

27 April 2018

Committee Secretary
Joint Standing Committee on Migration
PO Box 6021
Parliament House
Canberra ACT 2600

by electronic transmission

EFFICACY OF CURRENT REGULATION OF AUSTRALIAN MIGRATION AGENTS

- [1] Thank you for the opportunity to provide my opinion and recommendations to the Committee.
- [2] I am a Registered Migration Agent and hold a Queensland Restricted Legal Practising Certificate.
- [3] I have been active as a Registered Migration Agent for more than five years.
- [4] I am also a Legal Educator. I teach in the *Graduate Diploma of Australian Migration Law* with one of the Universities that offer that program.
- [5] My opinions and recommendations are my own.

The Registration and Regulation of Migration Agents in Australia

Recommendation #1: Registered Migration Agents should be regulated by the same body that regulates legal practitioners in their State or Territory

- [6] Registered Migration Agents perform professional services of a legal nature.
- [7] The Australian legal profession is regulated by bodies that operate at the State / Territory level. These bodies provide the same sort of functions as the Office of the MARA.
- [8] Legal professional bodies would be the most appropriate regulator for the migration advice profession. The existing disciplinary and regulatory processes for legal practising certificate holders could readily expand to registered migration agents.
- [9] The fees paid by registered migration agents would go to the relevant professional body. The money should cover the incremental costs to the body.
- [10] The fees paid by registered migration agents should be commensurate with the fees paid by legal practitioners in that jurisdiction.
- [11] A registered migration agent would not be admitted to the legal profession with the same 'standing' as a solicitor or barrister. They would be recognised as highly-educated professionals that are subject to the same ethical obligations as legal practising certificate holders.
- [12] An advantage of moving the regulation to the professional legal bodies is that the problems caused by "dual regulation" are removed.

Recommendation #2: The Regulator should promote career progression from Registered Migration Agent to Legal Practitioner

- [13] The State / Territory legal profession regulators should actively support and encourage the advancement of the migration advice profession by incentives or programs to assist registered migration agents to become legal practitioners.
- [14] The upcoming de-regulation sends the wrong signal to those considering the entry to our profession. Migration advice practitioners are not rewarded for further academic study and advancement. Instead, they face an impediment.
- [15] Migration advice practitioners with restricted legal practising certificates will need to choose between continuing to hold a (restricted) legal practising certificate or continuing their MARA registration acts as a disincentive to any registered migration agent that wants to improve.
- [16] Current registered migration agents that decide to progress their career through further legal studies and become admitted to the profession must be supervised prior to obtaining an unrestricted practising certificate. Many law graduates do not readily find a supervisor, and the imposition of a time-limit is unnecessary and onerous.
- [17] Regulation by the legal profession instead of the Office of the MARA and removing barriers to career progression supports the advancement of our profession, and advantages both practitioners and the public.

*Recommendation #3: The **function** of Registered Migration Agents should be promoted and supported by the Department of Home Affairs and through Legislative Change*

- [18] The definition of the *key purpose* of registered migration agents is expounded in the *Occupational Competency Standards for Registered Migration Agents*:

Provide professional advice and assistance to organisations and individuals on Australian migration matters in an ethical manner and in accordance with the Code of Conduct.
- [19] The *tasks performed* by registered migration agents is stated in the *Australian and New Zealand Standard Classification of Occupations*:

Provides information and advice to potential migrants, prepares and lodges visa applications, and acts as an intermediary to legally represent clients during visa processing and before review bodies. Liaises with Legal Professionals in relation to judicial review matters. Registration or licensing may be required.
- [20] These descriptors have utility however the *function* performed by registered migration agents does not appear to be defined, and not promoted nor supported.
- [21] Registered migration agents professionally prepare visa and other applications. Applications are complete and assessment-ready. They contain only the required documentation, compiled logically.
- [22] By using specialised knowledge of Australia's immigration laws and procedures, registered migration agents are third party service providers that help speed

application processing. The function of registered migration agents is to help the government operate more efficiently and at lower costs.

- [23] The function of registered migration agents is to advantage the Australian taxpayers.
- [24] Stakeholders including the Department of Home Affairs should acknowledge, promote and support this function.
- [25] The better that registered migration agents are supported to achieve the function, the better for everyone.
- [26] Acknowledgement of this fundamental truth should be the starting point in any conversation about regulation of the migration advice profession.
- [27] The Department of Home Affairs should actively encourage visa applicants to obtain professional guidance from a registered migration agent. Otherwise they may lodge applications with many irrelevant documents or alternatively insufficient and incomplete applications as they have not been encouraged to obtain the advantages of professional advice.

Recommendation #4: Refuse to accept applications from unregulated offshore advisors

- [28] Canada and New Zealand have implemented systems to refuse visa applications from unregulated offshore “agents”. Australia has not.
- [29] Those visa applicants are advised by someone that is not required to hold professional indemnity insurance. They have not had to undertake any academic study or met English language requirements. They have no need to demonstrate any knowledge of Australian Immigration Law. They do not need to provide evidence of their competence in English. They are not required to undertake Continuous Professional Development.
- [30] We should no longer tolerate the status quo and take steps pursuant to assessment and evaluation of the Canadian and New Zealand models to minimise the number of applications prepared and lodged by rogue operators.
- [31] Consumers are protected when they are advised by regulated professionals. They are unprotected when advised by those that are unlicensed and unregulated.
- [32] Registered migration agents through their businesses and employment in the profession contribute to the Australian tax system. Unregulated offshore rogue agents do not.
- [33] Eliminating applications from offshore agents would demonstrate a commitment by the government to support Australian businesses (migration agencies) and Australian taxpayers (migration agents), and to help protect vulnerable consumers.
- [34] The term “*unregistered migration agent*” should not be used. Members of the public can associate their actions as somehow connected to our profession. They are not. They are unwanted elements operating in our environment. Registered migration agents would appreciate serious action to stop them from operating, and the use of that term.

Recommendation #5: The nomenclature should be changed from “Registered Migration Agent” to “Australian Immigration Attorney”

[35] The function performed by Registered Migration Agents is akin to the function performed by Trade Mark Attorneys and Patent Attorneys. Those professionals too use their expertise and training in a specialised area of Australian law to assist clients with applications and representation that helps IP Australia deliver outcomes more efficiently than would otherwise occur.

[36] The entry requirements to become an Australian Patent Attorney or an Australian Trademark Attorney are at the Graduate Certificate level.

[37] Migration advice professionals should also be called “Attorney”.

[38] The word “migration” includes both immigration and emigration. Registered migration agents work only with immigration and do not have expertise or training in the migration of Australians to other countries.

[39] Professionals that provide Australian migration advice should be called “Australian Immigration Attorney”.

Recommendation#6: Professional privilege

[40] The clients of Australian Trademark Attorneys and Patent Attorneys enjoy the Right of Privilege in intellectual property matters.

[41] The same right should be extended to clients that engage the services of an Australian Immigration Attorney.

Conclusion

[42] Thank you again for the opportunity to provide my opinion and recommendations to the Committee.

[43] I request that my identity remains confidential.