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Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Via: Parliament of Australia – Submission Portal

Dear Senators Macdonald, Pratt, Fawcett, Hume, McKim, and Watt,

RE: MIGRATION AMENDMENT (REGULATION OF MIGRATION AGENTS) BILL 2017

I refer to the above and in particular to the proposed amendments that will remove dual registration for Registered Migration Agents and lawyers and allow lawyers to provide immigration assistance.

It is my submission that the proposed changes should not be recommended and should not be passed into law.

I submit that the amendments to dual registration will have a detrimental impact upon:

1. Myself as a Registered Migration Agent and lawyer;
2. My colleagues who are both Registered Migration Agents and lawyers;
3. The migration agents and legal professions; and
4. Clients who rely upon immigration advice and services.

Further, I submit that the amendments to allow lawyers to provide immigration assistance will have a detrimental impact upon:

1. The migration agents and legal professions; and
2. Clients who rely upon immigration advice and services.

This submission will address these concerns in two sections: the amendments to dual registration and the amendments to lawyers providing immigration assistance.

It is my submission that the Migration Amendment (Regulation of Migration Agents) Bill 2017 should not be recommended and should not be passed into law.

Amendments to Dual Registration

It is my submission that the proposed amendments to the dual registration for Registered Migration Agents and lawyers should not be recommended and should not be passed into law.

I hold a Bachelor of Laws (Honours), a Graduate Diploma of Legal Practice, and a Graduate Certificate of Australian Migration Law and Practice. I could have registered as a Migration Agent through being a lawyer with a current practicing certificate, however I completed the Graduate Certificate of Australian Migration Law and Practice in recognition of the complexity of this area of law and that my undergraduate studies in conjunction with the Graduate Diploma of Legal Practice did not prepare me for practice in this area of law.

I have recently registered as a Migration Agent and I am working very hard to provide my clients with the highest standard of immigration assistance and advocate strongly on their behalf.

I note that I do not currently hold a practicing certificate as a direct result of the ambiguity surrounding these amendments and the real impact they would have on me if they were passed.

In the instance they were passed, I would not be able to hold a practicing certificate because if I did, my registration as a Migration Agent would be cancelled. Further, if I did obtain my practicing certificate and these amendments were passed, again, my registration as a Migration Agent would be cancelled. In both situations, it would have the effect of leaving me with only a restricted practicing certificate. This would mean that I could not work in my current position and I would have to find employment elsewhere so that it would count towards the two (2) years of supervised practice so that I could obtain an unrestricted practicing certificate.

Alternatively, I could keep my registration as a Migration Agent and never be able to hold a practicing certificate despite holding a Bachelor of Laws with Honours and a Graduate Diploma of Legal Practice and being admitted as a legal practitioner in Queensland in 2014.

I want to be both a Registered Migration Agent and Immigration Lawyer. I cannot do this if these amendments are passed. If passed, these amendments would impact upon my employment, my career, and, importantly, upon my clients.

There is no reason why people such as myself should be penalised for undertaking further studies and from being able to hold both a practicing certificate and registration as a Migration Agent.

Among my colleagues, some are also both Registered Migration Agents and lawyers. These amendments would place them in the same situation where their registration as Migration Agents would be cancelled or they have to keep their Migration Agents registration over their practicing certificate. Regardless of what each colleague chose, it would have a real impact upon them, how they practice, and their clients.

Further, these amendments would have a detrimental impact upon the migration agents and legal professions as they will exclude lawyers from being Registered Migration Agents, and being able to advertise themselves as such, and they will allow any lawyer with a practicing certificate to provide immigration assistance regardless of whether they have any experience or training in this specific, very complex, area of law.

Ultimately, the amendments to dual registration will have a detrimental impact on clients who rely upon immigration advice and services, inter alia, because:

1. Clients may not be able to distinguish between lawyers who do not have experience or training in immigration law and practice and those lawyers who have experience and training in immigration law and practice but have had their registration cancelled because of this amendment;
2. The value of being a Registered Migration Agent will be diminished, and with it the profession, such that clients may think that any lawyer can carry out the functions of a Registered Migration Agent so why would they need Registered Migration Agent if they could use a lawyer; and
3. Lawyers would not be subject to the Office of the Migration Agents Registration Authority (OMARA) Code of Conduct, and those who have been in breach of this Code of Conduct who have had their registration suspended or cancelled but are still lawyers can continue to provide immigration assistance, thus diminishing the legal profession and jeopardising the clients matter.

Therefore, I submit that the amendments to dual registration will have a detrimental impact upon:

1. Myself as a Registered Migration Agent and lawyer;
2. My colleagues who are both Registered Migration Agent and lawyers;
3. The migration agents and legal professions; and
4. Clients who rely upon immigration advice and services.

It is my submission that the proposed amendments to the dual registration for Registered Migration Agents and lawyers should not be recommended and should not be passed into law.

Amendments to Lawyers providing Immigration Assistance

It is my submission that the proposed amendments to allow lawyers to provide immigration assistance should not be recommended and should not be passed into law.

This amendment, namely removing the distinction between immigration assistance and immigration legal assistance, would have a detrimental impact upon the migration agents and legal professions and on clients who rely upon immigration advice and services.

Registered Migration Agents who do not have a law background, until December 2017, had to complete the Graduate Certificate of Australian Migration Law and Practice. This specialist qualification prepared students for practice as a Migration Agent and they must maintain this knowledge to continue to be registered as a Migration Agent. Registered Migration Agents who do have a law background, and registered off a practicing certificate, are required to undertake continuing education and to abide by the OMARA Code of Conduct.

Allowing a lawyer to provide immigration assistance could mean that lawyers have no obligation to undertake continuing education in immigration law and practice and that they will not be bound by the OMARA Code of Conduct. It would also mean that a lawyer without training and knowledge in immigration law and practice can provide immigration assistance. Further, that those who have been sanctioned by the OMARA in the form of suspension or cancellation of their registration will be able to again provide immigration assistance.

This would be detrimental to the migration agents and legal professions and to clients who rely upon immigration advice and services.

Further, this amendment seems to be in direct contradiction to increasing the entry requirements to be a Registered Migration Agent. On the one hand the qualification is being increased from a six (6) month Graduate Certificate to a twelve (12) month Graduate Diploma with a proposed compulsory placement component and restricted practicing period of two (2) years. Then on the other hand this amendment would allow any lawyer with a practicing certificate, who could have no formal training or experience in immigration law and practice, to be able to provide immigration assistance. In having recently completed the Graduate Certificate of Australian Migration Law and Practice, I can see why a Graduate Diploma is preferred as the entry requirement. However, allowing the holder of a practicing certificate to provide both immigration legal assistance and immigration assistance without any further training or registration will undermine these changes, and the professions as a whole.

Further, if lawyers were no longer allowed dual registration, so they did not have a MARN number, how are they able to distinguish themselves from lawyers who have no formal training or specialist qualifications in this area of law.

Ultimately, the effect of these changes would be to bring the professions, both of Registered Migration Agents and lawyers, into disrepute and lower the standard of advice and assistance offered to clients and users of these services. These amendments would not improve the profession nor would they improve the services provided to clients seeking immigration advice and assistance.

Therefore, it is submitted that the amendments to allow lawyers to provide immigration assistance would have a detrimental impact upon:

1. The migration agents and legal professions; and
2. Clients who rely upon immigration advice and services.

It is my submission that the proposed amendments to allow lawyers to provide immigration assistance should not be recommended and should not be passed into law.

Conclusion

It is my submission that the proposed changes in the Migration Amendment (Regulation of Migration Agents) Bill 2017, namely the proposed amendments that will remove dual registration for Registered Migration Agents and lawyers and allow lawyers to provide immigration assistance, should not be recommended and should not be passed into law.

These amendments will have a detrimental impact on myself, my colleagues, the migration agents and legal professions, and on clients who rely on immigration advice and services.

If the Australian Government seeks to reform the professions, there is no reason why that reform should exclude dual registration for Registered Migration Agents and lawyers and why it should allow lawyers to provide immigration assistance.

The Migration Amendment (Regulation of Migration Agents) Bill 2017 should not be recommended and should not be passed into law.

If you would like to contact me in regard to the above, please do so.

Regards,

Tonley J Munro

Registered Migration Agent and Lawyer

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