commerce — Consumer Protection” (each occurrence) and insert:

Department of Mines, Industry Regulation and Safety — Consumer Protection Division

12. Schedule 6 Form 2 amended

In Schedule 6 Form 2 delete “Department of Commerce — Consumer Protection” and insert:

Department of Mines, Industry Regulation and Safety — Consumer Protection Division

N. HAGLEY, Clerk of the Executive Council.
